

1630. *July 2.*PATERSON *against* PATERSON.

No 140.

WHERE, by contract, a party is obliged to grant a reversion, but neither the place nor order is orderly nor particularly set down, the LORDS may appoint what is deficient by the ordinance.

Fol. Dic. v. I. p. 498. Auchinleck, MS. p. 207.

1669. *January 7.*

My LORD BALMERINO, Supplicant.

No 141.

MY LORD gave in a bill to the Lords, representing that his uncle was dead, and that he is nearest heir-male to him, in whose favours his estate is provided; and therefore desired that commission might be granted to certain persons in the country to inventory, seal, and secure his charter-chest, and to make patent doors in his houses, coffers, and cabins, for that effect; and to take my Lady, his relict's oath, where the evidents were, to the effect foresaid. Compearance being made for my Lady, desiring a sight of the bill till the next day, and alleging that it was notour to the Lords, that my Lady had a disposition to the whole estate; whereupon resignation had past in Exchequer, and that the evidents ought to be left open, to the effect my Lady may instruct her charter, conform to the disposition,

The Lords, without calling or hearing parties, granted commission to certain noblemen and gentlemen, or any one of them, to inventory, seal, and secure, the evidents of a party deceased, and to open doors, coffers, and cabinets for that effect.

THE LORDS refused to give up the bill, it being their ordinary course to grant such commissions without calling or hearing parties, and that a short delay might prevent the effect of the commission; and therefore granted commission to certain noblemen and gentlemen, or any one of them, to inventory, seal, and secure the evidents, and to open doors, coffers, and cabinets for that effect; but refused to give warrant to take my Lady's oath.

Stair, v. I. p. 578.

1675. *June 25:*

TUTOR for the LAIRD of AYTON's Daughter.

No 142.

THE tutor to the daughter of the deceased Laird of Ayton having craved by a bill, that he might be warranted, by an order of the Lords, to set the pupil's lands for less duties than were paid formerly, seeing the former duty could not be gotten,

THE LORDS, though they had granted the like desire in favour of other persons upon bills, thought, upon better consideration, that it was fit to refuse the said bill; seeing, upon such pretences, minors may be wronged by their tutor's authority; and the Lords have only a *jurisdictio contentiosa* in relation to processes or questions depending betwixt parties; but not a voluntary jurisdiction, or power in relation to administration of private estates; and if the tutor's deed

No 142. in setting pupil's lands were warrantable, the law would secure him ; and therefore left him to do as he will be answerable.

Reporter, *Redford*.

Fol. Dic. v. 1. p. 499. Dirleton, No 277. p. 135.

No 143. 1678. July 20.

MORRIS *against* ORROCK.

The Lords found, that *ex officio* they might supply defects in apprisings, to make them subsist as securities.

MORRIS pursues a reduction of several apprisings led against him by Orrock of Balram, wherein the penalties of the sums were exorbitant, yet the Lords did not abate the same ; but it being *alleged* against one of the comprisings, that it was null, proceeding upon a registration on a clause in these terms, ' To be registrate in the books of Session, or any other competent judicature of the kingdom ;' it was registrate where the creditor lived, but the debtor was not in that jurisdiction, and so there was no competent judge. It was *answered, imo*, That, by competent judge, was understood any judge having ordinary jurisdiction ; *2do*, In the apprising there were diverse other sums for which the apprising ought to stand, and to be sustained, though not in this sum.

THE LORDS considering, that *ex officio* they might supply defects in apprisings, to make them subsist as securities for the just interest, without the extraordinary advantage of expiring of the legal, or unequal penalties, did declare, that if the defender would restrict his whole apprising to the ordinary penalties (for the Lords had deducted the termly failzies, and would not allow them) they would then sustain this apprising for the whole sums ; but he having refused, the Lords reduced the apprising *in toto*. See LEGAL DILIGENCE.

Stair, v. 2. p. 637.

* * * Fountainhall reports this case :

1678. July 19.

A COMPRISING found null because led on a bond registered in Kirkcaldy town books, within whose jurisdiction the debtor dwelt not ; and the appriser here refused to restrict to his just sums ; and as the Lords maintain comprisings as a legal security, so they embrace every opportunity to cut them off where they are rigid.

Fountainhall, MS.

1687. July 22.

THE BRETHERN and SISTERS of PATRICK SCOT of Orchardfield *against* BARBARA FOULER, and RICHARD PRESTON TAYLOR, her Husband.

No 144. In a question of fraud, the Lords having

THE Brethren and Sisters of Patrick Scot of Orchardfield insist against Barbara Fouler, and Richard Preston Taylor, her husband, for reduction of the