tor's oath, (who did subscribe,) or *scripto*, that they had still in their own hands as much of the pupil's means as would satisfy; and that the said Henry Douglass was never paid by them, nor since by their pupil, during minority, with their consent.

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1671. *February* 7. MR PATRICK HOME *against* MR JOHN PRESTOUN.

IN a removing, pursued at the instance of Mr Patrick Home, as being infeft in the lands of Broomestonbank, upon a disposition made to him by William Brown, heritor thereof;—compearance was made for Mr John Prestoun, who had adjudged the right of the said lands from the heirs of William Downie, who had acquired a right of wadset from the said William Brown, granted *in anno* 1637, for the principal sum of 3500 merks, bearing a backtack for payment of the annualrent; whereupon the wadsetter did enter to the possession of the lands, and continued until the year 1655; which wadset was granted to one Thomas Brown, author to the said William; who, likewise, in the year 1642, by two several bonds,—one for the sum of 800 merks, another for £220,—had got an eik to the reversion of the former wadset from the said William Brown; which bonds and eik were likewise settled in the person of the said William Downie, but whereupon no diligence had been done: And, besides, the said Mr John, by adjudication, had right to a comprising, against the said William Brown, for the sum of 500 merks, at the instance of Magdalen Wardlaw.

Whereupon it was ALLEGED, That the tenants could not be removed at the pursuer's instance; because, long before his right, William Downie, from whom the said Mr John had adjudged, had not only the right of wadset and eik to the reversion foresaid, but likewise a right of comprising of the reversion and backtack, which was expired.

It was REPLIED for the pursuer, That as to the comprising, it was satisfied by intromission within the legal, so was extinct: And for the wadset and eiks to the reversion, they could not defend; because the wadset was affected with a backtack, bearing a clause irritant, which was never declared: and for the eik, it was only a personal right, and none of them could defend in the removing.

It was DUPLIED, That any possession William Downie or his authors had, could not be ascribed to the comprising, but only to the wadset, and eik to the reversion; which were long prior, and by virtue whereof they did enter to the possession; so that, unless they were satisfied by intromission, the possession could not be ascribed to the comprising, but only to the wadset and the eik to the reversion.

It was TRIPLIED for the pursuer, That the comprising being the more sovereign right, after the deducing thereof, the possession could only be ascribed thereto; and not to the wadset, which was affected with a backtack: neither to the eiks of the reversion, which were only personal rights against the granters of the wadset, but were no valid titles to give the wadsetter the natural possession, or to uplift the maills and duties from the tenants.

The Lords did sustain the defence, so far as it did extend to satisfaction of all

these rights, both of wadset, eik to the reversion, and comprising by intromission or payment; for which they ordained count and reckoning: but refused to ascribe the possession to the wadset, and eik to the reversion, only until they were satisfied; so that the reversion of the comprising might expire, and thereby the whole right of the lands taken away for an inconsiderable sum; which was done upon the pursuer's consent and declaration that he was willing that all these rights should be satisfied, providing that the legal of the comprising should be declared to be still current. But if it had been decided *in jure* and strictness of law, it is thought, that, after the deducing of the comprising, and that William Downie had acquired right thereto, his possession could only have been ascribed to the comprising, and not to the wadset or eiks to the reversion, which were no valid titles of possession; and so the removing should have been sustained.

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1671. *February* 9. LORD RENTOUN, JUSTICE-CLERK, *against* The LAIRD of CRAIGIHALL.

IN a double poinding, raised at the Countess of Leven's instance, against the Justice-Clerk and Craigihall;—It was ALLEGED for the Justice-Clerk, That he ought to be preferred; because he had arrested and obtained a decreet to make forthcoming, against the Countess, of all sums addebted by her to the Laird of Lamertoun; whereas Craigihall had only arrested, and led a comprising against the lands of Eastnisbet, which were given in wadset and security to Lamertoun, by the Earl of Leven; but was never infeft, nor had done any diligence upon the comprising.

It was ALLEGED for Craigihall, That he ought to be preferred; because his arrestment was prior, and he was *in cursu* to make forthcoming against the Earl of Leven, before he died; and, upon a bill, was reponed against the Justice-Clerk's decreet to make forthcoming: And for his comprising, albeit he was neither infeft, nor had done diligence, yet, as to all subsequent years' duties, he ought to be preferred, because a naked comprising is a sufficient title to pursue for maills and duties.

The Lords did prefer Craigihall, not only upon his arrestment, but upon his comprising, as to all subsequent years; and found, that a compriser was not obliged in law to do diligence, but that a comprising is a sufficient title against all others who have not a better right.

Thereafter the Justice-Clerk did ALLEGE, That he was donatar to the single and liferent escheat of the Laird of Lamertoun, and had thereupon obtained a general declarator, and intented a special action, against the Countess. But this right was reserved to be debated thereafter.

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1670. *February* 14. GEORGE BANES *against* The BAILIES of CULROSS.

IN a subsidiary action pursued against the Bailies, for suffering one Henry