DECISIONS

OF THE

LORDS OF COUNCIL AND SESSION

REPORTED BY

SIR ROBERT SPOTISWOODE OF PENTLAND.

Such of the following Decisions as are of a Date prior to about the year 1620, *must have been taken by Spotiswoode from some of the more early Reporters. The Cases which immediately follow have no Date affixed to them by Spotiswoode.*

CRAIGENS *against* The EARL of GLENCAIRN.

COMPRISED lands may be redeemed upon 48 hours' warning.

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GEORGE PRINGLE *against* MARK KER.

GEORGE Pringle, having comprised certain of my Lord Borthwick's lands, intented a reduction of a prior comprising of Mark Ker's, of the whole lands of Borthwick. The defender alleged that he could have no interest by virtue of that comprising, because the solemnities appointed by the Act of Parliament, 1469, were not all used; in so far as there was no searching nor seeking for moveables upon the whole lands denounced. Answered, That he had searched

at his dwelling place, and the lands thereabout, where it was most likely he should have had goods, and that he was no further obliged but only to seek at the principal messuage of lands united. After two days' contentious dispute, the Lords at last determined that it was necessary to search the grounds of all lands pertaining in property to him from whom they were comprised, and lying *discontiguè*, howbeit they were united in one barony; but, for lands whereof he had only the superiority, that there was no necessity to search. And so, because he had comprised of both these kinds, the comprising was partly sustained, and partly not; and it was thought no absurdity to divide the comprising thus, since the superiority and property of lands are *heterogenea:* so that a comprising being found in substance, for lack of formality, may partly fall, and stand in part.

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The Earl of Cassils *against* The Laird of Lochinvar.

In an action of spuilyie pursued by the Earl of Cassils against the Laird of Lochinvar, of the place and fruits of the abbacy of Glenluce; the Earl having founded his claim upon a tack and assedation of the same,—the Lords ordained him to produce his tack before the defender should answer to his claim. *Et quamvis, in interdicto recuperandæ possessionis, (vel spolii actione,) satis sit probare possessionem, et violentam ejectionem: Item teneant DD. quod narratio proprietatis, facta in libello possessorio, non arctet libellantem ad probandum proprietatem. Tamen, in hoc casu, bene judicatum a Dominis; quia, in casu nostro, dictus Comes rerum ecclesiasticarum et possessionum earundem erat omnino incapax, nisi habuisset titulum aliquem, saltem coloratum, quem titulum prius ostendere debuit, antequam restitutionem possessionis petere posset de jure.* Et hoc plene in Decis.

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One being pursued for spulyie of certain goods and gear alleged to have been in the pursuer's possession, as his own proper goods, when they were taken away;—Excepted, No spulyie: because the same goods were lawfully apprised from C. (they being then in his possession,) at the defender's instance, to whom C. was addebted; for, by our practique, albeit this exception be contrary to the libel, *quoad possessionem, (et de consuetudine non admittitur probatio directa contra libellum;)* yet, because faith is given to the officiar, *et præsumptio est pro eo, exceptio admittitur probationi.*

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In an action of spulyie; it being excepted that the goods were lawfully apprised from C. whose goods they were, for a debt, by virtue of letters; Replied, That, the time of the poinding and apprising, the defender's servants came to