

C O L L U S I O N .

1616. *February 7.* DR KINLOCH *against* HALIBURTON of Pitcur.

IN an action betwixt Dr Kinloch and James Haliburton of Pitcur, anent the pointing of three oxen, pertaining to one Thomas White, in whose hands the oxen were arrested as pertaining to Thomas's brother; ought to be compelled to make the said oxen forthcoming, notwithstanding the pointing thereof by the Laird of Pitcur; and that, because it was offered to be proven, that the said David had voluntarily exhibited the said oxen, and delivered the same to George Jackson, servitor to the Laird of Pitcur.

The like decided before, betwixt George Ord and Robert Blackadder, defenders, and James Wright pursuer.

Fol. Dic. v. 1. p. 153. Kerse, MS. Fol. 234.

1620. *November 15.* WARDLAW *against* DALZIEL.

COMPRISING impugned by way of exception *quod dolo*. The party was brought into the country to the effect it may be led upon fifteen days warning, and prejudge a third party who had denounced of before upon sixty days.

Fol. Dic. v. 1. p. 153. Kerse, MS. Fol. 66,

1628. *November 28.* BORTHWICK *against* CLERK.

IN an action of removing by a compriser against another compriser, who had both comprised the lands of the common debtor, and the pursuer having first comprised, and being first infett, the defender having denounced before the pursuer, after which denunciation, the common debtor having raised suspension of the charge and denunciation, during the dependance whereof the pursuer expedite and intended his comprising; and this suspension being discussed against the suspender, which was alleged by the defender in this removing, to have been procured by this pursuer, by his travel and expenses, and by his

No 1.

In a competition betwixt a pointer and arrester, the latter was preferred, because the party in whose hands the arrestment was laid, had voluntarily exhibited and delivered the goods to the pointer's servant.

No 2.

No 3.
A party having denounced, in order to comprise, and the debtor suspending, the denouncer was preferred to another, who denounced, and completed his

No 3.
 comprising
 and got him-
 self infett, be-
 fore the sus-
 pension could
 be got dis-
 cussed, the
 said person
 having pro-
 cured the sus-
 pension by
 his own tra-
 vel and ex-
 penses.

finding caution, whereby he was *in dolo* to pass through his own comprising, whereby the defender's denunciation, which was first made, became extinct, so that he was forced, after the discussing of the suspension, to denounce of new, and so he was after the pursuer, *ejus dolo et culpa, quæ non debet sibi prodesse*; this allegiance was sustained in favours of the defender, the second compriser; but that the suspension was purchased by the pursuer *ut supra*, that was found ought to be proven by writ, or by this pursuer's oath.

Fol. Dic. v. I. p. 152. Durie, p. 401.

1631. *January 20.*

The CREDITORS of BROWN Competing.

No 4.
 In a competi-
 tion betwixt
 the creditors
 and executors
 of a defunct,
 the Lords re-
 fused to pre-
 fer one credi-
 tor to ano-
 ther, altho'
 their diligen-
 ces were not
 alike, some of
 them having
 obtained de-
 creets; and
 this because
 the executors
 had not oppo-
 sed them, but
 had defended
 against the
 others who
 otherwise had
 been as dili-
 gent as they;
 for thus it
 would be in
 the executor's
 power to pre-
 fer one credi-
 tor to another.

The Creditors of umquhile William Brown, contending which of them should be answered of their debts *primo loco*, wherein some had done greater diligence than others, and who had obtained sentences, claiming preference to others, who were not so far advanced; THE LORDS found, that in this, and the like actions, where the debtor's goods were not sufficient to pay the whole creditors, they would not give such preference to these, who had prevented others by diligence, as to make them thereby answered of their whole debts, and whereby the rest of the creditors might want all their debts; for, the one being as just debt as the other, it were against justice, that in these cases, which concern so many, that few should have all, and many more want, only because diligence has been done more by one than by another; for some creditors might sooner know the common debtor's decease, or might dwell in that same town with him; and it were hard, that therefore they should be preferred to those who knew not so soon, or who dwelt in a more remote place of the realm. In this process, the poor of the hospital of Biggar, for a debt owing to them, and the relict of of the debtor, for her conjunct-fee, were preferred to others of the rest of the creditors, as more privileged than they. And some creditors craving debts owing to them, having nothing to qualify the debt, but the confession contained in the debtor's compt-books, in some articles thereof, written by his own hand, but not subscribed by him; THE LORDS found these articles were not sufficient to constitute the party debtor, thereby to exhaust the gear, to the prejudice of others, the rest of the creditors, who had legal and formal securities perfected to them upon their debts; except that the saids creditors, claiming the said debt, will prove that the particulars contained in the said compt, were truly and really paid, and delivered to the defunct, who was the common debtor to them, and no otherwise.

Act. ———.

Alt. *Nicolson, Russel, & Others.*

Clerk, *Gibson.*

Fol. Dic. v. I. p. 153. Durie, p. 556.