

owing by him for the same year, he had proponed the very same allegiance; and it was repelled by the Lords, who found where the minister was only a stipendiary, and no beneficed person, though the teind be wasted by calamity of war, or other accident, that did not liberate him who had right to the said teinds, because that loss might be compensated and supplied by the uberty of preceding or subsequent years; and which is the reason assigned by the law, wherefore tenants can plead no abatement upon the head of sterility or vastation. *L. 15, p. 4, D. Locati; L. 8. et 18, C. eodem.*

The Lords adhered to their interlocutor given in Roxburgh's case.

*Advocates' MS. No. 404, folio 219.*

1673. *June.*

ANENT COMPRISINGS.

IN an action for maills and duties at the instance of a compriser, it fell to be contended, that a first compriser having arrested, and by virtue thereof obtained payment of his annualrents, he was bound by the act of Parliament 1661 (declaring second apprisers within year and day to come *pari passu*, and to be reputed a part of the first comprising, as if but one apprising had been led for all their sums,) to communicate proportionally what he had so got to the said apprisers within year and day. (And yet the intent of the act of Parliament 1661 may be eluded easily, if their diligences were proper.)

It was not decided. Only it seems he ought to communicate nothing, save what directly and immediately flows from his comprising. What if he has attained payment, in whole or in part, by virtue of some other right he was necessitated to acquire, or by an inhibition he had served on his bond, or by confirming executor creditor? Sure posterior creditors apprisers should claim no share in that as common; *nam sibi vigilavit; meliorem suam conditionem fecit; jus civile vigilantibus scriptum est; non revocatur id quod precepit; L. 24, p. 1, D. Quæ in fraudem creditorum facta sunt, ut restituantur.*

*Advocates' MS. No. 405, folio 219.*

1673. *June.*

STREET and JACKSON *against* MASON.

IN the action pursued by the English merchants, Street and Jackson against Mason, the case was, James Mason, elder, merchant in Edinburgh, having, in 1665, granted heritable bonds to thir two Londoners for L.1000 sterling, whereon they were infest in his lands of Howboot and Gayside; they pursued a pointing of the ground. In which action compareance was first made for my Lord Torphichen, superior, his donator to Mason's liferent escheat, who craved to be preferred.

ANSWERED, That Torphichen having received the said Mason's son vassal in the said lands, and he being publicly infest before his father's rebellion, he could not thereafter, as superior, gift his liferent escheat of these lands, whereof the father, who became afterwards rebel, was denuded by a resignation, accepted by the said superior, in favours of his son, and whereon infestment was taken by the son.