

(The LEGAL.)

had apprised both their estates, and thereupon *alleged*, That he being thereupon infeft in the estate of Torwood-head, the Lady can have no access to the rents thereof; and the decret of Council can only be understood as to the husband, but cannot exclude the infeftment upon an apprising, and whatever effect it could have had, during the legal, yet now after the legal is expired, Gardner hath the full right.—It was *answered*, *imo*, That Gardner was compearing in the decret of Council. *2do*, That by the act of Parliament 1661, betwixt Debtor and Creditor, it is statute, 'That the Lords of Session may restrict the possession of apprisings to such part of the apprised lands, as they see cause, providing that the same be sufficient for their annualrent, and that during the legal.' And albeit the years of the legal be expired, yet the same is interrupted by an order of premonition and consignation used by Edward Ruthven, son to the Lord Forrester, and assignee constitute by him to the legal reversion of his estate, apprised by several creditors, whereof Gardner was one.—It was *replied*, That any order used being only in relation to the Lord Forrester his estate, can have no effect as to Torwood-head's estate.—It was *duplicated*, That Florence Gardner having apprised both Forrester's estate and Torwood-head's for the same sum; the consignation made by Forrester or his assignee, doth not only retain Forrester's estate, but doth extinguish the debt, whereupon it was apprised, and consequently all apprisings following upon that debt, in the same way as if payment had been made.

Which THE LORDS found relevant, and by virtue of the act of Parliament 1661, restricted Gardner's possession, so that 600 merks might remain free for the Lady's aliment, providing that Gardner had enough behind for his annualrent.

*Fol. Dic. v. 1. p. 21. Stair, v. 2. p. 320.*

1676. July 7.

EDGAR against MILN.

JOHN EDGAR being infeft in a tenement in Edinburgh, upon an apprising, pursues for mails and duties. Compearance is made for Patrick Miln, who *alleges* absolviter, because the apprising is satisfied by intromission within the legal, which legal is propogated by an order of redemption.—It was *answered*, That there was no declarator after the order, which behoved first to be obtained, and then thereafter the posterior intromission liquidated.

THE LORDS sustained the declarator, as incident in this process; and found the intromission after the legal, relevant to extinguish the apprising, in respect of the order, albeit the appriser had builded considerably upon the tenement, after the expiring of the legal.

*Fol. Dic. v. 1. p. 20. Stair, v. 2. p. 441.*

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proprietor of one of the subjects, was found to keep the legal open as to both.

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The legal of an apprising is prorogated, by a simple order of redemption, without declarator.