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,

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

which the commentators call *jus retractus feudalis*; and that being a correctory law, it cannot go beyond its caſe, nor extend to appriſings or adjudications for implement of diſpoſitions: And Craig complains, that they had fallen upon indirect methods in his time to compel ſuperiors to receive ſtrangers for their vaſſals, by granting ſimulate bonds for ſums of money, and appriſings thereon; ſo that *quod directe non licebat et erat prohibitum, erat per ambages permiſſum.*—*Anſwered*, At the time of the act 1469, alienations of land by vendition or ſale, were very rare in Scotland, and ſo no law could be made for regulating them, or ſuperiors; but, theſe 150 years bygone, ſuch bargains turning frequent, the ſtyle of adjudications, on ſuch diſpoſitions of ſale, is fixed, and bears a warrant for letters of horning againſt the ſuperior, for charging him to infeft; which could never be, if he were not in law obliged: And to deny this, were to make theſe adjudications for implement altogether eluſory and ineffectual; eſpecially ſeeing a bond may be taken for the price; and if the adjudication proceed on that bond, then the ſuperior can be forced to infeft, on payment of a year's rent, and ſo has no prejudice: And Barack having omitted to charge, can never compete with me. Dirleton, *voce* Adjudications, p. 1, ſtates this queſtion, If a ſuperior may be forced to enter an adjudger upon a diſpoſition? and makes his *ratio dubitandi*, becauſe the overlord in that caſe, has not *retractum feudalem*, and leaves it undecided.——THE LORDS thought the diligence, by charging the ſuperior, warrantable, and that to find otherwiſe, were to inſignificate all the adjudications which have been led for implement of diſpoſitions; and therefore preferred Southdun, who had charged on his adjudication to Barack, who, apprehending ſuperiors not obliged to enter parties on ſuch charges, did neglect that ſtep of diligence as ſuperfluous. No 5.

This queſtion is only as to ſubject-ſuperiors; for *quoad* the King, who is *pater communis ſuæ patriæ*, all his people are alike to him.

Fol. Dic. v. 1. *p.* 16. *Fount. v.* 2. *p.* 231.

*** See report of this caſe by Dalrymple, p. 56. Quarto Dictionary.

1664. *December* 22.

DOCTOR RAMSAY *againſt* MR WILLIAM HOGG and ALEXANDER SEATON.

No 6.
Of three appriſers, the firſt and third only being infeft; found, that the ſecond who had charged, was preferable to the third, tho' infeft.

THESE three parties having appriſed the ſame lands, the firſt appriſer being infeft, the ſecond not being, and the third being infeft: The firſt appriſer declared he would not inſiſt for the mails and duties of the whole, but only poſſeſſed a part. The queſtion came, Whether the ſecond appriſer, not having charged, ſhould be preferred to the third, who was infeft.—It was *alleged* for the ſecond appriſer, That he needed not be infeft, becauſe the firſt appriſer being infeft in all, he had the only *jus proprietatis*, and there was nothing remaining, but *jus*