feft her, which, by the current of decifions fince, has been fuftained to make it the firft effectual apprifing, or adjudication. *Anfwered*, for Fotheringham, That he had obtained a charter from the Earl of Strathmore, fuperior, three months prior to your charge; and, though I be not infeft till after it, yet my diligence, being completed by infeftment, will always be preferred to you, who have refted on a naked charge, and proceed no farther. *Anfwered*, Though your charter be prior to my charge, yet the faſine taken thereon is two years poſterior; and ſo there being ſo viſible a ceſſation and delay in perfecting the right, I muſt be preferred. THE LORDS conſidered, if there had been but the intervention of a few days, or weeks, betwixt the charter and ſaſine, that a charge coming betwixt might have had the leſs to plead; but there being a *mora* of two years, the obtainer of the charter was plainly negligent; and, therefore, found her the firſt effectual adjudger, but brought Fotheringham in *pari paſſu* with her; for our law ſeems to require no more diligence at apprifers' or adjudgers' inſtance, within the legal, but only a charge againſt the ſuperior. But the queſtion occurred, this ſame ſeſſion, in the caſe of one Grant, a wright in Edinburgh, if, after the legal is expired, a ſimple charge againſt the ſuperior can compete with an actual infeftment, expede on an adjudication or compriſing; and what the effect and import of ſuch a charge is within the legal, for making a rule in time coming in all ſuch competitions.

Fol. Dic. v. 1. *p.* 17. *Fount. v.* 2. *p.* 303.

No 11.

1695. *January* 31. DEWAR *againſt* FRENCH.

No 12.
Adjudgers of a diſpoſition, with procuratory and precept, but no infeftment, ranked *pari paſſu*; the one having taken infeftment, the other not.

WHITELAW reported the competion between Mr David Dewar, advocate, and David French, writer, anent Major Arnot's wadſet on Lovel of Cunnochie's lands. THE LORDS found Dewar's adjudication null, and would neither ſuſtain the one extract nor the other, becauſe both of them laboured under nullities and defects; the one omitting the deducing of the bond, at leaſt having it interlined; the ſecond not decerning the tutors and curators, and not mentioning the charge to enter heir. But ſome of the Lords thought he might yet be allowed to extract a formal decreet from the warrants, ſeeing French was then Mr Dewar's ſervant and truſtee, and ſhould have obviated theſe nullities. But this point was ordained to be further heard.

The competition between Mr David Dewar and David French, was reported on 6th December. They were both adjudgers of the eſtate of Cunnochie, from Major Arnot, who had right thereto by diſpoſition from John Scot, but was not infeft thereupon. David French had both a ſuſpenſion on multiple-poinding, and a reduction, and craved to be preferred to Mr David, albeit his adjudication was ſeveral years poſterior, becauſe Mr David's proceeded only upon a general charge againſt the Major's heir, which did not ſufficiently denude him, whereas he had likewiſe raiſed a ſpecial charge; likeas he was firſt infeft, in ſo far as he had perfected

No 12. the Major's right from John Scot, by taking ſaſine on the procuratory of reſignation and precept of ſaſine 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 infeft; and he had farther charged the Archbiſhop of St Andrews, ſuperior, to infeft 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 infeft, 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 *æquivalenter*, 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 infeftment firſt expede; or, in the caſe of two gifts of eſcheat, if he, who had the laſt gift, ſhould obtain the firſt decreet 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 infeftment.

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

1725. *December*

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

No 13.
What meant by the firſt effectual adjudication.

IN a competition among adjudgers, all within year and day, the ſubject adjudged being a diſpoſition, procuratory and precept, but upon which infeftment 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 infeftment is taken; and this, from the words of the act, deſcribing the firſt effectual appriſing, which is declared to be by the firſt infeftment, or charge againſt the ſuperior: And the act alſo ſuppoſes, that other appriſings may be led before the firſt effectual. All which particulars are