

(REDEMPTION.)

No 1. the comprising, more than that which he paid to the superior; albeit it was alleged by the defender, that if the superior had received him *gratis*, for respect of blood or favour, or such other respect, as might have moved the superior, yet that was no reason that it should be profitable to this pursuer, but that he ought to pay the whole duty; which was repelled by the LORDS, in this case, where the superior takes a moderate composition from the compriser; and where the same doth not proceed upon any personal respect born by the superior to the person compriser, more than to another person; for it were hard to give the compriser of lands, holden of the King, any more than is deburged to the King's Officers, for composition; and the like ought to be with the same reason in comprisings of lands, holden of other superiors; but where there is donation for personal respects to the compriser, it is of another nature; for then also I think the judge may modify, and the compriser ought not to have all.

This last part of this decision was altered by the LORDS; for they found, upon the 17th of July 1625, in this same process, that he who redeems from a compriser, ought to pay the year's duty of the lands, which is due to the superior by the act of Parliament, albeit the superior had given it *gratis* to the compriser; for if he had received him in the lands for service, or because he was of kin or friendship to him, or for any other personal respects, that ought not to be profitable to the redeemer. And sikklike in the expences made by the compriser, in deducing of his comprising, albeit he had gotten all done to him *gratis*, yet it is no reason that the redeemer should be free of paying to the compriser of the ordinary expences, which in such cases are in use to be paid ordinarily by others; and this the LORDS found they would keep hereafter, always when such cases occurred.

Act. Hope, & Lawrie.

Att. Nicolson.

Clerk, Gibson.

Eol. Dic. v. 1. p. 22. Durie, p. 170.

No 2.

1628. November 29.

JAMES LIVINGSTON against L. BASS.

An appriser may repair the houses, and, upon redemption, is entitled to reimbursement; but he ought to ascertain in an action, the state of them at the time of comprising, and get the warrant of a judge.

IN this pursuit, a compriser was found might bestow charges for entertaining of the house, and dwelling-place, being upon the comprised lands, for preserving of them in the same estate, wherein they were the time of his comprising; and also for entertaining the barns and byres, which were thereupon; as well which were upon the principal mains, as upon any other rooms, which were comprised; and albeit, the said rooms were possessed by the tenants, and had not been before laboured by the heritor; and that he might beir, and repair the tenants houses, the necessary expences whereof, deburged by the compriser, the LORDS found, ought to accrefce to the reverfion, and should be refunded to him, the time of the redemption of the lands from him; and, therefore, the LORDS found, that

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this order ought to be taken in these, and the like cases, viz. That a precognition and action ought to be intended by the compriser, for trial taking of the estate, of the ground and houses thereon; principal dwelling-house, byres, barns, &c. wherein they were at the time of the comprising; and what the danger and prejudice is, that may result there-through, if they be not repaired; and if it be necessary and profitable to the heritor, from whom the lands were comprised, to repair the same; that after this trial taken, the Lords may interpone their authority, after they have tried, and found the reparation necessary and useful: After which sentence the compriser may deburse the expences, necessary to the said reparation, in these particulars, which has been so tried to be necessary, for beiting; which being beited and repaired, he may intent his action to hear and see it be tried, that he has bestowed such particular expences, condescended on, upon the said reparation; and that to the said reparation, the said deburseings were necessary, and could not be uttered without the same; and that these expences should accresse to the reversion; which expences, by trial and cognition, taken by the Lords, being found to be truly and necessarily debursed, their sentence is interposed thereto, *ut supra*.

A&t. Hope.

Alt. absens.

Clerk Hay.

Fol. Dic. v. 1. p. 22. Durie, p. 402.

1669. January 19.

GEORGE JOHNSTOUN *against* SIR CHARLES ERSKINE, Lord Lyon.

UMQUHILE Richard Irwing having died infeft in the ten-merk land of Knockhill, his son, had a son, and four daughters; his son being his apparent heir, and being indebted a sum to Mr James Alexander, he charged him to enter heir in special to Richard, his grandfather, and apprised the lands from him, whereunto Sir Charles Erskine has now right; the said son being now dead, and never infeft, Mr George Johnstoun takes right from the four female grandchildren, and serves them heirs to their grandfather; but before they were infeft, there was an infeftment or charge upon the apprising, at the instance of Mr James Alexander; and in a former competition, Sir Charles was preferred upon Mr James Alexander's right, as denuding the male grandchild, apparent heir for the time, in the same manner as if he had been infeft; now, Mr George Johnstoun, upon the females right, raises a declarator, to hear and see it found and declared, that Mr James Alexander's apprising, was satisfied, and extinct by intromission, before the legal was expired. It was alleged that the pursuers, as heirs served and entered to Richard their grandfather, had no interest to redeem the apprising, led against Robert their brother, unless they were also entered heirs to their brother; which Robert, if he were alive, might redeem the apprising against himself; so that the legal reversion being in his person, cannot belong to his grandfather's heirs, but to his

No 2.

No 3.

An apprising led against an apparent heir, lawfully charged to enter, was found redeemable after the apparent heir's death, by the heir of the person last infeft, though he did not represent the apparent heir.