

1614. February 26. LAMB against HEPBURN and BLACKBURN.

IN an action of reduction of a comprising, pursued by James Lamb, against Mr Patrick Hepburn of Smeiton, and Patrick Blackburn,—THE LORDS reduced the comprising, because it was proven, that the half of the sum was paid; but they reduced it, *tantum, a tempore sententiæ*.

Hope, (POINDING AND APPRISING), MS. v. 2. folio 208.

1622. July 19. LAIRD OF LUGTON against ALEXANDER CRANSTON.

IN an action, pursued by the Laird of Lugton against Alexander Cranston and others, for reduction of their comprising of the living of East Nisbet.—THE LORDS found, that a comprising was null, wherein the sums of the comprising were greater, than the sums contained in the denunciation; and would not permit the defenders to reduce their sum, by their declaration, to the sums decerned for.

Fol. Dic. v. I. p. 6. Haddington, MS. No 2656.

1630. February 11. KER against L. LEMPITLAW.

IN a reduction of Lempitlaw's comprising; because Lempitlaw, before the comprising, had discharged a part of the sum, for which he had comprised:—THE LORDS found not this reason relevant, but assolizied therefrom, in respect that this discharge was competent to have been proponed by the reducer, before the sentence whereupon the comprising was deduced; and he comparing and proponing fundry exceptions; this being omitted, it was found, that he could not reduce thereupon: but the LORDS declared, that in the redeeming of the comprised lands, defalcation should be made, of as much of the money, for which the lands were comprised, as the sum of the discharge extended to. Another reason of reduction bearing, That it was agreed by contract betwixt the parties, that if any of them should annailzie any part of the sums whereto they had right, to any person, that the annailzier should lose all right that he had thereto; and the L. Lempitlaw having sold his right, which was sufficiently qualified; absolvitor was also given from this reason, because the LORDS found, that this failzie against the contract, by making of the alienation, ought not to import the conclusion desired, and convened on by both parties in the contract, except the pursuer could qualify some prejudice sustained by him, through making the alienation contrary to the contract; which prejudice not being qualified, and the reducer sustaining no hurt thereby, the LORDS found the

No 2.
Pluris petitio.

No 3.
A comprising was found null, because the sums decerned for, were greater than those contained in the denunciation.

No 4.
A comprising was sustained, tho' led for the whole sum, after part of it had been paid by the compriser himself, in respect the debtor, who had appeared in the constitution, had omitted to state the payment.