

S E C T. VII.

Adjudication upon a Debt *in diem*.

No 55. 1623. July 30. NICOLSON *against* BAILIE and WHITLAW.

A comprising was reduced, because the lands were denounced before the term of payment, though the comprising was not led till it was past.

Fol. Dic. v. I. p. 540. Durie.

. This case is No 3. p. 64., *voce* ADJUDICATION.

1699. July 18.

CHALMERS of Bonnington, and CUNNINGHAM, his Assignee, *against*
Mr JOHN SHAW.

No 56.
Adjudication
cannot pass
even *periculo*
petentis for a
sum of which
the term of
payment was
not come.

CHALMERS of Bonnington, and Cunningham, his assignee, craving an adjudication against Mr John Shaw, it was *objected* by Andrew M'Adam, and other creditors-adjudgers, That as to a moiety of his sum, he could not adjudge, because the term of payment of it was not yet come. *Answered*, The hail other creditors had adjudged, and if he waited till the term of payment, he would be without year and day, and so plainly lose that part of his debt, which was such a hardship as it was impossible our law could be so defective as not to have a remedy for it. *Replied*, That adjudication was *processus executivus* against the land, and by what rule could execution pass before the term of payment? *Duplied*, The exception of its not being yet due is only competent to the debtor, and not to his creditors. *2do*, The LORDS have allowed relicts to adjudge not only for bygones of their annuities, but also for terms to come. *3tio*, Adjudications on bonds of relief, though before distress, was allowed betwixt Robert Burnet and Veitch of Dawick, No 53. p. 2121. *4to*, Arrestments on bonds before the term of payment is very usual. *5to*, Removing before the term, to take effect at the term, is sustained. *6to*, Wives can pursue their husbands even while alive, *si vergens ad insopiam*, though the jointure cannot be due till after the husband's death. Some thought this could not be helped by the Lords, but needed a correctory law. However, the plurality agreed, that his adjudication should go out for the whole, though the term of payment was not come, but with this quality, that the co-adjudgers might object the nullity and anticipation as accords; and he might defend it on the principles and parallels of law; but this tacit allowance seemed to