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never modify penalties, unless there be defects in the apprising. For though the act of Parliament foresaid, as to the satisfaction of apprisings, mentions *not penalties, but principal sums and annualrents, &c.*; yet thereby principal sums are meant, as they are accumulated in the apprising, wherein the penalties are comprehended.

THE LORDS found the reason of reduction *relevant* to be proven by Francis's oath, that the apprising *quoad* Charles's sum was for Charles's behoof, to reduce the same, as to Charles's part, to his principal sums, and annualrents thereof, without penalties or accumulation; in respect of his bond, containing the clause of *retention*; and of Mowat's distress, by apprising after the decret of apprising; in which Drum failed to produce the back-bond; which could not then have been effectual: But in case it be not proven, that the apprising was for Charles's behoof, found, That the same ought not only to be retained, with the abatement of Mowat's sum, but they reduced the same as to the penalties, and termly failzies; and sustained the same, as a redeemable security for the remainder of Charles's principal sum, and annualrents thereof, due at the time of the apprising; being thereby accumulated into one principal; and thereby reduced, as to the whole penalties, and failzies in the apprising. And, as to the second reason; if, by Charles's bond, it appear, that the first term of his annualrent was only Martinmas 1662; that the pursuer had apprised for a term more than was due knowingly, after his assignation by Charles, found, *ad hunc effectum*, To reduce the sums to the principal and current annualrents only, without penalties, failzies, or accumulation of the annualrents.*

Fol. Dic. v. 1. p. 7. Stair, v. 1. p. 684.

1680. June 22.

GRANT against GRANT.

No 8.

An apprising valid, notwithstanding of articles of compensation against the appriser, who is not bound to propone compensation against herself.

WILLIAM GRANT having adjudged the wadset-right of the Bridge-town of Spey, from one Barclay, pursues for mails and duties. Patrick Grant compares, who *alleges*, That he has a posterior adjudication, which is preferable, because the first proceeds on a sum, contracted by a father to his son, in his contract or marriage, by which the tocher is also payable to the son; so that, though the contract be one-rous as to the wife, yet it is merely gratuitous as to the son.—It was *answered*, That, at the time of the contract, the father had a sufficient estate to pay his debt, beside this small provision of 1000 merks,—*Which the LORDS found relevant.* It

* Lord Fountainhall thus mentions the same case:—In the action betwixt Francis Irvine, and his brother, the Laird of Drum, the LORDS reduced Francis's comprising to the principal sum and annualrents, and lopt off the Sheriff-fees, and penalties, because it was deduced for greater sums than were truly resting owing at the time of the leading thereof; though it was only a quarter, or half a year's annualrent more, and Francis was only assignee, and so could not know of it. The LORDS, in some such cases, only restrict the comprising, but do not annul it.

Fountainhall, v. 1. p. 39.

was further *alleged*, That, though the father's solvency should not be proven, yet Grant's adjudication cannot be preferred; because it is null, being for the Laird of Grant's behoof; who, before deducing thereof, had entered to possession of the wadset, and thereby was satisfied: At the least, he ought to have compensated, and deduced the rents of the wadset lands.—It was *answered*, That Grant had entered to the void possession, relinquished by the wadfetter's heir; which he might do, both because the wadset was in *non-entry*, and because, by the late act of Parliament, 1661, between debtor and creditor, he might enter into the wadset. *2do*, No man is obliged to compensate against himself; nor can compensation take effect, but when it is proponed; and, though compensation might now be allowed against the adjudication, yet it will not annul the same; nor can it be sustained, further than what is liquid, and instantly verified; which is the annualrent of the wadset sum, and not of the wadset land, which must abide probation.

THE LORDS found the adjudication valid; and that the adjudger was not obliged to deduce, upon sums compensible, unless compensation had been proponed; but sustained the compensation, now to restrict the adjudication, for the annualrent of the wadset sum, and for the remainder of the rent of the wadset lands; if it were instantly verified and liquidated by writ, or the adjudger's oath; but found, That Grant had no right to the surplus-duty, nor to the *non-entry*, without *declarator*, or by the act of Parliament; without a sentence upon offer of caution to the wadsetters.

Fol. Dic. v. 1. p. 9. Stair, v. 2. p. 773.

1683. *January.* MR EDWARD WRIGHT *against* THE EARL OF ANNANDALE.

FOUND, That a comprising, led for a principal sum, and some bygone annualrents thereof, which had been paid, was not simply null; (though it could not expire, and the accumulation of annualrents, or necessary expences fall,) but did subsist, as a real security, for the principal, and current annualrents; and found, That though grounds of compensation, existing before leading of the apprising, and not applied, did lessen so much of the sums therein-contained; yet the apprising did subsist for the remainder, both *quoad* accumulations and expiring.

Fol. Dic. v. 1. p. 9. Harcarfe, (COMPRISING.) No 283. p. 66.

1683. *March.*

BAILLIE of Torwoodhead *against* FLORENCE GAIRDNER and his SON.

AN apprising, led by a father in his own name, for a sum payable to him in life, and to his children in fee; which he was empowered to uplift, and re-employ for their use, being quarrelled as null, upon these grounds: *1mo*, Twenty-nine

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No 9.

An apprising valid, notwithstanding of grounds of compensation against the appriser.

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An apprising was led by a father, for sums due to himself, in