

ADJUDICATION AND APPRISING.

(FORMALITIES of the DILIGENCE.)

No 14.
term of en-
durance, and
the granter's
name were
not specified.

‘ and others, granted by _____, to the said Robert
‘ Kennedy, of which there are _____ years still to run, from the term
‘ of _____ next to come.’

To this adjudication the common agent *objected*, That it did not specify the date of the tack, the granter of it, the term of endurance, nor the situation of the lands.

‘ THE LORDS repelled the objection.’

Lord Ordinary, *Alva.* For Jean and Fergusia Kennedies, *George Wallace.*

For the Common Agent, *George Ferguson.* Clerk, *Orme.*

Fol. Dic. v. 3. p. 8. Fac. Col. No 163. p. 254.

Craigie.

GENERAL CLAUSE in APPRISING and ADJUDICATION.

1673. November 21.

FAIRHOLM *against* RENTOUN and the Countess of LEVEN.

No 1.

An apprising is led, of an infeftment of annualrent. The letters contain the words, *and all other right.* The charge is given to infeft in the land, not in the annualrent. This is objected to; but on account of the general words in the apprising, the charge is sustained.

THE Earl of Leven having granted bond, of 20,000 merks to the Laird of Lamertoun, with an infeftment of annualrent thereon, in the barony of West Nilbet; The same being apprifed, first by Mr John Fairholm, he charged the Countess, on the apprifing, to receive him; and, thereafter, it was apprifed by Rentoun, Justice Clerk; and the Countess having raised a double pointing: In the competition, it was *alleged*, for Mr John Fairholm, That he ought to be preferred; because he had the first apprifing, and the first charge. It was *answered*, That, though Rentoun's apprifing was posterior, yet it was preferable; because infeftment had proceeded thereupon: and Fairholm's charge was informal, and null; because the Countess was charged to receive him into the lands; whereas the right was an annualrent furth of the lands, which is a distinct right from the lands, requiring distinct solemnities; neither did the apprifing apprise, or adjudge, an annualrent; nor did the horning charge to infeft in an annualrent, but to infeft in the land. Whereupon, the LORDS found already, That the charge was null; and, if the Countess had given obedience, and infeft Fairholm in the land, and Rentoun in the annualrent, he would have had the only right. It was *replied*, That apprifers, who cannot know their debtor's rights, can do no more but apprise *the ground, right, and property, and all other right*; and, if they charge accordingly, it is sufficient to reach an annualrent, or any other just right: and there is more in this case, for the apprifing is not only of the property, and all other right, but

(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, inefficual; but a barony, adjudged by.