

(RANKING OF ADJUDGERS AND APPRISERS.)

before first he make payment of 2000 merks, that Jouffie had paid to the Laird of Drum, as superior, for his entry, and of the expences for leading of the apprising, conform to the act of Parliament anent Debtor and Creditor. *Answered*, That Jouffie had paid no sums to Drum for his entry, and albeit he had paid him any sum, yet the pursuer was not obliged to pay him the same. But all that Jouffie could pretend, as having right to the first effectual comprising, is, that he should be preferred to so much of the mails and duties, as will pay the composition and expences in the first place. *Replied*, That albeit Drum had entered Jouffie upon the comprising *gratis* out of kindness and affection to him, yet that could not prejudice him nor Drum, as coming in his place, to crave the expences of the apprising and composition, that should have been paid by the other apprisers; and, it is not sufficient, that Jouffie or Drum should be preferred to so much of the mails and duties, in the first place, as will satisfy the same. But, the pursuer, who craves to come in *pari passu*, ought *ante omnia* to pay the composition and expences in ready money. It being provided by the foresaid act of Parliament, that the creditor having right to the first apprising, shall be satisfied by the posterior apprisers claiming the foresaid benefit of the whole expences disbursed by them, in deducing and expeding the first comprising, and infestment thereupon. THE LORDS found, that the composition paid to the superior, ought to be paid out of the fore end of the rent of the lands; and therefore, decerned the tenants to pay the said sum of 2000 merks to the Laird of Drum, as the expence of the first effectual apprising; and to pay the rest of the rents to all the comprisingers that come in *pari passu* together, according to their respective rights.

*Fol. Dic. v. 1. p. 19. Sir Pat. Home, MS. No 256.*

1683. February 20. L. BEARFORD *against* TENANTS of Craig.

IN the action of mails and duties, pursued by the Laird of Bearford against the Tenants of Craig, Sir James Turner having compeared, and craved preference, in regard he being a comprisinger, was first infest, and that Bearford, who was the other comprisinger, could not come in *pari passu* unless he paid the expences of his infestment, conform to the act of Parliament, and also L. 1000 of expences for changing the holding of the said lands from ward or tax-ward: And it being *replied* for Bearford, the other comprisinger, that the act of Parliament appointed the first effectual appriser to be reimbursed of his ordinary necessary expences, in expeding of his infestment, but made no mention of the expences of taxing: And Bearford declared, that he made no use of the tax-ward holding: It was further *alleged* for Sir James, that his comprising being expired, he behoved to pass a new infestment, conform to a clause in the end of all charters, obliging them so to do; at the least, he ought to have allowance of so much of his expences expended in the changing of the holding, as was necessary for pas-

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of the first effectual apprising.

No 21.  
The expence of changing from ward to tax-ward, was not allowed the first appriser, the others taking no benefit thereof.

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No 21. fmg an ordinary second infestment upon the expired apprising. THE LORDS refused to allow the expences of the changing of the holding, being restricted to the ordinary expences of a simple infestment, after the expiring of the comprising; in regard, the second infestment would not be profitable to the other comprisers, seeing, after expiration of the legal, they behoved to expedite infestment upon their own comprising.

*Fol. Dic. v. 1. p. 19. President Falconer, No 50. p. 28.*

1681. *January 26.* THE LADY BANGOUR *against* HAMILTON and Others.

No 22.  
How year  
and day is to  
be computed.

IN a competition between Mr William Hamilton, and other adjudgers of the estate of Bangour, the Lady Bangour having also adjudged, upon the warrandice of her contract, and craving to come in *pari passu*, in respect her adjudication is dated the 31st of July 1680; and their adjudication is upon the 30th day of July 1679:—It was *answered*, That the account of the year ought to be by the number of days intervening, *ita est* the Lady's adjudication is not within 367 days, which is a year and a day. *Ido*, Year and day is only meant of a full year, and the Lady cannot pretend that she is within a year.—It was *answered*, That within year and day can be no otherways interpreted, than within the next day after a full year; which year is never calculated by the number of days, but is ever estimated by the return of the same day, in the next year; and though there may be more days in one year than in another, as in the leap year, it alters not the case, for *de minimis non curat lex*.

THE LORDS found, That the year was not to be counted by the number of days, but by the return of the day of the same denomination of the next year, and therefore found, that the creditors adjudication, being upon the 30th July 1679, and the Lady's adjudication being upon the 31st day of July 1680, was within the year and day of the rest, and came in *pari passu* therewith.

*Fol. Dic. v. 1. p. 20. Stair, v. 2. p. 842.*

No 23.  
The first apprising being extinguished by payment; posterior apprisings, within year and day of the second, will not rank with it, unless they had been also within year and day of the first.

1672. *December 13.* STREIT *against* The EARL of NORTHESK and INNES.

THE estate of Reidcastle being apprifed by Young, and he infest, Streit apprifes within year and day of Young, and the Earl of Northesk and others apprifed within year and day of Streit, but not within year and day of Young; Young's apprising being satisfied, Streit insists for the whole duties; Northesk and the other apprifers *allege*, That Young's apprising being extinct, it is in the same condition as if it had never been; and so Streit being now the first apprifed, all the rest that are within year and day of him, must come in *pari passu* with him.—It was *answered*, That this was both contrary to the words and in-