

(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.