

debtor's creditors, who had affected the faids bygone mails with arrestment. The allegiance was repelled, and the compriser found to have no right to the faids years duties, which preceded his comprising.

No 6.

Act. Herriot.

Alt. Cunninghame.

Clerk, Scot.

Fol. Dic. v. 1. p. 10. Durie, p. 289.

1629. July 11. Mr ARCHIBALD MONCRIEF against L. BALROUNIE.

A PURSUIT being moved by a compriser, for the mails and duties of the comprised lands; the comprising not being expedite before Martinmas 1628, but being dated the 12th or 13th day of the month, and the pursuit being for the year 1628; whereby the defender *alleged*, That his title being after both the terms, the pursuer had no right to that year's farms thereby: The allegiance was repelled; for the LORDS found, That seeing the denunciation preceded the term of Martinmas, and the comprising was expedite before Yule, which was the term of payment of the farms; and that the defenders convened for payment, were the same persons from whom he had comprised, and were convened for payment, and that no others were convened, who might allege intromission with the farms, or payment thereof *bona fide* to any other, beside the compriser; therefore the action was sustained upon this comprising, for the said crop, against these defenders, from whom he had comprised. Also the said comprising being quarrelled, because the party had not searched and fought, before the denunciation of the land, for the moveable, and poindable goods, at the parties dwelling-house; and that the comprising reported not that the officer had fought at the dwelling-house; but only bearing, that he fought upon the ground of the lands comprised; which he alleged was not enough, as said is, and therefore, that the comprising was null; seeing the moveable goods ought to be discuss'd by poinding, before the ground can be comprised; and which, the party *alleged*, could not be well discuss'd, except the moveables had been fought at the parties dwelling-house, and that the execution had borne the same.—THE LORDS repelled the allegiance, and sustained the comprising; albeit it bore not *per expressum*, that the moveables were fought for at the dwelling-place; for the same bearing, that the officer fought upon the ground of the land comprised, it implied, that he fought all the parts of that land, and consequently at the dwelling-house, if any was upon that land: And it was not found necessary; at the least it was found, that it would not annul the comprising, for not seeking at the parties dwelling-place, which was not upon the ground of the lands comprised; and found, that the execution needed not report the same; for, if any person had land in any distinct corner of the country, which the creditor intended to comprise, and that he had diverse dwelling-houses in other corners of the kingdom, far remoter, and distant from the lands comprised, it were iniquity to the creditor to be compelled to go to all these places, and search for moveables there; and this action for the mails and duties

No 7.

A comprising found to carry mails and duties, prior to its date; the lands being in the natural possession of the debtor.—

Search for moveables at the dwelling-house presumed, where the words of the execution general.

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.