
NATURE *and* EFFECT *of this* DILIGENCE.

1619. February 3. BRUCE *against* BUCKIE.

A COMPRISING is a legal assignation, needing no intimation; and therefore, a second comprising of a right of reversion, though first intimated, was found not preferable.

Fol. Dic. v. 1. p. 14. Hope, (APPRISING.) MS.

1628. March 5. SCOT *against* TENANTS of Whitlaid.

In an action for mails and duties, betwixt Andrew Scot fergeon; and tenants of Whitlaid, the LORDS found a comprising of the lands libelled, whereof the duties were acclaimed by the pursuer, was not a sufficient title to produce action to him; except he had been either seised in the lands by virtue of his comprising, or had done diligence to obtain himself seised, by charging of the superior, who had refused, or such other lawful diligence.

Act. Craig.

Clerk, Scot.

Fol. Dic. v. 1. p. 14. Durie, p. 354.

* * But now, as to mails and duties, a decret of apprising is understood to be an effectual diligence, and equivalent to an assignation intimated; as to which, See COMPETITION.

1634. March 21. MAXWELL *against* MURRAY and WRIGHT.

ONE Ker of Redpeth, having disposed his lands heritably to his son, and to his wife in conjunct-fee, reserving an annual rent of 500 merks yearly, to be paid forth of any part thereof, to himself during his lifetime; and the said lands, with all right the said Ker of Redpeth had thereof, being thereafter comprised by Alexander Maxwell for debt, and he being, conform thereto, infeft in the lands; and another, viz. Murray, son to the L. Blackbarony, having comprised the said lands, and the said debtor's right, as the said Alexander Maxwell had done, and before Alexander's comprising, but not being infeft in the lands, it was questioned betwixt these comprisers, which of them had right to be an-

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Effect of a
simple decret
of apprising.

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Effect of a
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No 3. wered of the said annualrent, reserved to the common debtor, in the foresaid infestment of fee; whereto the compriser, who was infest, claimed to be preferred to the other not infest, albeit he had comprised before him, seeing he *alleged*, That the reservation of the annualrent to the disponent, could not be bruiked but by infestment; for the disponent therein behoved to be reputed, as if he never had been denuded of the fee of the land *pro tanto*, but remained, notwithstanding of the fee given to the son, as if he had not been denuded; but that he retained the infestment thereof, although it was retrenched to a liferent, and could not be bruiked but by virtue of his prior infestment, with which it was consolidated, as an usufruct casual, and not formal, which is constituted by a naked liferent, distinct and separate from the property. And the other party contending on the contrary, that he needed no *saſine*:—THE LORDS preferred the prior compriser, albeit not infest, to the posterior; albeit infest, and albeit both the comprisings were of the lands, and of the debtor's right, and not of the liferent of the annual *specifice*, which was not specially comprised by any of the parties, but under the general clause, as said is; for they found the same might have been *specifice* comprised, and the right thereof good to the compriser, without necessity of a *saſine*: even as the debtor might have disposed the same validly, without *saſine*, to the receiver; for the said liferent was distinct from the property, and was not inherent in the property, he being denuded of the property, by giving of the fee, and retaining nothing but a liferent of the annualrent, during his lifetime, which never made the fee thereof to revive to him, conform to his prior right; for then it could not have expired with his death, but he might have disposed it to another, to be effectual to the receiver after his death, which could not be done; therefore the allegiance was discussed, as said is.

A. Advocatus.

Alt. Nicolson.

Clerk, Gibson.

Fol. Dic. v. 1. p. 14. Durie, p. 715.

1635. March 25. LORD YESTER against L. INNERWEIK.

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An apprising being a legal assignation, needing no intimation, a discharge, by the debtor, of a bond comprised, is of no avail.

IN this cause, a reason of suspension was proponed, bearing, That the bond comprised was discharged by the creditor, to whom it was made, who granted that the same was satisfied to him, and discharged to the maker of that bond, which discharge was done after the comprising; and so whereby the compriser *alleged* that discharge ought not to be respected against him, and to his prejudice, who, after his denunciation and comprising completed thereupon, could be prejudged by no deed done by his debtor thereafter; yet the suspender, granter of the bond, *alleged*, That the discharge granted to him by the said creditor, to whom he was bound, *quocunque tempore* done, ought to produce liberation to him *contra quoscunque*, seeing the comprising