No 32. all along has been, to make onerous purchasers secure in all events; which, in a great measure, must be disappointed, if Towie's apprising be sustained, there being no records to show incumbrances by apprisings.

To which Towie *answered*, *Incommodum non solvit argumentum*; no law can be made so perfect to meet every inconveniency: But if this argument obtain, then apprisings hereafter, in the persons of singular successors, shall not be reducible upon nullities, or even upon payment made to the disponer. But the answer is obvious; every one who purchases upon an apprising, has an open intimation made to him, that he is purchasing *cum periculo*, and particularly with this, that he may have competing apprisings; it is a rare example, that an estate is carried off without more than one: So that the very nature of the right speaks loud to him, without another certification. Besides, our law has afforded public records, whence purchasers may be certified of apprisings; for by the act 1661, allowances are introduced; and before that time, as appears by that statute, apprisings were in use to be fully recorded and registered, which was a full notification.

"THE LORDS found, That the privilege introduced by the act of Parliament 1661, in favours of adjudgers, before, or within year and day of the first effectual apprising, is competent to the said adjudgers, before, or within year and day, against the singular successors of the first effectual appriser, as well after the expiry of the legal, as within the same."

Fol. Dic. v. 1. *p.* 20. *Rem. Dec. v.* 1. *No* 19. *p.* 40.

1665. *January* 7. GRAHAM of Blackwood *against* BROWNS.

No 33.
Manner of proportioning rents and expences among apprisers.

JOHN and William Browns having apprised certain lands, and William Graham having apprised the same, within a year after, pursues an account and reckoning against the first appriser, upon the last act of Parliament, betwixt Debtor and Creditor; and craves to come in *pari passu* with the first appriser, not only as to the mails and duties of the lands, intromitted with by the appriser, since the said act of Parliament; but also for those duties that were intromitted with before the said act; and that, because the act bears expressly, That such apprising shall come in *pari passu*, as if there had been one apprising led for both. It was *answered*, for the first appriser, that what he did uplift *bona fide*, before any process intented against him, at this pursuer's instance, he cannot pay back a part thereof to the pursuer; because he is *bona fide* possessor, and because the act of Parliament bears, That such apprisings shall come in *pari passu*; which, being in the future, must be understood to be from their intenting of process, at least from the date of the act, but not from the beginning.

THE LORDS having considered the tenor of the act of Parliament, found that such apprisings should only come in *pari passu*, from the date of the act; but that the bygones uplifted by the first appriser, before the act, should be account-

ed to him in his ſum, but no part thereof repeated to the ſecond appriſer; and found, that the ſums appriſed for, principal and annualrent of both parties, ſhould be reſtricted, as they were at the time of the act of Parliament, in one total ſum; and the rent to be received from that time proportionally to the total ſums; and that the firſt appriſer ſhould have allowance in his preceding intromiſſion, of the expences of the compoſition to the ſuperior, and the charges of the appriſing, without compelling the ſecond appriſer to pay him the ſame. No 33.

Stair, *v.* 1. *p.* 246.

1679. *January* 2. JOHNSTON *againſt* JOHNSTON.

No 34.
Undue means of delaying the diligence alleged.

JOHNSTON of Wamfray having aſſigned a bond of 10,000 merks to his brother Sheins; there was a decreet-arbitral betwixt them, by which Sheins was to have the lands of Hoprig, he paying Wamfray 8000 merks, albeit Wamfray had adjudged theſe lands for other debts; which decreet the Lords reduced upon *enorm leſion*. It was now *alleged* for Sheins, that Wamfray's adjudication ought not to be ſuſtained, at leaſt Sheins ought to come in *pari paſſu*, upon an adjudication to be obtained by him upon the 10,000 merks aſſigned to him by Wamfray, becauſe Wamfray had *doloſe* ſtopped Sheins's diligence, by proponing an allegeance, that the aſſignation granted by him to Sheins, was never delivered, but depoſited in Henry Rollo's hands; which was ſuſtained, and the witneſſes ordained to be examined, by which year and day elapſed after Wamfray had gotten adjudication of the lands of Hoprig, which was the only ſubject that could be affected by the decreets of both parties. It was *anſwered*, That Wamfray's allegeance was not calumnious, becauſe one of the witneſſes being examined, does acknowledge the depoſitation; but Henry Rollo was never examined till his death, Sheins knowing that he could alſo depone againſt him. 2*do*, Adjudications can never be brought in *pari paſſu*, otherwiſe than by the act of Parliament, being within year and day, which being a ſtatutory privilege, cannot be extended by the Lords. 3*tio*, Sheins had an evident remedy, that if he had repreſented to the Lords, that Wamfray had adjudged, and that by his contentiouſneſs, year and day would run and exclude Sheins; the Lords would have adjudged to both, reſerving the depoſitation *contra executionem*; but it were ſtrange, that Sheins never having inſiſted to adjudge for the ſpace of ten or eleven years, nor yet obtained a ſentence for eſtabliſhing the debt, ſhould be brought in with Wamfray, who adjudged eleven years ago; neither did the arbiters determine any thing upon the diligence, or delay of any party, whereof there is no mention in their decreet.

THE LORDS repelled the allegeance, and found that the adjudication could not come in *pari paſſu*.

Stair, *v.* 2. *p.* 663.