

REPLIED.—That was personal, and not comprisable by a creditor, and could not accresce to them.

The *third* nullity was, that the comprising was led for more than was due, he being decerned for the penalty of the bond ; whereas the decret of suspension finds the letters orderly proceeded only for the principal sum and annualrent, without the penalty. ANSWERED.—It does not assoilyie from the penalty, nor suspend the letters *quoad* that ; and so it was still due.

The pursuers first insisted to have the comprising annulled on thir grounds complexly ; but afterwards declared they only used them to restrict the comprising and cut off the legal.

Some of the Lords thought lesser nullities than thir had opened comprising. But the plurality, considering that this was no more a competition between two creditors, but that the lands had been bought on this right, and transmitted through four or five several hands, and each had made improvements, looking on themselves as proprietors irredeemable ; therefore they repelled the hail nullities, and did not find them so much as sufficient to restrict the comprising ; seeing the note of the registration seemed only to be an error of the writer, and that the faculty was apprisable, and that the decret of suspension did not liberate them from the penalty, though it spoke nothing of it.

*Vol. I. Page 573.*

1693. *November 30.* SIR JOHN CLERK of PENNYCUICK, Petitioner.

SIR John Clerk of Pennycuick gave in a petition, representing he was the most considerable creditor on the Wrights-houses, and that the tenant was removing, and he could not get the same rent ; therefore craved he might be allowed to set it at the best avail, for as much as he could get for it, and to uphold and repair the houses that were falling in decay.

The Lords refused the desire of the bill, and left him to do as he would be answerable ; for they were not to be curators for all the broken estates in the country, and to be factors to set the lands : their design being to get the Lords' warrant for their actings.

*Vol. I. Page 573.*

1693. *November 30.* WILLIAM CRIGHTON of CRAWFORDSTON *against* GIBSON of AUCHINCHYNE.

WILLIAM Crighton of Crawfordston, being infest in a common pasturage forth of the adjacent lands of Gibson of Auchinchyne ; in a declarator, contended, that, by virtue thereof, he had not only summer-grass for his beasts, but had been in the constant and immemorial possession of tilling so much of the servient lands, and sowing it ; as also, of mowing the meadows thereof, that thereby he might be furnished with straw and hay for the winter-feeding of his cattle. And it being ALLEGED that these were acts of property, and that a servitude could never carry a right to do such deeds, and was not so much as a title for the great prescription ; and so he could not be allowed a term to prove