

(RANKING OF ADJUDGERS AND APPRISERS.)

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-

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No 23.

tent of the act of Parliament between debtor and creditor, bearing expressly, That all apprisings led within a year of the first effectual apprising, shall come in *pari passu*, as if one apprising had been led for all the rest; so that albeit the first apprising should become extinct, that alters not the case as to other apprisings; nor can it be subsumed that a second appriser was the first effectual apprising; and if this ground should hold, all apprisers behoved to infest, or charge, otherways if the first should be satisfied, all the rest, though at twenty years distance, must come in together, none of them being more effectual than another.

THE LORDS found the posterior apprisers could not come in with Street who was within the year of the first apprising.

*Fol. Dic. v. 1. p. 17. Stair, v. 2. p. 133.*

\*\*\* The parties, in this case, are called by Gosford, NICOLAS and Others *against* The EARL of NORTHEK and Others; and the particulars, as he states them, are these.

IN the action for mails and duties, pursued at Mr Nicolas's instance, as compriser of the lands of Redcastle, compearance was made for the Earl of Northesk, who *alleged*, That he ought to come in *pari passu* with the pursuers, because his comprising was within year and day of the pursuers.—It was *alleged*, That Alexander Young being the first compriser of that estate, and the pursuers being within year and day of him, they must all be preferred to the Earl of Northesk, whose comprising is not within year and day of the said Alexander Young.—It was *replied*, That Alexander Young's apprising was satisfied by the common debtor, and extinct: And therefore, the Earl of Northesk's comprising being within year and day of Mr Nicolas's, he ought to come in *pari passu* with him.—THE LORDS did prefer Mr Nicolas, and the rest of the comprisers; and found, That by the act of Parliament anent Debtor and Creditor, that the special reason for making posterior comprisers come in *pari passu* with the first, was that they had done diligence within year and day of him, which could not be alleged for Northesk: And therefore, albeit the first comprising were satisfied, all the rest who had comprised within year and day, behoved likewise to be satisfied, before any posterior compriser could come in with them; the act of Parliament declaring their comprisings to be reputed, and holden as good and valid as if the first comprising had been led for all their debts; and if it should be otherwise, they found that it would open a door to infinite pleas, and frustrate creditors of their just diligence, by buying in of first comprisers.

*Gosford, MS. No 543. p. 290.*