

1678. November 14. WILLIAM DALMAHOY *against* MR CORNELIUS AINSLIE.

No 8.

FOUND, that a sasine unregistered is not absolutely null, but may be the active title in an improbation of other rights on that land. As also the LORDS assoilzied from the production of the executions, letters, and claim of apprising, because the decret of apprising itself was produced, and it was 36 years old, and they were in possession by virtue of it; but found the bonds and grounds of debt whereon it was led ought to be produced.

*Fol. Dic. v. I. p. 354 Fountainball, MS.*

1681. February 11. KENNOWAY *against* CRAWFORD.

No 9.

There was found no necessity to produce letters of apprising or execution thereof of an old date, but it was found necessary to instruct the debts on which the apprising proceeded, any time within the long prescription.

IN August 1635, Henderson of Clett did apprise certain tenements in Edinburgh, from George Austin, and was infest thereon in February 1636. Patrick Austin obtained a disposition from George Austin at Martinmas 1637, and was thereupon infest, and did also acquire right to Henderson's apprising, in February 1634. Kennoway of Ketlston used inhibition against Austin for a small sum, and upon that sum, and several others, did apprise the same tenements, in September 1635. James Kennoway having now right to Kennoway's apprising, and Thomas Crawford having right to Henderson's apprising, and Austin's voluntary disposition, there are mutual reductions, wherein Kennoway *insists* upon this reason, that Henderson's apprising is null, nothing being instructed of the sums, whereupon it proceeded. It was *answered, 1mo*, That after so long a time, there was no necessity to produce the instructions of Henderson's apprising. THE LORDS found there was no necessity to produce the letters of apprising, or execution thereupon, but that it was necessary to instruct the debts, whereupon it proceeded, any time within the prescription. *2do*, Kennoway insisted against the voluntary disposition, upon this reason, that it is posterior to the inhibition served against the disponent in *anno* 1634. It was *answered, 1mo*, That the inhibition, or any action thereon, was prescribed; for albeit the citation in this reduction be within 40 years of the inhibition, yet the reduction was not libelled upon the inhibition, as the interest, but upon Kennoway's apprising; and there is only adjected of late, a reason of reduction upon the inhibition, which is neither a habile way, seeing in reductions *ex capite inhibitionis* the inhibitions are libelled upon in the reduction, as the title. *2do*, This new adjected reason upon the inhibition is not within 40 years from its date. *3tio*, Albeit the inhibition were not prescribed, it may be purged by payment, which is now offered. It was *answered*, That the inhibition could not be purged by payment, because an apprising was led upon the ground thereof, and is expired, which is now irredeemable, as was found in the case of Grant 24th Feb. 1666, *voce* INHIBITION. It was *replied*, That the inhibition being upon a small sum, whereof there were