

(RANKING of ADJUDGERS and APPRISERS.)

No 28. verified, That, in anno _____, long before the comprising which was deduced in anno 1609 allenary, the said John Aflowen was infeft in the property, and, by virtue of his infeftment, was in poffeffion.

Fol. Dic. v. I. p. 16. Hope, (POINDING & APPRISING.) folio 208.

No 29.

1629. December 9. MONCRIEF *against* L. of BALNAGOWAN.

A COMPRISING for the King's blench duty, found preferable to all infeftments anterior, by difpofition or comprising.*

Fol. Dic. v. I. p. 16.

No 30.

An adjudication, for by-gone feu-duties, was preferred to prior comprisings for personal debts.

1675. July 7. MARGARET SCRIMZEOR *against* the Earl of NORTHESK.

IN a reduction, at the instance of Margaret, as heir to her father, who stood publicly infeft in the lands of Auchmouthie, against the Earl of Northesk, of his right and difpofition, made to him by Patrick Guthrie, who was common debtor, whereupon no infeftment followed until the year 1655; which was four years after the public infeftment upon the pursuer's father's comprising, and so was *a non habente potestatem*, the disponent being denuded: It was *answered*, for Northesk, That the reason was noways relevant; because, albeit his father's infeftment was posterior, yet his difpofition was prior to the comprising, and was granted for the feu-duties of the lands, which was a prior cause, and did affect the same before the pursuer's comprising; feu-duties being *debita fundi*, and a real right which affects the ground against all singular fuccessors. It was *replied*, That the said difpofition did only bear for an onerous cause and relief of cautionry, and not flowing from the superior, either by difpofition or assignation, could not give the defender right to the same; the superior having granted a discharge of the feu-duties, the same was extinct, and could not affect the lands against a singular fuccessor. It was *duplicated*, That the difpofition was affected with a back bond of the same date, bearing, that Northesk's being cautioner for the feu-duties, was the true cause thereof; neither could the feu-duties be said to be extinct, seeing the heritor was not discharged, who was principally liable. THE LORDS, having considered the first reason and reply, did sustain the reduction of the difpofition, as being voluntary, and flowing from Auchmouthie, after he was denuded by comprising, there being no decret obtained, nor the lands affected for the feu-duties; and the Earl of Panmure, as donator, having only granted a discharge, but no affig-

* Lord Kames mentions the above, from the authority of Hope's MS.; stating, that it is under the subject, *Blench Duty*. The Editor has not yet found any such title in the book. The particulars of the case, if afterwards found, will appear in an Appendix.