

(THE LEGAL.)

not betwixt the creditor and debtor; - for albeit the prescription began at the date of the comprising, against the debtor, against whom it was deduced, and who could not be ignorant thereof, but that he ought to redeem within the seven years, after the date thereof; yet it was not alike to another creditor, who cannot be counted *in mora*, if he offer to redeem within seven years, after it became a perfect and public act, which is not before the Lords allowance, at the least before taking sasine thereon; specially seeing the one creditor, who alleges the comprising to be irredeemable, wants nothing, whereas his whole debt and expences are paid to him, and the other creditor is in a hard estate to want all.—THE LORDS, not the less, sustained the exception, and found the prescription of the seven years, after which comprisings are not redeemable, takes beginning, against whatsoever person, either creditor or co-creditor, or others, from the date of the comprising, and neither from the time of the allowance, nor from the time of the sasine; for, if it were never allowed, the comprising not the less being otherwise good, is sufficient, seeing the allowance is only, that charges may be direct against the superiors of the lands, to give sasine; and if comprisers may get sasine, without such charges or allowance, the party needs not to seek allowance; and if the compriser delay to take sasine after his comprising, the co-creditor has the more advantage, if upon his comprising, albeit posterior, he obtain the first infeftment.

No 1.

Act. Nicolfor, Cunningham & Dunlop.

Act. Stuart & Aikenhead.

Clerk, Giffan.

Fol. Dic. v. 1. p. 20. Durie, p. 538.

* * Spottiswood mentions this case thus:

In an action for the mails and duties of a tenement, between Nicol Limpitlaw and Mr James Aikenhead, it was called in question, whether the seven years, that one, from whom lands were comprised, has to redeem the same, should begin to run from the date of the comprising, or from the time that it is allowed by the Lords, and sasine taken thereupon; it was found without any contradiction, That it begins to run from the date of the comprising.

Spottiswood, (COMPRISING.) p. 52.

1634. January 16. TUTOR of BALMAGHIE against MAXWELL.

In a pursuit of removing of Tutor of Balmaghie against Maxwell of Coblex, upon a comprising and infeftment thereon, wherein the defender *alleging*, That the comprising was extinct, conform to the act of Parliament 1621, anent comprisings; in so far as either the pursuer has intromitted, or at the least might have intromitted with the mails and duties of the lands comprised, and which would

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Rents due before the expiry of the legal, are to be imputed towards extinction of

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the apprising,
though not
received till
after expiry.

extend to as much, as would satisfy the said whole sums, for which the comprising was deduced:—THE LORDS repelled the allegiance, being so alternatively proponed; and found, That the compriser was liable in no further for the land, but only in so much, wherewith he actually intromitted, and was noways liable for any thing, wherewith he might have intromitted, in respect that they found the act of Parliament made him only accountable for that, wherewith he actually meddled, and no further; and that in such cases, comprisers are not liable, upon that ground, as if they might have intromitted; and found, That they are not holden to do diligence, to recover payment, or intromission, but only that they may seek the same, or omit it, as they think expedient, at their own pleasure, and no otherways. In this case, the state of the debtor is very hard, whose lands being comprised, neither the compriser is holden to do diligence against the tenants, and possessors thereof, nor can the debtor have any meddling therewith, being debarred by the comprising; so that the mails and duties may perish to all parties, and the tenants may become bankrupts without remedy.—And it being further *alleged*, That the appriser, that had intromitted with diverse years duties, for years running before the expiry of the comprising, which, albeit they were uplifted, after expiring of the comprising, yet being for years before the expiring, must be alike, as if the intromission had been before the same.—And the pursuer *answering*, That seeing the comprising was expired before his intromission, whatever intromission he had thereafter, was justly his own, and he was not answerable therefor, neither did the act of Parliament in that case militate against the same:—THE LORDS found this allegiance relevant, founded upon the pursuers intromission had for the years duties, owing for years before the comprising was expired, although they were not received, nor intromitted with, while the comprising was expired; and because this intromission extended not to more, nor effeired to the ordinary annualrent of the principal sum, therefore they found it could defalk no part of the principal sum, and so the compriser was in no part prejudged thereby; and repelled the allegiance.

Alt. *Mowat.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 21. Durie, p. 698.*1675. February 10. LADY TORWOOD-HEAD *against* GARDNERS.

No 3.
Two different
estates being
apprised,
for the same
debt; an order
of premo-
tion and
confignation,
used by the

THE Lady Torwood-head having obtained a decret of the Secret Council of 600 merks yearly of aliment, to her and her children, out of her husband's estate; and having gotten a gift of her husband's liferent-efcheat for securing the said aliment, and declaring the same, she now insists against the tenants of her husband's lands for payment. Compearance is made for Florence Gardner, who, upon a bond of 5000 merks granted by the Lord Forrester and Torwood-head,