

(GENERAL CLAUSE.)

pecially of the bond of 20,000 merks, and the infeftment following thereupon, which is the infeftment of annualrent, which is also contained in the *allowance*, and is related in the horning; and though, in the will, it bears only to infeft in the land, yet it bears *conform to the apprising and allowance*, and the charge is conform: And, at the time of the former interlocutor, the apprising was not produced; and the charge was only to infeft in the land, and mentioned not any other right, but the apprising, being related to, and special; it is sufficient.

THE LORDS sustained the charge, and preferred Fairholm.

*Stair, v. 2. p. 230.*

No 1.

1674. *January 23.*NISBET *against* MEIN.

UMQUHILE Henry Nisbet did infeft his son, James Nisbet, in a tenement in Edinburgh, excepting a merchant-buith of the tenement; in which buith he infeft William Nisbet, his son, reserving an annualrent of L. 20 yearly, furth of the said buith, to the said James. Gilbert Gourly, creditor to James Nisbet, apprifed, from James, the whole tenement, as it is bounded by its infeftments, The ground-right, and property thereof, with all other right competent to James; which right being now in the person of Mr William Nisbet, he pursues a poinding of the ground of the buith, against Robert Mein, who has the right of property thereof; who *alleged*, That the pursuer had no right to the foresaid annualrent out of the buith, because his author did not apprise the annualrent, but only the tenement, from which the buith was dismembered, by resignation, before the apprising, and so was neither part nor pertinent of the tenement belonging to James Nisbet, his debtor. It was *answered*, That the apprising being of the whole tenement, with all right competent to James Nisbet; and he having right to the annualrent out of the buith, the apprising carries the annualrent, though it be not expressed in the same manner as if James had disposed the tenement, with all right; for the right of property contains, *eminenter*, all lesser rights; neither is there here any competing, upon a more formal, or solemn right, of the annualrent; nor can the defender deny but he is liable in the annualrent, and hath 500 merks in his hand for the warrandice of it.

THE LORDS sustained the poinding of the ground.

*Fol. Dic. v. 1. p. 10. Stair, v. 2. p. 255.*

No 2.

An apprising of a tenement, with all right competent to the debtor; found to carry an infeftment of annualrent, the debtor had over the tenement.

1680. *July 21.* The APPRISERS of the ESTATE of ENOCH competing.

THERE being two apprisers of Enoch within year and day; the one whereof has adjudged the barony of Enoch, with parts and pertinents; and the other, the lands of Enoch, with parts and pertinents, and all other lands belonging to the

No 3.

A general clause of all lands, inefficual; but a barony, adjudged by.