

(NATURE and EFFECT.)

1662. June 17 PATRICK HERON *against* MARTIN STEVENSON.

PATRICK HERON having obtained decret of removing *against* Martin Stev-
 fon, he suspends, on this reason, that the decret was not upon litiſcontestation;
 but a time being assigned to the suspender, to find caution for the violent profits,
 and he failing, was decerned without being admitted to any defence; and now
alleges, that he ought not to remove; because he obtained decret of adjudica-
 tion of the lands in question, *against* the common author, and thereupon charged
 the superior long before the charger's decret of adjudication or infestment. The
 charger *answered*, that the reason ought to be repelled; because the decret was
 given *against* the defender, comparing and failing as said is. *2do*, The charger
 stands infest upon his adjudication. The pursuer was never infest, neither did
 he use all diligence to get himself infest, nor having denounced the superior, and
 in case he had suspended, discussing the suspension.

Fol. Dic. v. 1. p. 15. Stair, v. 1. p. 110.

* * * As to the effect of a charge in competition with voluntary rights, See
 COMPETITION.

1621. December 20. SMITH *against* WOOD.

IN an action betwixt Smith, burghs of Edinburgh, and Wood, wherein
 Smith charging the party personally for sums of money addebted to him, the
 other excepting, that Smith had comprised the debtor's land for that same sum,
 whereupon he had taken safine, and thereby alleged that the personal execution
 ought to cease: THE LORDS found, that the creditor might have recourse to his
 personal execution, notwithstanding of the comprising and safine, seeing the com-
 priser offered to renounce the comprising, and make resignation of the lands com-
 prised *rebus integris*, he having no intromission further, nor profit of the money,
 which the LORDS found he might lawfully do, notwithstanding of the safine.

Clerk, Hay.

Fol. Dic. v. 1. p. 15. Durie, p. 7.

1627. June 23. SINCLAIR *against* BRUCE.

IN a suspension, *against* William Bruce of Symbester, raised by one Sinclair, in
 Orkney, who was charged, by letters of horning, to pay, to the said William, cer-
 tain sums, contained in a decret of spuilzie, obtained, by him, *against* the suspen-
 der: The *reason* was, That the charger had used comprising of the suspender's

No 11.

Effect of an
 adjudication,
 with a charge
against the su-
 perior.

No 12.

Whether ap-
 prising pre-
 cludes per-
 sonal execu-
 tion?

No 13.

An appriſer
 allowed to
 retain his se-
 curity, and
 yet do perso-
 nal execution,