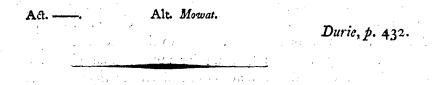
ADJUDICATION AND APPRISING.

(EITINCTION.)

ground, not being quarrelled thereon before the expiring of these years; which allegeance was repelled, and the comprising was found might be taken away upon the foresaid ground, albeit not proponed before these years, but after the fame were all expired; and the same was received by way of reply, being betwixt mean and poor folks; whereas other ways the Louns were of opinion, That it could not have been taken away but by way of declarator.



1630. January 13. L. Essilis against WALLACE.

A COMPRISING deduced before the act of Parliament 1621, not expired the time of the act, the comprifer is fubject at all times after the expiring of the feven years, to account for his intromiffion of all the years duties of the lands intromitted with by him, of all years before expiring thereof; and which account he is obliged to make at all times after the expiring of the comprifing, to any party having intereft to feek the fame, whether he be major or minor, that alleges the comprifing to be extinct, and againft whom the fame was deduced.

Durie, p. 479.

1662. January 4. JAMES SEATON against ANTHONIE ROSEWALL.

IAMES SEATON and others, purfue Anthonie Rofewall, to hear it found and declared. That two apprifings, to which he had right, were fully fatisfied, by his, and his author's intromiffion, within the legals refpective, in the account. The defender alleged, he was only accountable, according to his intromiffion, conform to the act of Parliament 1621, anent apprifings, and not according to a rental of the lands, as they paid when he entered, the purfuers anfwered, That they could not charge him by his yearly intromiffions, which they could not know, but he behoved to charge himself with the rent of the lands, as they paid at his entry thereto; and if any deductions, or defalcations, were, in fubfequent years, by neceffary fetting of the lands at a lower rate, poverty of the tenants, or wafte, he behoved to condefcend thereupon, and there the reafons, and verity thereof; for, in law, an apprifing giving jus pignoris prætorii, the apprifer is accountable for his diligence, having once entered in pofferfion, and thereby excluded the debtor and con-creditors from the pofferfion. / It were against law and confcience to fay, That if he should abstain, and suffer the tenants to keep the rent, or depauperat, or the lands to be wafte, without any diligence, that his legal should thereby expire, and the debtor and creditor should be excluded ; 'as was

Vol. I.

Рр

No 5.

No 6. Act 1621. How, and to whom comprifers accountable. See No 2.

No 7. . . Apprifer must account by a rental.

For what degree of diligence he is liable.

A fecond apprifer is allowed the composition paid to the fuperior, though a prior apprifer had paid a composition, if both together exceed not a year's rent,

297

298

(EXTINCTION.)

No 7.

found in the cafe of the Earl of Nithidale, and Counters of Buccleugh ;* and was feveral times to found, by the Lords before.---- THE LORDS found the defender accountable by a rental as the lands paid the time of his entry, but prejudice of his just defalcations, he clearing a reasonable cause thereof, and proving the truth of the fame; for they thought, that albeit apprifers are only accountable for their intromifion, that is, only for fuch parts of the lands, as they intend only to poffefs, and not for those they never poffeffed; yet in fo far as they once entered to poffefs, they must do diligence.—It was further alleged, That no allowance ought to be given to the defender, of a composition he had given to the fuperior, in refpect a prior apprifer had given a composition before, and fo he was obliged for none.—The defender anfwered, That both the prior and posterior composition was within a year's rent, which was due to the superior; which the Lords allowed, feeing it was not alleged that the composition of a year's rent was discharged by the fuperior, but only according to the custom of the burgh, where the lands lay, fo much marked upon the precept received in Stair, v. 1. p. 74. name of composition.

No 8.

An apprifer found accountable, not only for the feven years. but for the whole years of his debtor's minority.

1663. February 18. M'KENZIE against JOHN Ross.

JOHN Ross having apprifed certain lands belonging to M'Kenzie, there is a purfuit of count and reckoning intented, for declaring, that the apprifing was fatisfied within the legal.—It was *alleged*. That the apprifer was not accountable for more of the other party's minority than feven years; becaufe, in the act of Parliament 1621, anent apprifing, it is fo provided; and albeit the meaning of the act of Parliament was declared to be otherways, by the act of Parliament 1641; yet that declaration was contrary to the clear meaning, by the general refeiffory act 1661.

THE LORDS having confidered the refciffory act, and the refervation therein, of the right of private parties following upon the deeds of these Parliaments, in refpect thereof, and of the cultom these 20 years, the apprifer useing to account for all, found the apprifer accountable for the whole year of the minority. (See MINOR.)

Fol. Dic. v. 1. p. 21. Stair, v. 1. p. 182.

No 9. The legat being prorogated from feven to ten years, the apprifer be-

1666. January 20. CLAPPERTON against LAIRD TARSONCE.

. 7

CLAPPERTON raifes a declarator against Tarsonce, for declaring an apprising at his inftance, against the pursuer, to have been fatisfied within the legal, by payment of the fums by the debtor, or by intromission with the mails and duties, either within the feven years of the first legal, or within the three years there-

* There are cafes between thefe parties, Fount. v. 1. p. 274. 387. 582. and under ANNUALRENT in this Dictionary; but they do not feem applicable. See General Lift of Names.