

1676. February 9. SIR PATRICK NISBET *against* HAMILTON.

AFTER the lands of a debtor were denounced to be comprised ; a voluntary right was granted by him, of an annual rent out of the same lands for an onerous cause ; whereupon the annual renter was infeft by a public infeftment, before any infeftment upon the comprising ; and there being upon the foresaid rights a competition betwixt the comprising and the annual renter : It was *alleged*, That after the lands were denounced, the debtor could not give a voluntary right of the same, being litigious, and affected with the denunciation : And on the other part, it was *debated*, that the debtor, not being inhibited, might give a voluntary right for an onerous cause, and the first consummate right ought to be preferred.

THE LORDS, in respect it was pretended there were contrary decisions, thought fit, not to give answer, until these should be considered.

*Fol. Dic. v. 1. p. 182. Dirleton, No 328. p. 157.*

1682. December. JUSTICE *against* AIKENHEAD.

LUDOVICK KEIR having granted a wadset of the lands of Easter Crichton to Dr Scot, for the sum of 12,000 merks, and Dr Scot having disposed the wadset to Hepburn of Seaton, he thereafter disposes the same to John Justice, late Bailie of Edinburgh ; and there being an apprising led at the instance of Janet Aikenhead, relict of Adam Nisbet writer in Edinburgh, against Dr Scot, of the foresaid wadset, and certain tenements of land in Edinburgh belonging to him ; and John Justice having likewise apprised Dr Scot's right, pursues a declarator against the said Janet Aikenhead, for declaring her apprising to be satisfied by her intromissions with the rents of certain tenements of lands in Edinburgh, and that she ought to compt and reckon for that effect.—*Alleged* for the defender, That she could not be comptable for the rents of the tenements of land in Edinburgh, unless Bailie Justice compt to her for the rents of the lands of Easter Crichton, whereof he was in possession.—And it being *answered*, That Bailie Justice was not in possession by virtue of the apprising against Dr Scot, but by virtue of the disposition from him to the wadset, which was prior to the defender's apprising, and the infeftment was prior to the infeftment upon the apprising ;—THE LORDS, upon that ground, having preferred the voluntary right and disposition, it was thereafter *alleged* for Aikenhead, That albeit the disposition was prior to the infeftment upon her apprising, yet seeing there was a charge given to the superior upon her apprising, prior to the infeftment upon the disposition made by Dr Scot, and a charge against the superior, being in law equivalent to an infeftment, she ought to be preferred ; and albeit the pursuer were preferred by virtue of his right of wadset, yet seeing it was an improper

No 65.

Competition between a comprising denounced, and a posterior voluntary right followed by infeftment, before the comprising was infeft. Not decided.

No 66.

In a competition betwixt an apprising and a voluntary disposition, the Lords, in respect that the disposition was prior to the denunciation of the apprising, preferred the voluntary right completed by confirmation of the superior, although posterior to the charge upon the comprising, in regard the charge was only to be considered in the competition of diligences among themselves, but not with voluntary rights.