

1620. July 6.

LYON *against* DUNLOP.

No. 13.

Whether
eviction by
process must
be intimated
to the seller?

Adam Dunlop in Mursheill, suspends the charge of Andrew Lyon in Newbottle, upon a bond for warranting of a naig to be a lawful naig, free of all claggs and claims at the hands of James Watson in Kernydikes, and all others, and of the cost incurred through the challenging of him.

Ratio, The naig was free of all clagg and claim, bought by the complainer from William Stevenson, who coft him frae the relict of George Cochran five years sinee, who coft him frae Robert Miller, who coft him frae Niel Henry six years since; and for clearing of the truth hereof, the naig was libbed be such a man in Cochran's possession five years since, so that he could noways pertain to Watson, alleged challenger; and if there was any sick challenge, the complainer was not called, nor the plea denounced to him, that he might have proponed this defence. Alleged *ord. proc.* the defender came to the pursuer's dwelling of Mursheill, and showed him, he was summoned to compear before the Commissaries of Edinburgh, for delivery to Watson of the naig, and desired him to compear and prove the lawfulness of the naig, and delivered him a copy of the charge, which was a sufficient denunciation of the plea, and refers this to his oath of probation.

Denunciation of a plea may be made without formality of instruments. The registered bond and charge therein bearing him to be obliged to Andrew Lyon to warrant him a naig sold by him to Lyon, to be free of all claggs and claims, at the hands of James Watson and others, and to relieve him of all charges incurred by him through the challenging of the naig, upon this reason, that the naig was the suspender's, coft by him from such a man; so furth upward *per quinque manus*, and was libbed in one of his said authors' possession, and possessed by him and his authors four years before the selling of him to Lyon, and if he had been called to James Watson challenging, he would have proponed the reason by defence. Answered, The charger came to the suspender's house, and showed him he was summoned before the Commissaries of Edinburgh for delivery to James Watson of the naig, and desired him to compear before the Commissaries, and prove the naig was lawfully bought by him, and delivered to the complainer a copy of the charge to compear before the Commissaries, which he refers to his oath: Ordains letters to warrant the suspender to compear to give his oath, with certification, *pro confesso*, and that the allegiance shall be holden as proved.

Clerk, *Durie*.

Nicolson MS. No. 96. and 101. pp. 65. and 67.