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 APPRISING.
 

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 1610. LORD SALTON *against* LAIRD of Cluny.

## No 1.

In apprisings of importance, the Court appoint advocates to be assessors to the messengers.

COMPRISING being to be deduced upon a matter of great consequence; the LORDS will, at the desire of those who are infeft in the lands denounced; call the procurators of him who is to comprise; and will name advocates unsuspect, to be assessors to the officer who is to be judge in the comprising.

*Fol. Dic. v. 1. p. 4. Haddington, MS. No 195.*

 1622. July 20. CRANSTON *against* L. of EASTNISBIT.

## No 2.

The want of a previous charge of horning found to be a nullity in a comprising.

IN an action, depending betwixt John Cranston and the L. of Eastnisbit, a bond of this tenor and nature being conceived, whereby the party obliged, was bound to pay the sum then borrowed, and to infeft the creditor in an annual rent yearly therefor; and yet, notwithstanding of that heritable clause, the debtor was, by a posterior clause of the obligation, bound to pay the sum, at what time the creditor should please to seek the same, upon a simple charge of six days preceding: The debtor, giver of this bond, his land being comprised, for the principal, and expences therein contained:—THE LORDS found the comprising null; because the debtor was not charged upon six days to pay the principal sum, without which charge had preceded, no comprising could be deduced for the principal sum; for albeit, by the foresaid posterior clause of the bond, the necessity of a requisition was taken away, which is required in an heritable security; yet there was a necessity, by that same clause, of a preceding charge on six days.

*A&t. Nicolson and Craig.*

*Alt. Hope and Stuart*

*Gibson, Clerk.*

*Durie, p. 31.*

 1623. July 30. NICOLSON *against* BAILLIE and WHITLAW.

## No 3.

A search upon the ground of the land for moveables, ought to precede the charge and

IN an action of reduction of a comprising, pursued at the instance of Mr Thomas Nicolson, advocate, against Robert Baillie and Patrick Whitlaw; the LORDS found this a relevant reason of nullity against the comprising, viz. That the composer had continued the payment of the debt and sum, for which the comprising was deduced, unto the term of Martinmas 1619, and that he had denounced the

lands to be comprised, in September preceding; in respect of which denunciation, made before the term of payment, the comprising was null, and behoved to fall;—which reason the LORDS found relevant, notwithstanding that the defender *alleged*, That the denunciation, made preceding the term of payment, could not make the comprising null; seeing the comprising itself was not led till after the term of Martinmas was by-past; no more than an arrestment could be null, which was executed for any sum, whereof the term of payment was not come, at the time of the arrestment:—Which allegiance was repelled by the LORDS; seeing they found no part of the process of comprising could lawfully be deduced, before the term of payment was by-past of that sum, for which the comprising was led; for the denunciation is a part of the execution.

In this same process, this also was found a relevant reason of nullity against the comprising, viz. That by the same, the parties against whom the comprising was led, were summoned by the execution thereof, to hear the lands comprised, before lawful searching and seeking of the party's moveables, upon the grounds of the lands.—This reason was also found relevant; for the LORDS found, That the searching and seeking upon the ground of the lands, intended to be comprised, ought to be made, and should precede, before that the party could be summoned to hear the lands comprised, and before any denunciation thereof was made; neither was it sustained, nor found sufficient to maintain the comprising, that the officer had searched and sought at Granton and Edinburgh, and where it was most probable, that the party's goods would have been, against whom the comprising was led, if they had any; and though the comprising bore, that that searching preceded the charge, and summoning of the party; and also, that he had searched and sought upon the ground of the lands comprised, upon the morning after the party was summoned, which the defender alleged to be sufficient, to sustain the comprising; the said searching being done before the charge, at the places foresaid, and upon the ground of the lands comprised, immediately after the charge; seeing that execution of searching is not a material point; at the least not necessary to precede the charge, if it be any time used before the comprising, and before the act be made complete:—Which allegiance was repelled by the LORDS; for they found, That the searching upon the ground of the lands intended to be comprised, ought to precede the charge, and summoning of the party; neither was it sufficient, albeit it was done upon the morrow after the party was charged, and before the comprising; seeing they found it ought to precede all the acts of the comprising:—And this was found; albeit the Lords considered, that this kind of execution, was but an execution merely consisting in formality, and not otherways material; seeing comprisings will not be reduced or annulled upon any contrary reason, viz. Where a party would libel a reason, that there was goods and gear poindable upon the ground of the lands apprised, at the time when the officer searched; which the LORDS acknowledged would not be, nor is a relevant cause to annul comprisings.

A. St. per se.

Alt. Cunninghame.

Clerk, Gibson.

Fol. Dic. v. 1. p. 5. Durie, p. 78.

No 3.  
denunciation,  
and every o-  
ther step of  
the compris-  
ing.