

(RANKING OF ADJUDGERS AND APPRISERS.)

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 ei 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 infest; 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 infest, on payment of a year's rent, and so has no prejudice: And Barack having omitted to charge, can never compete with me. Dirleton, *v. v. v. 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.

This question is only as to subject-superiors; for *quoad* the King, who is *pater communis sue patrie*, 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.

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

G g 2

No 5.

No 6.

Of three apprifisers, the first and third only being infest; found, that the second who had charged, was preferable to the third, tho' infest.

(RANKING OF ADJUDGERS AND APPRISERS.)

No 6.

reversionis, which the apprising alone carried ; and, as the second appriser might redeem the first, as having the right of his reversion ; so he might force him, either to possess the whole, whereby his apprising might be satisfied, or give warrant to the second to possess the remainder ; so likewise he might use redemption.—It was *alleged* for the third appriser, That if the question were of the redemption of the land, the second had good right ; but the question being for the mails and duties, a right of reversion could never carry these without a fine.

THE LORDS, considering the point in law, and the great disadvantage the leiges would sustain, if all apprisers were necessitate to take investment, They preferred the second appriser.

Fol. Dic. v. 1. p. 17. Stair, v. 1. p. 244.

1666. December 12.

SIR HENRY HOME *against* The CREDITORS of Kello and SIR ALEXANDER HOME.

No 7.
Apprisings led before 1652, came not in *pari passu* with those led before, though within year and day.

SIR HENRY HOME having apprifed the lands of Kello, before the year 1652, pursues the tenants for mails and duties. Compearance is made for other creditors apprisers, who *alleged* they ought to come in with him *pari passu*, by the late act between creditor and debtor ; because the apprifings being since the year 1652, were within a year of his apprifings, being effectual by investment, or charge.—It was *answered*, That the act of Parliament was only in relation to comprifings, both being since the year 1652 ; and the pursuer's apprifing being led before, falls not within the same.—It was *answered*, That the act of Parliament, in that clause thereof, in the beginning, mentions expressly, that comprifings led since 1652, shall come in *pari passu* with other apprifings ; but does not express, whether these other apprifings are since 1652 ; but in that is general, and the reason of the law is also general, and extensive to this case.—It was *answered*, That the posterior part of that same clause, clears that point, both in relation to the apprifings, in whose favours, and against which the law is introduced, viz. That by the clause is only meant, the apprifings led since 1652, shall come in *pari passu* ; which must both comprehend those that come in, and those with whom they come in.

THE LORDS repelled the allegiance, *quoad* other comprifings, and found, That their comprifings could not come in with the pursuer, he having apprifed before the year 1652, and charged before their apprifings.

Fol. Dic. v. 1. p. 17. Stair, v. 1. p. 411.