

No 42.
found ineffec-
tual,

Adjudication was led upon this bond ; but requisition against the debtor was not used previous thereto. The summons of adjudication was called in the year 1742, but decret did not go till the year 1745.

In a question betwixt David M'Guffock assignee to M'Milton, insisting for the accumulations in the adjudication, and David Edgar, disponee of M'Kill, who had paid up the principal sum and interest ; it was *objected* for David Edgar, That the adjudication was ineffectual, in respect no requisition was used previous to it.

It was *answered* for M'Guffock, The reason why the requisition was stipulated and required, is, that the debtor might not be taken unawares, but might have sixty days to prepare the money for his creditor. Now, in the present case, the debtor had full time to prepare his money, not sixty days, but three years ; there being this distance of time betwixt the summons and decret of adjudication.

THE LORDS affoizied Edgar.

For M'Guffock, *J. Dalrymple.*

Alt. Crosbie.

Fol. Dic. v. 3. p. 7. Fac. Col. No 82. p. 180.

1784. *February 4.*

THE APPARENT HEIR of JOHN PORTEOUS of Glenkirk, *against* Sir JAMES NASMITH.

No 43.
An adjudica-
tion, led for
bygone rents,
without a
previous de-
cree of con-
stitution, set
aside, both as
to these rents,
and as to the
whole other
sums adjudg-
ed for, which
had been ac-
cumulated
into one sum,
without
distinction.

JOHN PORTEOUS, of Glenkirk, possessed lands, belonging to the Earl of Selkirk, for seven years, under a tack ; and he continued in possession two years longer, by tacit relocation.

The Earl, being, at the same time, creditor, by bond, to John Porteous, deduced an adjudication of his lands ; in which the nine years tack-duties, and the sum contained in the bond, were accumulated together in the same decerniture.

Sir James Nasmith acquired right to this adjudication ; against whom it was objected, that no decret of constitution had been obtained, in order to ascertain the tack-duties due to the adjudger. Erskine, book 2. tit. 12. § 4.

THE LORDS were clearly of opinion, That, to the extent of the rents due by the contract of lease, the debt was liquidated, with sufficient precision, by the lease itself ; and that it was competent to the landlord to adjudge for such, without the formality of a decret of constitution, in the same manner as it was to a creditor, by bond, to adjudge for bygone annualrents.

With regard to the tack-duties of those years, however, during which the debtor had possessed by tacit relocation, their opinion was different ; because the adjudication was, in this respect, altogether unwarranted by any voucher, and therefore equally exceptionable as if no debt had been due. The effect of this informality, it was farther observed, was a total nullity in the adjudication, and not merely a restriction as to the tack-duties of the two years ; which last would have taken place, if the different sums, instead of being accumulated, had been separately decerned for.

THE LORDS pronounced the following interlocutor; to which they adhered, upon advising a reclaiming petition and answers:

'In respect the decret of adjudication was led for bygone rents, without any previous decret of constitution, and that the whole debts adjudged for are accumulated into one sum, without distinction; find, That the same is to be set aside in totum.'

Lord Ordinary, *Westball.*

For the apparent Heir, *Rolland, D. Williamson.*

Alt. *Hay, Honyman, Mark Pringle.*

Clerk, *Home.*

Fol. Dic. v. 3. p. 6. Fac. Col. No 141. p. 222.

Craigie.

* * This case was appealed. The following was the judgment of the House of Lords:

'ORDERED and ADJUDGED, That the appeal be dismissed; and the interlocutors, complained of, be affirmed.'

4th April,
1783.

For Sir James Nasmith, appellant, *A. Wight, Wm. Adam.*

For the apparent Heir, respondent, *Ilay Campbell, Ar. M. Donald.*

What SUBJECTS are carried by APPRISING and ADJUDICATION.

1623. *March 1.* HAMILTON against DRUMMOND.

IN an action, pursued by Hamilton, against the Heir of umquhile Sir Alexander Drummond of Meidhope, to make arrested farms pertaining to the Heir forth-coming, the arrestment being executed after Whitfunday, in that year in the which the farms were arrested, and desired to be made furthcoming, and the land being apprised from the Heir after the arrestment, but before the term of Martinmas, that same year; the LORDS found the said arrestment after Whitfunday, affected the half farms of that year only; and that the comprising deduced before Martinmas affected the other half farms, viz. for the Martinmas term subsequent, to the compriser's use. (*See ARRESTMENT.*)

No 1.
What term's
rents an ap-
prising affects.

A.G. Aton.

Alt. *Hopet.*

Gibson, Clerk.

Durie, p. 54.