

(RANKING OF ADJUDGERS AND APPRISERS.)

1724. January 24. LYON against Easter Ogle's CREDITORS.

No 2.

IN the ranking of the Creditors of Easter Ogle, in a question with Miss Lyon; the particulars of which are given under the title, PROVISIONS TO HEIRS AND CHILDREN; an adjudication, led in security of the daughter's bond of provision, the term of payment whereof was not till her age of eighteen, ten years after the competition; was preferred, to such adjudications as were not within year and day, though led upon bonds whereof the term of payment was past.

*Fol. Dic. v. 1. p. 16. Rem. Dec. v. 1. No 45. p. 89.*

1677. December 12.

LADY FRAZER against The CREDITORS of Lord Frazer and LADY MARR.

No 3.  
Adjudication  
in implement,  
led within  
year and day  
of another,  
for a liquid  
sum; does  
not come in  
*pari passu*.

THE Lady Frazer, upon her contract being infest in the lands of Stanywood, did consent to the sale thereof with her husband; and, in lieu thereof, her husband disposed to her in life-rent the lands of Cairnbulg; but she was not infest during his life, but obtained an adjudication against his heir, and was thereupon infest; the creditors also adjudged for their debts within year and day of the lady; and in a competition for the rents, between the adjudgers and the young lady craving a terce, it was *alleged* for the old Lady, That she had the right of the whole lands during her life, by her adjudication on her liferent; because the act of Parliament 1661, betwixt Debtor and Creditor, which brings in apprisers *pari passu*, apprising within year and day, cannot extend to this case; neither the late act of adjudications in place of apprisings; because these acts are only in relation to apprisings or adjudications for liquid sums, whereby the first effectual apprising is declared; as if an apprising were deduced for the whole sums apprifed for, within the year; which cannot extend to an adjudication, for implement of a disposition in fee or liferent; which can only reach the lands disposed, and not the whole estate of the disponer.—It was *alleged* for the young Lady, That she is preferable for her terce to all the creditors, because her husband died in fee of the lands in question; and therefore neither the incomplete disposition in liferent to the old Lady, which was not made real by an infestment, till after the young Lady's husband's death, nor the adjudications of her husband's creditors, deduced after her husband's death, could exclude her terce, constituted *provisione legis*, and requiring no infestment.—It was *answered*, That the young Lady had no right of terce but by her contract produced, whereby her husband renounced his interest in her liferent from her first husband, and she renounced all provisions to be made by him out of his estate; and though, by a writ a-part of the date of the contract, he declares, that she was not thereby excluded from her terce; yet

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No 3. that is a latent fraudulent deed to deceive the creditors, who seeing the contract, thought themselves secure against the terce.

THE LORDS found, That, by the contract, the terce was not excluded, and therefore preferred the young Lady to her terce, against both the old Lady and the creditors, neither of them being infeft during the husband's life; and found, That if the old Lady did liquidate the value of her liferent, and adjudge therefore, the creditors adjudging within year and day, would come in *pari passu*; but if she adjudged only the lands provided to her in liferent, and was infeft before the creditors adjudged, she is preferable to them, and excludes them during her life.

*Fol. Dic. v. 1. p. 16. Stair, v. 2. p. 577.*

1680.

ADAM against ALISON.

No 4.

FOUND, that an adjudication, led within year and day of another, could not come in *pari passu* with it; because the first was for a liquid debt, and the second only special, for implement of a disposition, which the Lords thought not included in the 62d act, Parliament 1661; yet the equity is the same in both; *sed egit remedio imperatorio*.\*

*Fol. Dic. v. 1. p. 16.*

1704. June 21. SINCLAIR of Southdun against SINCLAIR of Barack.

No 5.

Of two adjudications in implement; the one on which the superior had been charged was preferred.

THIS was a competition betwixt two adjudications, both of them being for implement of dispositions. Southdun craved preference, because he had charged the superior to infeft him, and the other had neglected it. *Alleged*, This step of diligence, by a charge against the superior, was in this case preposterous, nimious, and unwarrantable; for though, in adjudications for debts, the superior is obliged, by act of Parliament 1669, to receive the adjudger, on his paying a year's rent; yet in adjudications for a fact, such as implement of a disposition, (which has no legal,) there is neither law nor custom obliging the superior to receive or infeft such an adjudger; for, by the ancient feudal customs, which are become our law, the superior was not obliged to change his vassal, or to accept of a stranger; and alienations of feus were strictly prohibited, only the favour of true and lawful creditors procured some relaxation by the 36th act, Parl. 1469, that superiors were then obliged to receive creditors apprising for their vassals; but so, that if superiors pleased, they might take the land to themselves, they paying the debt.

\* This is taken from that part of Lord Fountainhall's Works, which have not been printed.