No 3.

wered of the faid annualrent, referved to the common debtor, in the forefaid infeftment of fee; whereto the comprifer, who was infeft, claimed to be preferred to the other not infeft, albeit he had comprifed before him, feeing he *alleged*, That the refervation of the annualrent to the difponer, could not be bruiked but by infeftment; for the difponer therein behoved to be repute, as if he never had been denuded of the fee of the land *pro tanto*, but remained, notwithftanding of the fee given to the fon, as if he had not been denuded; but that he retained the infeftment thereof, although it was retrenfhed to a liferent, and could not be bruiked but by virtue of his prior infeftment, with which it was confolidated, as an ufufruct cafual, and not formal, which is conftituted by a naked liferent, diftinct and feparate from the property. And the other party contending on the contrary, that he needed no fafine:—THE LORDS preferred the prior comprifer, albeit not infeft, to the pofterior, albeit infeft, and albeit both the comprifings were of the lands, and of the debtor's right, and not of the liferent of the annual *fpecifice*, which was not fpecially comprifed by any of the parties, but under the general claufe, as faid is; for they found the fame might have been *fpecifice* comprifed, and the right thereof good to the comprifer, without neceffity of a fafine: even as the debtor might have difponed the fame validly, without fafine, to the receiver; for the faid liferent was diftinct from the property, and was not inherent in the property, he being denuded of the property, by giving of the fee, and retaining nothing but a liferent of the annualrent, during his lifetime, which never made the fee thereof to revive to him, conform to his prior right; for then it could not have expired with his death, but he might have difponed it to another, to be effectual to the receiver after his death, which could not be done; therefore the allegeance was difcuffed, as faid is.

Act. *Advocatus*. Alt. *Nicolfon*. Clerk, *Gibfon*.

Fol. Dic. v. 1. *p.* 14. *Durie, p.* 715.

1635. *March* 25. LORD YESTER *against* L. INNERWEIK.

No 4.
An apprifing being a legal affignation, needing no intimation, a difcharge, by the debtor, of a bond comprifed, is of no avail.

IN this caufe, a reafon of fufpenfion was proponed, bearing, That the bond comprifed was difcharged by the creditor, to whom it was made, who granted that the fame was fatisfied to him, and difcharged to the maker of that bond, which difcharge was done after the comprifing; and fo whereby the comprifer *alleged* that difcharge ought not to be refpected againft him, and to his prejudice, who, after his denunciation and comprifing completed thereupon, could be prejudged by no deed done by his debtor thereafter; yet the fufpender, granter of the bond, *alleged*, That the difcharge granted to him by the faid creditor, to whom he was bound, *quocunque tempore* done, ought to produce liberation to him *contra quofcunque*, feeing the comprifing

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was neither deduced against him, nor he ever warned thereto, nor yet was the same intimated to him; so that it was lawful to him to pay his creditor, and satisfy whatever he was bound in to his creditor, albeit the creditor had made another assignee thereto; yet satisfaction being given by the debtor to the cedent, before any legal intimation made by the assignee, the same would have freed him also against the assignee; so ought the like to be in this case, where he knew nothing of the comprising.——THE LORDS repelled this reason, and found, That the discharge of the bond, being given to the compriser's debtor, after the comprising; whereby the bond was assigned to the compriser judicially, the bond could not thereafter be validly discharged by the creditor, in prejudice of the compriser, and the judicial assignation: For the bond contained an obligation, made by the granter thereof, to infeft this debtor to the compriser, in lands therein comprised; so that, if the discharge was granted by real fulfilling of the same, viz. That the maker thereof had given real infeftment to his creditor, as the bond obliged him, which was not done, *eo casu* the infeftment would have been profitable to the compriser, and accresced to him; but that not being done, the discharge given, granting the bond to be satisfied, and no infeftment really given, but being discharged without implement, it was not found such a satisfaction, as thereby the compriser might be prejudged: And therefore it was found, That the compriser might still charge for giving to him the infeftment, oblig-ed by the bond, notwithstanding of the discharge.

Clerk, *Hay*.

Fol. Dic. v. 1. *p.* 14. *Durie, p.* 764.

1727. *January* 31. The DUCHESS of ARGYLE *against* M'NIEL of Losset.

No 5.
In what cases a decreet of adjudication, without charge or infeftment, is an effectual diligence to carry a right of reversion.

IN a contract of wadset, Killellan dispones his lands to M'Niel of Losset, holding feu of the disponer, for yearly payment of 2000 merks of feu-duty; and the clause of reversion obliges the disponee to renounce his right of wadset, upon payment of 5000 merks. The Dutchess of Argyle, and M'Niel of Losset, having both of them led adjudications against Killellan the reverser, the question occured, 'If a simple adjudication, without a charge or infeftment, was effectual 'to carry this right of reversion, so as to exclude all adjudications without year 'and day?'

And it was *contended* for the Duchess of Argyle, who had an adjudication with a charge against the superior, but not within year and day of Losset's, That her adjudication must be considered as the first effectual, with respect to the reverser's right, because the common debtor remaining still in the property of the land, burdened only with a pignus or wadset, he cannot be denuded, but by infeftment; and therefore, a simple adjudication, in this case, will convey no more