(Pafs *periculo petentis.*)

No 20. ceſs the LORDS found, that no defalcation ought to be made of the year's duty payable to the ſuperior, for the entering of the compriſer, through the lands being liferented by the relict of the debtor, from whom the compriſing was deduced; but declared, that ſeeing this defender was in poſſeſſion, by virtue of her liferent, as acquired by him from her, or as in her name, that during her lifetime, that duty ſhould not be paid to the ſuperior, but ordained the compriſer to find caution preſently to pay that year's duty, immediately after the liferenter's deceaſe.

Fol. Dic. v. 1. *p.* 13. *Durie, p.* 804.

1636. *March* 29. COWAN *againſt* L. ELPHINGSTOUN.

No 21. The ſame found.

ONE Cowan having compriſed Bruce of Polknavie's lands, and charging the L. Elphingſtoun ſuperior, to infeft him therein, he ſuſpends; *alleging*, that his vaſſal was at the horn, againſt whom the compriſing was deduced, and albeit he was not year and day rebel; yet the rebellion being *in curſu*, he as ſuperior, by any entry of the compriſer, ought not to be prejudged of his caſualty of the vaſſal's liferent, when it ſhould fall; this reaſon was found no impediment to ſtay the compriſer's entry, without prejudice always of the ſuperior's caſualty, when it ſhould fall out *prout de jure*, which was not meet to be tried, nor diſcuſſed in this place: And another reaſon was, that he could not enter him, while he were paid by the compriſer, of all the bygone feu-duties owing by Polknavie, and for which he was at the horn at the ſuperior's inſtance; this reaſon was alſo repelled, becauſe the compriſer was not found perſonally ſubject to pay them, but the ſuperior might poind the ground therefor, which was reſerved to him. *Item*, The ſuperior claiming a year's duty, the compriſer *alleged*, that he ought to pay no greater duty to the ſuperior, for receiving of him, but only the quantity of the feu duty, as the vaſſal's right bears, his holding being a feu, for paying of fourteen bolls of victual yearly, which he is content to pay, being liquidate, and no further. THE LORDS repelled the allegeance, and found that the compriſer ought to pay for his year's duty to the ſuperior, an year's avail of the lands, as the ſame is commonly worth to be paid by a tenant, and that the offer of a year's duty of the feu-duty is not enough.

Act. *Cunninghame.* Alt. *Stuart.* Clerk, *Scot.*

Fol. Dic. v. 1. *p.* 13. *Durie, p.* 809.

*** In an adjudication in implement of a diſpoſition, however, it was found, that the above privilege, in favour of appriſers, did not take place; for it was contended, that although ſuperiors are obliged to infeft appriſers *ſalvo jure cujuslibet*, where they get a year's rent; as alſo, ordinary adjudgers for liquid debts,

(Pafs *periculo potentis.*)

favore creditorum; theſe conſiderations have no place in adjudications in implement. *See* M'DOUGALL againſt L. GLENTARCHIE, 24th June 1663, p. 51. v. 1. Quarto Dictionary from Stair. No 21.

1667. *February* 9. ELIZABETH RAMSAY *againſt* KER of Weſtniſbet.

No 22.
Adjudgers of the *hereditas jacens* found to have right to be infeft by the ſuperior *ſalvo jure*; tho' it was not till afterwards that the ſuperior was allowed a year's rent for entering them.

ELIZABETH RAMSAY having purſued an adjudication of certain lands, upon the renunciation of Barbara Niſbet, inſiſts upon that member of the ſummons againſt the ſuperior John Ker, that he ſhould receive and infeft her; who alleged no proceſs, unleſs the purſuer ſhow the right of the former vaſſal, whoſe heir had renounced; for the purſuer can be in no better caſe than the apparent heir, who, if ſhe were craving to be entered, behoved to inſtruct her predeceſſor's right. The purſuer *anſwered*, That her adjudication againſt the defender, as ſuperior, is in common form, which has ever been ſuſtained upon good ground, becauſe a creditor has no intereſt to have his debtor's rights, when he is ſeeking adjudication, which muſt be his title to demand the rights; but the ſuperior is obliged by law to receive the adjudger, without inſtructing any right farther than the adjudication, which has been frequently ſo found in the caſe of appriſers.

THE LORDS having conſidered the caſe, and parallel with that of appriſers, found this difference, that ſuperiors got a year's rent for receiving appriſers, but not adjudgers; yet in reſpect of the common cuſtom of theſe ſummonſes, they repelled the defence, and decerned the ſuperior to receive the purſuer, *ſalvo jure cujuslibet et ſuo.*

Fol. Dic. v. 1. *p.* 13. *Stair, v.* 1. *p.* 440.

EXCEPTIONS againſt adjudication after it is led, how proponable. *See* COMPETENT.

ALLOWANCE *of* APPRISING, *and* ABBREVIATE *of* ADJUDICATION.

1630. *July* 27. GILMOR *againſt* GILMOR.

A COMPRISING was ſuſtained, upon which infeftment had followed, although not allowed; becauſe the LORDS allowance is only craved, to the effect, that charges may be obtained thereupon againſt the ſuperior. No 1.

Fol. Dic. v. 1. *p.* 13. *From Auchinleck*, (COMPRISING.) *MS.* *

* This MS. is not in the Advocate's Library.