

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