

(RANKING OF ADJUDGERS AND APPRISERS.)

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reversionis, which the apprising alone carried ; and, as the second appriser might redeem the first, as having the right of his reversion ; so he might force him, either to possess the whole, whereby his apprising might be satisfied, or give warrant to the second to possess the remainder ; so likewise he might use redemption.—It was *alleged* for the third appriser, That if the question were of the redemption of the land, the second had good right ; but the question being for the mails and duties, a right of reversion could never carry these without a fine.

THE LORDS, considering the point in law, and the great disadvantage the leiges would sustain, if all apprisers were necessitate to take investment, They preferred the second appriser.

Fol. Dic. v. 1. p. 17. Stair, v. 1. p. 244.

1666. December 12.

SIR HENRY HOME *against* The CREDITORS of Kello and SIR ALEXANDER HOME.

No 7.
Apprisings led before 1652, came not in *pari passu* with those led before, though within year and day.

SIR HENRY HOME having apprifed the lands of Kello, before the year 1652, pursues the tenants for mails and duties. Compearance is made for other creditors apprisers, who *alleged* they ought to come in with him *pari passu*, by the late act between creditor and debtor ; because the apprifings being since the year 1652, were within a year of his apprifings, being effectual by investment, or charge.—It was *answered*, That the act of Parliament was only in relation to comprifings, both being since the year 1652 ; and the pursuer's apprifing being led before, falls not within the same.—It was *answered*, That the act of Parliament, in that clause thereof, in the beginning, mentions expressly, that comprifings led since 1652, shall come in *pari passu* with other apprifings ; but does not express, whether these other apprifings are since 1652 ; but in that is general, and the reason of the law is also general, and extensive to this case.—It was *answered*, That the posterior part of that same clause, clears that point, both in relation to the apprifings, in whose favours, and against which the law is introduced, viz. That by the clause is only meant, the apprifings led since 1652, shall come in *pari passu* ; which must both comprehend those that come in, and those with whom they come in.

THE LORDS repelled the allegiance, *quoad* other comprifings, and found, That their comprifings could not come in with the pursuer, he having apprifed before the year 1652, and charged before their apprifings.

Fol. Dic. v. 1. p. 17. Stair, v. 1. p. 411.

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*** 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.