

1677. *July 21.*—The registration of a bond was found null, with the inhibition, horning, apprising, and all the other diligence used thereupon, in Moreis and Orrock of Balram's case; because it was registrate within the books of Kirkcaldie, without the jurisdiction where the granter lived, and so was *forum incompetentens* to him; and so the extract made no more faith than a mere copy.

The Lords are turning very strict in explaining clauses of registrations now. *Vide supra, February 1674, Douglas against Parkhead, No. 442, where the Lords slighted this irregularity. Advocates' MS. No. 610, folio 294.*

1680. *January 13.*—The action Orrock of Balram against Morris in Kirkcaldie (20th June 1677,) being reported by Lord Pitmedden; the Lords, in relation to the third and fourth apprisings, led at the instance of John Morris himself, adhered to their last interlocutor, of the 23d Jan. 1678, whereby they found Orrock of Balram free of the termly failies, but liable to the penalties of the bonds and sheriff-fees in the comprising; (for, by the Act of Parliament 1621, these are due to apprisers, and so the Lords cannot modify nor restrict them, unless there be an informality in the apprising.) But ordain the parties' procurators to be further heard upon the blank ratification produced; as likewise to be further heard as to the apprising led by James Hamilton.

Upon a second report made on the 15th of Jan. thereafter, bearing that the ratification did only relate to the third apprising, which is the first of John Orrock's two apprisings; therefore the Lords adhere to their former interlocutor as to that apprising, and sustained the fourth apprising only for the principal sum, and necessary expenses the party was at: and ordain the parties' procurators to give in an account of the necessary expenses the appriser was at, both as to that apprising and the other apprisings which are restricted to principal sums and annualrents, with power to the reporter to modify the same as he shall find just; notwithstanding of any former interlocutor, appointing ten or fifteen *per cent.* to be modified as expenses.

And the Lords declare, they will hear the parties' procurators upon that point, in relation to the comprising led at the instance of Hamilton, in their own presence, anent this objection, *viz.* That the debtor cannot allow the expenses thereof; because Douny, cedent to the said James, having led an apprising for the same debt, James ought not to have accumulated expenses upon the debtor, by leading a second apprising for the same sum; and so it cannot be allowed to Morris, though he be only a third party deriving right from James Hamilton.

They had formerly sustained this nullity, objected against the other apprisings, that the bonds were registrate in a jurisdiction, *viz.* Kirkcaldie and Burntisland, in which the debtor dwelt not. *Vide 21st July 1677.*

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1678, 1679, and 1680. HELEN DEAS OF DAE *against* ISOBEL LINDSAY.

1678. *June 15.*—If a ground of compensation be repelled in a process where it is proponed by way of exception or defence, that will not hinder but it may be pursued for *via actionis* in a process; and the allegiance of *res hac-*

*tenus judicata* will not meet that case to exclude it; for many things are receivable by way of action which are not *via replica vel exceptionis*, because it may be they are not liquidated nor instantly verified. Thus, in the action between Isobel Lindsay and Helen Dae in Perth, this session, it was alleged, though the Lords had refused to allow Helen Dae's reparations she had bestowed on the appraised tenement, against Lindsay the liferentrix, in their count and reckoning, by way of exception, yet that was not such a *prejudicium* as could hinder Dae from pursuing for these meliorations *via actionis*, and liquidating them; though we opposed the decret which repelled the said reparations, in so far as concerned the liferentrix her interest, and reserved only action to her against the fiar for the same, and so was clearly in the case of *res hactenus judicata*. And yet this interlocutor may seem strange, and not consonant to the analogy of law, by which the liferentrix is liable for usual reparations, and not the fiar. *Vide infra, 3d Jan. 1679. Vol. I. Page 4.*

1679. *January 3.*—In the cause betwixt Helen Deas and Isobel Lindsay in Perth, (*vide supra,*) the Lords reponed Lindsay against the decret, as to any defences she could instantly verify, and that in respect of the precipitation of the extracting the decret before it was read in the minute book. Thereafter Lindsay craving compensation upon some decreets she had against her son Inglis, who was cedent to Deas; and they pretending it was for aliment, which was to be presumed *ex pietate*; and the same being reported by Newton on the 14th of Feb. 1679:

The Lords allowed the compensation, the suspender Lindsay always producing a renunciation and discharge; and reponed Thomas Inglis to his oath against the first decret, and likewise reponed him against the second decret; and find the said Thomas Inglis liable for the aliment of his elder brother whom he represents, but not for the aliment of his younger brother. And remit to Newton the Ordinary to modify the aliment of the elder brother, as he, after consideration of his condition and means, shall think fit. See 17th Jan. 1680. Anent aliments, see Durie, 27th June 1629, Robertson; and 3d March 1629, Carmichael. See also 1st Feb. 1672, Guthrie; 19th Feb. 1679, Falconar; and 12th Nov. 1679, Cockburn. *Vol. I. Page 30.*

1680. *January 17.*—In the action Helen Deas against Isobel Lindsay, (*vide 3d Jan. 1679,*) the Lords, upon Newton's report, having considered the decreets of cognition of the value of the tenements, and the deposition of the witnesses, they found it proven, that, before the reparations made by Deas, the house paid only £9 Scots; and that after the reparations the houses paid £70 Scots; so that, by the reparation, the free profit of the rent of the houses extended to £61 Scots yearly; and therefore decern the liferentrix, Lindsay, to make payment of the said £61 Scots of all years wherein she possessed the houses, or that the compriser possessed by right from her. And find the expenses of the reparations to extend to 1000 merks Scots; and decern the liferentrix to make payment of 300 merks thereof, and the fiar to pay 700 merks thereof. This decision is at 7 years' purchase of the life-rent of 1000 merks. *Vol. I. Page 75.*