they preferred him to the third compriſer, who claimed to be preferred to the Doctor, the ſecond compriſer. The third compriſer *alleged*, as ſaid is, That the legal fell only under his compriſing; as he had denounced when the legal was extant, viz. after Haliburton's compriſing was complete, and perfected; and that Kincaid's compriſing, proceeding upon a denunciation, which could not extend to a legal, which was not then *in rerum natura*, could not carry the reverſion; but this plea was repelled. The contrary of this was found *in terminis*, in an action, betwixt Malloch and Murray againſt Weir, in July 1620. But the LORDS found this laſt deciſion the moſt juſt, and would hereafter ſo decide. No 3.

Act. *Hope & Lawtie.* Alt. *Nicolſon & Belſhes.* Clerk, *Gibſon.*

*** It is a common opinion, where compriſings are deduced for ſums, whereof a part is paid before the compriſing, that the compriſing falls *in totum*, and will not ſubſiſt for the reſt of the ſums, which are truly owing; and this was found in the action betwixt Lamb and Blackburn, and L. Smeiton, anno 1613, (*see* p. 95.): But there are many who doubt of the equity of that opinion, and think it no reaſon, that the compriſing ſhould fall for the ſums which are truly owing, no more than horning and poinding, or arreſtment, if they be executed for more than is owing, will not cauſe the whole execution to fall, but only for ſo much as is not a juſt debt; and a decreet, obtained for more than is due debt, will not make the ſentence to fall *in totum*: And this hath warrant alſo from the civil law, *de plus petitionibus*. But the reaſon of the common opinion is, for the fraud of the compriſer, to appriſe for that which he knows to be wrong, and his fraud is therein puniſhed; but where there is no appearance, or ſuſpicion, of fraud, there the law admits place of excuſe, *nam poteſt exiſtimari inique judicaſſe, qui reum omnino abſolverit, cum conſtaret & probatum ſit, eum partem debere.*

Fol. Dic. v. 1. *p.* 10. *Durie, p.* 148.

1627. *January* 3. HAGIE *againſt* HER DAUGHTERS.

No 4.
A bond made moveable by a charge, found not adjudgeable.

HAGIE, relict of John Williamſon in Cupar, having charged her own children, three daughters, begotten by him, to enter heirs to their father; they having renounced; ſhe ſought adjudication of all his goods; and, among other things, of a bond of 3000 merks, eſteemed moveable by a charge, and ſo not to have been adjudgeable before her huſband's deceaſe:—Many of the LORDS thought, that any moveable thing might be adjudged to a creditor, *quia nomina debitorum poſſunt addici*; but the moſt part ſuſtained the exception.

Spottiſwood, (ADJUDICATION.) *p.* 8.

1627. *January* 30. COWPER *againſt* WILLIAMSON and BOGMILN.

No 5.
An heritable bond, which

IN an action of adjudication, at the inſtance of a woman called Cowper, againſt Williamſon and L. Bogmiln, whereby the purſuer craved a bond of ſome monies