No 89.

make furthcoming, that constitute the right; and the arrestment was but a judicial prohibition, hindering the debtor to dispone, like an inhibition; or a denunciation of lands to be apprised, and that the last denunciation, and first apprising would be preferred: So the decreet to make furthcoming is the judicial assignation of the debt, and both being in one day, ought to come in together. It was *answered*, That in legal diligences, *prior tempore est potior jure*, and the decreet to make furthcoming is declaratory, finding the sum arrested to belong to the arrester, by virtue of the arrestment; and, as for the instance of apprisings, the first denunciation can never be postponed, unless the diligence be defective; for, if the first denouncer take as few days to the time of the apprising as the other, he will still be preferred.

THE LORDS preferred the first arrester, being equal in diligence with the second. *See* ARRESTMENT.

Stair, *v.* 1. *p.* 346.

1674. *February* 10. BLYTH *against* The CREDITORS of DAIRSAY.

No 90.
In a competition of apprisings, the sums upon which one apprising proceeded, were contracted partly before and partly after inhibition. It was argued, that the sums anterior were satisfied by intromission within the legal.—Found that intromission was to be ascribed to the first apprising, which alone carried the property; and this not with regard only to the sums anterior to the inhibition.

IN a competition among the creditors of Sir George Morison of Dairsay, Mr Henry Blyth having right to a sum, whereupon inhibition was used against Sir John Spottiswood of Dairsay, before he disponed the estate to Sir George Morison, did thereupon pursue reduction of two apprisings led against Sir John Spottiswood, whereunto Sir George Morison had taken right for his better security, when he bought the lands, and satisfied them with a part of the price, and obliged himself to make no other use thereof, but for his security. The reason of reduction was, because the sums whereupon the apprisings proceeded, were contracted after the inhibition. It was *answered*, That in both the apprisings there were sums anterior to the inhibition, and some posterior. It was *replied*, That the sums anterior were satisfied by the appriser's intromission within the legal, viz. 'either within the first seven years, or within the time by which the 'legals of apprisings not expired anno 1652, were prorogate for three years.' It was *duplied*, 1mo, That it was not relevant to allege, that the whole intromission should be ascribed to the sums anterior to the inhibition, but behoved to be ascribed to the whole sums *pro rata*; not only as to the sums in one apprising, but both the apprisings being acquired at one time for the buyer's security, the intromission behoved to be ascribed to both; and, albeit there be a prorogation of the legal, giving three years to debtors to redeem; it bears nothing of intromission *medio tempore*, much less can it extend to intromission had, after the legal was expired, according to the law then standing, and before the act of Parliament prorogating the legal; during which time, the appriser did not possess for satisfaction, but *proprio jure suo*, and so as *bonæ fidei* possessor, *fecit fructus consumptos suos*.

No 90. The Lords found that the intromission was to be ascribed to the first apprising, which alone carried the right of property, and not to the sums only anterior to the inhibition: So that the whole apprising behoved to be satisfied within the legal; and if it were so satisfied, the property did accresce to the second apprising, in which there were some sums prior, and some posterior to to the inhibition; to all which *pro rata* the posterior intromission was to be ascribed; but, if the saids apprisings were not found satisfied within their legals, the Lords reserved to their consideration, whether the apprisings, as founded upon the anterior sums, should carry the right of the whole estate, or only a proportional part of the estate effeiring to the sums anterior to the inhibition, and that the inhibition should reach the rest of the estate, as reducing the sums posterior; but the Lords found, that the intromission at any time before the end of the three years of the prorogation, was to be imputed in satisfaction. *See* Inhibition. *Stair, v. 2. p. 263.*

1676. *December* 20. Veitch *against* Pallat.

No 91.
A rebel might assign after rebellion, the assignee proving, in competition with the donatar, that the debt for which the assignation was obtained, was contracted before rebellion.

James Sanderson being debtor to Nairn, and being denounced, David Roger took the gift of his escheat, anno 1648. In anno 1650, Sanderson grants a bond to James Brown, bearing expressly, 'to be for wines sent by James Brown from France in anno 1649.' Sanderson assigns James Brown to a sum due to him by Sir Robert Stuart in Ireland, in satisfaction of the foresaid bond, and therefore, in anno 1662, he granted a new assignation, whereupon Sir George Maxwell retired Stuart's bond, and granted a new bond; thereafter, William Veitch being a creditor of Sanderson's, obtains assignation to David Roger's gift, and took a new gift of the escheat of Sanderson in anno 1673. Peter Pallat, merchant in Bourdeaux, being donatar to the escheat of James Brown, there falls a competition between William Veitch, as assignee to David Roger's gift of Sanderson's escheat, and Peter Pallat as executor to Brown, both claiming right to that sum due by Sir George Maxwell. It was *alleged* for Veitch, That he ought to be preferred to the sum contained in Sir George Maxwell's bond granted to Brown, because that bond was granted in place of a former bond due by Sir Robert Stuart to Sanderson the common debtor, in anno 1638, which fell under Sanderson's escheat, and therewith also the new bond in place of it, and therefore any assignation granted by Sanderson to Brown, whereupon Sir George Maxwell's bond was granted, was null, and could not affect the moveables and escheat of Sanderson which befell to the King by his rebellion. It was *answered*, That by the interlocutor in this case, the 10th of December 1673, it was found, That an assignation granted after rebellion, for a debt due before rebellion, attaining payment or new security, by innovation of the former security before any gift declared, did secure the