

(RANKING OF ADJUDGERS AND APPRISERS.)

No 10.

1678. July 27. RICKARTON *against* COUNTESS OF TRAQUAIR.

THE LORDS found, The coming in of posterior comprifings *pari passu* with the first, must be calculated year and day from the date of the first apprising, and not from the date of the infeftment*.

Fol. Dic. v. 1. p. 17. Fount. v. 1. p. 12.

1705. December 27.

FOTHERINGHAM of Balandean, *against* MARGARET BUTTER.

No 11.

An adjudger, though not within year and day, having charged the superior, admitted *pari passu* with a prior adjudger, who obtained a charter before the charge, but omitted to take infeftment till long after.

IN the competition for the mails and duties of Buttergask, Fotheringham of Balandean, and others, having produced the first adjudication, Margaret Butter was admitted *pari passu*, in respect that she produced a charge against the superior: but a petition was presented by Fotheringham, and others, craving preference, in respect they produced a charter from the superior, prior to the charge whereupon their author stood infeft.

It was *answered*: The charter was, indeed, dated the 1st of December 1694, three or four months prior to the charge on Butter's adjudication: but the infeftment did not follow till the 15th of May 1697, above two years after the charge. And seeing the obtainers of the charter were not careful to complete the same by sasine, which only gives a real right to the lands adjudged, the charge is a legal and complete diligence of its own nature, as effectual as if infeftment had followed of that date, or so soon as it could have been expedite. If the superior had given a charter, then the superior's partiality, in granting a charter to one comprifing, and refusing it to another, cannot prejudge the creditor who charged, seeing the obtainer of the charter did not complete it till two years after the charge.

'THE LORDS adhered to their former interlocutor, admitting the last adjudger *pari passu*, in respect of the charge, and the first adjudger's negligence.'

Fol. Dic. v. 1. p. 17. Dalrymple, No 69. p. 89.

* * Lord Fountainhall thus states this case:

IN a competition for the mails and duties of the lands of Walton of Blair, betwixt Margaret Butter, relict of William Haliburton, and Fotheringham of Balandean, and others, she craved preference on her adjudication; because, in the terms of the 62d act, parl. 1661, her author had first charged the superior to in-

* The names of the parties are not in the printed copy of Fountainhall.