

1680. *February 4.* BOYL of Kelburn *against* JAMES STEWART of ASHCOC.

BOYL of Kelburn *against* Mr James Stewart of Ashcog, advocate, complaining upon him in 15 or 16 articles of malversation; as compearing *against* clients from whom he had pensions, and taking bonds *de quota litis*, and assignments to pleas; and taking a bond of man-rent, from one to ride with him, vote with him, &c. contrary to the acts of Parliament. *Vol. I. Page 83.*

1680. *February 4.* HARY OSBORN and MILL *against* _____.

THERE is a comprising led, and assigned; thereafter it expires; then the assignee pursues for maills and duties.

ALLEGED,—The apprising was extinct, because the cedent who led it was debtor in greater sums to the party *against* whom it was led; and compensation is *vice solutionis*; and so within the legal it extinguishes. *2do*, Expired comprising are odious.

ANSWERED,—*1mo*, The grounds of the compensation are not *ejusdem speciei*; for the comprising is an heritable right, and thir bonds are moveable. *2do*, The debtor's executors may claim thir sums, because they fall under executry; and so he must be secured *against* them.

Where a back-bond is granted by an appriser before he is infest, it affects the comprising though it be assigned to a singular successor; because the comprising is as yet a personal right: but if the back-bond shall be granted by the appriser after he is infest, it is no more real *against* the assignee, but only a personal obligation upon the granter. *Vide Durie, 10th March 1629, Schaw.*

Where an appriser within the legal sells a part of the apprised lands, the price whereof might pay him the sums contained in his comprising, but in the disposition he reserves his right to the rest of the apprised lands; the Lords found, the legal expiring without any order used *against* him, he might recur to the rest, because of the said reservation; although it was alleged that the reservation was *præstatio contraria facto*. *Vol. I. Page 83.*

1680. *February 12.* HAMILTON *against* PATRICK CUNNINGHAM.

IN the action Hamilton *against* Mr Patrick Cunningham, agent; where a discharge mentions a small particular, and then adjects a general clause, the general will extend to no sums of greater value than the particular expressed is. But there is a distinction to be adverted to here; for, if the general clause precede the special, and then some particulars be adjected, the foresaid presumption will not take place; but the general will comprehend all things: but where the general follows a special clause, there by interpretation it is stretched no farther than the value of the special. *Vol. I. Page 84.*