

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 litigiousity, 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

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of the interlocutor are: "THE LORDS, on Newton's report, find that the appriser not having insisted in diligence, nor being *in cursu diligentia*, has thereupon no ground to reduce a posterior voluntary right granted for onerous causes. And find that the voluntary right, not being a gratification to the buyer, but in satisfaction of an anterior debt due to the buyer, it is not reducible upon the act 1621, notwithstanding a posterior comprising was led by another party, and infeftment following thereupon, in respect the first apprising was led diverse years before the second apprising, and no diligence done thereupon." Stair tells us, no voluntary deed can be done after the denunciation of an apprising; *intellige* unless the appriser be *in mora*.

Fountainhall, v. 1. p. 129.

1731. January.

BUCKIE *against* BELL.

No 84.

In a reduction of a voluntary alienation, granted after the subject was adjudged, the adjudger was found to be *in mora*, having lain over seventeen years before the voluntary alienation was made, and thereafter above thirty years before any challenge; and therefore was denied the benefit of the reduction. See APPENDIX.

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

No 85.

1736. December 8. WALLACE of CAIRNHILL *against* BARCLAY.

AN adjudication was deduced December 1726, with a charge against the superior February thereafter. In May 1730, the debtor granted an heritable bond, upon which infeftment followed in October thereafter. In a competition betwixt the adjudger and annualrenter, about the mails and duties arising *anno* 1735, the infeftment of annualrent being the first real right, was challenged as granted *in cursu* of the adjudger's diligence. *Answered*, The adjudger was *in mora* by not taking infeftment. *Replied, imo*, An adjudication with a charge is an effectual diligence, after which there can be no *mora*. See Stair, Tit. DISPOSITIONS, § 20. in fine, and § 23. *2do*, An adjudger is not bound to take infeftment during the legal, Stair, Tit. INFESTMENTS of PROPERTY, § 30., and therefore during the legal, he cannot be *in mora*, though he neither take infeftment, nor charge the superior to give him infeftment. THE LORDS preferred the adjudger.

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