

No 39. manner that the law allows. But if the case had been where a compriser having comprised for his own proper debt, and were infeft, and granted only a personal right by assignation, or a bond to denude, whereupon nothing followed, if, thereafter, a singular successor had acquired a real right, or had intimated a second assignation before the first assignee, in that case, posterior rights would be preferred, as being first complete; and the reason is, because, where a person's name is only entrusted, and gives a back-bond, and during the trust, suffers the true creditor to possess until the debt be satisfied, in that case, the law doth extinguish, and makes as if it were transferred in the person of the creditor, who did make use of his name, if the back-bond or declaration of trust was before his infeftment, it being then only a personal right; but if the back-bond or declaration be only granted after infeftment, the question would be more difficult where a third party acquires a valid right; and yet it seems that the decision will be alike in both cases, if it be made truly to appear, that the compriser's name was only borrowed from the beginning, and that he did declare so much under his hand before any right made to a third person, in respect that a right of comprising is singular of its own nature, and different from other real securities, as said is; and that, in our law and practice, it was never otherways found; whereas, if it were otherways, it would open a door to many indirect contrivances, and occasion vast charges and expenses for payment of a yearly duty by every petty compriser to the superior.

Gosford, MS. No 300. p. 129.

1672. November 20.

WORKMAN against CRAWFORD.

No 40.

A back-bond of trust is not effectual against a singular successor, by infeftment in lands, unless he either knew of the back-bond, or paid no money for the purchase.

GEORGE WORKMAN pursues reduction of a disposition and infeftment granted by James Stirling to John Crawford, on this reason, that he having disponed the tenements in question to James Stirling, he gave him a back-bond of the same date, obliging himself to denude, being paid of the sums due to him, and yet Stirling contrary to his trust, had disponed the lands to Crawford; likewise the pursuer had declared the trust against Stirling, and had reduced his right, and therefore Crawford's right from Stirling behoved to fall in consequence. It was answered for Crawford, That long before any declarator against Stirling, he had acquired Stirling's right *bona fide* for onerous causes, and was not called to the declarator against Stirling; and albeit Stirling's back-bond was sufficient against himself, yet being but a personal obligation, not contained in the infeftment, it could have no effect against a singular successor being infeft.

THE LORDS found the defence relevant, unless it were replied that Crawford's right was without an onerous cause, or that he knew of Stirling's back-bond, when he received the right and so was partaker of the fraud.

Fol. Dic. v. 2. p. 65. Stair, v. 2. p. 121.