

(RANKING OF ADJUDGERS AND APPRISERS.)

No 12. the Major's right from John Scot, by taking saine on the procuratory of resignation and precept of saine therein contained, conform to the allowance introduced by the new act of parliament 1693, whereby these procuratories, being mandates, *non gratia mandantis sed in rem suam*, they did not expire either by the death of the granter or the receiver. *Answered*, for Mr David Dewar, That his adjudging on a general charge had sufficiently denuded his debtor, Major Arnot, who was not infest; and he had farther charged the Archbishop of St Andrews, superior, to infest him, which was more than he needed to have done; and, by the 62d. act of Parl. 1661, it was declared to be the first effectual apprising, where either the party obtained himself infest, or did exact diligence to procure the same; which the tract of decisions since have explained and construed to be the giving a charge to the superior, and so he did all that was either competent or necessary for him to do, according to the law then standing. *Replied*, This was not the habile way; but he ought to have convened John Scot, who stood last vest and seized, or his heirs, to renew the precept and procuratory, and thereby have denuded them; which David French having done *equivalenter*, by completing Major Arnot's right on the supervenient law, he ought now to be preferred, as having the first complete perfected right; even as if Major Arnot had made two voluntary dispositions, and the receiver of the last had got his infestment first expedite; or, in the case of two gifts of escheat, if he, who had the last gift, should obtain the first decret of declarator. THE LORDS thought the point new, whether the denuding the heirs of Scot, and perfecting Major Arnot's right from him could give any preference; yet they repelled the reason of reduction against Mr David Dewar's adjudication; and *quoad* the mails and duties, brought them both in *pari passu*, as if they had been within year and day, Mr David paying the other the expences of his infestment.

Fol. Dic. v. 1. p. 18. Fount. v. 1. p. 664. & 684.

1725. *December*

Sir THOMAS MONGRIEFF, *against* the CREDITORS of Monerieff.

No 13.
What meant
by the first ef-
fectual adju-
dication.

IN a competition among adjudgers, all within year and day, the subject adjudged being a disposition, procuratory and precept, but upon which infestment had not followed; the first adjudger craved preference, because his adjudication totally denuded the debtor, having only a personal right: And, as to the other adjudgers within year and day, he *pleaded*, That the act 1661 does only regulate adjudications of subjects whereupon infestment is taken; and this, from the words of the act, describing the first effectual apprising, which is declared to be by the first infestment, or charge against the superior: And the act also supposes, that other apprisings may be led before the first effectual. All which particulars are

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inconsistent with apprisings of personal rights; the first apprising in such being always the *first effectual*. It was *answered*, That the preamble of this clause in the act is general; and respects all apprisings, whether of real or personal subjects, viz. *That creditors, at a distance, are prevented by the more timeous diligence of other creditors.* And the clause, mentioning the first effectual apprising is not intended as an adequate description of the first effectual apprising, but as a particular example of what, indeed, is the common case. THE LORDS brought the adjudgers in *pari passu*.

No 13.

Fol. Dic. v. 1. p. 18.

1729. February.

SIR JOHN SINCLAIR *against* MRS ELIZABETH GIBSON.

No 14.

A PERSONAL bond, bearing substitutions, and, consequently, heritable *destinatione*, was adjudged by several creditors. THE LORDS found, That the act, bringing in adjudgers *pari passu*, does not take place in this case; being a subject upon which infestment could not pass; and, therefore, they preferred the first adjudger.

Fol. Dic. v. 1. p. 19.

1734. June 27.

RELICT of Alexander Falconer, *against* his CREDITORS.

No 15.

ADJUDICATIONS, led against a debtor, who had, in his person, a disposition to lands, without procuratory or precept, brought in *pari passu*.

In this case, the disposition, being affected, by several adjudications, at the instance of creditors coming in *pari passu*, within year and day; one of the adjudgers went on to complete her right to the lands, by adjudging, in implement, against the disponent, whereupon infestment followed; and it was *pleaded* for her, That, though the other adjudgers did come in *pari passu*, with respect to the common debtor's right, sciz. the disposition, without procuratory or precept, that did not hinder her to be preferable in the land itself, which she only had affected by her adjudication in implement. THE LORDS brought in all the adjudications *pari passu*; and found, That the infestment obtained does accrease to the other creditors, upon their paying a proportional part of the expenses.

Mode of ranking when the subject adjudged is held by disposition, without procuratory and precept.

Fol. Dic. v. 1. p. 19.