

(NATURE and EFFECT.)

No 7.

The debtor, dying before the appriser be infest; The apparent heir may be retoured, nor can the appriser stop the inquest.

1555. February 15. COMPTROLLER against LORD SEMPLE.

LANDS being comprised by any person, if he from whom they are comprised happen to be forfeited, before the compriser take saine upon his comprising, the land will fall under forfeiture, notwithstanding of the comprising. So, if he from whom the lands are comprised, happen to die before the compriser be seased in them, the defunct's heir may be served and retoured heir to him of the same lands: And howbeit the compriser would cast in his comprising before the inquest, yet it would not stop the service of the brieve and retour, without he produce a saine upon his comprising.

Fol. Dic. v. 1. p. 14. Spottiswood, (COMPRISING.) p. 44.

No 8.

The Lords refused to allow an apprising, after the death of the party against whom it was led.

1625. July 30.

GUTHRIE, Supplicant.

A SUPPLICATION was given in to the Lords by Richard Guthrie, servitor to Mr. John Sharp, who had deduced a comprising against Sommerville of Humby, which comprising he desired to be allowed by the Lords:—This supplication was not granted; for the Lords found, That after the death of the party, against whom the comprising was deduced, such comprisings ought not to be allowed, nor given in, nor received by the clerk; and Sommerville of Humby was deceased, before this comprising was craved to be allowed. In these cases, it is to be considered, what should be done by the compriser, to make his comprising effectual, and to be allowed; for it is not reasonable, that the intervening, or subsequent death of his debtor, should frustrate his right or diligence, but he has competent action thereupon, against the superior, to enter him; albeit not by such summary charges upon deliverance.

Fol. Dic. v. 1. p. 15. Durie, p. 185.

No 9.

The contrary found.

1665. June 8.

THE LORDS, upon supplication, ordained an apprising to be allowed; albeit not only the debtor, against whom it was deduced, was dead, but the threescore days were long since expired; and ordained the allowance to be regitrate, in respect that the late act of Parliament, declares, that such apprisings as are not regitrate within threescore days, shall not be preferred to posterior apprisings first regitrate; so that the Lords thought, that where the allowance was regitrate, albeit after the threescore days, it would be preferred to any other apprising regitrate thereafter.

Fol. Dic. v. 1. p. 15. Stair, v. 1. p. 279.