

(The LEGAL.)

that he did not redeem; neither does law consider the right of the adjudication, either with respect to any part of the sums extinguished by payment, as long as there be other sums unpaid for which it was led; nor does it regard any proportion of the adjudged lands as unaffected, seeing it is a *jus individuum* which resides in the sums prior to the inhibition, or the sums yet resting unpaid, though all the rest be cut off; and the foresaid case of Blyth only reserved that point, but noways decided it; and an inhibition is only a prohibitory diligence, and gives no positive right, neither can it bring in their adjudication to compete with Alderston.—It was likewise *urged*, if it had been led for the anterior sums alienably, and expired, then it would have carried the property of the lands; and why shall it be in a worse case by having sums posterior to the inhibition; for *utile per inutile non vitiatur*?—THE LORDS found the sums adjudged for in Alderston's adjudication, prior to Aberlady's inhibition, being still resting unpaid when the adjudication expired; the legal conveyed the right of the whole lands adjudged, without respect to the sums contracted after the inhibition, or though part of them had been paid within the legal. This new decision was reckoned conform to the analogy of law; though some pleaded for equity, to cut off sheriff-fees or exorbitant penalties, if there was only a small part of the sums resting at the expiring of the legal. (See INHIBITION.)

*Fol. Dic. v. 1. p. 21. Fount. v. 2. p. 57.*

1712. November 26.

Colonel JOHN ERSKINE of Carnock, *against* Sir GEORGE HAMILTON.

IN the competition betwixt Colonel Erskine and Sir George Hamilton, for the lands of Tulliallan, Sir George having founded on an adjudication thereof in the year 1680, led by Sir Robert Mill, for 30 years bygone annuities of an infeftment of annualrent, granted by Sir John Blackadder, then heritor, effecting to 5000 merks, in favours of Thomas and Richard Blackburns; to which adjudication Sir George having right from Sir Robert Mill, pretended the legal was expired.—THE LORDS found the adjudication could only subsist as a security for the sums truly owing, and could not have the benefit of an expired legal; in respect it was led for the whole bygone annualrents since the year 1649; whereas Sir Robert Mill had only right to the half, viz. Thomas Blackburn's share, till the year 1675.

Albeit it was *alleged* for Sir George Hamilton, That his adjudication being *articulatus libellus*, and one of the articles, viz. half of the annualrents, which the adjudger had right to from Thomas, being a good debt; the adjudication for that article must expire, and carry off the whole subject. No informality as to Richard's share, can prejudice the other, according to the rule, *utile per inutile non*

No 9.

No 10.

The benefit of expiry of the legal, is not allowed, where there is a *pluris petitio*.

Interlocutor.

(THE LEGAL-)

No 10.

*vitiatur*: Especially, considering that the infeftment of annualrent granted to the Blackburns, was in effect two infeftments, for *concurfu partes faciebant*, and *nomina debitorum ipso jure dividuntur*, though a conjunct disposition of lands makes heritors *pro indiviso*. Thus, an adjudication led by a creditor for different bonds, if formal for one bond which is not paid within the legal, will expire, though informal as to the rest, July 6th 1699, Hay of Alderston against Children of Aberlady, (No 8. *supra*.)

To which it was *answered* for Colonel Erskine, That an adjudication for several fums, whereof some are found not to be due, useth to be sustained as a security for principal and annualrent, but not to expire as to the legal, November 23d 1677, Boid and Graham against Malloch, (Stair, v. 2. p. 565. See *BONA et MALA FIDES*, &c.); July 20th 1678, Morrice against Orrock, (Stair, v. 2. p. 637. See *JURISDICTION*.); in both which cases, the libels were articulate. Apprisings led for more than is due, are opened partly *in odium plus petitionis*; partly, for that the leading adjudication for more fums than are due, hinders the debtor from offering to redeem; and also because of the exorbitant penal consequence of an expired legal, the Lords do grasp at any reason to keep it open. *2do*, Sir George is not here in the case of one adjudging *articulatum* for several fums; this adjudication being for the bygones of an annualrent effeiring to a fum. Nor are the annualrents *articulatum* libelled, the half as conveyed from Thomas, and the other half as flowing from Richard; but simply the whole annualrents from the 1649, to the 1680. So that the case here is the same, as if Sir Robert Mill had adjudged for one fum, to the half whereof only he had right. The decision Hay of Alderston against Aberlady's Children, cannot be applied: For there was nothing there to hinder the adjudication to expire, as to all the fums for which it was led; only the adjudger might have been debarred *personali objectione* from making use of the fums contracted after inhibition, to the prejudice of the inhibitor. (See OF the DEBT which is the FOUNDATION of the Diligence.)

Forbes, p. 635.

1739. July 24.

CREDITORS of Bonhard.

No 11.

During the legal, casualties fall by the death of the reverfer, not of the appriser.

THE casualties of superiority were found to fall during the legal, by the death, not of the appriser, though he should be both infeft and in possession, but of the reverfer. (See the particulars, from Kilkerran, *SUPERIOR* and *VASSAL*, p. 527. under the Title *VASSAL* in this Dictionary.)

Fol. Dic. v. 3. p. 12.

\* \* See Waldie against Ancrum, from Kilkerran, p. 11. under the Title *PERSONAL OBJECTION*.