

1629. February 17. PRINGLE *against* M'DOUGAL.

SIR JAMES PRINGLE of Gallowshiels was obliged to infeft his son and his wife in conjunct-fee in certain lands, and that by two infeftments, the one to be holden of himself, and the other of his immediate superior. After his son's decease, she and her second husband, Sir William M'Dougal of Mackcairston, charged Gallowshiels 'to fulfil the contract, and duly and sufficiently,' (these were the words of the contract) 'to infeft her to be holden of the superior.' The LORDS found that Gallowshiels should procure the superior's confirmation upon his own charges, albeit he was not expressly obliged thereto by the contract.

*Fol. Dic. v. I. p. 440. Spottiswood, (CONJUNCT-FEE & LIFERENT.) p. 58.*

No 6.

Found in conformity with Colston against Hope Pringle, No 1. p. 6539.

1630. December 23. OGILVIE *against* LO. OGILVIE.

A CREDITOR to Mr David Ogilvie having comprised an heritable contract, whereby the Lo. Ogilvie was obliged to pay the said Mr David a sum of money, and to infeft him in an yearly annualrent therefor; and having pursued the Lo. Ogilvie for payment of the bygones owing before that comprising, and yearly thereafter, the LORDS sustained this action against the Lord Ogilvie for personal payment of the annualrent, although, by the contract, he was not obliged to pay the same personally, but only to give infeftment of that annualrent out of his land. The defender *alleged*, That he could not be convened thereupon for payment personally, but only to grant infeftment; which being first obtained, he had thereupon action to poind the ground, or personally to pay; but the LORDS found, that clause obligatory, to give infeftment of an annualrent, was alike as if he had obliged himself to pay the same yearly; *item*, the LORDS found, that a comprising gave not the compriser right to the bygone annualrents owing before the comprising, but only to the annualrents after the date thereof, and to the principal sum, seeing the bygones fall under arrestment or escheat, and are moveable, and so not comprisable; but because there were no other creditors, nor other party, who compeared to claim right to these bygones, and also that the donatar to Mr David Ogilvie's escheat, which was also declared, compeared in this process, and concurred with the compriser for the said bygones, and that the defender, who was debtor, had no right to retain them; therefore the LORDS sustained the pursuit, and ordained the pursuer to find caution to liberate him thereof at all hands, who might have interest thereto, and to refund the same to him if ever he should be distressed by any other therefor.

This contract being *alleged* to be prescribed as not being pursued on, or documents taken thereupon, within 40 years after the date thereof, the LORDS having considered the date, which was *anno* 1590, and blank both in the day and

No 7.

Found in conformity with Hamilton against Sinclair, No 4. p. 6540.