

1606. February 18. MACMATH against HEWIT.

In an action of removing pursued by Macmath against Hewit, it was *alleged*, That the pursuer could have no process, because his title produced was his sasine, which could be no title, because it was given long after the term of Whitsunday. It was *answered*, That it was given upon a retour, which was *declaratoria sanguinis*, and so should be drawn back in favour of the pursuer, especially seeing the defender was tenant to this pursuer, and to his predecessors, to whom he is served heir.

No 26.

Fol. Dic. v. 2. p. 303. Haddington, MS. No 1047.

1608. December 10. HAMILTON against HARVIE.

JOHN HAMILTON pursued a removing as donatar to Patrick Butter's escheat and liferent against Andrew Harvie and certain tenants, who excepted, that he could have no action upon that warning, because it was raised and executed long before his decret of declarator; and as in recognitions; it was found betwixt Newark and Calderwood, and Newark and Bekkie, that no warning could be made upon a sasine of recognition without declarator, so could none be granted upon liferents without declarator; it was *answered*, That they were not of a nature, and that the decret *in declaratoriis* was drawn back to the gift and summons, and if no warning might be made before decret of declarator, the donatar might be frustrated by the cavilators of the defender his whole lifetime. In respect whereof, the LORDS repelled the exception, and reserved the modification of the violent profits to themselves.

No 27.

Found in conformity to Henderson against South-house, No 24. p. 13264.

Fol. Dic. v. 2. p. 306. Haddington, MS. No 1505.

1610. February 9. Earl of KINGHORN against ARBUTHNOT.

A REDEMPTION sustained, albeit the pursuer was retoured and seised long after the warning, his predecessor being deceased diverse years before, in respect of the like practick past before betwixt the Earl of Kinghorn and Arbuthnot.

No 28.

Fol. Dic. v. 2. p. 304. Haddington, MS. No 1802.

1610. June 16. WARDLAW against Earl MARISCHAL.

AN execution for translation of a contract, thereby to obtain payment of the sum therein contained. That debt not being contained, nor confirmed in the testament, and so the summons being quarrelled, the same was sustained by a

No 29.

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 dependance 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.