

No 7. was sustained, upon this comprising, without saine; being pursued against the debtor, against whom the same was deduced; he being possessor of the lands comprised himself, and no other having right proponing the same, even as the comprising had been made assignee to the duties; the comprising, in effect, being but a judicial assignation.

A. Mowat.

Alt. Nicolson.

Clerk, Scot.

Durie, p. 460.

1630. December 15. OGILVIE against LORD OGILVIE.

No 8.
Found as in
No 6.

A CREDITOR to Mr David Ogilvie of Pitmowies, having comprised a contract, whereby the Lord Ogilvies was obliged to infest Mr David, in an yearly annualrent out of his lands redeemable, pursues the Lord Ogilvie, to pay the bygone duties owing to him.—THE LORDS found, That the pursuer, by virtue of that comprising, had no right to the bygones of the annualrent owing before his comprising, seeing his comprising would not extend to the same, they being moveable, subject to arrestment, and not to comprising.

Fol. Dic. v. 1. p. 10. Durie, p. 548.

1631. July 21. LADY HUTTONHALL against CRANSTON.

No 9.
An apprising
of a tack of
teinds, found
to carry a
back-bond,
which an af-
signee to the
tack had
granted, to
retroceis
when requir-
ed.

THE Lady Huttonhall being constituted assignee by her husband, to a tack of the teinds of these lands and others, fought this tack to be delivered to her by Alexander Cranston of Moriston.—*Alleged*, That she, by her back-bond, given at the making of the assignation, obliged herself to renounce the same, and repon her husband in his own place, whenever he should require her so to do, at any time before his decease; the defender having comprised all right, that her husband had to the said teinds, the said back-bond fell under the same, so that the right to require, now appertained to the defender.—*Replied*, The back-bond was only personal to the husband, and could not belong to a singular successor; and albeit it might; yet in respect he had not required her during her husband's life, he could not do it now.—*Duplied*, A reversion which is *strictissimi juris*, yet is comprisable. As to the requiring, he may do it yet if he please; but he had done the equivalent to a requisition, even in the husband's time, viz. He had served inhibition in his own name.—THE LORDS found the back-bond comprisable. But in respect, the comprising had not required her to repon him in her husband's lifetime; they repelled the exception.

Spottiswood, (COMPRISING.) p. 53.