

1639. February 9. HAMILTON against LAUDER.

No 4.

A TENANT who had a current tack, having, after a comprising, deserted his possession;—found, that the lying waste thereof ought not to prejudice the debtor, but that the compriser ought to be accountable for the same, since he neither laboured nor set it, nor made any intimation to the debtor to take care of it.

Fol. Dic. v. 1. 237. Durie.

* * * See This case, No 41. p. 3391.

1661. December. SETON against ROSEWEL.

No 5.

IN a compt and reckoning pursued at the instance of James Seton, being a third compriser of certain houses in Leith, from Mr James Gray, against Anthony Rosewel, who acquired a right to the two first comprising, and was in possession, it was *alleged* by the defender, That he was only comptable for his own and his author's intromission, and not according to the rental produced, bearing what the lands paid at the time of his author's entry thereto; and that by the act of Parliament 1621, he was tied to no farther; and *alleged* also some practiques, annis 1624, and 1625. It was *answered*, That the defender ought to be countable for subsequent or after years, according to the rental, whereby his author meddled the first year; else, it should be lawful to a compriser, after he has removed the debtor and entered to the possession, to lift, or not lift, what duties he pleased, and consequently to ruin the debtor; whereas, when he enters to the debtor's lands, he ought *tanquam bonus pater familias*, to make use of the comprised lands, &c. It was *replied*, That before the year 1621, the whole duties belonged to the compriser for his annualrent, had they been ever so great, nor any part counted *in sortem*: and this being restricted by the act, and the compriser having only his annualrent, and the superplus to be allowed in the principal sum; there the law did oblige the compriser to be comptable for more than he meddled with; against whom, within the time of the legal, the debtor may use an order of redemption when he will.

An appriser in possession was found accountable by a rental, as the lands paid at the time of his entry, without prejudice of just defalcations.

THE LORDS found the compriser comptable, according to the rental payable, and paid to the compriser the time of his entry, *but* prejudice of his lawful defences, upon probable reasons, wherefore defalcation ought to be allowed for after years.

Item, In the same cause it being *alleged*, That the second compriser should have allowance of the composition paid to the superior, it was *answered*, That the second comprising, being in effect, only of a legal reversion, it was *frustra*, and unnecessary to seek an infeftment from the superior; and the compriser