

1709. June 10.

WILKIE against WILKIE.

No 16.

The fums in an adjudication bear annualrent from the date of the decree, not from the time of accumulation.

IN the competition betwixt the children of the second marriage of old John Wilkie, and the creditors of young John Wilkie; THE LORDS found, That the accumulating annualrents, in a decret of adjudication, at a term preceding the date thereof, without mentioning from what time annualrent of the accumulate fum should run, was no nullity, or ground of restriction; in respect, *de jure*, the fums in an adjudication bear annualrent from the date of the decret only, and not from the time of the accumulation, when the term of commencement is not expressed.

Fol. Dic. v. 1. p. 8. Forbes, p. 331.

1711. June 19.

THE CREDITORS of ROSS of Lethinty, against ELIZABETH GELLIE, Relict, and JOHN HALL, Son to the deceased JOHN HALL, Merchant in Aberdeen.

No 17.

A liferentrix of a bond received payment of a small part of the penalty. An adjudication, at the instance of the fiar, found, notwithstanding good, even for the whole penalty.

IN the ranking of the creditors of Lethinty, Mrs Hall and her son founded on an adjudication, upon a bond granted by Ross of Lethinty, and cautioners; payable to the deceased John Hall, and Elizabeth Gellie his spouse, the longest liver of them two, for Elizabeth Gellie's liferent use alienarly; and, failing of them by decease, to John Hall their eldest son, with 2000 merks of liquidate expences, in case of failzie.

Alleged for the other creditors, The said adjudication could only subsist as a security for principal fum and annualrents, and not as to the accumulate penalty; because, the whole 2000 merks of penalty is adjudged for, and yet L. 23. Scots thereof was paid to Elizabeth Gellie, the liferentrix, conform to her receipt produced.

Answered for John Hall, Penalties in bonds are adjected for the failing in payment of the principal fum; and it is only in infestments of annualrent that termly failzies are pactioned, in case of the not punctual payment of annualrents. For, by common custom, the penalty in a bond doth only decrease by partial payment of the principal fum, and here the whole principal is still resting. So that if any part of the 2000 merks of penalty was paid to Elizabeth Gellie, it was *indebite solutum*, and cannot be obruded to John Hall the fiar, as a nullity in the adjudication.

THE LORDS repelled the nullity, and sustained the adjudication as good, even for the penalty.

Fol. Dic. v. 1. p. 8. Forbes, p. 509.