

(RANKING OF ADJUDGERS AND APPRISERS.)

hour of the day ; THE LORDS found That these different adjudications come in *pari passu* with one another, or such as are prior or within year and day.

Fol. Dic. v. 1. p. 20.

See the case MARSHAL *against* HAMILTON, p. 47. of this Dictionary, where the Lords refused to bring in an adjudication *pari passu* with other adjudications, although it was within year and day of the first adjudication before the Lords ; but was not within year and day, of the first effectual adjudication, on a *cognitio- nis causa* against the apparent heir renouncing, obtained before the Sheriff.

Fol. Dic. v. 1. p. 20.

See the case CREDITORS of Kinminity *against* GORDON of Clunie, p. 129. v. 1. of this Dictionary, where it was found that the adjudger must be ranked for his whole accumulate sum, including the penalty ; reversing the restriction of the penalty till the making out of the scheme of division.

Fol. Dic. v. 3. p. 15.

See Appendix to the Title ADJUDICATIONS.

LEGAL of APPRISINGS and ADJUDICATIONS.

1630. November 11. L. LIMPITLAW *against* AIKENHEAD.

No 1.

The legal re-
version of
comprings,
expired in
seven years
from the date
of the com-
prising, not
from the time
of the allow-
ance, or of
the infect-
ment.

IN a purfuit by the L. Limpitlaw, for the mails and duties of a lodging, per-
taining to Alexander Aikenhead, comprised by Limpitlaw, wherein Mr James
Aikenhead compeared, and defended himself by an anterior comprising, which
was expired ; and the pursuer *answering*, That the seven years were not expired,
and that yet he had place to pay the money, for which it was comprised ; seeing,
albeit there were seven years past, since the date of the comprising, yet that time
ought not to be counted to run, nor the prescription to take place, but after the
expiring of seven years, after that the comprising was allowed by the Lords, and
after safine thereupon ; by the which deeds the comprising began to be made
public, and from that time only it should take the beginning of the prescription
of the seven years, especially when the question is betwixt two con-creditors, and

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not betwixt the creditor and debtor; - for albeit the prescription began at the date of the comprising, against the debtor, against whom it was deduced, and who could not be ignorant thereof, but that he ought to redeem within the seven years, after the date thereof; yet it was not alike to another creditor, who cannot be counted *in mora*, if he offer to redeem within seven years, after it became a perfect and public act, which is not before the Lords allowance, at the least before taking sasine thereon; specially seeing the one creditor, who alleges the comprising to be irredeemable, wants nothing, whereas his whole debt and expences are paid to him, and the other creditor is in a hard estate to want all.—THE LORDS, not the less, sustained the exception, and found the prescription of the seven years, after which comprisings are not redeemable, takes beginning, against whatsoever person, either creditor or co-creditor, or others, from the date of the comprising, and neither from the time of the allowance, nor from the time of the sasine; for, if it were never allowed, the comprising not the less being otherwise good, is sufficient, seeing the allowance is only, that charges may be direct against the superiors of the lands, to give sasine; and if comprisers may get sasine, without such charges or allowance, the party needs not to seek allowance; and if the compriser delay to take sasine after his comprising, the co-creditor has the more advantage, if upon his comprising, albeit posterior, he obtain the first infeftment.

No 1.

A. Nicolfor, Cunningham & Dunlop.

Ait. Stuart & Aikenhead.

Clerk, Giffan.

Fol. Dic. v. 1. p. 20. Durie, p. 538.

* * Spottiswood mentions this case thus:

In an action for the mails and duties of a tenement, between Nicol Limpitlaw and Mr James Aikenhead, it was called in question, whether the seven years, that one, from whom lands were comprised, has to redeem the same, should begin to run from the date of the comprising, or from the time that it is allowed by the Lords, and sasine taken thereupon; it was found without any contradiction, That it begins to run from the date of the comprising.

Spottiswood, (COMPRISING.) p. 52.

1634. January 16. TUTOR of BALMAGHIE against MAXWELL.

In a pursuit of removing of Tutor of Balmaghie against Maxwell of Coblex, upon a comprising and infeftment thereon, wherein the defender *alleging*, That the comprising was extinct, conform to the act of Parliament 1621, anent comprisings; in so far as either the pursuer has intromitted, or at the least might have intromitted with the mails and duties of the lands comprised, and which would

No 2.

Rents due before the expiry of the legal, are to be imputed towards extinction of