

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

the Tower of Babylon, which being within year and day, were found to come in *pari passu*, and the matter remitted to an auditor, before whom it was *alleged*, for one of the apprisers, That the act betwixt debtor and creditor excepts annualrents constituted by infestment, which, and apprisings following thereupon, come not in *pari passu* with other apprisings; so that, as to the annualrents preceding the apprising, and which are constituted by an infestment of annualrent, they must be satisfied out of the mails and duties *primo loco*;—it was *answered*, That if the appriser had adhered to his infestment of annualrent, and apprised for the bygone, by a pointing of the ground, he would have been preferred; but now, having used requisition, and proceeded upon the personal obligation, for payment of annualrent, and apprised for the principal sum, and annualrent together, he cannot have that preference; for the requisition is a passing from the infestment of annualrent; and though he may pass from the requisition, and return to his annualrent, yet then he passes from the apprising for the principal sum; for he cannot pass from the requisition, in relation to the bygone annualrents, and adhere to it in relation to the principal sum, seeing one infestment is the security for both. It was *replied*, That he might restrict his apprising, and declare that he made use of the requisition, only in so far as concerned the principal sum, and annualrents, after the apprising.

Which the Lords sustained, and preferred him for the annualrents preceding the apprising.

Fol. Dic. v. 2. p. 355. Stair, v. 2. p. 33.

1779. February 5.

THOMAS DUNLOP and Others, *against* ALEXANDER SPIERS and Others.

DUNLOP and Ralston, merchants in Virginia, upon a settlement of accounts in September 1763 with James Dunlop, merchant in Glasgow, accepted bills to him at twelve months date, for the balance in his favour.

At this time, James Dunlop had a cash-credit with Dunlop, Houston, and Co. bankers in Glasgow, to the extent of L. 1500. In the bond of credit, his father, Dunlop of Garnkirk, and others, were jointly bound with him to the banking company. But the credit being entirely for the use of his son, he and his father granted a bond of relief to the other obligants.

Dunlop, junior, having drawn out the whole of his cash account, in order to replace the money, applied to the banking company to discount a bill for L. 1500, accepted by Dunlop and Ralston to him, at the time of the settlement above mentioned. The Company agreed, on condition that the bill should be indorsed by others, for their further security. This bill was accordingly indorsed by several of the cautioners in the bond of credit, upon which it was discounted by the Company, and the cash placed to the credit of Dunlop junior.

No 19.

No 20.

Effect of partial payments before the term of payment, in case of bankruptcy.