

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. Belshes.

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

infest upon comprising of the said lands from Sir John Ker, and John his son; the Earl charged Sir John and his son to deliver to him the tower of Langnewton, upon a charge of six days. It was *alleged*, That the order could not be sustained, but behoved to bide a warning. THE LORDS found, that by the comprising, and infestment following thereupon, all right and possession competent to Sir John behoved to pertain to the compriser; and so Sir John, who was denuded both of right and lawful possession, needed no warning from the house. I gave the reason, because that same reason that made an heir to have right to charge upon six days for possession of a house, whereof he was fiar, immediately after the liferenter's decease, militated in this cause in favour of the compriser, against the party from whom he comprised, whose right and possession were extinct by the comprising; and that, albeit law required warning upon 40 days, that labour begun should not be interrupted, and the possessor might have leisure to transport his folk and plenishing, and provide himself of another dwelling; yet there was no such reason to warn from a fortalice. Thereafter it was *alleged* for the Lairds of Linton and Lochtour, That they could not deliver the house, because they possessed by right and permission of the Lady Colinton, who was infest in the barony of Langnewton long before the comprising. It was *answered*, That she had given a back-tack to Sir John and his son, and so could crave nothing but the duty of the tack. It was *duplicated*, That the back-tack provided, that if the duty should be a year unpaid, she might enter to the possession, and it was true that the duty was unpaid. It was *answered*, That she had no declarator, which behoved to proceed before she could apprehend possession; and further, they offered to prove that the duty was paid. To this was *answered*, That the payment being made by Linton and Lochtour, who were cautioners, to the effect they might get the possession, to further their relief against the principal heritor's place the Earl was now in; by the comprising, their payment behoved to tend to the end for which they made, to get the possession, and bruik it till they were relieved. In respect whereof, the LORDS found the exception relevant.

Haddington, MS. No. 2727.

1627. June 21.

ADAM BAD *against* JAMES ORD and Others.

My Lord Balmerinoch having comprised the lands of Drumbreck, constituted Adam Bad cessioner and assignee thereto, who pursued a removing therefrom against Mr James Ord and others. *Alleged, imo*, No process till the comprising be produced. *Answered*, His sasine was sufficient to give him interest. THE LORDS found a sasine enough to give one interest in a removing.

Next *alleged*, Absolvitor, because the defenders were infest in the lands libelled, long before the pursuer's warning, and by virtue thereof in possession.

No 60.

No 61.

A party being warned, who had a title of property in his person, afterward taken away by reduction, it was found, he must be warned anew.