

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.

No 61.

Replied, That ought to be repelled, because any infeftment they had, was reduced at the pursuer's instance. *Duplied*, His allegiance stands relevant notwithstanding, because the pursuer's reduction was long after the warning, and they were *in bona fide* to possess still, knowing the pursuer to have no right, and should possess yet until they be warned of new. *Triplied*, All this has some force to free the defenders from violent profits, but cannot hinder the removing, seeing the defender's infeftments are now taken away by reduction. THE LORDS found they behoved to be warned of new again.

Fol. Dic. v. 2. p. 338. Spottiswood, (REMOVING.) p. 281.

1627. July 7. L. PITMEDDEN and LO. ELPHINSTON *against* SMITH.

No 62.

In a similar case, the defender was decerned to remove in the same process without a new warning, but not till the term, and without violent profits.

In a removing, pursued by Pitmedden and the L. Elphinston against Smith, the time of this warning, whereupon this removing was pursued, the defender had an heritable infeftment of the lands libelled, standing and clad with possession, which was reduced by the pursuer, after the making of the warning, the removing intended thereupon depending in the meantime undisputed, but lying over, not mentioned betwixt the parties, and after sentence of reduction, whereby the defender's right was taken away, which was standing when the warning was made; the pursuer insisting in his removing; and the defender *alleging*, That his infeftment foresaid standing untaken away the time of the warning, albeit since syne reduced, was enough to produce absolvitor from that warning, while he were warned of new again;—the LORDS, in respect of the said sentence of reduction, which reduction was intended before the warning foresaid was made, and the defender thereby summoned before the warning, for eschewing of pleas, and unnecessary actions betwixt parties, decerned the defender to remove, in this same process, by virtue of the foresaid warning; but assoilzied him from all violent profits, and found him possessor *bona fide*, and ordained him to remove from this land after separation of this crop, which was laboured before the sentence reductive, and that he should possess the barnyard, and also the barns, and likewise an house for winning and threshing of the corns, while Beltane thereafter.

Act. Baird.

Alt. Oliphant.

Clerk, Gibson.

Fol. Dic. v. 2. p. 338. Durie, p. 306.

* * Auchinleck reports this case :

A COMPRISER warns the tenant, who was infeft by him from whom the land was comprised, to remove, but after inhibition was served at the compriser's instance. So the compriser intents reduction of the tenant's infeftment, *ex capite inhibitionis*, and executes his summons of reduction first, and then makes warning; and a year or two thereafter obtains decret of reduction of the tenant's infeftment, and thereafter pursues removing upon the former warning. THE