

1635. January 29. HAMILTON against WILSON.

IN a double poinding betwixt Sir James Hamilton of Broomhill, and one Wilson, against whom the Tenants of Lauder had suspended upon double poinding, Wilson claimed the mails of the lands from the Tenants, by virtue of his comprising; and the other *alleging*, That in the first end of the farms he ought to be answered of his annualrent *primo loco*, seeing he was infeft therein long before the comprising; and the compriſer *answering*, That he had only right to claim the duties of the lands as heritor, and the annualrenter could not go therein betwixt him and the possessors; and for his annualrent he had his action safe to him, to poind or comprise the ground therefor;—the LORDS preferred the annualrenter to the compriſer, for answering of the annualrent in the first end of the farms addebted by the Tenants, and found that the compriſer had no right but to the superplus. And it being further *alleged*, That the annualrenter, before this year's term of payment of these duties controverted, had made requisition to his debtor for payment of his principal sum, whereupon the annualrent foresaid was redẽemable, whereby he could not come back again to seek his annualrent out of the land having made the sum moveable; this allegiance was repelled; for it was found, that, notwithstanding of the requisition, he might cloth himself with his infeftment, and might pass from the requisition, so long as the sum was neither paid by the debtor, nor yet prepared and consigned, or offered to this party, conform to the requisition.

Alt. Gilmour.

Fol. Dic. v. 2. p. 355. Durie, p. 745.

1663. January 24. GRAHAM against CLARK and ROSS.

IN a process betwixt Graham, compriſer of the lands of Newark, and John Clark, and John Ross, compriſers also, there being a comprising led *anno* 1651, whereupon there is infeftment, though the act of Parliament appoints all comprising, led within year and day after the first effectual comprising, to come in *pari passu*, being led since the first day of January 1652, yet, seeing the comprising led *in anno* 1651, turns to the nature of a comprising of the legal reversion of the first effectual comprising led *anno* 1652; it is in the same case as if it had been deduced immediately thereafter.

THE LORDS therefore brought in that comprising, as if it had been deduced *anno* 1662.

1663. July.—IN the foresaid process betwixt Graham and Clark in January last, the LORDS found, that a comprising being led for sums of money,

No 15.

An apprising was deduced, not upon the real right of infeftment of annualrent, but upon the personal obligation after requisition. This was not found a real extinction of the infeftment.

No 16.

In conformity with the above.

No 16. whereupon an infeftment of annualrent was granted, the compriser might pass from his comprising, and return to his infeftment of annualrent: this conforma to practiques long since decided. See No 19. *infra*.

*Fol. Dic. v. 2. p. 355. Gilmour, No 76. p. 57. & No 91. p. 70.*

\* \* Stair's report of this case is No 8. p. 237. *voce* ADJUDICATION.

1667. June 15.

KAY against FLEMING.

No 17.  
In conformity  
with the  
above.

See No 19.  
*infra*.

GEORGE FLEMING having an infeftment of annualrent out of the lands of Cambo, and thereafter having comprised for his principal sum, it was found, in a double pointing and competition betwixt the said George and Gilbert Kay, another creditor of Cambo, that the said Gilbert should be preferred, in respect of the said Gilbert's infeftment in an annualrent. That decret being suspended, Fleming craved to be preferred, in respect his right of annualrent was before Kay's right. It was *answered*, That this infeftment was extinct, and taken away by the comprising, and that he could not now have recourse to it, after a decret of preference *in foro contradictorio*. It was *replied*, That decreets of double pointing preclude, as to bygones; but, as to the future, all are qualified, for any thing that was then seen.

THE LORDS were clear, that, notwithstanding of the comprising, he might have recourse to his former right; but the great question was, Whether decreets of pointing the ground, against a party compearing, did conclude him, so that he could not be heard against competent and omitted? which the Lords did not decide, but recommended to the reporter to settle the parties.

Clerk, *Gibson*.

*Fol. Dic. v. 2. p. 355. Dirleton, No 83. p. 35.*

No 18.

1668. January 15. TRORTER against TROTTER.

THE LORDS found, that a wadsetter, having comprised for his principal sum, may, in competition with another compriser, pass from his comprising, and return to his former right of wadset. See No 14. p. 14104.

Clerk, *Gibson*.

*Fol. Dic. v. 2. p. 354. Dirleton, No 134. p. 56.*

No 19.  
An apprising  
may be re-  
stricted.

1671. December 22. CAMPBELL against ———.

IN a competition betwixt the Heirs of George Campbell, in the Canongate, and , who both had appraised a tenement of land in Leith, called