

(RANKING OF ADJUDGERS AND APPRISERS.)

*** Dirleton states the same case thus :

IN a process betwixt Henry Home, and the donator of the forefaulure of John Home of Kello, and certain others his creditors ; it was found, That a comprifing being deduced before January 1652, and being the first effectual comprifing, ought to be preferred to the posterior comprifings ; fo that they should not come in together *pari passu* : In respect, though they were within year and day of the compleating, and the making effectual the first comprifing by infestment or diligence, yet they were not within year and day of the deducing the said comprifing ; and the said comprifing being before the year 1652, doth not fall under the compass of the act of Parliament concerning debtor and creditor ; which brings in *pari passu* comprifings led since January 1652 ; and being *correctoria juris communis*, ought not to be extended.

Fol. Dic. v. I. p. 17. Dirleton, No. 60. p. 26.

1663. January 24. ROBERT GRAHAM against JOHN ROSS.

IN a competition betwixt Graham and Ross, and a third party, all comprifers, the posterior apprifers craving to come in *pari passu*, by virtue of the late act of Parliament :—It was *alleged* for Graham, who had obtained infestment, That he ought to be preferred ; because, albeit his apprifing was since January 1652, yet he had been in possession thereby seven years, and so had the benefit of a possessory judgment.

This was repelled, because the act of Parliament was but late, before which there could be no ground to come in *pari passu* ; and there was no exception in it, of those who had possessed or not possessed, before the act.

2do, Graham further *alleged*, That he ought to be preferred ; because he was infest in an annualrent out of the lands, which is a real right excepted by the act of Parliament. *3tio*, That Ross could not come in, because Ross's apprifing was before 1652 ; and the act of Parliament brings in only apprifings since December 1652. *4to*, None of the parties could come in with him, until first they paid him their proportionable part of the composition, and expences bestowed out by him, conform to the act.

THE LORDS found, That albeit Graham's apprifing was not upon the infestment of annualrent, but upon the personal obligation for the principal, and bygone annualrents, upon requisitions, which was a passing from the infestment of annualrent ; yet that he might, *pro loco et tempore*, pass from his apprifing, and might be preferred to his bygone annualrents, upon his infestment of annualrent, in this case of composition, albeit there was yet no apprifing upon the infestment of annualrent ; and found, That John Ross's apprifing before 1652,

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The contrary
seems to have
been found.

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was not excluded, but behaved to be in the same case, as if it had been after: But found, That the other apprisers, before they came in, behaved to satisfy the composition proportionally by the tenor of the act. (See RIGHT IN SECURITY.)

Fol. Dic. v. 1. p. 17. Stair, v. 1. p. 162.

1671. July 4.

LAIRD OF BALFOUR *against* MR WILLIAM DOUGLAS.

No 9.

The coming
in *pari passu*,
calculated
from the date
of the appri-
sing, not of
the infest-
ment.

THE Earl of Airlie's estate being apprifed by Mr William Douglas since 1652, after the legal was expired, Mr William was infest; and, after his infestment, the Laird of Balfour apprifed the same land, and thereupon pursued the tenants for mails and duties. It was *alleged* for the first apprifiser, that he must be preferred; *imo*, Because he has the only right, having an apprifing expired, and infestment thereon, before the pursuer's apprifing was led, so that *eo momento* that he was infest upon his expired apprifing, the common debtor was fully denuded, and there was no right of reversion, or any other in his person that could be apprifed thereafter. It was *answered*, that by the act of Parliament 1661, between debtor and creditor: It is provided, that all apprifings led within year and day of the first effectual apprifing, shall come in therewith *pari passu*; and therefore, the pursuer having apprifed within year and day after the first apprifiser's apprifing became effectual by infestment, he must come in with him *pari passu* by the said act, which makes no difference of expired, or unexpired, apprifings; and, by that same act, the debtor is not so denuded by the expiring of the legal and infestment, but that year and day is still allowed to subsequent apprifisers, which, in effect, is a prorogation of the legal as to con-creditors. It was *answered*, that the act of Parliament is opposed, bearing that apprifings before, or within year and day after the first effective apprifing shall come in *pari passu*, as if one apprifing had been led for all, which necessarily imports the calculation of the year to be from the date of the first effective comprifing, and not from the date of the infestment or diligence; for the coming in, as if one apprifing had been for all, must relate to the decret of apprifing, which, as it is clear by the letter of the statute, so also by the narrative and motive thereof, bearing that creditors did not know the condition of their debtor's estate, which might be apprifed before they could do diligence; whereas, before, they had only the benefit of reversion, for remedy whereof, the Parliament brings in all apprifings that are before, or within a year after the first effectual apprifing, which before would have carried the sole property, and *fictione juris*, states all these apprifings as led in one day, so that the remedy is sufficient, by having a full year after the date of the apprifing, and correctory statutes are to be strictly interpreted; and, if the date of the diligence be the rule, an apprifing, after twenty years, might be brought to admit a new one deduced after all that time, and not only so, but the mails and duties would belong proportionally to the last apprifiser, for twenty years before