

(RANKING OF ADJUDGERS AND APPRISERS.)

date of his charge, which, by itself, is sufficient to make his adjudication effectual; and if this is the rule of preference, no question can remain concerning the expences of King's infestment or his composition; for though by the statute, the creditors are burdened therewith, yet it is only in respect of the benefit which thence accrues to them; and where no such benefit arises, there is no foundation for the claim.

THE LORDS found, That Dunkinty having charged the superior upon his adjudication in *anno 1716*, the same is thereby the first effectual adjudication; and therefore, William King of Newmill cannot claim the composition paid by him to the superior, nor expences of his charter and infestment, *anno 1721 in hoc statu*, the other creditors having no benefit thereby; referring to the said William King, action against the other creditors, in so far as they may have benefit from his infestment against the superior's claim of non-entry, or otherwise, as accords.

*Fol. Dic. v. 3. p. 13. C. Home, No 182. p. 303.*

\* \* \* See INFESTMENT for this case, as reported by Kilkeran, p. 8.

No 37.

1752. July 9.

REPRESENTATIVES of MR DAVID COUPER, *against* The other CREDITORS of SKELBO.

IN the ranking of the creditors of Skelbo, it was *objected* to Couper's adjudication, that the summons of adjudication was executed before the days of special charge were elapsed, and therefore not regular. The LORD ORDINARY "sustained the objection relevant to postpone the said adjudication to such adjudications as were regularly led upon special charges."

*Pleaded* in a reclaiming petition for the representatives of Couper: The act of federunt of the 18th February 1721, which prohibits the raising and executing any summons of adjudication within the days of special charge, seems only to relate to adjudications posterior in date to it; for, that the act 106, Parl. 7. Ja. V. till explained by the act of federunt, was not clear as to this point. It does not say, that the days of special charge must be expired before letters of apprising can be directed, but only, That letters shall be directed, charging to enter within forty days next after the charge, and failing thereof, letters shall be directed to apprise: Which words might have been thus interpreted, That after a charge to enter heir, letters might be immediately directed to apprise; which, however, could only be carried into execution, if the person charged should fail to enter within the forty days: Nor is this more inconsistent with the nature of the thing, than is that daily practice which makes the days of a general charge, and the days of the *annus deliberandi*, to run on together.

'THE LORDS refused the petition without answers, and adhered.'

Pet. D. Grenc.

Dalrymple.

*Fol. Dic. v. 3. p. 14. Fac. Col. No 27. p. 47.*

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No 38.

An adjudication postponed, because executed before the days of special charge were elapsed.