

The Lords, in respect there was a competition of creditors, found the defunct was not fully denuded, unless the assignation had been intimated before his death; and so sustained the compensation; although, when the creditors do not compete, a cedent is looked upon as fully denuded by an assignation, though not intimated in his lifetime, and the sum assigned would fall under the assignee's escheat, if claimed by the donator, and no creditor of the cedent be competing.

The Lords also inclined to have sustained an adjudication led on such an assignation, in the cause of Balgony against Clerk, this same month, as a formal diligence; seeing the competitor did not derive right from Muir the defender's author, but from Carnegy the common author to Clerk and Muir, whose debt was fully established, although Balgony had not intimated his assignation in Muir's life: but this point was not voted in Clerk's cause.

*Page 60, No. 253.*

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1682. *March.* SIR DANIEL CARMICHAEL *against* JAMES JOHNSTON.

A WADSETTER, who had right to the reversion of an apprising, having used an order of redemption,—the Lords found, That the appriser should, upon payment, assign his apprising to the wadsetter; seeing the appriser had no other debt resting to him, and so could have no prejudice by assigning; albeit the appriser contended, that he was only obliged to renounce:—but found, That the assignation should bear a provision, that, by the acceptation thereof, the apprising should only have the effect of a security for the sum paid to the appriser, and not expire in prejudice of the debtor, or his other creditors: for it was considered, that, by the acceptation thereof, the apprising should only have the effect of a security for the sum paid to the appriser, and not expire in prejudice of the debtor or his other creditors: for it was considered, that, by the assignation to the reversion, the creditors should not be worse than if the debtor had redeemed; *quo casu* the right of apprising would have been extinguished, and the benefit had accresced to the creditors, though, if it had been a posterior apprising, there would have been no necessity for an assignation.

*Page 65, No. 275.*

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1682. *March.* MR WILLIAM GAIRNS *against* The LAIRD of DRUM.

THE Lords found, That, when a debtor's tailyied estate is to be appraised, it is more formal to charge the heir of tailyie to enter, than to charge the heir of line, who cannot enter, although the heir of line's estate is to be first discussed.

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1682. *March.* RANKIN *against* LADY STONYHILL.

THE rents of an appraised estate being arrested by another creditor, after the