

(The LEGAL.)

No 2.
the apprising,
though not
received till
after expiry.

extend to as much, as would satisfy the said whole sums, for which the comprising was deduced:—THE LORDS repelled the allegiance, being so alternatively proponed; and found, That the compriser was liable in no further for the land, but only in so much, wherewith he actually intromitted, and was noways liable for any thing, wherewith he might have intromitted, in respect that they found the act of Parliament made him only accountable for that, wherewith he actually meddled, and no further; and that in such cases, comprisers are not liable, upon that ground, as if they might have intromitted; and found, That they are not holden to do diligence, to recover payment, or intromission, but only that they may seek the same, or omit it, as they think expedient, at their own pleasure, and no otherways. In this case, the state of the debtor is very hard, whose lands being comprised, neither the compriser is holden to do diligence against the tenants, and possessors thereof, nor can the debtor have any meddling therewith, being debarred by the comprising; so that the mails and duties may perish to all parties, and the tenants may become bankrupts without remedy.—And it being further *alleged*, That the appriser, that had intromitted with diverse years duties, for years running before the expiry of the comprising, which, albeit they were uplifted, after expiring of the comprising, yet being for years before the expiring, must be alike, as if the intromission had been before the same.—And the pursuer *answering*, That seeing the comprising was expired before his intromission, whatever intromission he had thereafter, was justly his own, and he was not answerable therefor, neither did the act of Parliament in that case militate against the same:—THE LORDS found this allegiance relevant, founded upon the pursuers intromission had for the years duties, owing for years before the comprising was expired, although they were not received, nor intromitted with, while the comprising was expired; and because this intromission extended not to more, nor effeired to the ordinary annualrent of the principal sum, therefore they found it could defalk no part of the principal sum, and so the compriser was in no part prejudged thereby; and repelled the allegiance.

Alt. *Mowat.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 21. Durie, p. 698.*1675. February 10. LADY TORWOOD-HEAD *against* GARDNERS.

No 3.
Two different
estates being
apprised,
for the same
debt; an order
of premo-
tion and
confignation,
used by the

THE Lady Torwood-head having obtained a decret of the Secret Council of 600 merks yearly of aliment, to her and her children, out of her husband's estate; and having gotten a gift of her husband's liferent-efcheat for securing the said aliment, and declaring the same, she now insists against the tenants of her husband's lands for payment. Compearance is made for Florence Gardner, who, upon a bond of 5000 merks granted by the Lord Forrester and Torwood-head,

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had apprised both their estates, and thereupon *alleged*, That he being thereupon infeft in the estate of Torwood-head, the Lady can have no access to the rents thereof; and the decret of Council can only be understood as to the husband, but cannot exclude the infeftment upon an apprising, and whatever effect it could have had, during the legal, yet now after the legal is expired, Gardner hath the full right.—It was *answered*, *imo*, That Gardner was compearing in the decret of Council. *2do*, That by the act of Parliament 1661, betwixt Debtor and Creditor, it is statute, 'That the Lords of Session may restrict the possession of apprisings to such part of the apprised lands, as they see cause, providing that the same be sufficient for their annualrent, and that during the legal.' And albeit the years of the legal be expired, yet the same is interrupted by an order of premonition and consignation used by Edward Ruthven, son to the Lord Forrester, and assignee constitute by him to the legal reversion of his estate, apprised by several creditors, whereof Gardner was one.—It was *replied*, That any order used being only in relation to the Lord Forrester his estate, can have no effect as to Torwood-head's estate.—It was *duplicated*, That Florence Gardner having apprised both Forrester's estate and Torwood-head's for the same sum; the consignation made by Forrester or his assignee, doth not only retain Forrester's estate, but doth extinguish the debt, whereupon it was apprised, and consequently all apprisings following upon that debt, in the same way as if payment had been made.

Which THE LORDS found relevant, and by virtue of the act of Parliament 1661, restricted Gardner's possession, so that 600 merks might remain free for the Lady's aliment, providing that Gardner had enough behind for his annualrent.

Fol. Dic. v. 1. p. 21. Stair, v. 2. p. 320.

1676. July 7.

EDGAR against MILN.

JOHN EDGAR being infeft in a tenement in Edinburgh, upon an apprising, pursues for mails and duties. Compearance is made for Patrick Miln, who *alleges* absolviter, because the apprising is satisfied by intromission within the legal, which legal is propogated by an order of redemption.—It was *answered*, That there was no declarator after the order, which behoved first to be obtained, and then thereafter the posterior intromission liquidated.

THE LORDS sustained the declarator, as incident in this process; and found the intromission after the legal, relevant to extinguish the apprising, in respect of the order, albeit the appriser had builded considerably upon the tenement, after the expiring of the legal.

Fol. Dic. v. 1. p. 20. Stair, v. 2. p. 441.

No 3.

proprietor of one of the subjects, was found to keep the legal open as to both.

No 4.

The legal of an apprising is prorogated, by a simple order of redemption, without declarator.