

1671. July 13. DOUGALL M'PHERSON *against* The RELICT and CHILDREN of
MR THOMAS LUNDIE.

IN a pursuit of maills and duties, of the lands appraised from Sir James Keith, at the said Dougall's instance, compearance was made for the relict and children of the said Mr Thomas ;—who ALLEGED that they ought to be preferred ; because they had right by a comprising led by their father prior to the pursuer's comprising.

It was ALLEGED by the said Dougall, That he ought to be preferred ; because the said appraising led by Lundie was intrinsically null :—*1mo.* Because it was not led upon the day to which the lands were denounced to be appraised ; —*2do.* The appraising was led at the Beech-hill of Couper, a place neither within the shire nor the regality where the lands did lie.

It was REPLIED to the *first*, That the letters of appraising being directed to the sheriffs in that part, with power to hold courts, one or more, he had sufficient warrant, after holding of court the same day to which the lands were denounced, to continue the diet until the next day. And, as to the *second*, it was ANSWERED, That it was done by a dispensation from the Lords ; which was a sufficient warrant to the messenger.

To this last it was DUPLIED, That, by a late decision, Lady Lucy Hamilton against the Laird of Kelburn, an appraising was found null, because it was led at Glasgow ; whereas the lands appraised lay not within that shire, notwithstanding of a dispensation granted by the Lords.

The Lords did sustain Lundie's comprising, notwithstanding of these nullities alleged ; in respect that the messenger not only is a sheriff in that part, but, by the letters, hath power to hold courts ; unless the said Dougall could allege, that, by the continuation of the court until the next day, the common debtor had sustained prejudice : As, likewise, they did find, That, there being a dispensation granted by the Lords, albeit it was a private warrant, *et periculo petentis*, yet that could not make the comprising null ; and that the chief reason of the decision, in Lady Lucy Hamilton's case, was, that the denunciations were not at the head burgh of the regality within which the lands lay ; whereas, here, the denunciations were at the head burgh of the shire of Forfar, within which shire the lands were. But yet the Lords did declare, and ordained it to be inserted in the books of sederunt, and to see intimated, That no comprising should proceed upon dispensations privately impetrated ; but that the reasons thereof should be considered, or reported to the whole Lords : and that it should not be in the power of messengers to continue their courts and diets, but upon just and reasonable causes. Which shows, at least, that the interlocutor as to the appraising, at the place without the sheriffdom, where the lands lay, was hard,—dispensations not being granted in course for comprising at any other head burgh but at Edinburgh, which is *communis patria*.

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1671. July 18. JAMES MURDOCH *against* SIR ANDREW DICK.

SIR Andrew, as tutor and administrator to his son, who was minor, having