No 4. posterior apprisers had denounced or apprised, which he might lawfully do. It was *answered*, That intromission by an apprising being the proper and peculiar way of satisfying and extinguishing of it by a special statute, it was equivalent to a renunciation or discharge of the apprising *pro tanto*, which could not be given back to revive the apprising.

THE LORDS found, that the first appriser might restrict himself to his annualrent, or might repay the superplus more than his annualrent to the debtor, before any other apprising or denunciation.

Fol. Dic. v. 2. *p.* 49. *Stair, v.* 2. *p.* 389.

*** Gosford reports this case:

1675. *December* 17.—IN a suspension of multiplepoinding of a tenement of land belonging to William Ruthven of Garnes, there being a competition betwixt the said parties, as having both comprised the tenement, it was *alleged* for William Clark, That he ought to be preferred, notwithstanding that his comprising was posterior, because he offered him to prove, that Robertson's comprising was satisfied by intromission, and so was extinguished; for which there being an act of count and reckoning and receipts produced, granted to the tenants by Robertson, for their whole duties, it was *alleged*, That, notwithstanding of those receipts, yet Robertson did only intromit with as much as paid the annualrent of his money, and what he had disbursed besides for public burdens, and for reparations of the tenement, and gave in the Laird of Garnes and his tutors the superplus, upon their receipts, and so could not be liable for farther intromission, especially at Clark's instance, whose comprising was posterior to all the years of his intromission, for which he had counted, as said is. It was *replied*, That Robertson having intromitted by virtue of a comprising, and having taken discharges under the common debtor's hand, and his tutor, in prejudice of a second compriser, ought to be liable.—THE LORDS did find, that the intromission being before the second comprising, and it being lawful to the first compriser to intromit or not, or to restrict his comprising, having to do with none but the common debtor, it was lawful for him to retain no more than the annualrents and true disbursements, and the second compriser had no interest to quarrel the same, but for years subsequent to his comprising.

Gosford, MS. No 825. *p.* 520.

1676. *June* 28. GIBSON *against* FIFE.

No 5. ELIZABETH GIBSON pursues Fife for 100 merks lent by her to him, and referred the same to his oath. He deponed that he received the sum,

and gave a bond for it blank in the creditor's name, and therefore was not obliged to pay it till his bond was retired. The pursuer having also deponed that the bond was lost, and both parties having agreed upon the date, writer and witnesses of the bond, No 5.

THE LORDS decerned the defender to make payment of the same, the pursuer always, before extracting, finding caution to relieve or repay, if he should be distrest by any bond of the same sum, writer, date and witnesses.

Fol. Dic. v. 2. p. 49. Stair, v. 2. p. 434.

*** Dirleton reports this case:

1676. *June* 21.—A WOMAN having lent 100 merks upon a bond, and the same being lost, the debt or was pursued for payment of the said sum, and did confess that he had truly borrowed the money and granted the bond blank, and he was willing to pay the same, being secured against any pursuit at the instance of any person who might have found the said bond, and filled up his own name therein.

THE LORDS thought the case to be of great difficulty and import as to the preparative, that practice of granting blank bonds having become too frequent; and resolved, in this case, to take all possible trial by the debtor's oath, and likewise, of the date and writers name, and the witnesses in the said bond; and thereafter to ordain the debtor to pay upon surety, that the pursuer should relieve him of any bond that should be found of that date and sum, and written and subscribed by the writer and witnesses that should be found to have been in the said bond.

Clerk, *Gibson.*

Dirleton, No 334. *p.* 169.

1676. *July* 8. SPENCE *against* SCOT.

IN a pursuit for payment of a sum of money, it was *alleged*, That the pursuer's cedent was tutor to the defender, and had not made his account; which defence the LORDS sustained against the assignee; but it was their meaning that the pursuer should not be delayed, and that a competent time should be given to the defender to pursue and discuss his tutor. No 6.

Reporter, *Glendoick.* Clerk, *Mr John Hay.*

Fol. Dic. v. 2. p. 50. Dirleton, No 376. *p.* 184.