

(GENERAL CLAUSE.)

No 3.
name, compre-
hends all the
lands of it
contiguous,
and includes
mills and
woods.

debtor, within the parish of _____, and sheriffdom of Dumfries: It was *alleged*, for the adjudger of the barony, That he only could have right to mills, woods, fishings, and others, that require special infeftments, or else erection into a barony; which is *nomen univertitatis*, and comprehends these, though not expressed, and reaches to discontiguous tenements.—It was *answered*, *imo*, That the general clause, of *all other lands*, was sufficient to bring in that adjudger *pari passu*. *2do*, That, though *barony* was not expressed in the adjudication, yet, Enoch being adjudged, all that is comprehended under that common designation, is carried thereby, *with the pertinents thereof*; and so mills, or woods, thereupon, unless they were forests, or a milln which is a separate tenement; and, whatever might be alleged, upon voluntary dispositions, where purchasers may see their author's rights, yet, in adjudications, where they cannot know the same, there ought to be the most favourable and extensive interpretation. It was *replied*, That the general clause can operate nothing; for the adjudger might as well adjudge a debtor's lands through all Scotland; and such general adjudications can be no foundation of infeftments, and cannot make any real right; and therefore the lands, or rights, adjudged must be named.

THE LORDS found the general clause, in the adjudication of lands undesigned, was null, and of no effect; but found, That, Enoch being adjudged, all lands, under that common designation, lying contiguous, and the mills and woods thereon, was carried thereby. *

Fol. Dic. v. 1. p. 10. Stair, v. 2. p. 786.

No 4.
Teinds found
not to be
comprehend-
ed under a ge-
neral clause.

1702. February 17. HOME of Wedderburn, *against* HOME of Kimmergham.

HOME of Wedderburn, having acquired a comprising, led against his estate, by Mr Alexander Spottiswood, he pursues Home of Kimmergham for the teinds of his lands. *Alleged*, You have no title to my teinds; in so far as your comprising is allenary of the lands and mill, and makes no mention of the teinds. *Answered*, It needs not; for teinds, being an inferior right, are carried with the lands; especially, seeing the comprising bears all right, interest, and claim of right, petitory, or possessory: And Stair observes, That, on the 27th of February 1672, Scot against Muirhead, (*See TEINDS*) in a voluntary sale, where the disposition bore only the lands, yet the LORDS extended it to the teinds also. *Replied*, That there were sundry specialties in this case; for he was burdened with L. 30 of teind-duty to the minister; and yet the LORDS allowed the defender to be reponed, he repaying the price, *cum omni causa*. Dirleton likewise states this question, *voce TEINDS*; but leaves it undecided. THE LORDS found this comprising did

* See Corfer against Durie, p. 44. quarto Dic.; where the contrary seems to have been found.

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not extend to the teinds, nor comprehend the same, under the general denomination of lands, *et omne jus*, &c. ; which is but an extension of style, ampliating the right to the lands, and goes no farther.

Fol. Dic. v. 1. p. 11. Fountainball, v. 2. p. 147.

No 4.

1710. December 21.

SIR WILLIAM MENZIES, of Gladstains, *against* Dr ANDREW BROWN, of Dolphintoun.

JAMES CLERK having, in the year 1680, disposed his lands of Wrightshoufes to Sir John Clerk of Pennycuik, his brother, upon his granting him a back bond, obliging himself to denude in favours of the disposer, when paid of the sums therein contained ; there arose a competition, betwixt Sir William Menzies, as having right to an adjudication, in anno 1685, whereby the lands and estate of Wrightshoufes are specially adjudged from James Clerk, with all right, title, interest, reversion, &c. that he had, or could pretend thereto : And Dr Brown, who, in the year 1709, adjudged, specially, the back bond, granted, by Sir John Clerk, to the common debtor. Sir William craved to be preferred to the mails and duties of the lands, because his adjudication is prior to the Doctor's.

Answered for Doctor Brown. No respect can be had to Sir William's adjudication of the lands, with all right and interest that the common debtor had therein : Because, he, being denuded before, by disposition and infeftment, in favours of Sir John Clerk, had no real right in the lands that could be adjudged ; but only Sir John's back bond, which is only affected by the Doctor's special adjudication thereof, and could not be carried by the general clause in Sir William's adjudication ; more than Sir John's personal bond, obliging himself to dispoise his own lands, of Loanhead, to his brother, James, in a certain event, could be affected, at the instance of James's creditors, by an adjudication of Loanhead, with all title, interest, &c. though it might be affected by their adjudging specially the personal obligation, or *jus ad rem*, that stood in James's person. At least, such a special adjudication would be preferred to the adjudication of the lands, with such a general clause, November 21. 1673, Fairholm against Rentoun, (*No 1. b. t.*) ; January 23. 1674, Nisbet against Mein, (*No 2. b. t.*). *2do*, An adjudger of a special disposition of lands from his debtor, who never was infeft, would be preferred to another creditor, who had adjudged from him the lands, with all dispositions concerning them. James Clerk had no more right, by the back bond, to the lands of Wrightshoufes, than one has, by a simple disposition, without infeftment : Because, though the back bond did qualify Sir John, in the disposal of the right, it did not qualify the right itself ; so that Sir John might have disposed the lands to another, without the burden of the back bond. *3tio*, Sir William having adjudged only all rights, in general, concerning the lands of Wrightshoufes, that stood in the common debtor's person ; and the Doctor, having specially ad-

No 5.

An adjudication, of *all right*, &c. carried a back bond, in preference to an adjudication of the back bond only.