

No. 11.  
not to be excluded by an apprising granted by the Crown, the immediate superior, before the gift.

apprising and infestment could not defend him, because the person from whom he apprised being a vassal of the Earl of Argyle's, and his right not being confirmed by the King, the same could not exclude the pursuer, the King's donatar, and the appriser could be in no better case, because he being infest by the King before the pursuer's gift, when the King had both superiority and property, it is equivalent to him as if the King had confirmed his author's right. It was answered, That infestments upon apprisings that pass in course, and are not noticed in Exchequer, cannot prejudge the King, and take away the benefit of the gift, which must pass by a several signature.

Which the Lords found relevant, and repelled the defence and duply, and decerned.

*Stair, v. 1. p. 568.*

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SECT. III.

Virtual Discharge.

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No. 12.

1623. December 10. LA. ELPHINSTON *against* MR. JAMES ORD.

Found, That a decree-arbitral ordaining to discharge is equivalent to a discharge *etiam quod assignatum.*

Clerk, *Durie.*

*Kerse MS. fol. 181.*

No. 13.

1626. November 25. TURNBULL *against* SCOT.

A bond to discharge a reversion was found equivalent to a discharge in prejudice of a third party.

*Durie. Kerse.*

\*\*\* This case is No. 3. p. 13540. *voc.* REGISTRATION.

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No. 14:  
A bond was found discharged by

1632. December 6. CHISHOLM *against* GORDON.

One Chisholm, relict of umquhile Mr. Alexander Craig, and Douglas, her spouse, pursue Gordon of Park for payment of a sum of money contained in

his bond granted thereon ; and the defender alleging, That the pursuer, since the date of this bond, accepted a posterior security, in satisfaction of the said sum in the prior bond ; the Lords found this-allegiance relevant to elide and exclude all action which might be moved upon the said prior bond, which they found satisfied and taken away by the said posterior security, the same bearing the tenor foresaid, viz. " That it was given and accepted in satisfaction of the said prior security ; " neither was it found necessary that the defender should be compelled to say, that the said prior bond was expressly renounced and discharged ; for in effect, by accepting of the said posterior security, in satisfaction, as said is, the same was discharged.

Act. Baird.

Alt. Barclay.

Clerk, Hay.

*Durie, p. 656.*

**No. 14:**  
acceptance  
of a posterior  
security in sa-  
tisfaction of  
it.

## SECT. IV.

## Virtual Precept of CLARE CONSTAT.

1666. January 20. LORD RENTON *against* FEWERS OF COLDINGHAME.

The Lord Renton insisting in the declarator of his right of the office of Forrestry, and of a threave of corn with the fodder, whereof mention is made, No. 73. p. 2840 ; the defenders proponed a second defence, viz. That the pursuer showed no sufficient progress from Ellen, but only an infestment granted by Janet Ellen, David's daughter, and so the pursuer's goodsir, upon Janet's own resignation ; and albeit there was a precept of *clare constat*, produced by the Abbot in favours of Janet, yet no sasine followed thereupon ; so that David's infestment was not established in the person of Janet ; and consequently could not belong to this pursuer ; and the defenders having gotten their feus immediately after David's right free of this burden, the right could not be declared, till it were established in the pursuer's person ; and if he should now infest himself, the interruption on the act of prescription upon the summons, libelling upon David's right, and the progress produced from David would fall. It was answered, That the Abbot having granted the infestment to Janet, upon her own resignation, yet bearing to be expressly to her, as heir to David, it was equivalent to a precept of *clare constat*, which does not necessarily require the ordinary form, but a charter infesting such a person as heir to such another, who was before infest, would be as valid ; so that in this infestment of Janet's, all being materially included to establish David's right in her per-

**No. 15.**  
Instance of  
this.