

1714. *February 2.* COLONEL FRANCIS CHARTERIS *against* ENSIGN THOMAS YOUNG of Rosebank.

IN a competition betwixt Colonel Charters and Ensign Young, for the rents of some tenements in Edinburgh, which both had adjudged, Ensign Young claimed preference upon his adjudication, though some years posterior to the Colonel's adjudication; in respect the same was not allowed, and the allowance recorded in the terms of Act 31. Parl. 1. Sess. 1., and Act 19. Parl. 2. Sess. 3. Charles II.

ANSWERED for Colonel Charters,—The Act 31. Par. 1. Charles II. appointing appraisings to be allowed, declares the certification of the not allowance to be without prejudice to any farther diligence by infeftment, or charge against the superior, according to the priority or posteriority thereof, *prout de jure*. And the Colonel's adjudication being made public by a charge against the Magistrates of Edinburgh as superiors, and infeftment thereon, several years before Mr. Young's adjudication; there was no necessity of allowance; which was only intended to make the diligence known, that creditors might not be disappointed, by apprising or adjudging lands already appraised or adjudged.

REPLIED for Ensign Young,—Neither the charge against the superiors, nor infeftment, doth supply the want of allowance, in competition with an adjudication formerly allowed and recorded. Because, 1. Since other things may be the subject of adjudication besides rights that pass by infeftment, the record of the infeftment would not answer the full end of allowance. 2. If adjudications be accepted whereupon infeftment followed, because the infeftment is patent in the public record; Colonel Charters's adjudication is not in the case of the *salvo*, the same not being registered. 3. The *salvo* in the Act 31. pleaded by the Colonel, is not an exception from the certification in the act, but only salves such diligences, as to their other native effects in a competition not arising from the allowance; as against the common debtor, removings, coming in *pari passu*, and the like. If it were otherwise, charges against the superior had not been expressed in the *salvo*; for whatever reason there might be to except infeftments upon the account of their publication, there was none for excepting charges against the superior, whereof there is no record; seeing, to complete an adjudication by a charge against the superior, it is not necessary to denounce him.

DUPLIED for Colonel Charters,—1. The Colonel's seasin being before the act appointing infeftments within burgh to be registered, is valid without registration; which, before the Act 1681, was supplied by the town-clerk's prothocal, whereof a minute patent to the lieges was kept. 2. The meaning of the *salvo* in the Act can never be restricted to other legal effects of the diligence, abstracting from that arising from the allowance: because all these effects were secure without the *salvo*.

The Lords preferred Colonel Charters' assignation to that in the person of Ensign Thomas Young.