

therein condescended on did not make the sum moveable after the apprising ; and so was not equivalent to a charge.—*March 1683.*

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1683. *March.* JAMES HENDERSON *against* SAUGHTONHALL.

FOUND, that, of bonds taken to a man and his wife, and the longest liver, the husband is *fiar*-substitute, though the wife survive ; and that the sum, though moveable, needs no confirmation.

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1683. *March.* DAVID SCRIMZOUR *against* MARGARET HAY and her ASSIGNEE.

ONE having paid £100 sterling of £200, upon the creditor's obligation to warrant him as to that £100 ; was not found obliged to pay the other £100 to an assignee, till he got surety that he should be harmless as to the first £100 ; but was allowed retention upon that head, though the debtor was not yet troubled for it, the cedent being insolvent.

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1683. *March.* BAILIE JUSTICE *against* NISBET and AIKENHEAD.

IN a competition between an appriser and one having right by a disposition of a date anterior to the denunciation, where the obtainer of the disposition had expedite a base infestment thereon, after the decret of apprising, but before the appriser had charged the superior ; which base right was confirmed by the superior after the appriser's charge ;—it was alleged for the receiver of the disposition, That he, having the first complete real right, ought to be preferred to the appriser, whose apprising and charge against the superior was but a diligence ; for, though a charge be equivalent to infestment, in a competition of diligences of the same nature, *viz.* apprisings and adjudications, it hath not that effect where a comprising competes with a voluntary right. 2. As the disobeyed charge did not infer contempt or *mora* in the superior, unless the appriser had offered a charter and a year's duty, nor would hinder him from nonentry, ward, marriage, &c. upon the death of the debtor, far less could a stranger-purchaser, who is completing his diligence, be prejudged by the charger, who is only obliged to notice what diligence is real and upon record. 3. Though it may be pretended that the legal diligence is favourable, a buyer's case is more favourable ; for it were harder to disappoint a purchaser, who pays a real price that may be affected by the seller's creditors, than to frustrate the diligence of a compriser, who is at no greater loss thereby than he had before. Answered for the appriser, A charge against the superior is esteemed equivalent to infestment, as to all effects except removing ; and it was not in the power of the superior,