

The Lords, in respect there was a competition of creditors, found the defunct was not fully denuded, unless the assignation had been intimated before his death; and so sustained the compensation; although, when the creditors do not compete, a cedent is looked upon as fully denuded by an assignation, though not intimated in his lifetime, and the sum assigned would fall under the assignee's escheat, if claimed by the donator, and no creditor of the cedent be competing.

The Lords also inclined to have sustained an adjudication led on such an assignation, in the cause of Balgony against Clerk, this same month, as a formal diligence; seeing the competitor did not derive right from Muir the defender's author, but from Carnegy the common author to Clerk and Muir, whose debt was fully established, although Balgony had not intimated his assignation in Muir's life: but this point was not voted in Clerk's cause.

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1682. *March.* SIR DANIEL CARMICHAEL *against* JAMES JOHNSTON.

A WADSETTER, who had right to the reversion of an apprising, having used an order of redemption,—the Lords found, That the appriser should, upon payment, assign his apprising to the wadsetter; seeing the appriser had no other debt resting to him, and so could have no prejudice by assigning; albeit the appriser contended, that he was only obliged to renounce:—but found, That the assignation should bear a provision, that, by the acceptation thereof, the apprising should only have the effect of a security for the sum paid to the appriser, and not expire in prejudice of the debtor, or his other creditors: for it was considered, that, by the acceptation thereof, the apprising should only have the effect of a security for the sum paid to the appriser, and not expire in prejudice of the debtor or his other creditors: for it was considered, that, by the assignation to the reversion, the creditors should not be worse than if the debtor had redeemed; *quo casu* the right of apprising would have been extinguished, and the benefit had accresced to the creditors, though, if it had been a posterior apprising, there would have been no necessity for an assignation.

*Page 65, No. 275.*

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1682. *March.* MR WILLIAM GAIRNS *against* The LAIRD of DRUM.

THE Lords found, That, when a debtor's tailyied estate is to be appraised, it is more formal to charge the heir of tailyie to enter, than to charge the heir of line, who cannot enter, although the heir of line's estate is to be first discussed.

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1682. *March.* RANKIN *against* LADY STONYHILL.

THE rents of an appraised estate being arrested by another creditor, after the

appriser was in possession, upon a pretence that the apprising was satisfied, and the tenants having broken *medio tempore*;—the Lords found, That the loss of the rents arrested, through the tenant's insolvency, was not to fall upon the appriser; because the arrester was to blame, that did not insist in his forthcoming, and then the appriser would have compeared and got up the duties, seeing his debt is not yet paid. But many of the Lords thought it was proper for the appriser to have loosed the arrestment, which was but on a dependence; seeing he knew best that his debt was not satisfied.

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1682. *March.* PROVOST ANDERSON *against* JAMES BOGIL.

THE defender, in a reduction and improbation, having produced the extract of a bond out of the public register, to satisfy the production; and the principal not being found after searching of the registers;—the Lords, before granting certification, allowed a farther search to be made, seeing the warrants were not in order. But it was the more suspicious that it was registrat in the year 1652, when the principals were got up again.

*Page 146, No. 529.*

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1682. *March.* CAPTAIN ALISON *against* LUDOWICK CANT.

THE signatures of two base infestments of annual-rent, whereof the one was two months prior to the other, being passed the same day in exchequer, before the first term of payment of annual-rent, the Lords brought them *in pari passu*. But, it being thereafter informed that Alison's charter was expedite the great seal a month before Cant's, and that the charter was the complement of the confirmation;—the Lords preferred Alison, unless Cant could purge his negligence, by proving, that the expediting of his charter was delayed by the keeper of the seal, after he had, *debito tempore*, given it in. *Vide* No. 593, [Alison and Aikman *against* Cant, 13th December 1682.]

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1682. *March.* CLARK *against* ERSKINE of BALGONY.

FOUND, that though writers not inserted may be designed, yet, if they be dead, their hand-writ ought also to be produced.

*Page 253, No. 892.*

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1682. *March.* WILLIAM HAY *against* ROBERT BURNET.

ROBERT Burnet, who had a general disposition of all his father-in-law James