

was further *alleged*, That, though the father's solvency should not be proven, yet Grant's adjudication cannot be preferred; because it is null, being for the Laird of Grant's behoof; who, before deducing thereof, had entered to possession of the wadset, and thereby was satisfied: At the least, he ought to have compensated, and deduced the rents of the wadset lands.—It was *answered*, That Grant had entered to the void possession, relinquished by the wadfetter's heir; which he might do, both because the wadset was in *non-entry*, and because, by the late act of Parliament, 1661, between debtor and creditor, he might enter into the wadset. *2do*, No man is obliged to compensate against himself; nor can compensation take effect, but when it is proponed; and, though compensation might now be allowed against the adjudication, yet it will not annul the same; nor can it be sustained, further than what is liquid, and instantly verified; which is the annualrent of the wadset sum, and not of the wadset land, which must abide probation.

THE LORDS found the adjudication valid; and that the adjudger was not obliged to deduce, upon sums compensible, unless compensation had been proponed; but sustained the compensation, now to restrict the adjudication, for the annualrent of the wadset sum, and for the remainder of the rent of the wadset lands; if it were instantly verified and liquidated by writ, or the adjudger's oath; but found, That Grant had no right to the surplus-duty, nor to the *non-entry*, without *declarator*, or by the act of Parliament; without a sentence upon offer of caution to the wadsetters.

Fol. Dic. v. 1. p. 9. Stair, v. 2. p. 773.

1683. *January.* MR EDWARD WRIGHT *against* THE EARL OF ANNANDALE.

FOUND, That a comprising, led for a principal sum, and some bygone annualrents thereof, which had been paid, was not simply null; (though it could not expire, and the accumulation of annualrents, or necessary expences fall,) but did subsist, as a real security, for the principal, and current annualrents; and found, That though grounds of compensation, existing before leading of the apprising, and not applied, did lessen so much of the sums therein-contained; yet the apprising did subsist for the remainder, both *quoad* accumulations and expiring.

Fol. Dic. v. 1. p. 9. Harcarfe, (COMPRISING.) No 283. p. 66.

1683. *March.*

BAILLIE of Torwoodhead *against* FLORENCE GAIRDNER and his SON.

AN apprising, led by a father in his own name, for a sum payable to him in life, and to his children in fee; which he was empowered to uplift, and re-employ for their use, being quarrelled as null, upon these grounds: *1mo*, Twenty-nine

No 8.

No 9.

An apprising valid, notwithstanding of grounds of compensation against the appriser.

No 10.

An apprising was led by a father, for sums due to himself, in

No 10.
liferent, and
his children
in fee. There
was a *pluris
petitio* of a
small sum of
annualrent.
The apprising
found null, as
to the life-
rent; but va-
lid, as to the
fee.

pounds of annualrents apprifed for, had been paid before; *2do*, Annualrents are accumulated at 8 *per cent.* after they had been lowered to 6 *per cent.*

Answered: imo, The wrong casting up and accumulating of the annualrent, was an error *in facto*, falling under the clause, *salvo justo calculo*; *2do*, The mistake was only chargeable upon the father, who led the apprising; and so could only be a ground to annul the same, *quoad* his liferent, but prejudice to the childrens fee.

THE LORDS found the apprising simply null, *quoad* the father's liferent; and would not so much as sustain it, for a security, of the principal sum and annualrents, without accumulation; but found it to subsist entire, as to the fee belonging to the children; yet they declared, that if the children obtrude the apprising, as expired, they would consider, if such a probable objection of nullity, should not purge the negligence, in not using an order within the legal.

Fol. Dic. v. 1. p. 8. Harcarfe, (COMPRISING.) No 290. p. 68.

1685. February.

LADY HISLESIDE *against* MATHEW BAILLIE.

No 11.
An apprising
led by an af-
signee, re-
stricted, on
account of
payments
made to the
cedent.

FOUND, That an apprising, led by an assignee, for a sum, whereof the cedent had recovered partial payment, should be restricted to the principal sum, current annualrents, and necessary expence, without accumulation of annualrents and penalties.

Fol. Dic. v. 1. p. 7. Harcarfe, (COMPRISING.) No 312. p. 76.

1685. March.

MARGARET CRAWFORD *against* OLIPHANT of Condy.

No 12.
A widow,
who had right
to the fee of a
sum, leads an
apprising, in-
cluding some
annualrents,
which were
in bonus of her
deceased hus-
band. This
occasioned the
apprising, to
be found in-
capable of ex-
piring. She
had not de-
ducted some
partial pay-
ments, made
to an affig-
nee; on this
account, the
apprising re-
stricted to a
security.

AN apprising, led at the instance of a wife, who had right to the fee of the sum apprifed for, being quarrelled as null, because she had apprifed for the by-gone annualrents, which were *in bonus* of her deceased husband; and *2do*, She having formerly assigned the debt, before she was retroceded, the assignee had uplifted some part of the sum.

Answered: imo, The husband's representatives, claim no interest in the by-gone annualrents; and the wife would fall to a greater share by the husband's testament; *2do*, The creditor in the apprising, is willing to restrict to the sum uplifted.

THE LORDS found it relevant, to make the apprising current, but not to prejudice accumulations, &c.: That the annualrents apprifed for, were *in bonus defuncti*; but found the second allegiance, viz. That the assignee had uplifted a part of the annualrent apprifed for, before the compriser was retroceded, relevant to take off the accumulations, and to make the apprising subsist, only as a security, for principal sum, current annualrents, and necessary expences.

Harcarfe, (COMPRISING.) No 311. p. 76.