

(RANKING OF ADJUDGERS AND APPRISERS.)

1680. *January 16.* GORDON *against* HUNTER.

No 18.
The same
found.

IN a competition betwixt Gordon of Troquhen and John Hunter, both having adjudged the same lands within year and day: Hunter craved a proportion of the duties. It was *alleged* for Troquhen, That he could have no share, till first he paid the whole expences of the first adjudication, and infestments thereon, because by the act of Parliament 1661, between debtor and creditor, whereby all apprisings within year and day of the first effectual apprising, are brought in *pari passu*; it is expressly provided, that the first appriser be first satisfied of his whole expences of his apprisings and infestments. And by the act anent adjudications, general adjudications of the whole estate are declared to be in all points in the same case as apprisings.

THE LORDS found, that the posterior adjudger could have no access, until he satisfied the first adjudger of his whole expences of his apprisings and infestments.

Fol. Dic. v. 1. p. 19. Stair, v. 2. p. 740.

1668. *December 18.* CHISHOLM *against* STEVENSON.

No 19.
What expences a second appriser liable to pay to a first.

CHISHOLM, a second compriser, and admitted to come in *pari passu* with Stevenson, who was the first compriser, he paying his proportional part of the whole charges waired out, conform to the late act of Parliament, anent Debtor and Creditor: THE LORDS found, that he should only be liable for his part of such charges as were disbursed for deducing the apprising, and obtaining infestment thereon, and obtaining decreets of removing, or for mails and duties; which they ordained to be communicated to the second compriser, but did not find him liable for the expences of the registration of the bond, and raising of letters of horning and inhibition and execution thereof.

Fol. Dic. v. 1. p. 19. Gosford, MS. No 70. p. 25.

1682. *November.* GAIRNS *against* JOUSSIE.

No 20.
In a competition among adjudgers, found that the composition to the superior ought to be paid out of the fore-end of the rents as a part of the expence

MR WILLIAM GAIRNS, one of the ministers of Edinburgh, as having right to an apprising led at the instance of John Brown, merchant there, of the lands of Fodderate, having pursued the tenants for mails and duties; and there being compearance made for John Joussie, and the Laird of Drum, who had right to the first effectual comprising of the lands: It was *alleged* for them, that they ought to be preferred to the mails and duties, by virtue of the first effectual comprising; and, albeit Mr William Cairns was within year and day, yet he ought not to be admitted to come in *pari passu* with Joussie and the Laird of Drum,

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before first he make payment of 2000 merks, that Jouffie had paid to the Laird of Drum, as superior, for his entry, and of the expences for leading of the apprising, conform to the act of Parliament anent Debtor and Creditor. *Answered*, That Jouffie had paid no sums to Drum for his entry, and albeit he had paid him any sum, yet the pursuer was not obliged to pay him the same. But all that Jouffie could pretend, as having right to the first effectual comprising, is, that he should be preferred to so much of the mails and duties, as will pay the composition and expences in the first place. *Replied*, That albeit Drum had entered Jouffie upon the comprising *gratis* out of kindness and affection to him, yet that could not prejudge him nor Drum, as coming in his place, to crave the expences of the apprising and composition, that should have been paid by the other apprisers; and, it is not sufficient, that Jouffie or Drum should be preferred to so much of the mails and duties, in the first place, as will satisfy the same. But, the pursuer, who craves to come in *pari passu*, ought *ante omnia* to pay the composition and expences in ready money. It being provided by the foresaid act of Parliament, that the creditor having right to the first apprising, shall be satisfied by the posterior apprisers claiming the foresaid benefit of the whole expences disbursed by them, in deducing and expeding the first comprising, and infestment thereupon. THE LORDS found, that the composition paid to the superior, ought to be paid out of the fore end of the rent of the lands; and therefore, decerned the tenants to pay the said sum of 2000 merks to the Laird of Drum, as the expence of the first effectual apprising; and to pay the rest of the rents to all the comprisingers that come in *pari passu* together, according to their respective rights.

Fol. Dic. v. 1. p. 19. Sir Pat. Home, MS. No 256.

1683. February 20. L. BEARFORD *against* TENANTS of Craig.

IN the action of mails and duties, pursued by the Laird of Bearford against the Tenants of Craig, Sir James Turner having compeared, and craved preference, in regard he being a comprisinger, was first infest, and that Bearford, who was the other comprisinger, could not come in *pari passu* unless he paid the expences of his infestment, conform to the act of Parliament, and also L. 1000 of expences for changing the holding of the said lands from ward or tax-ward: And it being *replied* for Bearford, the other comprisinger, that the act of Parliament appointed the first effectual appriser to be reimbursed of his ordinary necessary expences, in expeding of his infestment, but made no mention of the expences of taxing: And Bearford declared, that he made no use of the tax-ward holding: It was further *alleged* for Sir James, that his comprising being expired, he behoved to pass a new infestment, conform to a clause in the end of all charters, obliging them so to do; at the least, he ought to have allowance of so much of his expences expended in the changing of the holding, as was necessary for pas-

No 20.
of the first effectual apprising.

No 21.
The expence of changing from ward to tax-ward, was not allowed the first appriser, the others taking no benefit thereof.