

An apprising is only *pignus prætorium*, and a security answerable to that in the Roman law called *missio in possessionem ex secundo decreto*, and not a right of property, till the legal expire ; and, therefore, in charters on apprisings, they are bound to pass a new one after the legal. And what if there were twenty apprisers within year and day of ward-lands ? shall the superior have right to every one of their marriages ?

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1680. *February 27.* SIR GEORGE KINNAIRD of that ilk, Petitioner.

SIR George Kinnaird of that ilk being nominated by Dr Yeaman tutor to his children, together with his brother and Dryburgh ; and they two, who were made *sine quibus non*, being both dead, Sir George gives in a bill to the Session, craving he might be liberated of his acceptation of that tutory-testamentar, in regard it was now impracticable, the two persons by whose advice he was adstricted to act being both dead.

The Lords freed him of that acceptation, but ordained him to take a dative, and administer by it.

I think it would, in the same very manner, annul the nomination of the tutory-testamentar, if the parties *sine quibus non* did repudiate and refuse to accept. *Quær.* whether a judicial disclamation be necessary, seeing without that they may repent and accept : though it be the opinion of some that they are limited within year and day.

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1680. *February 27.* JOHN M'LURG, JAMES CLELAND, and the OTHER CREDITORS of BOYD of PINKILL, competing.

IN the competition between John M'Lurg, James Cleland, and other Creditors of Boyd of Pinkill, for getting up of some money owing to him by Fergusson of Kilkerran ; the Lords found, that Pinkill the debtor might give M'Lurg, one of his creditors, an assignation to a debt, and cause intimate it to his debtor, and all the while keep it in his own hand and custody : and if it be delivered after other creditors' arrestments of that sum, the receiver shall be preferred to these arresters, though the receiver upon oath hath confessed that the same was not delivered to him by the common debtor till long after the arrestments. Which seems to lay down a ground for permitting debtors to gratify one creditor before another, and so of defrauding of the rest.

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During this Winter Session there were several questions moved, and decisions whereof I was informed ; and, not knowing their certain date, I have drawn them all together here, to the number of 51 :—