

(RANKING OF ADJUDGERS AND APPRISERS.)

No 3. that is a latent fraudulent deed to deceive the creditors, who seeing the contract, thought themselves secure against the terce.

THE LORDS found, That, by the contract, the terce was not excluded, and therefore preferred the young Lady to her terce, against both the old Lady and the creditors, neither of them being infeft during the husband's life; and found, That if the old Lady did liquidate the value of her liferent, and adjudge therefore, the creditors adjudging within year and day, would come in *pari passu*; but if she adjudged only the lands provided to her in liferent, and was infeft before the creditors adjudged, she is preferable to them, and excludes them during her life.

Fol. Dic. v. 1. p. 16. Stair, v. 2. p. 577.

1680.

ADAM against ALISON.

No 4.

FOUND, that an adjudication, led within year and day of another, could not come in *pari passu* with it; because the first was for a liquid debt, and the second only special, for implement of a disposition, which the Lords thought not included in the 62d act, Parliament 1661; yet the equity is the same in both; *sed egit remedio imperatorio.**

Fol. Dic. v. 1. p. 16.

1704. June 21. SINCLAIR of Southdun against SINCLAIR of Barack.

No 5.

Of two adjudications in implement; the one on which the superior had been charged was preferred.

THIS was a competition betwixt two adjudications, both of them being for implement of dispositions. Southdun craved preference, because he had charged the superior to infeft him, and the other had neglected it. *Alleged*, This step of diligence, by a charge against the superior, was in this case preposterous, nimious, and unwarrantable; for though, in adjudications for debts, the superior is obliged, by act of Parliament 1669, to receive the adjudger, on his paying a year's rent; yet in adjudications for a fact, such as implement of a disposition, (which has no legal,) there is neither law nor custom obliging the superior to receive or infeft such an adjudger; for, by the ancient feudal customs, which are become our law, the superior was not obliged to change his vassal, or to accept of a stranger; and alienations of feus were strictly prohibited, only the favour of true and lawful creditors procured some relaxation by the 36th act, Parl. 1469, that superiors were then obliged to receive creditors apprising for their vassals; but so, that if superiors pleased, they might take the land to themselves, they paying the debt.

* This is taken from that part of Lord Fountainhall's Works, which have not been printed.