

No. 81. It was alleged by the said Abbot, that the said letters charging him to receive the said Brown immediate tenant to him of the said appraised lands, were evil given, because in respect of the act of Parliament, which bore, that the superior of the lands may take the appraised lands to himself, paying the sums to the creditor, for which they were appraised. It was alleged by the said Brown, that albeit the said act had borne a provision, yet the said letters of four forms should not be suspended, because, if the superior of lands appraised would hold the lands to himself, he should incontinent pay the said Abbot, because there were three charges of the said letters given to the said Abbot, and certain days between every charge: And also, the said Abbot had purchased suspension of the said letters by sinister information to a long day, at which day the said letters of suspension being called, and the matter reasoned before the Lords and left in their hands, and all this time never offered the party to pay him the sums contained in the appraisings for which he would hold the lands to himself, and have the said letters suspended; and thereafter the said matter being in the said Lords' hands for the space of eight or ten days, and then being wakened by the parties, who both compeared before the Lords, and yet never silver offered at this time by the said Abbot to the said creditor; but at the last compearance of the Abbot, he offered a purse, wherein the said sum that the lands were comprised for was, which he offered to the said Brown present at the Bar, to which the said Brown answered, that the said offer was over-late and out of time, and therefore his letters of four forms should have farther execution; which allegiance of the said Brown was admitted by the Lords, and ordained the said letters to have farther execution against the said Abbot, notwithstanding the Abbot's allegiance and offer foresaid, which was thought by the Lords over-late and out of time.

*Fol. Dic. v. 2. p. 411. Maitland MS. p. 175.*

1634. March 5. BLACK against LORD PITMEDDEN.

No. 82.

The superior may redeem the lands before expiry of the legal.

One Black having comprised some lands, whereof Pitmedden was heritor, and having charged him as superior, to receive him upon the comprising, after the letters were found orderly proceeded, notwithstanding of Pitmedden's allegiance that he was heritor, because his heritable right was acquired from the L. Meldrum, who was heritor of the lands, and was debtor to Black in that sum, for which the comprising was deduced, and for which he had affected the land with some diligence, before Pitmedden's right was acquired, so that Pitmedden remained superior to the compriser; but his right of the property was not sufficient against the compriser; and Pitmedden claiming a year's duty for entering of the compriser, the Lords allowed to him retention of a year's rent of the land therefore, during which he possessed the land, by virtue of his heritable right, albeit that heritable right was not found sufficient to exclude the compriser. After which sentence Pitmedden suspending again *de novo*, upon the act 36. Parliament 5. James III.

whereby it is provided, that the superior may take the lands comprised to himself, he satisfying the compriser of his sum, and expenses, which he offered presently to do; which he alleged is the rather receivable from him, who had acquired this heritable right, and was prejudged therein by this compriser; and which comprising being yet unexpired, as any other creditor might comprise the legal, and thereby redeem the same; so with more equity ought he to be admitted to out-quit the comprising, that his own right might convalesce;—and the compriser answering, That it was not time now to make this offer, because he had allowed, by the Lords' ordinance, a year's rent to be retained by the suspender, in his own hands, to which he had no right, and which he had possessed, for satisfaction of the year's duty acclaimed by him as superior, for entering of the compriser; which allowance must be equivalent, as if he had paid and really delivered a liquidated sum for that year's entry, *quo casu* if he had so paid, the suspender's offer could never have been thereafter received; and where it is said, that the suspender, as creditor, may do this, as if the legal were comprised and redeemed from the compriser, (the comprising being yet unexpired;) he answers, that this offer cannot be respected upon that pretence, neither can it be admitted, except the legal were comprised, and redemption used by virtue thereof; which not being done, he cannot so summarily evacuate the effect and force of his comprising, by and against all form and order of law;—the Lords repelled the allegiance, and found the reason of suspension relevant; and found, that the suspender paying the principal sum of the comprising, with the whole annual-rents thereof since that time, and the expenses of the comprising, and the charges thereof, that then the compriser should assign his right to the suspender; and found, that the allowing to the suspender a year's duty of the land, the same being possessed by him, was not alike as if the compriser had actually paid a year's rent to him, and that he had received real payment thereof, and therefore that that allowance was no cause why the reason should not have been found relevant.

Act. Stuart.

Alt. Baird.

Clerk, Hay.

*Fol. Dic. v. 2. p. 411. Durie, p. 709.*

1671. June 10.

SIR FRANCIS SCOT of Thirlstoun *against* LORD DRUMLANRIG.

Sir Francis Scot having obtained decret of adjudication of the lands of Brankinside and others, and having charged the Lord Drumlanrig to receive and infest him, he suspends on this reason, that he was willing to satisfy the sums contained in the adjudication, upon assignation made to him thereto, and so was not obliged to receive the charger. It was answered, That albeit King James the Third's act of Parliament anent apprisings doth provide, that for a year's rent, superiors shall receive apprisers, or otherwise shall take the land to themselves and pay the sums; yet that gives not the superior an option, but bears, failing of paying a year's

No. 82.

No. 83.

After an apprising or adjudication has been purchased by the superior, it is competent to the debtor to redeem it, upon payment of the like