

(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.

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after; during which, by the late act of Parliament, apprisings not expired in *anno* 1652, were declared redeemable, or by sums received from such as bought from the appriser, a part of the apprifed lands.—It was *alleged* absolutor from that member, of satisfaction by the intromission during these three last years; because the act of Parliament does not expressly prorogate the reversion, but declares the lands redeemable within three years; but does express nothing to whom the mails and duties shall belong, which cannot be imputed against the appriser, to satisfy the apprifing; because he enjoyed them as his own, the apprifing by the law then standing, being expired; *et bona fide possessor facit fructus consumptos suos*, and therefore a subsequent law cannot be drawn back, to make him account for that which he might have consumed the more lavishly; thinking it his own.—It was *answered*, That apprifings were odious, being the taking away the whole right of lands, for a sum without proportion to the true value; and therefore all acts retrenching them, ought to be favourably interpreted, especially where the appriser gets all his own; and therefore the act declaring them redeemable, must be understood in the same case as they were before, and that was either by payment, or intromission.

THE LORDS repelled the defence, and sustained the declarator, both as to payment and intromission; and as to the sum the appriser got for a part of the land, sold by him irredeemably, after the seven years legal was expired. And seeing the acquirer of that right was called; they found it also redeemable from him upon payment of the price paid for it, *cum omni causa*, and he to be accountable for the rents, unless the pursuer would ratify his right, as an irredeemable right; in which case the price should be accounted as a part of the sums apprifed for.

*Stair, v. 1. p. 341.*1669. *January 14.*

ALEXANDER M'KENZIE of Pitglassie against Ross of Auchinleck.

ALEXANDER M'KENZIE having right to two comprifings of the lands of Auchinleck, one in *anno* 1644, and another in *anno* 1647, which being *alleged* to have been satisfied within the legals, and the matter referred to an auditor, who reported these points to the Lords: *1mo*, Whether the appriser should account for the mails and duties, so as to impute the same to both apprifings, as to years after the second apprifing, or to impute them wholly to the first apprifing during its legal, and then to the second apprifing during its legal.—It was *alleged* for the appriser, that he having two titles in his person, it was free for him to impute his possession to either of them; and yet he was so favourable, as not to crave his option, but to impute proportionally to both; albeit in law, when receipts are not specially as to one cause, *electio est debitoris*. *2do*, When any payment is made by a debtor to his creditor indefinitely, it is still imputed to the annual rents in the first place, before it can satisfy any stock; so that any satisfaction gotten

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came bound to account for intromissions during the last three years, as well as the former seven.

No 10.

A person possessing upon two apprifings, must attribute his intromission to the first apprifing only, till it be satisfied.

Having sold a part of the lands within the legal, an appriser found accountable, not for their real worth, but for what he had actually received.