

1633. February 16. HARPER *against* COCKBURN and JOHNSTON.

BEATRIX JOHNSTON having comprised from Cockburn of Borthwick, his lands, upon a denunciation after Whitfunday, and being seized before Martinmas thereafter, and thereby claiming the whole year's duty of the lands, being victual farm, after the terms of Yule and Candlemas were past; and another creditor of this Cockburn's, having, after the denunciation, arrested the said farms; THE LORDS found, That the arrester ought to have the half year's farm, viz. The Whitfunday's duty, and that the compriser ought to be answered only of the other half of that year's duty; albeit the denunciation was before the arrestment, and albeit the compriser alleged, that his prior denunciation, and subsequent perfected comprising, and sasine also expedite before the Martinmas, affected all that year's duty, and gave her only right to the land; and that year's fruits thereof, *quia fructus soli, præsertim fructus pendentes, sunt pars fundi*: And seeing the ground is her's, so must the farms; otherways the arrester must have the like right to the Martinmas duty as to the Whitfunday, he having arrested before the term, and before his comprising was perfected; specially also, the lands being set for victual to be paid at a term, and not for silver duty, payable at Whitfunday and Martinmas equally; which was repelled.

A. G. Craig.

Clerk, Gilson.

*Fol. Dic. v. 1. p. 10. Durie, p. 674.*

No 10.  
An apprising does not carry the duties, falling due between the denunciation and the decree.

1638. November 24. CAMPBELL *against* BAXTER.

ONE Campbell, being made assignee by the creditors of umquhile Thomas Baxter, smith in Edinburgh, to the debts owing to them by the said umquhile Thomas, pursues John Baxter, his apparent heir, as lawfully charged to enter heir; who, renouncing to be heir, is affoizied; and thereupon, adjudication being sought against the debtors of the said umquhile Thomas Baxter, and sentence of adjudication being obtained against the debtors compearing; which being suspended, the LORDS found, That the particulars adjudged, could not come under such a process, and sentence of adjudication; seeing the same were moveables, which might be sought by arrestment; whereas, adjudication is for immoveables; this was found, albeit there was a sentence obtained, the party compearing, who might have opposed this; but the LORDS found the nature of the debts decerned, might permit this at any time to be opposed, specially where it was proponed by another party, than by them against whom the sentence was pronounced.

*Fol. Dic. v. 1. p. 10. Durie, p. 862.*

No 11.  
An adjudication of moveables, where the heir had renounced, found incompetent.