

(RANKING OF ADJUDGERS AND APPRISERS.)

first apprising was satisfied, the third apprising not being within year and day of the first, could not come in with the second, though within year and day of it. *3^{to}*, It was *alleged*, That the order used by the second appriser, albeit thereby the first had been redeemed, the third would be excluded, because the second appriser redeeming the first, he would succeed in his place, and he would be discerned to denude in favours of the second, so that he might found upon the first apprising, which would exclude the third, having used no order within the legal, and therefore, though it might redeem the second apprising, yet it never could redeem the first. Nor was there any thing to hinder the second appriser to pass from his order. It was *answered*, That declarators of redemption do not transmit, but evacuate and annul the apprising redeemed; and, though the second appriser redeem, it could not be redeemable, without the satisfaction of its own sums, and of the sums in the first apprising; yet that was only as *utiliter gestum*, so that the third appriser redeeming from the second, the legal reversion gives him right to the order used by the second appriser, which he could not pass from to the prejudice of the third appriser.

THE LORDS found the second appriser having used an order, the same was effectual to the third appriser, who thereby might not only redeem the second, but the first apprising, and could not be passed from to the prejudice of the third appriser.

*Stair, v. 2. p. 700.*1680. December 21. FORBES of LAVOCK *against* BUCHAN.

THE LORDS brought in a comprising, led two years before the first effectual one, perfected by infestment, *pari passu*, as if it had been within year and day of it, though the 62d act, Parliament 1661, seems only to speak of apprisings posterior to the first effectual one, and not of prior apprisings, except they be within year and day of them.—*2dly*, They found such a comprising, coming in *pari passu*, gave a right to the lands *pro indiviso*; so that the one might hinder the other from removing the tenants, unless he can instruct, that he will improve the writ, or get a better tenant by the removal.

*Fol. Dic. v. 1. p. 17. Fountainball, MS.*1741. November 17. WILLIAM KING of Newmill *against* INNES of Dunkinty.

INNES of Dunkinty being creditor to Stewart of Castlehill, obtained decret of adjudication of his lands, upon the 14th June 1716, and on the 26th of December thereafter, he charged the superior with horning. William King being likewise a creditor of Castlehill's, obtained decret of adjudication of his lands upon the 1st January 1718, and having applied to the superior, and paid the usual composition, he obtained a charter of the said lands of Castlehill, *anno* 1721, and

No 35.

No 36.
An apprising, led two years before the first effectual one, brought in *pari passu*.

No 37.
The first charge on an adjudication, renders it the first effectual one, though