

count and reckoning of the byrun maills intromitted with by them, that he may come in *pari passu* with them, conform to the late Act of Parliament, and may be preferred alike, the first compriser having only his charges allowed to him in the first end. It was alleged for Brouns, That, as to the byruns, they are *bona fide possessores*, having uplifted and consumed the same, according to the standing law in force for the time; and there is neither law nor reason to make them countable to a party having a posterior right, for what they had so uplifted before the making of that supervenient law. It was answered, The law makes no distinction, but brings in both together, and prefers only the first compriser as to the expense. The Lords found, That though the pursuer, Graham, should come in *pari passu*, yet not so but that the defenders should *lucrari*, and be preferred as to what they *bona fide* uplifted, according to their right and the law then standing;—for which, nevertheless, the Lords found, The defenders should count, to the end, the expense wared out may be first allowed to them, and the remainder ascribed for payment of the debt *pro tanto*; and, for the superplus debt, the pursuer and defender are to come in *pari passu*.

No. 134, Page 97.

1665. July.

CALDERWOOD *against* PRINGLE.

[See Dictionary, page 3036.]

IN the cause debated the last winter session betwixt Calderwood and Pringle, concerning the contract of marriage altering the old tailyie, according to the then interlocutor, the original charter was produced; which bears a clause, that the vassal should not alienate without the superior's consent. Notwithstanding whereof, the former debate being resumed, the Lords sustained the process against the heirs-male.

No. 155, Page 110.

1665. July. MARGARET STEVINSON and THOMAS NEWTOUN *against* MARGARET KER.

THERE being a process pursued at the instance of Margaret Stevinson and Thomas Newtoun against Margaret Ker, as executrix or intromissatrix with the goods and gear of umquhile William Stevinson, her husband, who was bound as cautioner for Sir Alexander Belshes of Tofts, for payment of £500 contained in a bond;—it was alleged, That she could not be convened *ut supra* for payment; because she is executrix-creditrrix confirmed to her husband upon a bond made by him to her divers years before his decease, which was all the provision she had to live on. It was answered, That the bond being a donation *stante matrimonio*, it could not prejudge lawful creditors. Likeas, it wants witnesses; and, unless it were proven that it was truly subscribed of the date therein mentioned, it must be holden to have been done on deathbed, and it can be of no other force than if it had been done on deathbed. It was replied, That there being no contract of marriage betwixt the parties, and the defender

having brought means with her to her husband, it was lawful to the husband, *quocumque tempore* before his death, to grant a provision to his wife, either before or upon deathbed, for her necessary aliment, and to supply the want of a contract of marriage. The Lords, before answer, ordained the defender to condescend what means her husband got with her, where, and by whom paid, and how she is able to prove the payment thereof.

No. 161, Page 114.

1665. *November.* ELIZABETH RIG *against* THOMAS BEG.

IN the declarator of redemption, in June last, pursued by Thomas Beg against John, his son, thereafter compeared Elizabeth Rig, spouse to the said Thomas, who was infest in the liferent of the said tenements for implement of her contract of marriage, and to whom, for security of her liferent, the said reversion and order of redemption was assigned; and it was alleged for her, That she concurred to the pursuit. Answered, That she could not concur, being clad with a husband, who could not give her *personam* to pursue where he himself is excluded. 2. Her assignation was not registrate in the register of reversions. 3. Her infestment was not *habilis modus*, to transmit the right of reversion in her favours, without an assignation registrate. Replied, That the wife, with or without the husband's concurrence, might defend and make good her own right. 2. A disposition and procuratory of resignation, whereupon infestment followed, needs not to be registrate: her seazine being *debite* registrate, at least in the town of Edinburgh's books; which is sufficient. 3. Such a right denudes the granter of *omne jus*, and consequently of the right of reversion; as has been often found. The Lords, having heard the cause *in præsentia*, sustained the order at the wife's instance, *ad hunc effectum* that she may bruik her liferent after her husband's death, in case she survived him.

No. 165, Page 116.

1666. *January.* MR GEORGE CLAPERTOUN *against* The LAIRD of TORSONCE.

THERE was a comprising deduced at the instance of the Laird of Torsonce, or James Brown of Colstoun, to his behoof, of the lands of Wyllicleugh, against Ramsay, as lawfully charged to enter heir to the deceased Sir George Ramsay of Wyllicleugh, his father, and George his brother, in June 1616. After which, there was a second comprising led, within fourteen days, at the instance [of] Mr Alexander Kinnier: to which Mr George Clappertoun, having right, used an order of redemption of the first comprising against Torsonce, and others having interest, before Whitsunday 1664; to which term the legal reversions of all comprising, whereof the legal was not expired in January 1662, was prorogated by Act of Parliament 1661. And now he craves that the order may be declared, and that the first comprising may be found satisfied, either by disposition made by the first compriser, of some of the lands, the worth whereof doth far exceed the sum due by the first comprising, [or] by his intromission with the