

might, and done therein, as *bonus pater-familias fecisset in re sua*, or else he should have made some intimation to the debtor, and required him to provide for the room, and given way to him to make use of it, for his best profit, if the compriser had not been willing to make use of it himself;—but doing no diligence to make profit of the land, in these years when it was waste; the LORDS found, that notwithstanding of the act of parliament, which met not this case, the compriser remained comptable.

Act. Mowat & Sandilands.

Alt. Hamilton.

Clerk, Gibson.

Fol. Dic. v. 1. p. 227. Durie, p. 874.

1662. February 4. LAIRD OF ELPHINGSTONE *against* SIR MUNGO MURRAY.

No 42.

The seller was obliged to relieve the purchaser of the composition for his entry to the lands. It was found that the purchaser could have no claim, if the composition was remitted to him by the superior, although he got it for other good services.

THE laird of Elphingstone having charged Sir Mungo Murray, for the price of some lands bought from him, he suspends, and *alleges*, that by the disposition the charger is obliged to relieve him, of all inhibitions; and now produces several inhibitions. The charger *answered, non relevat*, unless there were a distress, seeing the disposition bears not to purge but only to relieve, or to warrant against inhibitions.

THE LORDS considering that the charger *vergebat ad inopiam*, found the reasons relevant, till caution were found to warrant the suspender from these inhibitions. They found also, that where the charger was obliged to pay to the suspender, the composition for his entry to the lands; that the suspender should have no composition if he got it *gratis*; albeit he alleged he got it for other good services.

Fol. Dic. v. 1. p. 227. Stair, v. 1. p. 91.

1664. July 8.

NISBET *against* LESLY.

No 43.

A cautioner transacted a debt for a lesser sum, and obtained assignation.

The Lords found his co-cautioner was bound to relieve him of the half of the whole debt.

JOHN NISBET as assignee constitute by Major Drummond, charges Lauchlan Lesly to pay four dollars for each soldier of sixty, conform to a contract betwixt Major Drummond and Lodovic Lesly, for whom Lauchlan was cautioner. Lauchlan suspends on this reason, that the charge is to the behoof of Francis Arneil, who was conjunct cautioner, and bound for mutual relief, and therefore he can ask no more than his share of what he truly paid in composition. The charger *answered*, that he nor Francis Arneil, were not charging on the clause of relief, but on the principal contract, as assignee; and though he had gotten assignation thereto *gratis*, he might crave the same, except his own part,

Which THE LORDS found relevant.

Fol. Dic. v. 1. p. 227. Stair, v. 1. p. 211.