

No. 2. yearly duty paid by his tenants, to whom he set the same therefor; the other compriser *alleging*, that the first year should be allowed according to the farm which he received, and for the which he set the lands the years thereafter, seeing it was but a casualty, to make gain or disadvantage to any, in the first year of his plenishing. THE LORDS would not allow any thing to the first compriser for the first year, wherein he declared that he was plenisher, and was a loser.

Act. *Stuart & Cheap.*

Alt. *Nicolson & Craig.*

Clerk, *Scot.*

Fol. Dic. v. I. p. 236. Durie, p. 478.

1636. February 11. COLQUHOUN *against* L. BALVIE.

No 3.
In a competition among creditors, he who was preferred *primo loco*, was bound *ad exactissimam diligentiam* for recovery of his payment, that way might be made for the succeeding apprisers.

Two comprisers contending for the mails and duties of the lands comprised, and the L. Balvie, who was brother to the Laird of Luss, (which L. Luss his lands were comprised by both these creditors), being preferred, in respect of his priority of comprising and infestment; the LORDS found, that he ought to do *exactissimam diligentiam*, for recovering of payment from the tenants, and possessors of the lands comprised, whereby he might be satisfied of his debt, for which he had deduced comprising, that after his payment there might be place to the second and subsequent compriser, to recover payment in the second room; and found, that it was not enough to give the prior compriser such preference, that he should not be holden, to do all diligence possible to recover his own satisfaction, and to suffer either the tenants to become bankrupts, or to connive and suffer his brother, the L. Luss the common debtor, to uplift the duties of the lands, and thereby to make his own comprising, and the legal reversion thereof to expire; but that he was holden, as said is, to do *summam diligentiam*, to obtain his own payment, notwithstanding that by the act of Parliament, he *alleged*, he was only liable to count for his actual intromission, and not for that wherewith he might have intromitted; seeing he *alleged*, that the second compriser had an ordinary remedy in law, viz. the benefit of redemption by virtue of the legal, which if he used not, it was his own fault; which allegiance was repelled, and it was found he ought to do all lawful diligence, as said is; and if he did it not, afterwards then when the matter should be again drawn in dispute betwixt the parties, the LORDS would consider thereof; that in case he did not what he might, they would take order, that thereby the second compriser should not be prejudged, by his wilful omission, collusion, or negligence.

Act. *Gilmor.*

Fol. Dic. v. I. p. 236. Durie, p. 794