

No 29. reply, that the said sum was eiked to the testament, after the raising of the summons.

*Fol. Dic. v. 2. p. 303. Haddington, MS. No 1896.*

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No 30. 1610. June 26. COLLART *against* LADY ANNANDALE.

SHE who, during the dependence of her divorcement, made warning, and obtained decret of removing against the possessors of her conjunct fee lands charging them therewith. They suspending, her decret will be found null, by way of exception, as founded upon a warning made when she had no power.

*Fol. Dic. v. 2. p. 305. Haddington, MS. No 1921.*

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No 31. 1610. July 26. SMALL *against* TENANTS of BALDERSTON.

IN an action of removing, pursued by John Small against the tenants of the lands of Balderston, which he had comprised, the LORDS sustained the warning, notwithstanding it was made before he was infeft, and that because the comprising was laid before the warning, and he was infeft thereupon, before the feast of Whitsunday, at the which the warning was used.

*Fol. Dic. v 2. p. 306. Kerse, MS. fol. 238.*

\* \* Haddington reports this case :

HE who has comprised, making warning before he be seised, his warning will be sustained if he be seised before Whitsunday, and the sasine will be drawn back to the comprising in favour of the warner.

*Haddington, MS. No 1986.*

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No 32. 1610. July 26. BUTTER *against* HARVIE.

IN an action of removing, pursued by Patrick Butler of Urig against Andrew Harvie and his tenants, the LORDS found no process upon the warning, because the time of the making thereof Patrick Butter was only superior, and the property was only adjudged to him by a declarator of Andrew Harvie's liferent escheat, obtained long thereafter, which the LORDS found should not be drawn back in prejudice of the tenants, notwithstanding it was alleged that the said Andrew Harvie was year and day at the horn long before the warning. See No 27.

*Fol. Dic. v. 2. p. 306. Kerse, MS. fol. 938.*

\* \* Haddington reports this case :

THE LORDS found, that a warning made by a donatar to a liferenter, before he had obtained declarator, was not lawful, and could not convalesce by the subsequent declarator.

No 32.

1610. November 29.—GENERAL declarator being given of a man's escheat and liferent, upon diverse hornings, and he thereafter warning the possessors of the liferent lands to remove; if one who was infest by the rebel, after the first horning, offer him to prove that the party was relieved within year and day after the denunciation, and that thereby he was able to grant him lawful infestment, and that his liferent fell not by that horning, it will be received by way of exception, notwithstanding of the declarator; standing the which these defenders not being called, the same will not prejudice them.

*Haddington, MS. No. 1987. & 2024.*

1611. February 19. FAIRLIE against BLAIR'S HEIRS.

No 33.

A CHARGE to enter heir, executed at the pursuer's instance, before he was himself entered heir, was sustained, by his subsequent service, which was drawn back to the time of the charge.

*Fol. Dic. v. 2. p. 304. Haddington.*

\* \* This case is No 23. p. 3575. *voce* DISCUSSION.

1618. July 2. WHITELAW against ———.

No 34.

IN a reduction, pursued by Dame Mary Whitelaw and Patrick Whitelaw, her assignee, the LORDS found no process upon the assignation, because it was dated 13th April 1617, after the date of the summons, which are raised 12th April, albeit the summons are not signeted while the 13th November, executed many days thereafter.

*Fol. Dic. v. 2. p. 304. Kerse, MS. fol. 246.*

1619. December 16. STRAGHAN and MENZIES against KEITH.

No 35.

RETOUR drawn back to the date of the summons, in favour of a daughter, pursuing for the heirship goods.

*Fol. Dic. v. 2. p. 303. Kerse, MS. fol. 139.*