

Countess of Caithness, and Lady Dorothea Primrose, against Creditors-Adjudgers of the Earl of Roseberry, No 103. p. 10288. No 105.

THE COURT, on a hearing in presence, ' Found, That the adjudication, and infestment following upon it, are preferable to the personal disposition founded on by Fergusson.'

Lord Ordinary, *Monbodo*.
Clerk, *Colquhoun*.

Act. *Rae, G. Fergusson*.

Alt. *M^cLaurine, M^cCormick*.

Fol. Dic. v. 4. p. 72. Fac. Col. No 35. p. 60.

1786. November 15.

THOMSON *against* DOUGLAS, HERON, & COMPANY.

A PARTY having acquired a right to lands under trust, but fraudulently omitting the trust in his infestment, his adjudging creditors were thought liable to the objection which lay against him, their rights not being completed by infestment. No 106.

N. B. This point, though stated in the report, No 52. p. 10229, was little discussed, as the fund was said to be exhausted by preferable debts; and the Court did not mean to lay down the rule in general, that adjudgers must take *tantum et tale*.

Fol. Dic. v. 4. p. 72.

1787. August 8.

CREDITORS of SIR JOHN SINCLAIR *against* Captain JAMES SUTHERLAND.

IN consequence of a stipulation contained in a lease granted by Sir John Sinclair of Mey to Captain Sutherland, the latter, after the death of the former, made several payments to Sir John's Creditors.

Several years afterwards, the other creditors deduced adjudications *contra hereditatem jacentem*, and sued the tenant for the whole rents which arose after that period, as being all attached by such adjudications.

The defender *pleaded*; If, before the death of the landlord, and after the payments made by the defender, a creditor of the former had adjudged his estate, the latter would have been entitled to plead, that by such payments, made under the authority of the landlord, the posterior rents were so far actually extinguished; and that, therefore, he could not be liable for them; although, perhaps, the same plea could not be maintained against a *bona fide*

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No 107.
Payment of rents by a tenant, after his landlord's death, in virtue of a special authority contained in his lease, found effectual against the creditors of the landlord, who afterwards attached the lands, by adjudications *contra hereditatem jacentem*.