

hand, That, *in dubio solutio est imputanda in duriores sortem*; and if imputation be made to both apprisings, the first apprising will not be satisfied, and the debtor's right will be taken away, which is most unfavourable. *2do*, The second apprising was no title for possession, carrying only the right of reversion of the first. The possession was found only to be attributed to the first apprising, and not to the second, until the first should be satisfied.

*Fol. Dic. v. I. p. 459. Stair.*

\* \* This case is No 10. p. 299. *voce* ADJUDICATION.

\* \* Gosford reports the same case :

IN a declarator at the instance of John Ross of Auchnacloch against Alexander M'Kenzie of Pitglassie, to hear and see it found, that two comprisings, led at M'Kenzie's author's instance, one of them in *anno* 1644, for the sum of 1200 and odd pounds, and the other in *anno* 1647, for the sum of L. 5000, were satisfied, by intromission or sale of lands within the legal; it being controverted, if the manner of counting should be for the annualrents of both the comprisings from the time that the second was deduced, and that the intromission should be only ascribed to the first apprising during the whole seven years of the legal thereof.—THE LORDS found, that the first comprising being *debitum gravius et antiquius*, and by virtue whereof the compriser entered to the possession, and the second comprising resolving only in a right of reversion, the debtor might force the compriser to ascribe his possession to the first comprising only, during the running of the legal thereof, notwithstanding it was alleged that there was a difference betwixt two comprisings led by one and the same creditor, and those deduced by several creditors; and that the defender will be prejudged of payment of the annualrents of the second comprising, during the legal of the first.

*Gosford, MS. No 82. p. 29.*

\* \* The like was decided 10th February 1674, Blyth against The Creditors of Dairsey, No 90. p. 2873. *voce* COMPETITION.

1683. November 22.

M'BRAIR against CRICHTON.

A GRANDFATHER'S debt being secured by apprising, and stated against the grandchild, the intermediate mails, which were *in bonis* of the father, were ascribed towards payment of the apprising, as being *durior sors*, and not in payment of the father's debt.

*Fol. Dic. v. I. p. 459. P. Falc. Stair. Fount. Harc.*

\* \* See P. Falconer's report of this case, No 123. p. 2655., and Stair, Fountainhall, and Harcarse's reports, No 13. p. 5245.

No 2.

No 3.