

parts of the land to three several persons, whereupon they were infeft. Sinclair of Rattar, as apparent-heir and in possession, pursued reduction of these infeftments, and declarator that his superior could not split his superiority to his prejudice, whereby he was uncertain by whom to enter his lands. Ulbster objected to his title, that he never was infeft, nor did it appear that he was apparent-heir to the last vassal infeft, whose infeftment produced was no later than 1661. We allowed before answer a proof of his being apparent-heir and in possession, which was this day advised in the summary cause roll. And the Court found it was not in Ulbster's power to split the superiority, agreeably to our judgment 9th July 1741, Sir John Maxwell against M'Millan, (No. 5, *supra*.) This is the judgment, as I am told, for I was in the Outer-House.

* * * Note referred to in No. 23, *voce* ADJUDICATION.

Lord Elchies, in his note relative to the case, Home against Creditors of Eyemouth, 29th January 1740, No. 23, *voce* ADJUDICATION, mentions that he had stated the subject there treated of "in another place." The Editor hoped to have discovered the place alluded to, and to have communicated here any information he might thence obtain. In this he has been unsuccessful. No notes appear upon the Session papers, which are in the 11th volume. There was no attempt made to plead, in the abstract, that an adjudger infeft becomes, after expiry of the legal, so absolutely the proprietor, *whether in actual possession or not*, as to be entitled as superior to enter vassals in preference to the former proprietor. It was distinctly proved, that the adjudger here in question had never been in any respect in actual possession,—and it seems to have been on all hands considered to be necessary to ascertain this, in order to come to the conclusion that a purchaser was not bound to regard him although infeft, but might validly receive a charter from the former superior.—This charter was besides supported both by the positive prescription and by homologation.

SUSPENSION.

No. 1. 1735, Jan. 7. BRACO *against* THE DUKE OF GORDON.

THE Lords refused Braco's complaint, but remitted to me to enquire whether the Duke had controverted the quality in the Ordinary's interlocutor refusing Braco's first bill of suspension.

No. 2. 1736, Feb, 27. GRAHAM *against* MRS GRANT.

THE Lords ordained caution to be found *ad valorem*. I thought such a suspension a novelty and ought not to pass at all, were it not for the creditor's consent, but since he consented, I thought the caution should be the same as in loosing of arrestments.