

(RANKING OF ADJUDGERS AND APPRISERS.)

obliged to follow the same course: And, now that adjudications have been substituted in the place of apprisings, it must follow, that, when the debtor has never been feudally vested in the lands, a charge against the superior must be inept, in the same manner as if the superior had proceeded to give charter and infeftment to the adjudger, without being formally required so to do; and so it was solemnly decided, 6th December 1695, Dewar against French, (*No 12. b. t.*)

Answered: The statute of 1661 declares, in general terms, that a charge against the superior shall be equal to infeftment; wherever, therefore, a charge has been given, the requisites of the statute must be considered as complied with, and the preference of the creditors must be regulated by it. To enter into farther discussions would only be injurious to creditors, who cannot always know how their debtor's rights stand; and so the rule is laid down by all the authors, no distinction being made whether the debtor was infeft or not. *Stair, 2. 3. 29.; 3. 2. 49.; Erskine, 2. 12. 24.*

Where the superior pays no regard to the charge at the instance of an adjudger, it would be equally unjust to enquire, whether the debtor had been regularly received as the vassal, as it would be to examine, whether, along with the warrant for charging the superior, the creditor had offered a year's rent, without which, however, a superior is not obliged to give infeftment to an adjudger. The decision, quoted on the other side, appears to have been erroneously abridged in the Dictionary, the question, in the case there noticed, having turned on the effect of a general charge, and of the statute 1693, respecting unexecuted procuratories. At any rate, it is a single decision, in opposition to the general tenor of the best authorities.

THE LORDS unanimously found, That the adjudication at the instance of Henry Pierce was the first effectual one.

Reporter, *Lord Swinton.* For David Limond, *Mat. Ross, et alii.* For Henry Pierce, *Abercromby, Honyman, et alii.* Clerk, *Sinclair.*

Craigie. *Fol. Dic. v. 3. p. 14. Fac. Col. No 2. APPEND. p. 9.*

1663. February 5. GRAHAME against ROSS.

THESE parties competed upon apprisings: (*See the 24th of January, No 8. b. t.*) Wherein the LORDS found, That none of the apprisers should come in with him who was first infeft, till first they paid their proportional part of the composition and expences.

Now, having again considered the tenor of the act of Parliament, they found that they behoved to satisfy the whole, and that the obtainer of the first infeftment should bear no share of it, that being all the other apprisers gave, to get the benefit of the act, to come in *pari passu.*

Fol. Dic. v. 1. p. 19. Stair, v. 1. p. 171.

No 16.

No 17.
Apprisers, before coming in with the first effectual, must pay the whole composition and expences.