

have had no repetition of any part, seeing these intromissions would have extinguished the second apprising; no more can he hinder the second to continue in his possession, by uplifting mails and duties *pro rata*. The Lords sustained the first appriser's allegiance; and found that he might likewise intromit with the rents for refunding the whole expenses of his apprising.

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1683. *January*. EDWARD WRIGHT *against* the EARL of ANNANDALE.

FOUND that a comprising, led for a principal sum, and some bygone annual-rents thereof, which had been paid, was not simply null, (though it could not expire; and the accumulation of annual-rents or necessary expenses fell;) but did subsist as a real security for the principal and current annual-rents. 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. *Vide* No. 290, [Baillie of Torwoodhead against Florence Gairner and his Son, March 1683;] and No. 292, [John Græme against the Creditors of Innergelly, March 1683.]

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1683. *January*. ALEXANDER SINCLAIR *against* WILLIAM DUNDAS.

FOUND that seven years' possession did not afford the benefit of a possessory judgment to a second appriser against the first, whom he was within year and day of; but here the second appriser did not offer to renounce the benefit of coming *in pari passu*.

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1683. *January*. COUTS *against* STRAITON.

SOME of several persons of the name of Coutts, nearest of kin in the same degree to one Clement Rouchhead, having granted an assignation of their share of a bond falling under executry to Arthur Straiton, and the rest having, after the cedent's decease, confirmed the whole;—it was alleged by them against Arthur Straiton, That he could have no right by the assignation, the cedents having died before their interest of nearest of kin was established in their persons by confirmation; so that it could not transmit, but remained *in bonis defuncti*. Answered, By the civil law, *dies legati cedit a tempore mortis testatoris*, and the testament was but *modus acquirendi*. The Lords found the pursuers, who were executors, had right to the whole; and that Arthur Straiton had no share by the assignation.

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