

1628. *January 30.* HAMILTON *against* BROWN.

MARK HAMILTON having comprised a tenement in Edinburgh, pursued for the mails and duties thereof. N. Brown got a disposition of the same tenement from the heritor the very day of Mark's denunciation of his comprising, and was infeft therein before the comprising. Upon which disposition and infeftment prior to the pursuer's comprising he founded his exception, and had it sustained, the disposition proceeding upon an onerous cause, viz. upon a contract of marriage.

*Fol. Dic. v. 1. p. 182. Spottiswood, (COMPRISING) p. 44.*

No 61.

A disposition, of the same date with the denunciation, but with the first infeftment, was preferred to the apprising.

1630. *July 3.* COCHRAN *against* HAMILTON.

HAMILTON of Tweedie being debtor by bond to Cochran in 1000 merks, for payment of the annualrent whereof, while the principal sum was paid, he causes William Henry, his tenant, oblige himself in the bond, to pay yearly 100 merks, which the bond bore, *to be done by the said tenant, at the direction of his said master*; likeas, in that same bond, his master allows to him that 100 merks, in the first end of the mails addebted to his master yearly. The tenant being charged by the creditor foresaid to pay the 100 merks for annualrent, he suspended upon double pouding against the creditor on the one part, and against the compriser, viz. the Lord Balmerino, who had comprised the lands from the said Hamilton of Tweedie, and was infeft therein, by virtue whereof the duty of the lands was alleged to belong to him; and the other creditor *alleging*, That the tenant was obliged to him, by his personal bond, to pay that yearly profit to him for the annualrent of his money, while their payment thereof, for so the bond bore; so that whatsoever duty should be evicted from him, as tenant of the land, it should not be derogate to his personal obligation, which had no respect to the land.—THE LORDS found, That this tenant, notwithstanding of the said obligation, whereby he was obliged to pay this annualrent to the creditor, was only subject to pay the said duty of 100 merks acclaimed once, to any of the two parties which might be found to have best right to the duties of the lands possessed by him, and therefore ordained the two parties to dispute which of them should be preferred therein; for it was found that he ought not to pay to both.

No 62.

A tenant binds himself, in a bond with his landlord, to pay to his landlord's creditors a sum annually out of his rent. Another creditor claims the whole rent in virtue of an apprising. Found, that the tenant can be obliged to pay only to the one or the other.

Act. *Lawrie.*

Alt. ———.

Clerk, *Gibson.*

*Durie, p. 524.*