

No 41.

first compriser to transact and affect his right by the said restriction, seeing the said Alexander was not thereby denuded of any public right by his comprising, it not being *habilis modus* to take away a right of comprising, whereupon the compriser was infeft. It was *answered*, That a comprising of lands being of a far different nature from an heritable and irredeemable disposition whereupon infeftment followed, and by the law and constant practice, may be extinguished by intromission, or a naked discharge of the whole or any part of the principal sum *pro tanto*; and therefore, by a back-bond, declaring the trust which was granted before any infeftment or comprising led, especially in this case, where the back-bond was of that same date of the assignation, and that the comprising was only a right of reversion of a prior comprising, which was transmissible by assignation, and upon which back-bond the granter was charged with horning and inhibition, served before the granting of the restriction, whereupon the allegence is founded:—THE LORDS having considered the case without respect to the inhibition and horning, which could only be the ground of the reduction, found, That a comprising within the legal was such a right as might be extinguished by private deeds, such as discharges or intromissions, with as much of the mails and duties as would amount to the sum contained in the comprising, and thereupon a back-bond granted by the compriser, bearing a trust, before leading of the comprising or any infeftment, was sufficient to denude or qualify his right against a singular successor, as hath been found by the constant practice, when a private discharge was alleged upon; especially considering, that if it were otherways there would be an absolute necessity that every creditor, albeit for never so small a sum, behoved to lead a several comprising, to the ruin of the common debtor, and would open a door to those whose names were entrusted, to defraud all other creditors, against their own back-bonds and declarations, which hath always been looked upon as a perfect security; and it was so decided *in terminis*, the 12th of July 1670, Kennedy against Cunningham, No 39. p. 10205.

Gosford, MS. No 634. p. 367.

1676. July 6.

GORDON against SKENE and CRAWFORD.

No 42.

AN assignee to a decree of apprising, granted a back-bond, obliging him to denude upon payment of a certain sum. This found good against an onerous assignee, the legal being still current, and no infeftment upon the apprising.

Fol. Dic. v. 2. p. 64. Gosford. Stair.

* * * This case is No 1. p. 7167. *voce* INTIMATION.