

1623. December 13.

L. LEY *against* STUART.

No 4.

An apprising was sustained, though no search for moveables was made at the dwelling house, which was distant from the lands.

IN an action, L. Ley against Alexander Stuart and Forfyth of Dykes, the LORDS sustained a comprising, which was quarrelled, and alleged to be null; because it bore not, that the officer searched and sought for the moveable goods pertaining to the party, whose lands were comprised, at his dwelling place; and, that the searching upon the ground of the lands comprised, was not enough, except that execution had been also used at the dwelling place of the party, as said is, albeit he dwelt off the ground of the lands comprised:—Which allegiance was repelled; for the LORDS found it not necessary to seek at the dwelling place, which was not upon the ground of the lands comprised, but distant therefrom. This was proponed as an objection against the comprising, and not used in an action of reduction intended upon that ground.

Act. *Hope and Mowat.*Alt. *Nicolson younger.*Clerk, *Scot.*

Nota.—A sentence of comprising will not have all the executions and the acts of the process, *specifice*, insert in the sentence; as they were executed and done punctually in all circumstances; but only will make a compendious relation thereof: As, for example, the same will not make mention, if the party was summoned personally, or at his dwelling place, but only that the officer cited him lawfully; and therefore comprisings, when they are questioned by reductions, the whole process and executions, and warrants thereof, are called to be produced, which will largely purport the manner and form of all the particular proceedings therein.

Fol. Dic. v. 1. p. 5. Durie, p. 92.

1624. January 29.

HOP-PRINGLE *against* KER.

No 5.

A previous search for moveables is unnecessary in comprisings of superiorities.—It is not sufficient to search at the principal place of diverse lands, although united into a barony.

IN an action, Hop-Pringle against Mark Ker and L. Borthwick, the LORDS found, That where superiority of lands are comprised from the superior, there is no necessity to use any execution of searching and seeking; but that these comprisings shall be sustained, although that execution be not used; seeing it is not probable, that the superior could have any goods upon that land, whereof he was naked superior only, and whereof the property pertained to another; and also they found, That in all other comprisings of the property of lands, where diverse lands were comprised, notwithstanding that the diverse lands were valued in one barony or tennandry; yet, that the execution of searching of the moveable goods, should be used upon the ground of every land, denounced to be comprised; and that, where the foresaid union was, it was not sufficient, to search at the principal place, and upon the ground of that land, to the which the