

(FORMALITIES OF THE DILIGENCE.)

1680. *January 16.*BROWN *against* NICOL.

No 2.

An apprising sustained; although, at the time of execution, the letters had been blank in the description of the lands.

JOHN BROWN, having right by progress, to an apprising of some tenements in Edinburgh, pursues reduction of an anterior apprising, whereunto John Nicol has right; on this reason, that the apprising was without warrant; because the letters of apprising did not contain the tenements apprised, neither does the special charge to enter heir comprehend the said tenements; but both it, and the letters of apprising, were blank as to the particular lands, and the blank is now scored out; neither does the execution of the special charge express the lands.—It was *answered*, That the messenger who is judge to the apprising, was the same that executed the special charge; and the apprising itself is the execution of the letters of apprising, and bears expressly, That the messenger by virtue of the special charge, did charge the debtor's heir to enter *nominatim* to the tenements in question; that he denounced the same tenements, which accordingly were apprised: So that, though there were no execution for the special charge, except the apprising, it is sufficient, and a most solemn execution, especially after so long time.

THE LORDS sustained the apprising, notwithstanding of the said blanks.

Stair, v. 2. p. 739.

1680. *February 11.*GORDON *against* HUNTER.

No 3.

Where requisition before payment is stipulated in the bond; requisition must be made before adjudication.

IN a competition betwixt Gordon of Troquhen and John Hunter, both having adjudged the same lands; it was *alleged*, for Troquhen, That Hunter's assignation was null; proceeding upon a bond, payable only upon requisition of forty days; and yet the adjudication, upon the late act, proceeds, without mention of any requisition. It was *answered*, That, there being no infestment upon the bond, requisition was not necessary to make it moveable; and, though the debtor could not be charged to make payment till requisition, yet his lands might be adjudged, the summons of adjudication being more solemn than the requisition by instrument. It was *replied*, That the being payable only upon requisition by a notary and instrument, there could be neither process thereon, for payment, nor adjudication; for, if the debtor be not obliged to pay till requisition, his lands cannot be adjudged; which is a legal solution: And, though the cases of adjudications be new, yet action for payment, on such bonds, has been ordinary; against which, this defence has ever been sustained.—No process, till requisition be made.

THE LORDS found, That the adjudication could not proceed till requisition had been used; but Hunter, producing an instrument of requisition, before the adjudication, The LORDS sustained the adjudication; albeit it did not bear the requisition produced; and albeit the requisition, being done by the creditor himself, did not bear the bond produced, but did contain the tenor thereof.

Stair, v. 2. p. 754.