dained Roger Mouat to produce Thomson's old retired bond and discharge, which Mouat paid for John Somerville, and for which it is alleged that Somerville gave this new bond to Mouat on his death-bed, which is now quarrelled: and to produce all other adminicles and documents by which it can be made appear that this new bond was granted by John for that old one, and so that it had an antecedent onerous cause. *Vol. I. Page* 66.

1679. JOHN STRAITON *against* GILBERT BELL.

July 25.—IT was queried,—There is an effectual comprising by taking infeftment thereon: there is another comprising led within the year, conform to the 62d Act 1661, but no infeftment taken thereon, which by law comes in *pari passu* with the first: thereafter there is a third comprising led, whereon infeftment is taken. The first apprising is extinct and satisfied by payment; the second appriser thereupon finds it necessary to infeft himself; and so takes seasine. The competition of preference fell in between the second and third appriser. The third contends, that, though he was the last appriser, yet he was the first infeft. The second alleges, he was *in bona fide* not to take infeftment as long as the first continued in being, unextinguished, since he was, *fictione juris*, a part thereof, and his posterior infeftment must be drawn back to the date of his apprising.

REPLIED,—It cannot retrotract, because the third appriser who is infeft is a *medius obex* and *impedimentum* betwixt the second.

This is a very debateable point. See it decided *infra*, *6th November* 1679, *Straiton*. *Vol. I. Page* 53.

November 6.—In the action (mentioned 25th July last,) betwixt John Straiton and Gilbert Bell, anent the three apprisers;—the Lords found the second appriser, though last infeft, yet he was preferable in the competition to the third appriser, infeft before him; because, being within year and day of the first apprising, he was, by Act of Parliament, once a part thereof; and, during the time of its existence, he needed not take infeftment. *Quid juris*, if the second appriser had not been infeft at all? See thir parties, at 28th current. *Vol. I. Page* 61.

November 28.—In the action, Straiton and Bell, (mentioned 6th Nov. curt.) it was questioned, whether a decreet of adjudication of lands lying in the Canongate may be legally obtained before the bailies of Edinburgh.

It was ALLEGED, not to be *forum competens ratione re sitæ et domicilii*, the Canongate not lying within the royalty of the burgh. See *2d December* 1675, *Nasmith*.

It is but a late practice that adjudications were pursued before the sheriffs and other inferior judges; for Hope tells us, they were, in his time, only competent before the Lords. Yet this day the Lords found a decreet of lands, lying in the Canongate, pronounced, by the bailies of Edinburgh, valid, as given *a judice competente*, in respect of the custom these thirty years past, and that they have been in use to give such decreets. *Vol. I. Page* 66.