

horning and infestment replied upon were after the warning; and this was the rather found by the LORDS, seeing this removing was sought only against the debtor, from whom he comprised, his son, and his father, and their tenants, and not against any other, who clothed themselves with any other right to the lands, which might have excluded this compriser, and maintained their own possession; but the LORDS superceded the execution of removing to Whitsunday, betwixt and which the defenders might remove; and declared they would grant no violent profits, the defenders paying to the pursuers the ordinary duties of the lands.

No 46.

Act. ——— & *Belches.*Alt. *Gilmors.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 306. Durie, p. 659.*

1666. November 15. KENNEDY against HAMILTON.

THE LORDS found a comprising, upon a charge to enter heir, null; because the person, at whose instance the charge was, had no right to the debt the time of the charge; the assignation, whereby he had right, being acquired thereafter, so that the charge was *inanis*, and without ground. *Me referente.*

No 47.

Fol. Dic. v. 2. p. 304. Dirleton, No 47. p. 19.

* * This case is mentioned by Stair in his report of Abercrombie against Anderson, which follows.

1666. November 15. ABERCROMBIE against ANDERSON

FOUND that a pursuit upon an assignation after the summons executed, should not be sustained, though the cedent concurred, the pursuit not being at his instance.

No 48.

Reporter, *Newbyth.**Fol. Dic. v. 2. p. 304. Dirleton, No 46. p. 19.*

* * Stair reports this case :

MR JOHN ABERCROMBIE, as assignee, having pursued Anderson, as debtor for the debt assigned, he *alleged*, No process, because the assignation was posterior to the date of the summons and executions; so that the assignation being his sole title, the process could not be sustained. It was *answered*, That the defender had no prejudice, and that the cedent concurred. It was *answered*, That the summons was not in the cedent's name, and so his concurrence could operate nothing, so that the decret thereupon would be null; for, in the like case, the LORDS, last week, in the cause betwixt David Hamilton and John Kennedy, and Symington, *supra*, reduced an apprising led twenty years since, because the apprising proceeded upon a charge to enter heir; and