

No 19.

WHEN it is alleged, that the compriser meddled with a part, and might have meddled with the hail, the LORDS found it not relevant, in respect of the act of Parliament, which binds not the compriser with intromission, but if he pleases, and the same found relevant, it was offered to be proved, that he meddled with more than would pay his annualrent, and so ought to have meddled with the hail, not being impeded.

Kerse, MS. fol. 84.

. Durie's report of this case is No 1. p. 314., *vide* ADJUDICATION.

1626. December 13. E. BUCCLEUCH *against* YOUNG.

No 20.
Dwelling
place must be
specially
mentioned.

IN an action of redemption at the instance of the Earl of Buccleuch against _____ Young, the LORDS found the instrument of premonition made to the defender to be null, because it bore him to be warned at his dwelling-place, and made no mention of the special dwelling-place whereat he was warned, nor designed the same in the instrument; but only bore, that he was warned at his dwelling-place indefinitely; and this was so found, albeit the date of the instrument bore two special places therein mentioned, designed in the inscription thereof, viz. in this manner, at Trockness, and _____, such a day and year; and the instrument purported, that he was warned indefinitely at his dwelling-place, not declaring which of the foresaid two places dated in the instrument, nor yet bearing, at his dwelling-place foresaid, nor there.

Act. Scot.

Alt. _____

Clerk, Scot.

Fol. Dic. v. 2, p. 322. Durie, p. 244.

1628. February 7. MAXWELL *against* L. INNERWEEK.

No 21.
Place of pay-
ment must be
pointed out.

IN an action betwixt James Maxwell and L. Innerweek, for declaring of a reversion of lands to be expired, upon a clause irritant, conform to the contract betwixt the parties, seeing conform thereto the defender being required to provide and pay the moneys, as was appointed in the contract, he had not done the same, the LORDS assoilzied from this declarator, in respect the requisition made to pay the moneys was made by a procurator constituted by the pursuer, who required payment to be made to James Maxwell, at a term at which he was not within the country, and the defender was not obliged to pay the same out of the country; and albeit the procurator had power to receive the money, yet seeing he required not the payment to be made to himself, as having power, but to the constituent's self, who was absent as said is; and also in respect that the procurator designed no place, where he desired the defender to

REDEMPTION.

13449

make payment, so that it was uncertain to him where to pay the moneys, there being no place in the contract designed for payment; and that the instrument of requisition bore not, that the procurator shewed and delivered his procuratory to the notary, to the effect the notary might read the same to the party; for albeit that the instrument bore, that the notary read the same procuratory to the party, these words were eiked upon the margin of the instrument since the same was produced by the party, without any clause making mention of the reading of the procuratory, and whereby he alleged, that it could be sustained; and although the same might be received, as it is now mended, he alleged it was not sufficient, not purporting that the procuratory was delivered to him as notary, to be read by him, as ought to have been done; for the reading thereof by the notary himself, without the procurator's own direction, was not an act of his office, but was only proper to the procurator to have desired it, and upon his desire the notary ought to have done it, and to give instruments thereon; and it is not his office to be notary to his own deed; but in so far as he has the preceding warrant of the requirer; as in sasines, the notary reads the precept at the desire of the party, and the instrument makes mention thereof, and sicklike in other acts; in respect of all which conjoined, the requisition was not sustained.

No 21.

Act. *Hope vs Nicolson.*

Alt. *Aison et Stuart.*

Clerk, *Scot.*

Fol. Dic. v. 2. p. 322. Durie, p. 341.

1628. February 8. STEWART against BAILLIES.

A WADSET being redeemed, and the party from whom the lands are redeemed refusing to resign, but only to renounce, is ordained to resign according to the orders of reversion, bearing to resign, renounce, quit, claim, and evergive.

No 22.

Auchinleck, MS. p. 181.

1628. March 15. LORD CATHCART against LAIRD of CARSS.

THE Lord Cathcart wadset some lands, which came thereafter into the hands of Carss Crawford. The said Lord uses order of redemption against the Laird of Carss, and pursues declarator of redemption. It is alleged by the defender, All parties having interest are not called, viz. the Laird of Carss's author. THE LORDS found it necessary that one be summoned to represent him who gave the

No 23.