

(NATURE and EFFECT.)

1662. June 17 PATRICK HERON *against* MARTIN STEVENSON.

PATRICK HERON having obtained decret of removing *against* Martin Stevifon, he fufpends, on this reafon, that the decret was not upon liti-conteftation; but a time being affigned to the fufpender, to find caution for the violent profits, and he failing, was decerned without being admitted to any defence; and now *alleges*, that he ought not to remove; becaufe he obtained decret of adjudication of the lands in queftion, *against* the common author, and thereupon charged the fuperior long before the charger's decret of adjudication or infeftment. The charger *answered*, that the reafon ought to be repelled; becaufe the decret was given *against* the defender, comparing and failing as faid is. *2do*, The charger ftands infeft upon his adjudication. The purfuer was never infeft, neither did he ufe all diligence to get himfelf infeft, nor having denounced the fuperior, and in cafe he had fufpended, difcuffing the fufpention.

Fol. Dic. v. 1. p. 15. Stair, v. 1. p. 110.

* * * As to the effect of a charge in competition with voluntary rights, See COMPETITION.

1621. December 20. SMITH *against* WOOD.

IN an action betwixt Smith, burgef of Edinburgh, and Wood, wherein Smith charging the party perfonally for fums of money addebted to him, the other excepting, that Smith had comprifed the debtor's land for that fame fum, whereupon he had taken fafine, and thereby alleged that the perfonal execution ought to ceafe: THE LORDS found, that the creditor might have recourfe to his perfonal execution, notwithstanding of the comprifing and fafine, feeing the comprifer offered to renounce the comprifing, and make refignation of the lands comprifed *rebus integris*, he having no intromiffion further, nor profit of the money, which the LORDS found he might lawfully do, notwithstanding of the fafine.

Clerk, Hay.

Fol. Dic. v. 1. p. 15. Durie, p. 7.

1627. June 23. SINCLAIR *against* BRUCE.

IN a fufpention, *against* William Bruce of Symbester, raifed by one Sinclair, in Orkney, who was charged, by letters of horning, to pay, to the faid William, certain fums, contained in a decret of fpuilzie, obtained, by him, *against* the fufpender: The *reafon* was, That the charger had ufed comprifing of the fufpender's

No 11.

Effect of an adjudication, with a charge *against* the fuperior.

No 12.

Whether apprifing precludes perfonal execution?

No 13.

An apprifor allowed to retain his fe- curity, and yet do perfonal execution,