

1628. July 4.

BYRES *against* LAW.

No 17.

JOHN BYRES being heritably infest in the Cotes, pursued Margaret Law to remove from a part thereof. *Alleged*, Absolvitor, because she was apparent heir to her father, who was infest in the same. *Replied*, The pursuer had obtained a gift and declarator of non-entry of her land, in respect whereof, and of his heritable right foresaid, he had good action to remove her; albeit his reply took away her exception, yet if he had not used it as a title in this removing, that he had right to the lands by virtue of that non-entry, as well as by his heritable title, the exception would have been found relevant for eliding the pursuit, but, in respect the pursuer libelled upon both his titles, the action was sustained.

Spottiswood, (REMOVING.) p. 282.

1629. February 20. Mr JOHN GALLOWAY *against* L. BOGMILN.

No 18.

In a removing, a comprising, and charges against the superior thereon, to receive the compriser, with a protestation against the superior, because of the suspension raised by him of these charges, was not sustained without sasine, to produce removing from the lands comprised, albeit the warning and process of removing were only pursued by the compriser against the debtor allenary, against whom the comprising was deduced; and this allegiance, proponed by him, was found sufficient, seeing a removing was found, could not be pursued by a compriser against the debtor without a sasine.

Act. *Lawrie.*

Alt. ———

Clerk, *Gibson.**Durie, p. 428.*

. Auchinleck reports this case:

ANNE GALLOWAY pursues removing against Turnbull of Bogmiln, as having comprised the said land from him, and charged the Lord Coupar, as superior, to enter him who had suspended the charge. The defender *alleged*, He could not remove, because the pursuer was not infest. It was *replied* by the pursuer, That his diligence was equivalent to sasine, especially against him whose lands were comprised for his own debt. THE LORDS found the exception relevant notwithstanding of the reply.

Auchinleck, MS. p. 194.

. Spottiswood's report of this case is at the end of his report of Lockhart against Tenants, No 16. p. 13790.