

neither be sustained as a general nor as a special adjudication ; not as a general, because it adjudges for a fifth part more, and for the composition to the superior, and expenses of infestment, as the Act provides in the case of special adjudications ; nor as a special one, since it proceeds not upon a special rental and probation. 2. The term of payment, of the sum adjudged for, is the next term after a liferenter's decease, which was not declared. Answered, The adjudication was led in the year 1679, when the Act was not fully understood ; and, therefore, some escapes in form should be dispensed with. 2. The term of the liferenter's decease being libelled, and not denied by the debtor, who appeared in the process of adjudication, it needed not be proven. The Lords sustained the adjudication.

*Nota.* The Act of Parliament appoints the fifth part in special adjudications, to be the fifth not only of the principal, but effeiring to the principal and annualrents resting the time of adjudication, and stocked. 2. The clause of redemption provides nothing in relation to the fifth part of penalty, or expenses of adjudication, which yet in justice is due. But, in total adjudications, we adjudge ordinarily for principal, annualrents and penalty, all stocked the time of adjudication into a liquid sum ; and also for the superior's composition, and the expenses of passing infestment in general without liquidations, (which, by the Act, bears annualrent from the time of expending,) and total adjudications are declared, by the Act 1661, redeemable in all points as comprisings : and though there be no sheriff-fee due, yet, seeing, in 1661 the appriser had the penalty free, so now adjudgers ought to have expense of the decret of adjudication and recording, &c. so as the penalty may be free. *Page 3, No. 11.*

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1687. *January.* AUCHINMOULY *against* DOROTHY BUCHANNAN.

AN assignation being quarrelled as null, because consisting of two sheets of paper, and the margin, at the joining, not subscribed by the cedent ;—Answered, The cedent being a wife, had judicially ratified the same in presence of the mayor of Waterfoord, in Ireland, attested by his subscribing indorsed on the first sheet. Replied, The cedent does not subscribe the judicial ratification. The Lords sustained the ratification ; but it appeared that the debtor and the cedent had settled. *Page 23, No. 118.*

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1687. *January.* MARGARET BROWN *against* ANDREW BURNET, MERCHANT in ABERDEEN.

IT was debated, if a substitution to one, in case she die unmarried, did convalesce upon her dying within year and day after her marriage. *Page 48, No. 213.*

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1687. *January.* CLIFTONHALL and His WIFE *against* DAVID OSWALL.

A PERSON named executor and universal legatar by his father, having filled

up, in his own name, a blank moveable bond he found lying by the defunct and omitted out of the testament confirmed by him; the defunct's daughter did afterwards confirm the said bond, as executor *ad omissa*: The son's assignee pursued the debtor for payment. Alleged for the debtor, That the sum contained in the blank bond was *in bonis defuncti*; and, 2. Alleged for the sister, executor *ad omissa*, That the cedent had lost his interest in the sum, by *dolosè* omitting the same out of the principal confirmed testament. Answered for the pursuer: 1. 'Tis denied that the bond was blank in the defunct's custody; 2. The son, as executor and universal legatar, had right thereto; 3. Though omissions in executors, who have a naked office, are punished by the custom of the commissaries, yet such omissions, in persons who have a positive interest of universal legacy, or legitime, &c. are not presumed fraudulent, but to happen through negligence. The Lords ordained trial to be taken if the bond was found lying blank by the defunct; but found, that the son, the cedent, and his assignee, would, by reason of the universal legacy, have right to the sum, though not confirmed.

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1687. *January.* MR ALEXANDER COLVIL *against* WILLIAM HALY.

IN the reduction and improbation, at the instance of Mr Alexander Colvil against William Haly, of writs granted to the defender by Jean Colvil;—Alleged for the defender, That Jean Colvil being author condescended on, the pursuer ought to have cited her, or her nearest of kin, if she be dead; 2. He could not produce writs granted by Jean; because the pursuer libelled or instructed no right, in his favours, flowing from her by disposition or succession; 3. The defender is only obliged to condescend on the dates of decreets before the Lords, and not produce them, or the grounds and warrants; and extracts of registrate writs must satisfy the production, and the pursuer must seek the registers for the principals. The Lords, *ex gratia*, allowed Jean Colvil, or her nearest of kin, to be cited *cum processu*, in respect the defender was an agent, who had been vexatious to the pursuer; and they sustained [the second] and third defences as relevant.

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1687. *January.* FORREST *against* JOHN CALLENDER.

MR Alexander Higgins having disposed his lands of Craigforth to John Callender, whereupon resignation was made in exchequer, after one Forrest had been infest base in an annualrent out of these lands; Forrest raised a pointing of the ground, and, before decret thereon, John Callender presented a signature to the exchequer, and infestment followed after the decret of pointing, which was obtained immediately after the first term of payment of annualrent. In a competition betwixt Callender and Forrest,—alleged for Callender, That he having presented a signature before the other's decret, the infestment ought to be drawn back to operate from the date of presenting the signature, seeing he could do no diligence by a charge against the king; and applications to the exchequer (which is a public judicatory,) could not be disappointed, more than a prior action before the Lords by a posterior first consummated before an in-