

(Pars periculo petentis.)

1619. June 30. LORD CORSTORPHIN *against* WARDLAW.]

IN comprisings, the superior cannot be compelled to give infeftment, except the charger and compriser prove, that the party from whom he comprised it was infeft.

*Fol. Dic. v. 1. p. 13. Hope, (SUPERIOR.) v. 2. Folio 73. MS.*

No 15.  
The same  
found.

1622. March 23. RAMSAY *against* The EARL of ROTHES.

MR SIMON RAMSAY having comprised the lands of Corston, for the sum of 2500 merks, addetted to him by the L. of Corston, and having charged the Earl of Rothes superior, to infeft him therein, the LORDS found, That the superior could not be compelled to infeft the compriser, except the compriser paid first to the superior a year's duty of the lands; albeit the compriser offered a year's annualrent of the sum, for the which he had comprised: Which the LORDS found not sufficient, seeing he had not comprised an annualrent for his principal sum out of the lands, but that he had comprised the property of the land. In the same process, the LORDS found, that the superior could not be compelled to receive the compriser, except that he show, that the person from whom he comprised, or some of his predecessors to whom he was apparent heir, was infeft of before in these lands, as vassals to the Earl of Rothes; without which were proven, the superior could not be charged. (See SUPERIOR and VASSAL.)

No 16.  
The same  
found.

A&amp;A. Aiton.

Clerk, Hay.

Durie, p. 23.

1629. February 14. GRANT *against* L. BALVANIE.

ONE having comprised lands as pertaining to his debtor, and having thereupon charged Balvanie as superior of the lands, to enter him therein as vassal, in place of his debtor from whom he had comprised; and the superior suspending, *alleging* that that debtor was never his vassal, and that he could not be compelled to enter the compriser, until he produced and shewed where the debtor was infeft in the same lands as his vassal; and the compriser *answering*, that he could not allege that he was not his vassal, because he had accepted of him a resignation of the same lands made by him in his hands *ad perpetuam remanentiam*; and also that he had received from him divers years before, payment of the feu-duties owing by him, and contained in the infeftments of the said lands, and that his said debtor had also a charter of the same lands, granted to him by another, who

No 17.  
The same  
found.