

## No 16.

Comprising  
without sasine  
no title.

1628. *March 25.*LOCKHART of BAR *against* TENANTS, and GALLOWAY *against* TENANTS of Bogmill.

IN a removing L. Bar *contra* his Tenants, for removing from the lands comprised by him, the LORDS found the comprising, whereupon no sasine was taken, could not be a title to produce removing, albeit the compriser *alleged*, That he had charged the superior to infest him, and who had suspended, and which suspension was discussed, and the letters found orderly proceeded; which superior being now out of the country, whereby he could not receive precepts for taking sasine, he *alleged*, This should be sufficient to him to supply sasine, and produce this action of removing, specially against tenants who alleged no right to exclude the pursuer; notwithstanding whereof, this pursuit, without sasine, was not sustained; albeit it might produce action for the mails and duties of the lands, as some thought, but others doubted thereof.

Act. *Cunninghame.*Alt. *Nicolson.*Clerk, *Scot.**Fol. Dic. v. 2. p. 335. Durie, p. 370.*

\* \* Spottiswood reports this case :

JOHN LOCKHART of Bar having comprised the seven merk land of Mainholm from William Shaw; and having charged the Earl of Abercorn superior thereof, to infest him therein, afterwards warns the tenants to remove, and raiseth summonses thereupon. *Alleged* for the Tenants, They could not remove at the pursuer's instance, because he was not infest upon his comprising, and so had no real right to remove them. *Replied*, That ought to be repelled, in respect of the comprising, which of its own nature is a real right; and sicklike of the charge given to the superior long before the warning, which charge was equivalent to an infestment, and must be as effectual to the pursuer as if the superior had infest him, especially against the tenants who pretend no right in their person; especial consideration being had likewise, that the superior having suspended the charge given, the letters were found orderly proceeded *in foro contradictorio*; yet the LORDS found the exception relevant.

\* \* \* 1629. *February 20.*—The same was found afterwards between Mr John Galloway and the Tenants of Bogmill. After that, he having passed from the tenants, and insisted only against Bogmill himself, from whom he had comprised; the LORDS found the same allegiance relevant likewise for him; albeit it was *alleged*, That he being his author, from whom these lands were comprised, could never be heard to allege it.

*Spottiswood, (REMOVING.) p. 282.*

\* \* \* See Durie's and Auchinleck's report of this last case on next page.