

1623. December 13.

L. LEY *against* STUART.

No 4.

An apprising was sustained, though no search for moveables was made at the dwelling house, which was distant from the lands.

IN an action, L. Ley against Alexander Stuart and Forfyth of Dykes, the LORDS sustained a comprising, which was quarrelled, and alleged to be null; because it bore not, that the officer searched and sought for the moveable goods pertaining to the party, whose lands were comprised, at his dwelling place; and, that the searching upon the ground of the lands comprised, was not enough, except that execution had been also used at the dwelling place of the party, as said is, albeit he dwelt off the ground of the lands comprised:—Which allegiance was repelled; for the LORDS found it not necessary to seek at the dwelling place, which was not upon the ground of the lands comprised, but distant therefrom. This was proponed as an objection against the comprising, and not used in an action of reduction intended upon that ground.

Act. *Hope and Mowat.*Alt. *Nicolson younger.*Clerk, *Scot.*

Nota.—A sentence of comprising will not have all the executions and the acts of the process, *specifice*, insert in the sentence; as they were executed and done punctually in all circumstances; but only will make a compendious relation thereof: As, for example, the same will not make mention, if the party was summoned personally, or at his dwelling place, but only that the officer cited him lawfully; and therefore comprisings, when they are questioned by reductions, the whole process and executions, and warrants thereof, are called to be produced, which will largely purport the manner and form of all the particular proceedings therein.

Fol. Dic. v. 1. p. 5. Durie, p. 92.

1624. January 29.

HOP-PRINGLE *against* KER.

No 5.

A previous search for moveables is unnecessary in comprisings of superiorities.—It is not sufficient to search at the principal place of diverse lands, although united into a barony.

IN an action, Hop-Pringle against Mark Ker and L. Borthwick, the LORDS found, That where superiority of lands are comprised from the superior, there is no necessity to use any execution of searching and seeking; but that these comprisings shall be sustained, although that execution be not used; seeing it is not probable, that the superior could have any goods upon that land, whereof he was naked superior only, and whereof the property pertained to another; and also they found, That in all other comprisings of the property of lands, where diverse lands were comprised, notwithstanding that the diverse lands were valued in one barony or tennandry; yet, that the execution of searching of the moveable goods, should be used upon the ground of every land, denounced to be comprised; and that, where the foresaid union was, it was not sufficient, to search at the principal place, and upon the ground of that land, to the which the

rest of the lands comprised, were united, and where the sasine was appointed to be taken; but that the searching should be at all the lands, otherways the comprising to be null.

A. Hope. Alt. Nicolson and Oliphant. Gibson, Clerk.
Fol. Dic. v. 1. p. 5. Durie, p. 103.

No 5.

1624. July MONCRIEFF *against* TENANTS OF LAWES.

IN an action between Mr Archibald Moncrieff, and the tenants of Lawes, in Ross, the LORDS sustained the comprising, albeit there was no searching and seeking of moveables, at the dwelling house of him against whom the comprising was led, but only upon the ground of the lands comprised; which they found sufficient.

Fol. Dic. v. 1. p. 5. Spottiswood (COMPRISING) p. 42.

No 6.

1624. November 20. FORSYTH *against* L. SMEITON.

IN an action betwixt Marion Forsyth and L. Smeiton, the LORDS found, a comprising sufficient; whereby two lands being comprised upon two denunciations, made at two several times; to wit, a denunciation for the one land, done at one time, after searching for poindable goods, was used first upon the ground of that land; and the other denunciation, made for the other lands, after searching was made upon the ground of that other land denounced: Which searching, at the second land denounced, being made after the denunciation of the first land, the defender *alleged*, rendered the comprising altogether null; seeing he alleged, that the searching ought to have been made upon all the lands comprised, and every one of them, before denunciation could be made, for comprising of any of the lands; and that he alleged that it was not sufficient, that the searching preceded the denunciation of each several land; but there behoved to have been searching at all the lands, before any denunciation could be made at all, of any land: Which allegiance was repelled, and the comprising sustained; for it was found sufficient, that the searching preceded each denunciation.

Durie, p. 150.

No 7.

A comprising contained two parcels of land. Search for moveables was made on the one parcel, before denunciation for it; and on the other, before denunciation for it. This found sufficient; and that it was not necessary to search on both, before denouncing for either.

1627. July 11. WALLACE *against* HARVEY.

IN a suspension betwixt Wallace and Harvey, Harvey having comprised certain lands from Wallace, his debtor, and being therein seised, obtained decret of removing; which being desired to be suspended, and reduced upon this reason by Adam Wallace; because the said Adam had obtained tack of the same lands,

No 8.

A tack is granted before lands are denounced to be comprised. If the tackf-