

No 9. fame being only deduced, for the principal and penalty ; and which penalty extended not to so many annuals, as the creditor wanted unpaid to him.

A.G. *Advocatus* and *Mowat*.

Alt. *Nicolson, Burnet and Nairn*.

Clerk, *Hay*.

Durie, p. 460.

1665. December 2.

M'CULLOCH *against* CRAIG.

No 10.
A comprising found null, subscribed only by the clerk, and not by the messenger who was judge.

IN a purfuit, at the instance of Sir Hugh M'Culloch against Mr John Craig, as representing his father, Mr Robert Craig, by progress; which Mr Robert, was debtor by bond to Patrick Wood, and which bond was comprised; the right whereof, came in the person of the said Hugh M'Culloch; whereupon he pursued the said Mr John:—There being nothing produced, but a comprising, subscribed by James Allan, who was clerk to the comprising, and not by the messenger who was judge; the LORDS would find no process thereon.

Fol. Dic. v. 1. p. 5. Newbyth MS. p. 42.

1670. July 21.

LADY LUCY HAMILTON *against* the CREDITORS of MONCASTLE.

No 11.
A warrant, upon a bill to lead a comprising at another head burgh, than that of the shire where the lands lay, was found null, since it was not at Edinburgh, which is *communis patria*.

IN the reduction, at Lady Lucy's instance, against the Creditors of Moncastle, it being *alleged* for Pitroan, one of the trustees, that he himself being a creditor, and inserted in the disposition *ab initio*, the same could not be taken away, but *scripto vel juramento*.—It was *replied*, That he ought to condescend and instruct *in quantum* he was creditor; specially, he being Moncastle's brother-in-law, and so a confident person.—THE LORDS did ordain him to condescend and instruct, otherwise they declared they would reduce his right as simulate.—*2do*, The defenders offered to purge the pursuer's comprising, she assigning them thereto.—To this it was *replied*, That the reversion of the comprising being expired, and the right thereby become irredeemable, she was not obliged to assign; but declared that she was content to discharge the comprising upon payment.—THE LORDS found the offer to discharge the comprising sufficient, and that she was not obliged to assign.—*3tio*, It was *alleged* for Kelburn, who was likewise a compriser, That his right could not be reduced upon these libelled reasons: That the lands were denounced at the head burgh of the regality; and that the comprising was led in Glasgow, which is not the head burgh of the shire; because, albeit regalities were suppressed at that time by the usurpers; yet *quoad* doing of legal diligence at the head burghs of regalities, there was no discharge thereof in their act and proclamation. And as to the *second*, the comprising was led at Glasgow, upon a special warrant from the English judges.

It was *replied* to the *first*, That by act and proclamation of the usurpers, all jurisdictions of Lords of regalities were discharged and suppressed; and these