

No. 83. being as strong for superiors to crave that benefit in adjudications as in comprisings, they being alike founded *in jure* as to both, that they should not be obliged to receive a vassal against their will, but by satisfying his debt might purge his interest, and so take off the creditor's prejudice; they thought it just, that superiors should be in that same condition as to adjudgers as they are to comprisers by the act of Parliament, it being special and alike, there being *par ratio*; 2^{do}, The superiors being founded *in jure communi*, and by the feudal law not being obliged to change a vassal, the privilege granted to comprisers by the act of Parliament being special, and the like not granted by any posterior act to adjudgers to enter them, or pay the sums contained in the adjudication, they thought it a favour to put them both in the like condition, privileges being *stricti juris*; as likewise, that the debtor's redeeming from the superior should be free of a year's duty, whereof they prejudged themselves, it being done by the adjudgers or comprisers in case they were entered, and so were in a better condition, and could pretend no prejudice by using an order against the superior, who ought to possess these lands as his property, the apparent heir having renounced to enter; and so upon the principles both of law and equity, the Lords decerned *ut supra*.

Gosford MS. p. 164.

1695. February 6.

SIR THOMAS KENNEDY and BAILIE BLACKWOOD *against* The EARL of CASSILIS.

No. 84.

In an adjudication after the new form by sale of bankrupt lands, it was found, that the act 1469, allowing superiors to purge apprisings, took no place.

The lands of Dalmorton, as a part of Girvanmains, being exposed to sale, they were bought by the fore-named persons. The Earl of Cassilis, superior, refused to enter them, but offered to pay the price, and take them to himself, conform to the 36th act 1469, allowing the over-lord to redeem, which is called *retractus dominicus vel feudalis*. It was alleged he could not, because the acts introducing the sale of bankrupt lands had provided no such thing in favours of superiors. 2^{do}, If the adjudications be expired, then the right of redemption ceases, his privilege continuing no longer than his vassal's, who could not redeem after the legal. Answered, You the buyer have no prejudice, *et nihil tibi deest*, for your whole sums are to be paid with the interest. The Lords thought this of universal concern to all the superiors in Scotland, and therefore allowed it to be heard in presence; for it was alleged, that in adjudications for perfecting dispositions of lands, the superior could claim no more but a year's rent, and the decreets in favours of those who now buy the estates of bankrupts at the roup are declared to be full and absolute rights, which they could not be, if they were subject to the superior's faculty of redeeming.

1695. December 17.—The Lords advised the point debated between the Earl of Cassilis and Sir Thomas Kennedy, and Robert Blackwood, mentioned 6th February, 1695. The Earl being required to receive them as his vassals, offered

to pay the price, and take these lands to himself, conform to the power granted to over-lords by the 36th act of Parliament 1469, and which is the *retractus feudalis seu dominicus* introduced by the feudal law. Answered, That holds in lands appraised or adjudged during the currency of the legal; but adjudications by rousps being a new remedy introduced by our law in favours of creditors, neither the act of Parliament 1681, nor the subsequent statutes, allow any such reversion to superiors; but, on the contrary, declare the right shall irredeemably be the buyer's, else this excellent security might be wholly evacuated; for a superior might pick out a room holding of himself, without which the rest of the estate would be much less vendible, and so discourage all from buying at rousps where any part of the bankrupt's lands were holden of subjects; and, as the superior has no interest to redeem adjudications on obligations *ad factum præstandum*, or to complete dispositions, so neither can he have any here. Replied, These new statutes are very compatible with the superior's interest; neither do they abrogate his right founded on the old law, and the inconveniencies may be salved. The Lords unanimously found the superior's right of redeeming took no place in their sales. The gild-robbs, or extraordinary Lords, voted for the superiors.

No. 84.

Fol. Dic. v. 2. p. 411. Fountainhall, v. 1. p. 666, 689.

1713. July 24. UNIVERSITY of GLASGOW *against* HAMILTON.

No. 85.

An adjudication having been led for debt exceeding the value of the lands adjudged, it was found, That the superior must either enter the creditor, or pay the value of the lands adjudged, to be determined by the Lords upon a probation thereof; and upon such payment, that the creditor must transfer his debt and diligence to the superior, with absolute warrandice for the sum received, reserving to the creditor his claim against the common debtor, so far as not satisfied out of the value of the lands.

Fol. Dic. v. 2. p. 411. Forbes.

* * Forbes's report of this case is No. 16. p. 9296. *voce* NON-ENTRY. See No. 42. p. 15034.