

(EXTINCTION.)

1624. January 15. VISCOUNT of ANNAND against SCOT.

No 2.

An appriser was found obliged to account for intromissions prior to the act 1621, by which his apprising might be declared extinct, although he pleaded that the law could have no retrospect, and *fructus erant bona fide percepti et consumpti.*

IN an action of reduction, pursued at the instance of the Viscount of Annand, as donator to the liferent-escheat of Simon Scot of Bonnitoun, and donator also to the non-entry of the same lands of Bonnitoun, against Sir William Scot of Harden; who, for the particular goods contained in a special declarator, obtained by him against the said Simon, whose single escheat was in the person of the said Sir William, had comprised the heritable right of the said lands, and was thereupon inserted in the same: This comprising was desired to be declared extinct, the reason whereof was libelled, and founded upon the act of Parliament, anno 1621, concerning comprisings, viz. Because the compriser had intromitted with the duties of the lands comprised; since whose comprising, the quantity of the profits and duties of the lands comprised, extended to more than would satisfy the sums, for the which the comprising was deduced, and annualrents thereof, and other debursings and charges appointed to be repaid by the said act of Parliament. In this process, this reason was found relevant, and the LORDS found, That the compriser ought to account for the profits of the lands intromitted with by him, of the years preceding the act of Parliament, as well as of the years since; and which decision, they found they would keep in all comprisings, where the legal reversion was not expired before that act of Parliament, when the like question occurred; and they repelled the exception proponed for the defender, whereby he *alleged*, That he ought not to account for any year preceding the act, seeing *fructus erant bona fide percepti et consumpti*, and wherewith he had meddled by virtue of a lawful right then standing, and conform to the law and custom of the whole kingdom, ought not now to be drawn under this act of Parliament, which, as all other laws, only *extenduntur ad futura*. This was repelled; likewise the LORDS found, That the probation of the yearly avail of the lands, seeing the same was not set out to tenants, but ever kept in the heritors, and also in the compriser's hands in the maining, might be proven, what the same were worth, and might pay so much yearly duty; and that other lands adjacent, of the like quality, paid as much yearly, to be proven by gentlemen in the country, neighbours to the lands, and who should be *testes omni exceptione majores*, and men landed.

A.G. Neilson & Burnet.

Alt. Nicolson younger & Stuart.

Clerk, Gibson.

Duriz, p. 98.