

No 29. reply, that the said sum was eiked to the testament, after the raising of the summons.

Fol. Dic. v. 2. p. 303. Haddington, MS. No 1896.

No 30. 1610. June 26. COLLART *against* LADY ANNANDALE.

SHE who, during the dependence of her divorcement, made warning, and obtained decret of removing against the possessors of her conjunct fee lands charging them therewith. They suspending, her decret will be found null, by way of exception, as founded upon a warning made when she had no power.

Fol. Dic. v. 2. p. 305. Haddington, MS. No 1921.

No 31. 1610. July 26. SMALL *against* TENANTS OF BALDERSTON.

IN an action of removing, pursued by John Small against the tenants of the lands of Balderston, which he had comprised, the LORDS sustained the warning, notwithstanding it was made before he was infeft, and that because the comprising was laid before the warning, and he was infeft thereupon, before the feast of Whitsunday, at the which the warning was used.

Fol. Dic. v 2. p. 306. Kerse, MS. fol. 238.

* * Haddington reports this case :

HE who has comprised, making warning before he be seised, his warning will be sustained if he be seised before Whitsunday, and the sasine will be drawn back to the comprising in favour of the warner.

Haddington, MS. No 1986.

No 32. 1610. July 26. BUTTER *against* HARVIE.

IN an action of removing, pursued by Patrick Butler of Urig against Andrew Harvie and his tenants, the LORDS found no process upon the warning, because the time of the making thereof Patrick Butter was only superior, and the property was only adjudged to him by a declarator of Andrew Harvie's liferent escheat, obtained long thereafter, which the LORDS found should not be drawn back in prejudice of the tenants, notwithstanding it was alleged that the said Andrew Harvie was year and day at the horn long before the warning. See No 27.

Fol. Dic. v. 2. p. 306. Kerse, MS. fol. 938.