

1624. *January 23, and February 3.* DAVID STEVENSON *against* The LAIRD of CRAIGMILLAR.

DAVID Stevenson, having comprised from Patrick Edgar certain lands, charged the Laird of Craigmillar, as superior, to enter him thereto: He suspended, because he had comprised the same lands himself, by virtue of an assignation made to him, by Clement Edgar, of a decret recovered by the said Clement against Patrick Edgar; and so had consolidated in one both the superiority and property. It was alleged, That he could not obtrude that comprising upon that assignation, unless it were transferred by decret, since there had followed no execution during the cedent's lifetime upon that assignation. Replied, That his comprising standing, could not be taken away *hoc modo* by way of exception, but behoved to be reduced. Which reply the Lords found relevant.

Upon the 3d of February after, Craigmillar's comprising upon assignation lawfully intimated before the cedent's death, was sustained; because his right was thought to be sufficiently established by the intimation, and needed no transferring.

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1624. *February 6.* The LAIRD of CLACKMANAN *against* SIR WILLIAM NISBET and PATRICK NISBET.

JAMES Nisbet being owing to the Laird of Clackmanan 4000 merks, and being straitened by him for the payment thereof, his brethren Sir William and Mr Patrick Nisbets came to the Laird, and, by fair words, and both their promises by word to see him satisfied at Whitsunday following, obtained of him continuation till then: Likeas, at the same time they laid him down 400 merks for the bygone year's annual-rent. Afterwards, they being charged by virtue of their foresaid promise;—Alleged, That it was not obligatory; likeas they produced a practise of Mr Peter Kennoway's against the Lord Blantyre, who had in the very like business written to Mr Peter, wherein he promised to see him satisfied, who nevertheless was assoilyied.—The Lords, notwithstanding, found it to be a perfect stipulation, which obliged the promisers to the payment of the sum; whereof otherwise the creditor by their fair promises should have been frustrated.

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1624. *February 12.* The EARL of MARR *against* LORD ELPHINSTON.

THE same thing is said by Spotiswoode to have been found in this case as in that of Yester against Buccleugh, 10th February 1624; Dictionary, 2243.

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