

moveable; whereas a comprising or adjudication being a legal diligence for the creditor's farther security, is considered in law as an accessory right, which does not hinder but that the sum contained in the adjudication may be extinguished by liquid debts existing before the legal be expired; as also the expiring of the legal of apprisings being odious, many things may be allowed to extinguish the sum contained in the adjudication and comprising that will not be allowed in other cases. THE LORDS sustained the reason of compensation by extrinsic intrusions to extinguish the adjudication, being before the expiring of the legal of the adjudication.

Fel. Dic. v. 1. p. 164. Sir P. Home, v. 1. No 241.

* * Harcarse reports the same case :

EXTRINSIC grounds of compensation, existing during the legal of an apprising, though after the appriser was infest, found to extinguish the apprising, even against singular successors after the compensation existed, just as intruission, or selling, or wadsetting a part of the apprised lands; though real rights, after infestment, are not regularly compensable with personal rights, which are not *ejusdem qualitatis*. But this point was not fully considered.

Harcarse, (COMPRISINGS.) No 272. p. 65.

1682. March 17. BAILLIE against HISLESIDE.

INTRUSSION with a debtor's executry sustained to extinguish an apprising of his lands. *Fel. Dic. v. 1. p. 164. Harcarse, (COMPRISINGS.) No 273. p. 65.*

1697. January 13.

JAMES DAES of Coldingknows against JOHNSTON of Hilton and MOTHER.

I reported James Daes of Coldingknows against Johnston of Hilton, and his mother, for the teind-duties of Huttonhall; out of which Hilton craved allowance and compensation for the sum of 3,650 merks he had paid as cautioner for Wamphray, Mr James's author, in the right of the teinds. *Alleged*, The compensation can only begin after the date of the bond of corroboration given for that debt by Wamphray to Hilton in 1678, wherein the bygone annualrents are accumulate, and Wamphray acknowledges himself then debtor in the sum, which is an evident renunciation and passing from any ground of compensation he then had; for *quorsum* all this security of a corroboration, if the debt was extinct by compensation before granting the same? And it was not Hilton's fault, that the teind-duties lay in his hand; for they were arrested, and he knew not whom to pay to, till he raised a multiple-pounding, and called all the competitors: And compensation is presumed from the tacit acquiescence of parties, but not that they would insensibly moulder away a sum bearing annualrent with one that carried none. *Answered*, The principles of law were clear, that

No 96.

No 97.

No 98.

Found that a moveable bond might compensate and extinguish one heritable, by decree of comprising, but not *e contra*, unless it were loosed and made moveable by a requisition or charge.