

1630. *December 23.* JOHN OGILVIE *against* LORD OGILVIE.

HE that compriseth the right of an heritable bond hath not right to the bygone annual-rents owing of the same bond, by virtue of his comprising, but to the annual-rents only in time to come. Yet an action was sustained, at the compriser's instance, even for the bygone annual-rents, against the debtor, in respect of the concurrence of the donator of him from whom it was comprised, and that the compriser offered caution to free the debtor at all hands.

*Page 43.*

---

1631. *January 28.* The LAIRD OF DRUMKILBO *against* JOHN STUART.

THE Laird of Lethindie, by contract, disponded, in wadset, to Alexander Graham, certain of his lands, for the sum of 6000 merks; and, because James Scrimgeor of Fardell had a three years' tack of a part of the same wadset lands, Lethindie obliged him to pay 40 bolls of victual, out of some other of his lands, to the said Alexander, during the years of Fardell's tack, till he was removed and Alexander entered in possession of the room. More than three years after this contract in 1617, there passed another betwixt Mr John Stuart, who had comprised the lands of Lethindie, and John Graham, assignee made by Alexander to his right, making mention, "That where, in 1614, theré was made such a contract, betwixt Lethindie and Alexander, whereby Lethindie was bound to pay him 40 bolls, aye and while the 6000 merks were redeemed by him;" (which was a false narrative, for he was only obliged to pay the same as long as Fardell possessed the room;) "therefore, he, the said Mr John, for the love and favour he carried to the said John, bound and obliged himself to pay the said 40 bolls of victual to John, as long as the said 6000 merks was unredeemed," &c. The Laird of Drumkilbo, as having right to this last contract, pursued Mr John for payment to him of the said 40 bolls, all years bygone. Alleged, That last contract being relative to the former, he could be no further obliged but to pay that 40 bolls as long as Fardell's tack lasted, and he was not removed; but so it is, that he offered him to prove, that the pursuer's author entered to the possession of his lands, which Fardell had in tack, immediately after the expiring of his tack, and had continued therein ever since. Replied, He could not defend himself by the first contract; for, although the last made mention of it, yet the defender was otherwise bound in the last, than Lethindie was in the first; and, for his possession, he had apprehended it by virtue of another right which he had acquired necessarily from the donator to Lethindie's liferent-escheat, without which he could not have come to the possession; and, therefore, he would attribute his possession to that right of liferent, and to no other. The Lords found that the defender could be no otherwise bound than Lethindie was to him, in respect of the relation that the last contract had to the first, except the pursuer would affirm that the defender had gotten any good deed at the making of the last contract; for, otherwise, they did think that the defender had been cozened, in being made believe that the first contract was of another tenor than in effect it was.

*Page 67.*