

provided the appriser proceed in diligence to obtain infeftment, or charge the superior; but if he be *in mora*, the effect of the litigiousness ceases.

No 81.

Fol. Dic. v. 1. 558. Stair.

*** This case is No 74. p. 2738., *voce* COMPETENT.

1680. February 25.

EARLS of SOUTHESK and NORTHEK *against* LORD POWRIE, &c.

No 82.

A compriser being *in mora* for twelve or thirteen years, not obtaining infeftment, or charging the superior, nor using diligence to recover possession by mails and duties or otherwise; a voluntary disposition for a price paid, granted after the comprising, with infeftment upon it, was found preferable.

Fol. Dic. v. 1. p. 558. Fountainhall. Stair.

*** This case is reported by Stair, No 160. p. 1075., *voce* BANKRUPT; and by Fountainhall, No 69. p. 3730., *voce* EXECUTION.

1681. February 8.

NEILSON *against* ROSS.

No 83.

DENUNCIATION of apprising renders the subject litigious, after which every voluntary alienation by the debtor, even for a price told down, to prevent the appriser *in cursu diligentie* is ineffectual; but where the appriser was silent and negligent by the space of ten years, without infeftment or charge, and without pursuing for mails and duties, he was not allowed to plead the litigiousity, since it could not be said that he was *in cursu diligentie*.

Fol. Dic. v. 1. p. 558.

*** This case as reported by Stair is No 134. p. 1045., *voce* BANKRUPT.

*** Fountainhall likewise reports it.

THE LORDS preferred a singular successor, who *bona fide* bought lands, to a comprising, whose legal was expired before the said disposition, because the appriser was *in mora*, and had never done any diligence to infeft himself, or to charge and denounce the superior; whereas the receiver of the disposition was publickly infeft, though after the expiring of the legal. This would also hold in one who apprises after the other's legal (who was not infeft,) and the said last appriser infefts himself.

Then they quarrelled the said disposition, as being granted by a bankrupt, after he was denuded by their prior diligences on the act 1621. The words