
 EXTINCTION of APPRISINGS and ADJUDICATIONS.

1623. November 28. CRAIG against his TENANT and WILSON.

MR ROBERT CRAIG having recovered a decreet of removing against a tenant, founded upon a *fasine* after comprising: The tenant suspended upon double distress against Mr Robert on the one part, and against one Wilson on the other part, wherein Wilson compeared and *alleged*, That he would not suffer Craig to remove the suspender, in respect he had comprised the land, and was long infest therein before Mr Robert's right; so that the land pertained to him, which was found relevant by the Lords; albeit that Craig *answered*, That seeing he had done no diligence upon his infestment, though anterior, nor made warning thereupon, nor yet had recovered any possession of the land, and that he could not allege the suspender to be his tenant, by payment of mail and duty, he ought not to be heard, to stay the execution of his sentence; and whenever he should pursue upon his anterior right he should answer thereto in its own time. This was repelled, and the prior right sustained, and the parties ordained to dispute upon their rights, as if sentence had not been given; after which Craig *answered* to the said prior right, that the same could not be respected, because the same was founded upon a comprising, which in effect was become extinct, in so far as since the deducing thereof, and since the *fasine* past thereupon, he had received a part of the sum, for the which the comprising was deduced. This allegiance was repelled, because the Lords found, That the receiving payment of a part of the sum, was not enough to make the comprising to fall, except the whole had been paid; but that the comprising stood while the whole debt were satisfied; and because there was some term of probation assigned in this process, which proceeded upon the compearance of this Wilson; the Lords ordained him, to find caution for the violent profits, sicklike as if he had been party in the first removing, seeing by his appearance, he stayed the execution of the decreet of removing already obtained.

No r.
An apprising did not become extinct, while any part of the sum remained unsatisfied.

Ast. Craig.

Alt.

Clerk, Gibson.

Durie, p. 84.