

1666. *January 19.* GILBERT HAY *against* GEORGE FLEMING.

GILBERT Hay, being infest in an annualrent, effeiring to the principal of 1000 merks, forth of the lands of Cambo, in December 1650, and having obtained decret for poinding of the ground *in anno* 1657; the decret is suspended, and compearance is made for George Fleming, who apprised the said lands, and stands publicly infest, and craves to be preferred, because Gilbert Hay his infestment is base, and not clad with possession; and any decret for poinding of the ground, [is] obtained after the apprising, at least after the denunciation; which cannot make the base infestment public, there being no possession nor diligence [done] before denunciation nor apprising.

To which it is ANSWERED, That, notwithstanding of the said apprising and infestment following thereupon, the infestment of annualrent ought to be preferred; because the base infestment being long anterior to the apprising, and he having, upon his said infestment of annualrent, obtained decret for poinding of the ground, in October 1651, after there was but one term's annualrent due, and which decret was a year prior to any infestment following upon the said apprising, which being a legal diligence before the said apprising was confirmed by infestment; which made his base infestment, clad with civil possession a year before the appriser was infest, sufficient to make the anterior base infestment preferable; especially seeing there was but one term's annualrent due, and the decret was recovered before the apprising was confirmed. And albeit that the common debtor, doing any voluntary deed, after the denunciation of his lands, will not prejudge the appriser's diligence; yet that denunciation or apprising is not an impediment to any lawful creditor to do diligence upon prior infestment, or rights to make their infestments, that were base, preferable, before the consummation of the appriser's right.

The Lords preferred the annualrenter to the appriser.

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1666. *January 20.* GEORGE CLAPPERTOUNE *against* The LAIRD of TORSONCE.

THERE being an apprising deduced in January 1645, at the instance of Torsonce, against Ramsay of Bewick, of the lands of Wylliecleugh and Kippielaw; there was a second apprising of the said lands, within fourteen days thereafter, at the instance of Mr Alexander Kinneir, against the said Ramsay; whereunto George Clappertoune has right by progress: who having used an order of redemption of the first apprising against Torsonce and the apparent heir of Ramsay of Bewick, and others, and that before Whitsunday 1664,—to which time the expiration of the legal of comprisings which were not expired in January 1652, are prorogated; and craved that the order might be declared, and that the first comprising might be found satisfied; in so far as he offered him to prove that the first apprising was satisfied within the year of the legal, as the same was prorogated by the late Act of Parliament, either by disposition made by the first comprising of some of the lands appraised, whereof the worth doth far exceed the sum due by the first appriser, or by the sums of money received by