

(RANKING of ADJUDGERS and APPRISERS.)

ed to him in his fum, but no part thereof repeated to the second apprifer; and found, that the fums apprifed for, principal and annualrent of both parties, fhould be reſtricted, as they were at the time of the act of Parliament, in one total fum; and the rent to be received from that time proportionally to the total fums; and that the firſt apprifer ſhould have allowance in his preceding intromiffion, of the expences of the compoſition to the ſuperior, and the charges of the apprifing, without compelling the ſecond apprifer to pay him the ſame.

Stair, v. 1. p. 246.

No 33.

1679. January 2.

JOHNSTON *against* JOHNSTON.

JOHNSTON of Wamfray having affigned a bond of 10,000 merks to his brother Sheins; there was a decret-arbitral betwixt them, by which Sheins was to have the lands of Hoprig, he paying Wamfray 8000 merks, albeit Wamfray had adjudged theſe lands for other debts; which decret the Lords reduced upon *enorm leſion*. It was now *alleged* for Sheins, that Wamfray's adjudication ought not to be ſuſtained, at leaſt Sheins ought to come in *pari paſſu*, upon an adjudication to be obtained by him upon the 10,000 merks affigned to him by Wamfray, becauſe Wamfray had *doloſe* ſtopped Sheins's diligence, by proponing an allegiance, that the affignation granted by him to Sheins, was never delivered, but depoſited in Henry Rollo's hands; which was ſuſtained, and the witneſſes ordained to be examined, by which year and day elapſed after Wamfray had gotten adjudication of the lands of Hoprig, which was the only ſubject that could be affected by the decreets of both parties. It was *answered*, That Wamfray's allegiance was not calumnious, becauſe one of the witneſſes being examined, does acknowledge the depoſitation; but Henry Rollo was never examined till his death, Sheins knowing that he could alſo depone againſt him. *2do*, Adjudications can never be brought in *pari paſſu*, otherwiſe than by the act of Parliament, being within year and day, which being a ſtatutory privilege, cannot be extended by the Lords. *3tio*, Sheins had an evident remedy, that if he had reſented to the Lords, that Wamfray had adjudged, and that by his contentiouſneſs, year and day would run and exclude Sheins; the Lords would have adjudged to both, reſerving the depoſitation *contra executionem*; but it were ſtrange, that Sheins never having inſiſted to adjudge for the ſpace of ten or eleven years, nor yet obtained a ſentence for eſtabliſhing the debt, ſhould be brought in with Wamfray, who adjudged eleven years ago; neither did the arbiters determine any thing upon the diligence, or delay of any party, whereof there is no mention in their decret.

THE LORDS repelled the allegiance, and found that the adjudication could not come in *pari paſſu*.

Stair, v. 2. p. 663.

No 34.
Undue means
of delaying
the diligence
alleged.