

(EXTINCTION.)

ground, not being quarrelled thereon before the expiring of these years; which allegiance was repelled, and the comprising was found might be taken away upon the foresaid ground, albeit not proponed before these years, but after the same were all expired; and the same was received by way of reply, being betwixt mean and poor folks; whereas otherways the Lords were of opinion, That it could not have been taken away but by way of declarator.

No 5.

Act. —.

Alt. *Mowat.**Durie, p. 432.*1630. *January 13.* L. ESSILIS *against* WALLACE.

A COMPRISING deduced before the act of Parliament 1621, not expired the time of the act, the compriser is subject at all times after the expiring of the seven years, to account for his intromission of all the years duties of the lands intromitted with by him, of all years before expiring thereof; and which account he is obliged to make at all times after the expiring of the comprising, to any party having interest to seek the same, whether he be major or minor, that alleges the comprising to be extinct, and against whom the same was deduced.

No 6.

Act 1621.  
How, and to  
whom com-  
prisers ac-  
countable.  
See No 1.

*Durie, p. 479.*1662. *January 4.* JAMES SEATON *against* ANTHONIE ROSEWALL.

JAMES SEATON and others, pursue Anthonie Rosewall, to hear it found and declared, That two apprisings, to which he had right, were fully satisfied, by his, and his author's intromission, within the legals *respective*, in the account. The defender *alleged*, he was only accountable, according to his intromission, conform to the act of Parliament 1621, anent apprisings, and not according to a rental of the lands, as they paid when he entered. — The pursuers *answered*, That they could not charge him by his yearly intromissions, which they could not know, but he behoved to charge himself with the rent of the lands, as they paid at his entry thereto; and if any deductions, or defalcations, were, in subsequent years, by necessary setting of the lands at a lower rate, poverty of the tenants, or waste, he behoved to condescend thereupon, and there the reasons, and verity thereof; for, in law, an apprising giving *jus pignoris pratorii*, the apprifer is accountable for his diligence, having once entered in possession, and thereby excluded the debtor and con-creditors from the possession. It were against law and conscience to say, That if he should abstain, and suffer the tenants to keep the rent, or depauperat, or the lands to be waste, without any diligence, that his legal should thereby expire, and the debtor and creditor should be excluded; as was

No 7.

Apprifer must  
account by a  
rental.

For what de-  
gree of dili-  
gence he is  
liable.

A second ap-  
prifer is al-  
lowed the  
composition  
paid to the  
superior,  
though a  
prior apprifer  
had paid a  
composition,  
if both toge-  
ther exceed  
not a year's  
rent.

(EXTINCTION.)

No 7.

found in the case of the Earl of Nithsdale, and Countess of Buccleugh;\* and was several times so found, by the Lords before.—THE LORDS found the defender accountable by a rental as the lands paid the time of his entry, but prejudice of his just defalcations, he clearing a reasonable cause thereof, and proving the truth of the same; for they thought, that albeit apprisers are only accountable for their intromission, that is, only for such parts of the lands, as they intend only to possess, and not for those they never possessed; yet in so far as they once entered to possess, they must do diligence.—It was further *alleged*, That no allowance ought to be given to the defender, of a composition he had given to the superior, in respect a prior appriser had given a composition before, and so he was obliged for none.—The defender *answered*, That both the prior and posterior composition was within a year's rent, which was due to the superior; which the LORDS allowed, seeing it was not alleged that the composition of a year's rent was discharged by the superior, but only according to the custom of the burgh, where the lands lay, so much marked upon the precept received in name of composition.

*Stair, v. 1. p. 74.*

No 8.

An appriser found accountable, not only for the seven years, but for the whole years of his debtor's minority.

1663. February 18. M'KENZIE against JOHN ROSS.

JOHN ROSS having apprifed certain lands belonging to M'Kenzie, there is a pursuit of count and reckoning intended, for declaring, that the apprifing was satisfied within the legal.—It was *alleged*, That the appriser was not accountable for more of the other party's minority than seven years; because, in the act of Parliament 1621, anent apprifing, it is so provided; and albeit the meaning of the act of Parliament was declared to be otherways, by the act of Parliament 1641; yet that declaration was contrary to the clear meaning, by the general rescifforary act 1661.

THE LORDS having considered the rescifforary act, and the reservation therein, of the right of private parties following upon the deeds of these Parliaments, in respect thereof, and of the custom these 20 years, the appriser using to account for all, found the appriser accountable for the whole year of the minority. (*See MINOR.*)

*Fol. Dic. v. 1. p. 21. Stair, v. 1. p. 182.*

1666. January 20. CLAPPERTON against LAIRD TARSONCE.

No 9.

The legal being prorogated from seven to ten years, the appriser be-

CLAPPERTON raises a declarator against Tarsonce, for declaring an apprifing at his instance, against the pursuer, to have been satisfied within the legal, by payment of the sums by the debtor, or by intromission with the mails and duties, either within the seven years of the first legal, or within the three years there-

\* There are cases between these parties, Fount. v. 1. p. 274. 387. 582. and under ANNUAL RENT in this Dictionary; but they do not seem applicable. See General List of Names.