

(Pars periculo petentis.)

1619. June 30. LORD CORSTORPHIN *against* WARDLAW.]

IN comprisings, the superior cannot be compelled to give infeftment, except the charger and compriser prove, that the party from whom he comprised it was infeft.

Fol. Dic. v. 1. p. 13. Hope, (SUPERIOR.) v. 2. Folio 73. MS.

No 15.
The same
found.

1622. March 23. RAMSAY *against* The EARL of ROTHES.

MR SIMON RAMSAY having comprised the lands of Corston, for the sum of 2500 merks, addetted to him by the L. of Corston, and having charged the Earl of Rothes superior, to infeft him therein, the LORDS found, That the superior could not be compelled to infeft the compriser, except the compriser paid first to the superior a year's duty of the lands; albeit the compriser offered a year's annualrent of the sum, for the which he had comprised: Which the LORDS found not sufficient, seeing he had not comprised an annualrent for his principal sum out of the lands, but that he had comprised the property of the land. In the same process, the LORDS found, that the superior could not be compelled to receive the compriser, except that he show, that the person from whom he comprised, or some of his predecessors to whom he was apparent heir, was infeft of before in these lands, as vassals to the Earl of Rothes; without which were proven, the superior could not be charged. (See SUPERIOR and VASSAL.)

No 16.
The same
found.

A&A. Aiton.

Clerk, Hay.

Durie, p. 23.

1629. February 14. GRANT *against* L. BALVANIE.

ONE having comprised lands as pertaining to his debtor, and having thereupon charged Balvanie as superior of the lands, to enter him therein as vassal, in place of his debtor from whom he had comprised; and the superior suspending, *alleging* that that debtor was never his vassal, and that he could not be compelled to enter the compriser, until he produced and shewed where the debtor was infeft in the same lands as his vassal; and the compriser *answering*, that he could not allege that he was not his vassal, because he had accepted of him a resignation of the same lands made by him in his hands *ad perpetuam remanentiam*; and also that he had received from him divers years before, payment of the feu-duties owing by him, and contained in the infeftments of the said lands, and that his said debtor had also a charter of the same lands, granted to him by another, who

No 17.
The same
found.

(Pais periculo petentis.)

No 17. was vassal admitted and entered by Balvanie, which were great presumptions that he was infeft, and by the which he had acknowledged the said compriser's debtor to be his vassal. This answer was not sustained to enforce the superior to receive the compriser in place of his debtor in these lands, except he shewed where the debtor was seafed therein: For the superior might receive a resignation in his own hands, from one who was never infeft, and when he liked he might enter or not enter him who resigned, as he thought expedient for his security; but he not being infeft, and the comprising deduced against him as having right to the lands, he ought to shew the same to the superior, and also he might receive payment of his feu-duty from any who would pay the same; from whence, it could not be necessarily inferred, that the payer was his vassal.

Clerk, Hay.

Fol. Dic. v. 1. p. 13. Durie, p. 426.

1629. March 12.

COLMSLIE against E. ROXBURGH.

No 18.
The same
found.

A CHARGE against the superior to receive a compriser's assignee, being suspended by the superior, because the compriser had made another assignee to that comprising judicially, as use is frequently to be done; and that assignee had made another assignee, and so the same had passed from hand to hand, and might be transmitted by many assignments, which the superior was not holden to acknowledge; for he *alleged*, That albeit he might be compelled to receive the assignee to whom the comprising was legally assigned; yet, he could not, of law, be compelled to receive that assignee's assignee, no more than upon his vassal's resignation, he could be compelled to receive him in whose favours the same was made; which reason was repelled, seeing he only received but one vassal by virtue of that comprising, no other being received thereupon: It was also here found, that the superior could not be compelled to receive the compriser, except he shewed that the debtor was infeft; albeit the charger offered to prove, that his father, to whom he was apparent heir, was infeft; and also shewed a decret of declarator of this same debtor's liferent of the same lands, gifted by the same superior to a donator; in which gift the superior had granted, that the same lands pertained heritably to the said debtor, and thereby gifted his liferent thereof, which liferent was declared in favours of the donator. Likeas, the said liferent right being again returned by the donator to the superior, the superior was in possession of the lands by virtue of that liferent, and so he could not allege that the debtor was not infeft, notwithstanding whereof, it was found, that the compriser should shew that the debtor was infeft, seeing the declarator of