

14th November 1677, *Edgar*; 30th July 1678, *Hamilton*; and Dury, 10th July 1624, *Kinloch*; 28th March 1629, *Gall*.
Vol. I. Page 29.

ANENT COMPRISING.

It was queried, where a man comprises lands of a value worth less than the sum he deduces the comprising for, if he can charge his debtor for the surplus of the sums above the value of the lands comprised. Some think he cannot, because the style of comprising runs, that the lands appraised are adjudged and decerned to him in payment and satisfaction of the sums appraised for, and doth not say, in satisfaction *pro tanto*; and so like a judicial vendition, the appraiser seems to acquiesce, and accept of the appraised lands for payment. But this seems *durum et iniquum*; however, it is not yet decided, and it were surest, in such a case, to make the decerniture words of the comprising to bear only *pro tanto*, and in part of payment. Craig thinks, *p.* 331, he may crave the remanent; and the Roman law decides the same, *l. 23 D. de Reb. Cred*; for an appraising is *pignus pratorium*. And the 6th Act, Parl. 1621, decides he may crave the remanent.
Vol. I. Page 29.

1678. December 12. KIRKALDIES against KIRKALDY of GRANGE.

In the action, Kirkaldies against Kirkaldy of Grange, for maills and duties, upon a comprising, it came to be debated, if a mother, who is tutrix, can emit any promise, and can be forced to depone thereon, to prejudge her pupils. It seems not. Yet see Stair, 25th July 1661, *Helen Hepburn*, where the Lords found curators might transact.
Vol. I. Page 29.

1678. December 14. MENZIES of GLASSIE and CAMPBELL against NAPIER of WRIGHT'S-HOUSES.

In the cause, Menzies of Glassie, and Campbell his assignee, against Napier of Wright's-houses, (Jan. 1678, page 223;) they offered to prove the passive titles against Wright's-houses as representing his uncle, *prout de jure*, and there is a day assigned them to that effect; after which day Wright's-houses circumduces the term against them for not proving. The pursuers, to stop the circumduction, declare they refer the passive titles to his oath. Wright's-houses being ready to depone, they resile, and declare they will prove *alimde*, viz. *scripto*; and crave a diligence for recovery of writs, wherein he not only designs himself heir, (which were not *per se* relevant,) but also obliges himself, if need be, to serve heir.

This the Justice-Clerk refused, as against all form; but, in regard the pursuers offered to make faith that the writ was *noviter veniens ad notitiam*, he ordained them to depone thereupon; and, if they affirmed it, then he allowed them a short term, but no more.
Vol. I. Page 29.