

(The LEGAL.)

1677. June 20. WILLIAM ORROCK of Balram *against* DAVID MORICE.

No 5.

The principal sum, whole annualrents, and necessary deburments being paid by intromission within the legal; it was found this sloop the expiring of it, although the penalties, and sheriff-fees, contained in the comprising, were not satisfied.

THERE being mutual declarators, one at William Orrock's instance against David Morice, to hear and see it found that a comprising to which David Morice had right, was lawfully redeemed by his intromission; and another, at the said David's instance, to hear and see it found and declared, that he had now an irredeemable right, not being satisfied within the years of the legal, which was expired, there being a count and reckoning.—It was *alleged* for Orrock, That he being instantly ready to make out full payment of the principal sum, whole bygone annualrents, and all the expences bestowed upon leading the comprising, and obtaining infeftment, and all other deburments in pursuing upon his right, that it could not be declared an irredeemable right for not payment of the penalties and sheriff-fees, but it ought to be declared that the reversion is not yet expired.—It was *replied*, That the whole years of the legal being now run out, unless payment were made of the whole sums contained in the bonds of principal and annualrents, penalties and sheriff-fees, with the annualrents thereof, which are all made up into one principal sum, as the true ground of the apprising, and not satisfied within the legal, by our law and constant practice, the comprising becomes an irredeemable right.—THE LORDS, by their interlocutor, did find that they had power to declare the reversion not to be expired, payment being made of the principal sum in the bond, whole annualrents, and necessary deburments, to be modified upon this ground, that the expiring of legal reversions being odious, and to take away a considerable estate for less than its worth, *ex bono et equo*, they have power to hinder the same; but many were of a contrary opinion, whereof I was one, that a comprising being led for not payment of a just debt, and by our constant custom and practice, the sheriff-fees and penalties being all deduced as the grounds thereof, the failzie could never be purged, but by payment, or using an order within the legal; and, if it were otherwise, it would open a door to infinite pleas to take away expired comprising, which have always been looked upon as absolute and irredeemable rights after the expiring of the legals, for which our law allows no remedy, by restriction of the sums contained in the apprising.

*Fol. Dic. v. 1. p. 21. Gasford, MS. No 977.*

1675. June 18. LAIRD OF LEYS *against* FORBES.

No 6.

If the appriser continue to possess after expiry of the legal; the debt is

THE Lord Forbes having granted two several Wadsets to Alexander Burnet elder and younger; after the death of Alexander Burnet elder, Leys apprises the right of both wadsets, and some other lands from Alexander Burnet younger, and was thereupon infeft. The laird of Pluscardin having acquired the right of