

(The LEGAL.)

No 7. satisfaction; and took in the declarator *incidenter* in this process, that thereby the pursuer might redeem from the defender, by payment of what was resting after intromissions. (See HEIR APPARENT.)

*Fol. Dic. v. 1. p. 20. Stair, v. 2. p. 531.*

1686. December 17. LORD BARGENY *against* LIN of Largo.

No 8.

Taking annualrent after expiry, found not to prorogate the legal.

THE case of Lord Bargeny against Lin of Largo was reported.—THE LORDS found, That Bargeny's taking the annualrent of the sum of his comprising from the debtor, after the legal was expired, was not a formal prorogating of the legal, though it seemed to dispense therewith *tacite*; however, the LORDS superfeded to declare the expiration of the legal till Whitsunday, that if the debtor pleased to redeem betwixt and that time, he might.

*Fol. Dic. v. 1. p. 21. Fount. v. 1. p. 438.*

1699. July 6.

HAY *against* HAYS.

No 9.

An adjudication was led, for several debts, contracted, some prior, some posterior, to inhibition by another creditor. The adjudication expired, without intromission or payment within the legal. Found, That the legal conveyed the whole right to the lands adjudged, without respect to the sums contracted after inhibition, or though part of them had been paid within the legal.

IN the competition between John Hay of Alderstone, and the Children of Hay of Aberlady, this new point came to be decided. Alderston's adjudication was led for fundry sums due by Stuart of Kettlestone, whereof some were prior to the inhibition served by Aberlady, and others posterior. The adjudication was expired, neither was there any intromission, or any other payment made to the adjudger within the legal; but Aberlady's heirs *contended*, the lands adjudged could only be affected with the sums prior to the inhibition proportionally with the sums posterior; and so the debts contracted after the inhibition being swept of by the reduction, a proportional part of the lands adjudged fell in consequence, and so must be carried by the children's adjudication; which, though it cannot compete with Alderston's adjudication (being without year and day) in so far as extends to the sums prior to the inhibition, yet must be preferred to it *quoad* a proportion of the lands and subject adjudged, effecting to the sums contracted after the said inhibition; and this was under the Lords view and consideration in the decision 10th February 1674, Doctor Blyth against the creditors of Dairie\*.—Against this it was *alleged* for Alderston, That his adjudication being expired, it was the same thing in law whether it expired as to the hail sums, or only *quoad* a part; for though it were all paid to 100 merks, yet, if that be resting at the elapsing of the legal, it carries the entire property of the lands, as much as if the whole had been standing out unpaid, seeing a debtor *fibi imputet*

\* Stair, v. 2. p. 263. See COMPETITION.