

neral, comprehending all appraisers and adjudgers within year and day, Pardovan and Torrence should come in *pari passu* *. (See ARRESTMENT.)

No 14.

Fol. Dic. v. 1. p. 10. Forbes, p. 12.

1725. February 9.

SARAH CARLYLE, Relict of William Lyon, younger of Easter Ogle, *against* his CREDITORS.

WILLIAM LYON died invested in fee of an estate about L. 900 Scots of yearly rent; of his creditors only one had an infestment of annualrent, answering to the principal of L. 1000 Scots: There were adjudications deduced against him, before the marriage with Sarah Carlyle, to the extent of L. 11,900 Scots, whereof some were with charges against the superior during the marriage; the other adjudications, extending to L. 10,700, were without year and day of the former.

Upon these rights, it was for the creditors *alleged*, That the widow could pretend no right to a terce, because the husband was, at the time of the marriage, *obæratu*; and, as he could by no voluntary conveyance or writing, have provided his wife in prejudice of his creditors; neither could he, by his marriage, prejudice them, especially since the wife had brought no tocher.

It was *answered*, That a wife is not excluded from a terce by her husband's bankruptcy; but in that matter, there is in law a distinction made of the quality of the debts, if secured by infestment, or not; for personal debts prejudice not the terce: In which all our lawyers agree; *see* Stair, lib. 2. tit. 6. § 18. 'Terces are burdened by all *debita fundi*, but with no other debts of the defunct, being *personal*, though they be *heritable*, and have a provision of infestment.' And though the husband had been really insolvent at the marriage, it would make no alteration; for, since the law forbids not a person insolvent to marry, the provision of law must take place in favours of his wife.

It was *2do alleged* for the creditors, That such of the adjudgers as had charged the superior before the husband's death, must be preferred to the tercer; because an adjudication with a charge is equivalent to an infestment.

Answered, That a charge by the act 1661, is made equivalent to infestment, in the competition only of adjudgers one with another; but not with other rights: That though in that special case a charge is made equivalent to infestment, for reasons specified in the said act, in other cases it is not: For that act has not said, that a charge against the superior constitutes a real right; far from it, an adjudication remaining still a personal right till infestment. Hence it would be an er-

No 15.

Adjudication with a charge against the superior, excludes not the terce.

* This case is also reported by President Dalrymple, and by Lord Fountainhall.—The report by the one will be found under COMPETITION: By the other, under ARRESTMENT.

No 15.

ronous consequence, if one should thus argue : A charge of horning against the superior is equivalent to an infeftment ; therefore, an apprising with a charge cannot be carried but by a special service. The answer would be plain, That though the law, in competition of apprisings among themselves, has given this effect to a charge against the superior, it has not confounded the nature of our rights ; and an apprising with a charge remains still personal, and is carried by a general service.

THE LORDS found, That the widow has right to her terce, or third of the lands wherein her husband died infeft : and preferred her for the said terce, to the hail other creditors adjudgers.' (See-TERGE.)

Rem. Dec. v. I. No 56. p. 108.

1737. July 22. JAMES BLAIR and JOHN NAIRN *against* ROBERT FREEBAIRN.

No 16.

The office of King's printer granted to a person, his heirs and assignees, found to be adjudgeable.

THE question betwixt these parties was, Whether or not a gift from the Crown to the said Robert Freebairn, his heirs, assignees, and substitutes, of being the King's sole printer for 41 years, was adjudgeable ? The *arguments* urged for the defender were, That every debtor ought to dispone in satisfaction of a just debt, and, if he refused, the law would do it for him ; but, where he could not, the law cannot interpose. It was further *pleaded*, in general, That, if a right may be assignable, but not without the consent of a third party, no creditor, until such consent is obtained, can pretend to adjudge, under colour that his debtor unjustly refuses to assign.

It was likewise *argued* : That there are several offices, where a *delectus personæ* is absolutely necessary ; and, to intrust the officer with chusing his successor in such offices, would be dangerous to the constitution : *e. g.* To suppose a bench of judges, who had right to their offices by dispositions or adjudications, would be absurd. It is true, there is no statute concerning this matter ; but, where personal qualifications are necessary, incroachments against this rule are secured by the law of common sense and public utility. And, if a grant of them were given to assignees, it is believed, such a clause would have no effect. Now, to apply these things to the case in hand, it may not be improper to observe, that, although monopolies are reckoned illegal, and a great grievance to the subject, yet the necessity of government, and the good of the nation, forced a monopoly to the King's printer ; for, if irreligious and heretical persons had the power of publishing religious books, seeds of schisms and heresies would, with great ease, be sown, to the subversion of religion ; or, if seditious persons had a power of printing, for acts of Parliament, what they thought fit, dangerous consequences might follow ; which made it necessary, that the sole right of printing should be in one appointed by the Crown : So that, from the nature and circumstances of this office, it cannot be adjudged. Besides, if this is allowed, the consequence would be, that a taylor would become the King's smith, and *vice versa* ; though both offices were.