

was nor could be any infestment for denuding the creditor, who stood not infest, the act takes no place, but the adjudications are preferable according to their dates.

No 15.

It was *answered* ; The reason expressed in the act is general, relating to all creditors doing diligence, and considers the prejudice of creditors who are at a great distance, whereby the debtor's estate is comprised, which word *estate* comprehends all comprisable subjects ; and then considers the prejudice of creditors, who have nothing but legal reversion ; and for remeid thereof, statutes that all comprisings within year and day of the first effectual comprising shall come in *pari passu* ; and what follows for clearing an effectual comprising, is indeed to be understood only of comprising of lands or real rights, because in that case an apprising, without an infestment or charge, is but personal, and a posterior apprising with an infestment is preferable ; but an apprising of a personal right is complete and effectual from the date.

' THE LORDS found that the adjudgers ought to come in *pari passu*.' See No 14. p. 140., and No 41. p. 703.

*Fol. Dic. v. 1. p. 179. Dalrymple, No 63. p. 79.*

1724. January 8.

SYME *against* DALZELL.

IN a competition betwixt two creditors of a defunct, about the rents of the estate falling due after the debtor's death ; both having obtained decrees of constitution against the apparent heir ; the one upon an arrestment laid on in the tenant's hands as debtors to the apparent heir, obtained furthcoming ; the other upon a charge to enter heir, obtained adjudication some months thereafter. THE LORDS preferred the arrester, though it was urged, that an apparent heir has no proper title to the rents, and that they cannot be made furthcoming for his debt. See APPARENT HEIR.

No 16.

*Fol. Dic. v. 1. p. 179.*

1758. July 18.

GILBERT JACKSON, and Others *against* JAMES HALIDAY, and Others.

ON the 5th November 1750, William Ferguson disposed his lands of Cairloch to Duke and Brown ; and they became bound to redeem these lands from Mr Heron, to whom they had been disposed under reversion, and to grant back-bond to Ferguson, declaring the lands redeemable between and Martinmas 1751, upon payment of debts due to them, and of the redemption-money they were to pay to Heron ; under condition, ' That if Ferguson should not redeem at Martinmas 1751, they should be at liberty to sell the lands by public roup, and

No 17.

A creditor held lands, with a power to sell (if not redeemed within a limited time), and to account for the price ; ano-

No 17.  
 ther creditor  
 adjudged the  
 reversion,  
 and a third  
 arrested in  
 the hands of  
 the first who  
 had sold the  
 lands.—The  
 adjudger pre-  
 ferred.

take the security of the price payable to themselves, and to be only liable to Ferguson for any balance, after payment of their debts and expenses.'

On the 24th July 1752, Grierson, a creditor of Cairoch's, obtained an adjudication against him of all right of reversion competent to him.

Haliday and others executed summonses, and obtained decreets of adjudication within year and day of Grierson's; but between the execution of their summons, and the obtaining their decret, Duke and Brown, on the 17th of May 1753, sold the lands by roup to Agnew; who granted bond to Duke and Brown.

Jackson and others used arrestment in the hands of Duke and Brown, after Martinmas 1751, but before the sale to Agnew; and after the sale, they arrested also in the hands of Agnew.

Certain other creditors arrested in the hands of Duke and Brown after the sale.

*Objected* by the arresters against Grierson's adjudication, That as the term limited for redemption was elapsed before his adjudication was obtained, Ferguson's right, being then only a personal claim for the balance of the value, could not be carried by adjudication.

*Answered*, The sale to Duke and Brown was *pactum legis commissoriæ*; and therefore Ferguson had a right of redemption after Martinmas 1751, till the lands were sold, which was properly carried by Grierson's adjudication; and by the nature of the transaction, Duke and Brown did not become proprietors after Martinmas 1751, though at that term their right to sell the lands commenced.

*Objected* to the adjudications led by Haliday and others, That after the sale to Agnew, Ferguson had no right to redeem the lands. His claim was only for a balance of the price; a moveable subject, not attachable by adjudication.

*Answered*, These adjudgers had executed their summonses before the sale to Agnew, after which no voluntary deed could have the effect to disappoint them, though, no doubt, the sale was notwithstanding competent in consequence of the prior powers. *2dly*, As their decreets were within year and day of Grierson's, the validity of this adjudication must support them; agreeable to a decision in the ranking of Netherwood, 29th January 1748, Irving *contra* Sir William Maxwell of Springkell, *voce* HEIR APPARENT; where one creditor adjudged before a judicial sale by an apparent heir, and another after the sale, but within year and day of the first, and both adjudications were ranked equally. The decision in the ranking of Bonjedward was also referred to, No 56. p. 724.; and the common practice of leading adjudications against an estate after a judicial sale, in order to convey them to the purchaser.

*Objected* to the arrestments in the hands of Duke and Brown before the sale, That Ferguson's right was at that time not a moveable claim, but a right of reversion not arrestable.

*Answered*, From the elapse of the term for redemption, Ferguson's claim was only for the balance of the value. No 17.

No objection was made to the arrestments in the hands of Duke and Brown after the sale, but against the arrestments in the hands of Agnew.

*Objected*, That Agnew was not debtor to Ferguson, but to Duke and Brown; and though Ferguson might have been entitled to insist in a declarator against Agnew, that the surplus price belonged to him in preference to his trustees; yet this was not so direct a claim, as to found an arrestment; nor could arrestment be competent in the hands of distinct persons to attach the same subject.

*Answered*, That by the accustomed style of arrestments, all moveable subjects are attached, not only due directly to the principal debtor, but 'to any other person or persons for his use and behoof, by bond, bill, &c.' And there can be no dispute, that Agnew owed the surplus price in this case to Duke and Brown, for the use and behoof of Ferguson.

'THE LORDS found, That the adjudications were the only proper diligence to carry Cairoch's interest in the lands, and the price thereof; reserving the consideration of the competency of the arrestment in the hands of Nathaniel Duke and Patrick Brown, and those in the hands of David Agnew the purchaser.'

For the Arresters, *Montgomery*. Alt. *Lockhart*. Clerk, *Kirkpatrick*.  
*W. J.* *Fol. Dic. v. 3. p. 152.* *Fac. Col. No 125. p. 229.*

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### S E C T. III.

#### Arresters with Assignees.

1618. June 16.

A. against B.

FOUND that an arrestment upon an action depending, with sentence following, should be preferred to an assignation, which was not intimate before the arrestment, albeit intimate an half year before sentence.

No 18.

*Fol. Dic. v. 1. p. 178.* *Kerse, MS. fol. 234.*

1623. February 21. CRAW against IRVINE, and Others.

ONE Craw arrests in the hands of certain persons some sums and corns addebted by them to one Mr James Irvine, who was addebted to Craw in some money; for satisfaction whereof they being pursued to make the same furthcom-

No 19.  
 A prior assignee found obliged to