

(RANKING OF ADJUDGERS AND APPRISERS.)

No 24.

Posterior apprisings do not rank *pari passu* among themselves; but are preferable according to their dates.

1675. July 12. DAVID BOYD *against* ROBERT MALLOCH.

In a pursuit at David Boyd's instance, as having right to a comprising of the liferent of the Lady Barefoot, and led at the instance of George Grahame against Robert Malloch, as having right to several comprisings led against the said Lady's liferent; it being found, that the first comprising, which was two years before Bailie Boyd's, being satisfied by intromission, the defender might count and reckon, and make payment of his intromission, by virtue of a second apprising, as being posterior to the pursuer's:—It was *alleged* for the defender, That he ought to be preferred, at least, ought only to account for the half of his intromission; because, albeit his comprising was posterior in date, yet it was first allowed by a deliverance, and so was the first complete right; and albeit this should not be sustained; yet it being dated within a month of the pursuer's comprising, by the act of Parliament, they ought to come in *pari passu*, being within year and day.—It was *replied*, That the leading of the comprising, and the subscribing thereof by the judge and clerk, makes the same complete; and albeit the allowance thereof be posterior to the defender's allowance in the comprising, it operates nothing to derogate from the priority, according to the date; neither can the defender's apprising, as being within year and day, come in *pari passu*; because, by the last act of Parliament, that privilege is only granted to all comprisings led within year and day of the first effectual comprising by infestment, which being the defender's first comprising, which is satisfied by intromission, and which is two years before both the comprisings now in question, they ought to take effect without regard to the act of Parliament, according to their priority and date.—THE LORDS did repel the defence, and preferred David Boyd; and found, That the allowances of comprisings, by the Lords' deliverance, were not necessary nor essential to the completing thereof; seeing, if it carry only a reversion to redeem a prior comprising, there needs no deliverance, which is only necessary for obtaining letters to charge the superior to infest; and likewise they found, That the privilege of comprisers to come in *pari passu*, can only be craved where they are within year and day of the first effectual comprising; but if that be purged by the common debtor, as extinct by intromission, then all other comprisings, which are after year and day, are preferable according to their dates, and law and custom before the act of Parliament.

*Fol. Dic. v. 1. p. 18. Gosford, MS. No 789.*

1756. January 27. RANKING of the CREDITORS on the Estate of Tulloch.

No 25.

Adjudgers without year

In the year 1736, Margaret Bayne, a creditor of Bayne of Tulloch, adjudged his lands of Tulloch, and was infest in April 1740.