

(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, ineffectual; but a barony, adjudged by.

(GENERAL CLAUSE.)

No 3.
name, compre-
hends all the
lands of it
contiguous,
and includes
mills and
woods.

debtor, within the parish of _____, and sheriffdom of Dumfries: It was *alleged*, for the adjudger of the barony, That he only could have right to mills, woods, fishings, and others, that require special infeftments, or else erection into a barony; which is *nomen univertitatis*, and comprehends these, though not expressed, and reaches to discontiguous tenements.—It was *answered*, *imo*, That the general clause, of *all other lands*, was sufficient to bring in that adjudger *pari passu*. *2do*, That, though *barony* was not expressed in the adjudication, yet, Enoch being adjudged, all that is comprehended under that common designation, is carried thereby, *with the pertinents thereof*; and so mills, or woods, thereupon, unless they were forests, or a milln which is a separate tenement; and, whatever might be alleged, upon voluntary dispositions, where purchasers may see their author's rights, yet, in adjudications, where they cannot know the same, there ought to be the most favourable and extensive interpretation. It was *replied*, That the general clause can operate nothing; for the adjudger might as well adjudge a debtor's lands through all Scotland; and such general adjudications can be no foundation of infeftments, and cannot make any real right; and therefore the lands, or rights, adjudged must be named.

THE LORDS found the general clause, in the adjudication of lands undesigned, was null, and of no effect; but found, That, Enoch being adjudged, all lands, under that common designation, lying contiguous, and the mills and woods thereon, was carried thereby. *

Fol. Dic. v. 1. p. 10. Stair, v. 2. p. 786.

No 4.
Teinds found
not to be
comprehend-
ed under a ge-
neral clause.

1702. February 17. HOME of Wedderburn, *against* HOME of Kimmergham.

HOME of Wedderburn, having acquired a comprising, led against his estate, by Mr Alexander Spottiswood, he pursues Home of Kimmergham for the teinds of his lands. *Alleged*, You have no title to my teinds; in so far as your comprising is allenary of the lands and mill, and makes no mention of the teinds. *Answered*, It needs not; for teinds, being an inferior right, are carried with the lands; especially, seeing the comprising bears all right, interest, and claim of right, petitory, or possessory: And Stair observes, That, on the 27th of February 1672, Scot against Muirhead, (*See TEINDS*) in a voluntary sale, where the disposition bore only the lands, yet the LORDS extended it to the teinds also. *Replied*, That there were sundry specialties in this case; for he was burdened with L. 30 of teind-duty to the minister; and yet the LORDS allowed the defender to be reponed, he repaying the price, *cum omni causa*. Dirleton likewise states this question, *voce TEINDS*; but leaves it undecided. THE LORDS found this comprising did

* See Corfer against Durie, p. 44. quarto Dic.; where the contrary seems to have been found.