

(NATURE and EFFECT.)

1628. *March 15.* LO. BLANTIRE *against* PARISHIONERS of Bothwell.

IN an action of spuilzie, by the Lo. Blantire against Parishioners of Bothwell, founded upon a tack of teinds of the defender's lands, set to the L. of Cleland, whereto the Lo. Blantyre was constituted assignee by him, for satisfaction of some debts owing to the pursuer, and which he had paid, as cautioner for him; and the defender *alleging*, That the assignation being made to him, for the foresaid cause, it could not produce this action; in respect that the pursuer had comprised the said debtor's lands for the same debt, owing by the cedent to him; upon which comprising, he had both charged the superior to enter him, and also had pursued the possessors of the lands, for payment to him of their duties, whereupon he might both recover sentence, and payment; and so this comprising standing unrenounced by the pursuer, and nothing being alleged or shewn by him, which might make the comprising unprofitable or ineffectual, the same behoved to be imputed, for payment; especially seeing these defenders stand bound for the L. Cleland in far greater sums, whereof they have, nor can get no other relief, but only retention of their own teinds, the right whereof must be found to remain with Cleland, in respect of his comprising, which might make the assignation to cease, and, consequently, the defenders must have retention thereof, as said is. This allegiance was repelled; and the comprising was not found to be any impediment to the pursuer, to claim the benefit of the assignation, ay and while he was relieved of the said debts, which were not found satisfied by the comprising; albeit the pursuer should neither renounce the same, nor allege any thing, wherefore it was unprofitable to him, neither whereof the LORDS found necessary to be done. *See MELDRUM, No 14. b. t.*; where the contrary seems done, except that the difference is, that the comprising there stayed personal execution against the debtor, whereas here no personal execution is sought, such as caption and warding, but the debtor's goods challenged. But, in a suspension, the same day, Michael Hill against his Creditors, who desired to be put to liberty, he being put in ward by his said creditors, who had comprised his lands; the LORDS found, That he could not be put to liberty, notwithstanding of the comprising; until the time he caused those to whom he had made prior rights of the lands comprised, renounce their rights which were redeemable, and the reversion whereof pertained to the compriser, who was found could not be compelled to renounce, albeit he refused to put the debtor to liberty.

Fol. Dic. v. 1. p. 15. Durie, p. 362.

No 15.
If the appri-
fer has any
separate secu-
rity, he is not
barred from
putting it in
execution.