

(EXTINCTION.)

1624. July 1.

L. RANDKILLOR *against* —.

IN a removing, pursued by Sibbald of Randkillor, *contra* , the defender compearing and defending himself with an infeftment of the lands libelled, proceeding upon a comprising, and clad with possession, before the right made to the pursuer by him, from whom the defender had comprised, as said is, and who was author to the pursuer:—And it being *replied*, conform to the act of Parliament, *anno* 1621, anent comprising, that the pursuer's author, from whom the defender had comprised the lands, was then minor; and that the defender's intromission with the mails and duties thereof, extended to as much as would satisfy him of his whole principal sums, for which he had comprised, and all the annuals and expences, and others mentioned in the act of Parliament; so that the comprising was extinguished, and could not furnish any defence: This reply was found relevant by the LORDS, and received in this same place and judgment of removing, to be discussed, without any other trial, or action of declarator to be intended thereupon; and the parties were ordained presently to condescend and count upon the quantities of the mails and duties of the lands, and the defender's intromission therewith. Neither was it found necessary, that the pursuer should be urged to intent any new pursuit, or declarator, but received the trial summarly in this place; albeit the defender contended, that in this judgment it ought not to be taken in, but that his infeftment, clad with possession, should maintain him, ay and while it were taken away by some direct pursuit, which was repelled, in respect of the act of Parliament, which appoints the comprising to expire, *ipso facto*, where satisfaction is received in manner foresaid; which words, *viz.* To expire *ipso facto*, the LORDS found, gave warrant for summar trials.

A.G. Lermouth.

Alt. Aiton.

Clerk, Gilson.

The like done 21st March 1629, Scarlet against her Tenants, by way of suspension of a decret of removing against the tenants, and only the compriser, who was called to the decret, compearing in the suspension, to defend the tenants, who were decerned in absence.

Durie, p. 133.

No 3.
Comprisings
expire *ipso*
facto, by intro-
mission. This
allowed to be
pleaded by
way of excep-
tion in a re-
moving.