

(Pais periculo petentis.)

No 12. and if your right be null, you cannot complain ; for *damnum quod quis sua culpa sentit sentire non videtur*. And Stair is misapplied ; for tit. Competitions, § 27. yields, that exceptions instantly verified are competent against adjudications ; and it must be still so while our good laws against multiplying of processes stand in vigour ; and a present trial saves expences to both parties.—THE LORDS found, before any adjudication, Ogilvy might insist in such reasons of reduction and nullity as were instantly verified ; but ordained him to condescend thereon, that it might appear of what kind they were. My Lord Forglen having proposed, if he might vote in this case, one of the parties having married his niece ; the LORDS found he might be declined in any cause immediately carried on by his niece, but not in her husband's concerns, not derived from her. (See DECLINATOR.)

Fol. Dic. v. 1. p. 12. Fount. v. 2. p. 714.

1734. July 19.

DUFF against OGILVIE.

No 13.

AN apparent heir having granted a bond in trust, in order to lead an adjudication against his predecessor's estate, a piece of land sold by the predecessor, wherein the purchaser was infest and in possession, was struck out of the adjudication ; the purchaser offering to hold the adjudication as led, in so far as to be a title to found all objections against the purchase.

Fol. Dic. v. 1. p. 12.

1615. December 14.

ALEXANDER MONTEITH against SIR GEORGE ELPHINSTON.

No 14.

By the older decisions, the superior, was not bound to infest the appriser, without instructing his author's right.

IN the suspension raised by Alexander Monteith against Sir George Elphinston, who had comprised the right of two ploughs of land of Dunbreck, from Lord Salton ; the LORDS found, that Alexander Monteith could not be obliged to infest him upon the comprising, except Sir George would show that the Lord Salton was infest. *Item*, In the same cause, the LORDS found, That Sir George ought to pay to the superior, for his infestment, 80 pounds which is the annualrent of the principal sum of 1200 merks, whereupon the lands are wadset : And so the LORDS found, That in a wadset comprised, the superior of the wadset ought to have the benefit of the act of Parliament : And also they found, That the said duty ought to be paid to the superior of the wadset ; notwithstanding it was replied, that by the contract of wadset, the superior was obliged to infest the Lord Salton, because that should be craved *ex contractu*, and not upon the comprising.

Fol. Dic. v. 1. p. 13. Hope, (SUPERIOR.) v. 2. Folio 73. MS.