

easily be solved by satisfying the apprising; and suppose the first appriser were satisfied, or would renounce, the second appriser could found nothing upon his right, and so would be excluded by the donatar, and would also be excluded by a posterior appriser infest; and therefore posterior apprisers do frequently infest themselves, and if they do not, it is upon their hazard.

No 23.

THE LORDS found, that if Sir Robert Sinclair had no right to the first apprising, the allegiance founded upon the first apprising was *super jure tertii*, which was not to be discust until the first appriser were called, and therefore repelled it *hoc loco*, seeing the second appriser might, in the name of the Tenants, suspend on double pointing, and call the first appriser and all other parties, in which case the first appriser would be necessitated to declare, what use he would make of his right, and might debate thereupon; but the LORDS declared that if Sir Robert had right to the first apprising, they would hear the parties debate, whether he behoved to ascribe his possession and intromission to his apprising, and not to the gift.

Stair, v. 2. p. 37.

1674. November 13. CRAWFORD against CHRISTIE.

ANDREW CRAWFORD, as donatar to the liferent escheat of Mr James Winraham pursues the tenants of some tenements in Edinburgh, belonging to Winraham, for payment of their duties; compearance is made for James Christie, who *alleged*, that he was infest in an annualrent out of these tenements; but his infestment being year and day after the horning, the allegiance was repelled. He now further *alleges*, That the pursuer as donatar by the King, can have no right to these duties, because the King is not superior of this tenement, which being an alterage, the patron of the alterage is superior by act of Parliament 1661, cap. 54. It was *answered*, That both in the general act of annexation there is an exception of alterages, provostries, chaplainries, which had laick patrons, who are presumed to have founded the same, and likewise in the late act; but there is nothing alleged or instructed that this alterage is a laick patronage, and therefore the King's right which is founded in *jure communi*, presumes him to be patron; and neither the tenants nor the annualrenter can found themselves upon the laick patron's interest, which is *jus tertii*, upon which they cannot make liti-contestation, which will be effectual against the laick patron, unless he concur.

No 24.
A donatar of liferent, constituted by the King, was found to have right to pursue for the duties of lands as holden of the King, unless another superior would instruct his right.

THE LORDS sustained this allegiance, and found that the King is presumed patron and superior of this chaplainry, unless another patron concur and instruct his right.

Stair, v. 2. p. 283.

.-See Minto against Marshall, No 18. p. 5090.