

No 58. 1734. *January 12.* EARLS of LOWDON and GLASGOW *against* LORD ROSS.

THE LORDS found an adjudication *contra hereditatem jacentem* preferable to an assignation of mails and duties granted by the defunct proprietor, where the competition was about the rents that fell due betwixt the proprietor's death and the date of the adjudication. *See* SUCCESSION.

Fol. Dic. v. 1. p. 181.

S E C T. XI.

Apprisings and Adjudications with Voluntary Rights.

1612. *June 16.* HENDERSON *against* M'ADAM.

No 59.
An heritable bond, before denunciation in a comprising, though the infeftment was posterior to it, was preferred, being before infeftment upon the comprising.

IN an action of poinding of the ground, for an annualrent of L. 20, out of a tenement of land in Edinburgh, disposed by William Cuningham, heritor, in favours of Samuel Henderson, and his heirs, the Lords fand, that the infeftment granted by William Cuningham to Samuel, after the denunciation used at the instance of John M'Adam, who thereupon comprised the said tenement, was a good infeftment, in respect the same depended upon a contract preceding the denunciation, whereby William Cuningham was obliged to infeft Samuel in the said annualrent.

Fol. Dic. v. 1. p. 182. Kerse, MS. fol. 224.

No 60. 1622. *March 22.* HOPE *against* ANDERSON.

FOUND, that a procuratory of resignation may be used after denunciation to be comprised.

Item, found, that diligence done upon the offer of resignation, albeit refused, if thereafter resignation and infeftment follow, that it cannot be prejudged by an intervenient comprising.

Fol. Dic. v. 1. p. 182. Kerse, MS. fol. 226.