

No 80.

nefit of a possessory judgment, and a prior more valid right. It was *answered*, that this voluntary disposition was granted after the denunciation of the pursuer's apprising; after which, the common debtor could not prefer any other creditor by his voluntary deed; and so the denunciation making the matter litigious, any posterior possession is vicious, and cannot give the benefit of a possessory judgment; neither is the disposition, being after the denunciation, a valid right; but especially it being considered, that the act of Parliament brings in this pursuer with the other prior apprisers, as if they had been in one apprising, and several of the other apprisings are led, and infeftment thereon before the disposition.

THE LORDS sustained this defence, and found that the denunciation did not take away the benefit of a posterior possessory judgment. *See REGISTRATION.*

Fol. Dic. v. I. p. 558. Stair, v. I. p. 553.

* * * Gosford reports this case.

SIR WILLIAM STEWART of Innernytie having comprised the lands of Skirline and Deuchar, belonging to Sir James Murray in *anno* 1654, did intent action against the prior comprisers upon the act of debtor and creditor, he being within year and day of the date of their comprisings, to make count and reckoning of their intromission, that he might come in *pari passu*. It being *alleged*, *imo*, That the pursuer's comprising was null, not being allowed and recorded conform to the late act of Parliament anent registration of comprisings not being brought in to be recorded within sixty days after the date thereof; the LORDS found, that by the said act of Parliament, the comprising was not declared null upon not registration, but thought that before process were sustained thereupon, it should be recorded. *2do*, It being *alleged*, that the pursuer could not make use of that comprising, because he had accepted of a disposition of a tenement of land in Edinburgh, in satisfaction of the debt due to him by Sir James Murray; as likewise of an assignation of a debt due by Innerlieth, whereby he might have been satisfied, if he had done diligence, and whereof he had not offered to make any retrocession; the LORDS found the defence relevant, being proponed for the creditors comprisers, who had done diligence, and will be great losers.

Gosford, MS. No 36. p. 13.

No 81.

1674. July 23.

JOHNSTON *against* JOHNSTON.

DENUNCIATION of apprising makes the subject litigious, after which the debtor cannot make any voluntary alienation in prejudice of the apprising.

provided the appriser proceed in diligence to obtain infeftment, or charge the superior; but if he be *in mora*, the effect of the litigiousness ceases.

No 81.

Fol. Dic. v. 1. 558. Stair.

*** This case is No 74. p. 2738., *voce* COMPETENT.

1680. February 25.

EARLS of SOUTHESK and NORTHEK *against* LORD POWRIE, &c.

No 82.

A compriser being *in mora* for twelve or thirteen years, not obtaining infeftment, or charging the superior, nor using diligence to recover possession by mails and duties or otherwise; a voluntary disposition for a price paid, granted after the comprising, with infeftment upon it, was found preferable.

Fol. Dic. v. 1. p. 558. Fountainhall. Stair.

*** This case is reported by Stair, No 160. p. 1075., *voce* BANKRUPT; and by Fountainhall, No 69. p. 3730., *voce* EXECUTION.

1681. February 8.

NEILSON *against* ROSS.

No 83.

DENUNCIATION of apprising renders the subject litigious, after which every voluntary alienation by the debtor, even for a price told down, to prevent the appriser *in cursu diligentie* is ineffectual; but where the appriser was silent and negligent by the space of ten years, without infeftment or charge, and without pursuing for mails and duties, he was not allowed to plead the litigiousness, since it could not be said that he was *in cursu diligentie*.

Fol. Dic. v. 1. p. 558.

*** This case as reported by Stair is No 134. p. 1045., *voce* BANKRUPT.

*** Fountainhall likewise reports it.

THE LORDS preferred a singular successor, who *bona fide* bought lands, to a comprising, whose legal was expired before the said disposition, because the appriser was *in mora*, and had never done any diligence to infeft himself, or to charge and denounce the superior; whereas the receiver of the disposition was publickly infeft, though after the expiring of the legal. This would also hold in one who apprises after the other's legal (who was not infeft,) and the said last appriser infefts himself.

Then they quarrelled the said disposition, as being granted by a bankrupt, after he was denuded by their prior diligences on the act 1621. The words