

after he was charged, to prefer a voluntary right. The Lords preferred the disposition having infestment and confirmation, in respect the disposition was prior to the appriser's denunciation; and so there could be no suspicion of fraud in the receiving thereof.

*Page 68, No. 289.*

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1683. *March.* MR HUGH DALRYMPLE *against* LORD CRICHTON.

ONE having, without an onerous cause, restricted his apprising to a less sum, in case the same was punctually paid at such a day; the debtor failing in payment, the appriser, after the day, claimed the whole sum in his apprising. Alleged for the debtor, That he offered to purge the failie by payment of the restricted sum; and the like was allowed in the case of the Lady Gray against Earl of Mareschal. The Lords allowed the party to purge, though it was a conventional irritancy: but here, the parties being relations, the point was not much controverted.

*Page 69, No. 291.*

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1683. *March.* JOHN GRÆME *against* The CREDITORS of INNERGELLY.

FOUND that the first infestment upon an apprising, or the first exact diligence for obtaining the same, makes, by Act of Parliament, the first effectual apprising; and that a posterior infestment, upon a prior apprising, cannot be drawn back in prejudice thereof; but that a bare charge against the superior is not the exact diligence the act requires, unless a charter and composition be also offered to him. In this cause an apprising was found simply null upon this ground, That a part of the sums appraised for, had been paid to the appriser himself. *Vide* No. 283, [Wright against Earl of Annandale, January 1683;] and No. 290, [Baillie of Torwoodhead against Gairner and his Son, March 1683.]

*Page 69, No. 292.*

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1683. *March.* LAMBERTON *against* HILTON JOHNSTOUN.

PLED, but not decided, that a creditor comprising the debtor or his cautioner's lands, equivalent to the value of his debt, could not, after expiring of the said apprising, apprise again, for the same debt, any other lands belonging to them, although he might have done so within the legal; seeing the creditor's selling the lands appraised within the legal, to others, would have imported satisfaction of his debt; so his retaining the same, till the legal expired, must have the like effect, since an apprising is a judicial sale. Here, the creditor had disposed the expired apprising to one of the cautioners, whose lands were denounced after expiring of the legal, and who, having satisfied the creditor, was recurring against the co-cautioners for relief.

*Page 69, No. 293.*