

(RANKING OF ADJUDGERS AND APPRISERS.)

No 21. fmg an ordinary second infestment upon the expired apprising. THE LORDS refused to allow the expences of the changing of the holding, being restricted to the ordinary expences of a simple infestment, after the expiring of the comprising; in regard, the second infestment would not be profitable to the other comprisers, seeing, after expiration of the legal, they behoved to expedite infestment upon their own comprising.

Fol. Dic. v. 1. p. 19. President Falconer, No 50. p. 28.

1681. *January 26.* THE LADY BANGOUR *against* HAMILTON and Others.

No 22.
How year
and day is to
be computed.

IN a competition between Mr William Hamilton, and other adjudgers of the estate of Bangour, the Lady Bangour having also adjudged, upon the warrandice of her contract, and craving to come in *pari passu*, in respect her adjudication is dated the 31st of July 1680; and their adjudication is upon the 30th day of July 1679:—It was *answered*, That the account of the year ought to be by the number of days intervening, *ita est* the Lady's adjudication is not within 367 days, which is a year and a day. *Ido*, Year and day is only meant of a full year, and the Lady cannot pretend that she is within a year.—It was *answered*, That within year and day can be no otherways interpreted, than within the next day after a full year; which year is never calculated by the number of days, but is ever estimated by the return of the same day, in the next year; and though there may be more days in one year than in another, as in the leap year, it alters not the case, for *de minimis non curat lex*.

THE LORDS found, That the year was not to be counted by the number of days, but by the return of the day of the same denomination of the next year, and therefore found, that the creditors adjudication, being upon the 30th July 1679, and the Lady's adjudication being upon the 31st day of July 1680, was within the year and day of the rest, and came in *pari passu* therewith.

Fol. Dic. v. 1. p. 20. Stair, v. 2. p. 842.

No 23.
The first apprising being extinguished by payment; posterior apprisings, within year and day of the second, will not rank with it, unless they had been also within year and day of the first.

1672. *December 13.* STREIT *against* The EARL of NORTHESK and INNES.

THE estate of Reidcastle being apprifed by Young, and he infest, Streit apprifes within year and day of Young, and the Earl of Northesk and others apprifed within year and day of Streit, but not within year and day of Young; Young's apprising being satisfied, Streit insists for the whole duties; Northesk and the other apprifers *allege*, That Young's apprising being extinct, it is in the same condition as if it had never been; and so Streit being now the first apprifed, all the rest that are within year and day of him, must come in *pari passu* with him.—It was *answered*, That this was both contrary to the words and in-