

No 78. the instance of the compriser, in respect of the long time (*viz.* six years,) that had intervned betwixt the comprising and sasine.

*Fol. Dic. v. I. p. 558. Spottiswood, (COMPRISING.)*

\* \* \* This case is No 4. p. 6989., *voce* BONA ET MALA FIDES.

No 79.

A posterior voluntary base infestment granted for onerous causes, and clothed with possession, found preferable in a possessory judgment to a prior comprising, in respect the compriser had been *in mora*, by lying out four years without doing any diligence.

1636. March 29. E. GALLOWAY *against* GORDON of Kingstair.

IN a double poinding, both contending who ought to be answered of the duties of the mill of Sorbie, which were comprised *in anno* 1632, by the Earl of Galloway, and who neither had done diligence, nor was infest upon the comprising; and the other party, after perfecting of the Earl's comprising, being infest in the said mill by the common debtor, by a base infestment, for causes most onerous, of debt paid by Gordon for Sorbie; and by virtue of his said infestment, he being in peaceable possession of the mill, and whole duties thereof, two years together uninterrupted, and continually to this year 1636, now controverted, and so they both claiming preference, by reason of their rights foresaid; wherein the Earl *alleged*, that the voluntary deed of the base infestment granted after his comprising, could not be respected, nor no act voluntarily done by the common debtor, who is now, and was then *non solvendo*, for his denunciation was enough to take away all deeds thereafter done by the debtor, in prejudice of his public act of denunciation; and he contended that his comprising, without either diligence or infestment, was sufficient to give him right to the mails and duties. THE LORDS repelled the allegiance, in respect the compriser was neither infest, nor had done any diligence by the space of almost these four years since his comprising, to obtain himself infest, and that he was not yet infest, therefore they preferred him who was infest in this judgment possessor.

*Act. Stuart & Nicolson.*

*Ait. Gilmore.*

*Clerk, Gibson.*

*Fol. Dic. v. I. p. 558. Durie, p. 808.*

No 80.

A disposition and infestment found to give the benefit of a possessory judgment, though granted after denunciation of an apprising which made the matter litigious.

1668. July 17. Sir WILLIAM STEWART *against* MURRAYS.

Sir JAMES MURRAY his estate being apprised by many of his creditors, Sir William Stewart, one of the apprisers, pursues the rest for count and reckoning of a proportionable part of the rents, in respect that his apprising is within a year of the first effectual apprising, and comes in therewith *pari passu*, by the act of Parliament, 1661, betwixt debtor and creditor. It was *alleged absolutor*, *imo*, Because the pursuer's comprising is incompleat, nothing having followed thereupon now these sixteen or eighteen years; and by the act