

1639.

L. PINKELL *against* KENNEDY and INGLIS.

No 67.
Found in
conformity
with Cun-
ningham a-
gainst Laird
of Buchanan,
No 63. p.
8372.

L. PINKELL being made assignee by Alexander M'Culloch of Myrtoun, in and to an heritable security and bond granted by umquhile ——— Kennedy of Ardmillan, whereby he was obliged to infest his daughter, spouse to the said Alexander M'Culloch of Myrtoun, in an annualrent, redeemable by payment of 8000 merks, pursues for registration of the said bond. In the which action John Inglis, burgess of Edinburgh, compears, and produces horning against Myrtoun, and *alleges* the assignation made by him to the pursuer is null, being done in his fraud and prejudice, who is creditor to the cedent, and which cedent is at the horn at his instance, and yet remains at the horn for the same cause; and therefore by the act of Parliament 1592, the assignation is null. THE LORDS repelled the allegiance, because they found, that the act of Parliament did not militate, nor was intended against heritable rights, but that parties may dispone them, notwithstanding they were at the horn; for if the act were generally understood, as the words seems to purport, then none at the horn could dispone their lands, then horning should be as an inhibition, whereas the context of the act strikes only upon assignations of things escheatable.

Act. *Stuart et Johnston.*Alt. *Nicolson et Mowat.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 557. Durie, p. 881.*

DIVISION IV.

Litigious by denunciation upon apprising, and citation upon adjudication.

S E C T. I.

Rights granted in consequence of an antecedent obligation.—Alienation after denunciation.—Adjudication led during the dependence of a ranking and sale.

1612. *June 16.*M'ADAM *against* HENDERSON.

No 68.

HE wha had ane contract registrate, containand ane procuratory of resignation, for infesting him in ane tenement, albeit the lands be denounced to be

comprised after his contract be registrate, yet he taking sasine after the denunciation, and before the apprising, his sasine will be sustained for pointing the ground of the lands, notwithstanding the subsequent comprising, and infeftment following thereupon.

No 68.

Fol. Dic. v. 1. p. 558. Haddington, MS. No 2458.

* * * Kerse's report of this case is No 59. p. 2818. *voce* COMPETITION.

1627. February 20. GARDIN against ———.

IN an action of Adam Gardin, litster, against ———, for the mails and duties of a tenement, whereto he had right, by virtue of a comprising and infeftment following thereupon, the defender clothing himself with a tack of the said land, set to him by that person from whom the lands were comprised, the LORDS preferred the compriser, infeft as said is, to the tacksman, because the tack was set after the comprising deduced, which could not be done in prejudice of him who had comprised the land from the setter of the tack before the setting thereof; neither was this duply respected, that the comprising was deduced for a small sum, far within the worth of the lands; and so that the defender *alleged*, that the tack and his comprising might both subsist, his tack being set to him until the time the sum addebted to him by the setter was paid, for payment of the duty therein contained; and the land comprised being far more in value and worth than both the parties' sums; so that it were against equity to prejudge the excipient of his sum, which he could never have, if his tack should be made unprofitable to him; which was repelled, seeing if the comprising was for a little sum, another creditor might easily redeem the land.

No 69.

A compriser preferred to the mails and duties of the lands comprised, notwithstanding of a tack let by the common debtor, after the comprising, to another creditor, for his security and payment.

Act. Kay.

Alt. ———.

Clerk, Gibson.

Fol. Dic. v. 1. p. 557. Durie, p. 278.

1629. February 7. A. against B.

AFTER the denunciation of the lands, to be comprised at the instance of a creditor, he who is debtor may do no voluntary deed, by disposition or setting of the lands to any other person, although he be creditor, in prejudice of him who used the first diligence, by denunciation, whereupon apprising followed.

No 70.

This decision was thought very hard, except it had been alleged that the debtor was bankrupt.

Fol. Dic. v. 1. p. 557. Auchinleck, MS. p. 36.