

No 6.

An apprising was reduced *in totum*; a term's annualrent more than due, having been apprifed for.

1678. June 20.

SCOT *against* FALCONER and EDMISTON.

ROBERT SCOT pursues reduction of an apprising, led against him in the name of Sir John Falconer, upon a bond granted by him to James Edmiston, upon these reasons: *imo*, That the decret of registration, whereupon the apprising proceeded, is null; the bond being regiftrated in the Sheriff Court books of Edinburgh, without a warrant in the clause of registration, for that Court in particular, but only in general, *in any competent register within this kingdom*.

THE LORDS repelled this reason; and found the general clause sufficient for regiftrating the bond, either in the books of Session, which is competent to all the lieges, or any other court where the debtor had his residence at the time of the registration, and thereby is within that jurisdiction.

2do, The second reason of reduction was, because the apprising was led before the time of payment, contained in the bond; which, though it bore a clause, *That in case two years annualrent run together unpaid, the principal sum should then be payable, as if that term had been expressed*; yet that could be no ground summarily to comprise, without a declarator; for, seeing apprisings had exorbitant advantages, they are *strictissimi juris*. It was *answered*, That the legal was yet running; and the Lords are in use to sustain, yea and to supply the defect of apprisings, as to the creditor's security; and though clauses irritant require declarator, when they are penal, and so purgeable, *pendente processu*; yet here the delay of the term is a favour granted conditionally, upon payment of the annualrent; and the failzie takes nothing from the debtor.

THE LORDS sustained the apprising; seeing the legal was current, and the not-payment of the annualrent was a negative proving itself, and not penal.

THE third reason was, that there is produced a discharge for a term's annualrent, which is apprifed for; and it hath ever been sustained, that where any part of the apprising is not due, the apprising falls in whole: and the advantage of making annualrent and penalty, principal sums, with the Sheriff fee, fall thereby. It was *answered*, That the apprising was led by an assignee, who was not *in dolo*, or *mala fide*. It was *replied*, and offered to be proven, That the assignee's name was but in trust, for the behoof of the cedent, who led the apprising himself.

THE LORDS sustained the reason and reply, to reduce the apprising *in totum*.

Fol. Dic. v. 1. p. 7. Stair, v. 2. p. 622.

No 7.

An apprising led by a trustee, for behoof of the cedent, upon a bond, of which part

1679. January 31.

IRVING *against* the Laird of DRUM.

FRANCIS IRVING having apprifed the estate of Drum, for his own, and his brother and sister's bonds of provision, extending to L. 36,000 principal; for which there were infestments of annualrents granted, with termly failzies; and for 21 (being accumulated in one principal sum by the apprising now expired), Francis