

## RIGHT IN SECURITY.

### S E C T. I.

A right in security is an exclusive right to the subject, but not to the rents or annualrents.

1634. *July 11.* EARL of Lothian *against* VASSALS of Jedburgh.

No 1.

THE Earl of Lothian pursued the Vassals of Jedburgh, for payment to him of their teind-duties diverse years preceding. *Alleged*, They had made payment thereof to Sir John Ker, to whom they were in use of payment. *Replied*, They were *in mala fide* to make payment to Sir John, because he was denuded before, of the right thereof, by a comprising, and a public infeftment holden of the King following upon the comprising. *Duplied*, That put not the defenders *in mala fide*, except the pursuer would allege some diligence done after the comprising and infeftment, without which the defenders were still *in bona fide* to continue their payment to Sir John. *Triplied*, The public infeftment was enough without other diligence, which none can (at least ought to) be ignorant of. THE LORDS found the allegiance relevant, and forced the pursuer to reply, that he had served inhibition after his infeftment, which took away the exception.

*Spottiswood, (COMPRISING.) p. 54.*

1665. *December 7.*

KATHARINE SMITH and WILLIAM DUNCAN *against* ISOBEL ROBERTSON.

KATHARINE SMITH and WILLIAM DUNCAN having apprised from Isobel Robertson and John Wilson, all right they had to a tenement, under which fell

No 2.

A wife not liable to her husband's creditor's apprising his *jus*

No 2.  
*mariti*, for the rents of houses possessed by herself, for her aliment, as to years preceding the intending the cause.

the liferent-right of Isobel Robertson his wife, *jure mariti*, pursue the said Isobel for payment of the mails and duties that she had uplifted, and of a part of the tenement that she dwelt in herself. She *alleged, imo*, That her husband's *jus mariti* could not carry her liferent, seeing immediately after the marriage he went out of the country, and was never heard of since, and she had obtained decret of adherence against him, and was going on in a divorce for malicious deserting.

THE LORDS repelled the allegiance, seeing the divorce was not complete, and this was four years anterior.

The said Isobel further *alleged* absolvitor for the rents of her dwelling-house for bygones, and for what she had uplifted, because she had done it *bona fide cum titulo*, viz. her husband's obligation to aliment her as his wife, *et bona fide possessor facit fructus consumptos suos*;

Which the LORDS found relevant, and that albeit her husband would be liable for these rents, which alimented his wife, yet not she.

*Fol. Dic. v. 2. p. 253. Stair, v. 1. p. 323.*

1675. July 17.

BOYD *against* JUSTICE.

No 3.

THOUGH apprisings led within year and day come in all *pari passu*, yet the appriser who enters into possession has the sole benefit of his own intromissions, because an appriser may chuse to possess and intromit or not as he pleases, and if he insist not for possession he has no claim.

*Fol. Dic. v. 2. p. 353. Stair.*

\* \* \* This case is No 50. p. 10651., *voce* POSSESSORY JUDGMENT.

A similar decision was pronounced, 4th January 1695, Wallace *against* Campbell, No 53. p. 10653., *voce* IBIDEM.

No 4.  
 A debtor, after his lands had been appraised, uplifted, and sold his farm meal, and assigned the bond for the price. The appriser was found to have no right to the bond.

1675: July 29.

The Earl of PANMUIR *against* COLLISON.

THE LAIRD of Drum having sold 1600 bolls of victual to merchants in Edinburgh, and the same being delivered, the merchants gave in a bill of suspension and double pouding; which being appointed to be discussed upon the bill, compearance is made for the Earl of Panmuir and the other creditors of the Laird of Drum, who produced an assignation granted by Drum to George Johnston, bearing expressly to be to the behoof of these creditors. There is also compearance for Gilbert Collison, who craves to be preferred, because he having appraised the lands out of which the farms were paid, which are sold by