1623. *July* 25. E. ERROL *against* L. BUCKIE.

No 2.

IN an action, betwixt the E. Errol and Buckie, the LORDS found, That nothing could be compriſed, except heritable rights, and writs containing heritable ſecurities; or writs which were real rights, as tacks; or writs concerning real ſecurities, as bonds to ſet tacks; and that no bond of moveable ſums, or other moveables, might be compriſed.

Act. *Nicolſon.* Alt. *Hope.* Clerk, *Gibſon.*

Fol. Dic. v. 1. *p.* 9. *Durie, p.* 77.

1624. *November* 18. KINCAID *against* HALIBURTON.

No 3.
An appriſing carries the reverſion of a preferable appriſing.

IN an action, betwixt Doctor Kincaid and James Haliburton, for redemption of ſome lands compriſed from Mr Robert Monro, by the ſaid James Haliburton, Dr Kincaid deſired the lands to be redeemed at his inſtance from the ſaid James, as having right to the legal reverſion, by reaſon of a compriſing deduced at his inſtance. In this action, one Monro compeared, who had alſo compriſed the ſame lands, but poſterior to James Haliburton and Dr Kincaid. Monro alleged, that Dr Kincaid's compriſing was null, and ſo could not ſupport this action of redemption at his inſtance; as thereby he could not be found to have right to James Haliburton's legal reverſion of his compriſing, in reſpect that the ſaid purſuer had denounced the land to be compriſed *before* James Haliburton; ſo that, at the time of his denunciation, there was not a legal reverſion, nor any right thereof then extant; there being then no other denunciation, nor compriſing, uſed before the purſuer's denunciation, which might occaſion any legal to have been extant. This allegeance was repelled; for the LORDS found, albeit the purſuer was the firſt denouncer of the lands to be appriſed, and that James Haliburton denounced after him, which James Haliburton had compriſed before the purſuer; yet, under the firſt compriſing, albeit ſecond in denunciation, the property of the land was comprehended; and ſo thereby James Haliburton ought to be preferred to Dr Kincaid, who had compriſed after him, albeit he had denounced before him; and that the right of the legal reverſion, which was, or might have been competent to Monro, the common debtor, againſt whom all the compriſings were deduced, fell under Dr Kincaid's compriſing. It was *alleged*, That it could not fall under the ſame; and that nothing could fall under the compriſing, but that which could be comprehended under his denunciation; and, at the denunciation, there was no legal extant; but the LORDS found, That the ſecond compriſing, albeit proceeding upon the firſt denunciation, ought to extend to all right, which, at the time of the ſaid ſecond compriſing, was inherent in the perſon of him, from whom the compriſing was deduced, and, conſequently, to the ſaid legal reverſion; therefore,

they preferred him to the third compriſer, who claimed to be preferred to the Doctor, the ſecond compriſer. The third compriſer *alleged*, as ſaid is, That the legal fell only under his compriſing; as he had denounced when the legal was extant, viz. after Haliburton's compriſing was complete, and perfected; and that Kincaid's compriſing, proceeding upon a denunciation, which could not extend to a legal, which was not then *in rerum natura*, could not carry the reverſion; but this plea was repelled. The contrary of this was found *in terminis*, in an action, betwixt Malloch and Murray againſt Weir, in July 1620. But the LORDS found this laſt deciſion the moſt juſt, and would hereafter ſo decide. No 3.

Act. *Hope & Lawtie.* Alt. *Nicolſon & Belſhes.* Clerk, *Gibſon.*

*** It is a common opinion, where compriſings are deduced for ſums, whereof a part is paid before the compriſing, that the compriſing falls *in totum*, and will not ſubſiſt for the reſt of the ſums, which are truly owing; and this was found in the action betwixt Lamb and Blackburn, and L. Smeiton, anno 1613, (*see* p. 95.): But there are many who doubt of the equity of that opinion, and think it no reaſon, that the compriſing ſhould fall for the ſums which are truly owing, no more than horning and poinding, or arreſtment, if they be executed for more than is owing, will not cauſe the whole execution to fall, but only for ſo much as is not a juſt debt; and a decreet, obtained for more than is due debt, will not make the ſentence to fall *in totum*: And this hath warrant alſo from the civil law, *de plus petitionibus*. But the reaſon of the common opinion is, for the fraud of the compriſer, to appriſe for that which he knows to be wrong, and his fraud is therein puniſhed; but where there is no appearance, or ſuſpicion, of fraud, there the law admits place of excuſe, *nam poteſt exiſtimari inique judicaſſe, qui reum omnino abſolverit, cum conſtaret & probatum ſit, eum partem debere.*

Fol. Dic. v. 1. *p.* 10. *Durie, p.* 148.

1627. *January* 3. HAGIE *againſt* HER DAUGHTERS.

No 4.
A bond made moveable by a charge, found not adjudgeable.

HAGIE, relict of John Williamſon in Cupar, having charged her own children, three daughters, begotten by him, to enter heirs to their father; they having renounced; ſhe ſought adjudication of all his goods; and, among other things, of a bond of 3000 merks, eſteemed moveable by a charge, and ſo not to have been adjudgeable before her huſband's deceaſe:—Many of the LORDS thought, that any moveable thing might be adjudged to a creditor, *quia nomina debitorum poſſunt addici*; but the moſt part ſuſtained the exception.

Spottiſwood, (ADJUDICATION.) *p.* 8.

1627. *January* 30. COWPER *againſt* WILLIAMSON and BOGMILN.

No 5.
An heritable bond, which

IN an action of adjudication, at the inſtance of a woman called Cowper, againſt Williamſon and L. Bogmiln, whereby the purſuer craved a bond of ſome monies