

1612. *January 18.* ARCHBISHOP of ST ANDREWS *against* LORD ROXBURGH.

No 56.

A WARNING to remove upon sixty days against a person, being furth of the country, at his dwelling-place, ground of the lands and parish-kirk where the same lies, was found sufficiently done by the warner's own precept, albeit he had neither warrant of the LORDS by their letters, nor made any publication at the market-cross, or shore and pier of Leith.

Fol. Dic. v. 2. p. 337. Haddington, MS. No 2335.

1612. *June 16.* HOME *against* HOME.

No 57.

THE heritor may charge summarily for the manor-place after the liferenter's decease, without any warning.

Fol. Dic. v. 2. p. 335. Haddington.

* * * This case is No 2. p. 9627, *voce* PART and PERTINENT.

1613. *July 2.* FORBES *against* FORBES.

No 58.

IN an action of ejection pursued by John Forbes of Blackton *contra* Robert Forbes, Prior of Monymusk, the LORDS repelled an exception founded upon voluntary removing, and certain deeds qualified to infer the same, such as delivery of the plenishing of the house, selling a part of the corn being upon the lands, transporting of the rest to a room called ———, selling of the oxen that laboured the land, familiar haunting of the house of Tullich, out of the which the pursuer's father was ejected, and that his father nominated the defender overseer to his son in his testament.

Kerse, MS. fol. 191.

1622. *January 12.* The LADY KINCAID *against* ———.

No 59.

THE Lady Kincaid, liferenter of the lands of ———, in which lands she was infest by her umquhile husband, and from the possession whereof she was debarred by the liferent right, standing in the person of ———, her mother-in-law, who bruiked the same by her liferent thereof, so long as she lived after the decease of the said mother-in-law, she charges by a summons two persons who had entered to the possession of the houses and lands liferented, as said is,

A liferenter, after the decease of a former liferenter, has the same privilege with a fiar of summary removing.

No 59. immediately after the said old Lady liferenter's decease, to compear to hear them decerned to remove. This summons is raised summarily upon these fore-said grounds and narrative, without any warning or precept of removing, as is ordinary in other actions of removing; against which, it was *alleged* by the defenders, That that order could not be sustained so summarily upon a charge and a summons, without a preceding warning made before the ordinary term of Whitsunday; seeing actions, which had the like summary proceeding, were only where fiars enter to the possession of lands, after the liferenter's decease, when the fee is affected with that liferent, and cannot be drawn to the case of this pursuer's right. THE LORDS repelled the allegiance, and sustained the warning; and found, that one liferenter, after the decease of another anterior liferenter, had the same privilege which a fiar would have had.

Act. *Hamilton.*Alt. *M'Gill.*Clerk, *Scot.**Fol. Dic. v. 2. p. 335. Durie, p. 9.*

No 60. 1623. *January 18.* E. LOTMIAN *against* SIR JOHN KER.

FOUND, that a compriser might charge to deliver the tower and fortalice of the barony comprised, upon six days, without a warning; but found, that the summons could not be sustained against the third party bruiking *titulo lucrati-vo*, without a warning.

Fol. Dic. v. 2. p. 335. Kerse, MS. fol. 225.

*** Durie reports this case :

IN an action pursued by the E. of Lothian, who had comprised Sir John Ker his lands and houses, for delivery of the said houses to him, as compriser, upon a summons of six days, without any preceding order of warning before a term, as is used in removing, the LORDS sustained that order, against all the persons from whom the lands were comprised, and against whom the said comprising was deduced, and found no necessity to use a warning against them; but found, that this summary order, without warning, should not be sustained against a stranger, possessor of the houses, who might maintain his possession by any right, who having right, ought not to be put from his possession, but by a warning, and an ordinary pursuit of removing pursued thereupon, against him.

Act. *Belsbes.*Alt. *Morison.*Clerk, *Hay.**Durie, p. 42.*

*** Haddington also reports this case :

The Earl of Lothian, infest in the lands of Maxton, Langnewton, and Dantsinton, holden of the King, upon Alexander Stewart's resignation, who was