

1637. *January 20.* GRIER of Bararge *against* L. CLOSEBURN.

No. 50.

Whether superiors have the same claim of a year's rent from adjudgers, as they had from comprisers?

Grier of Bararge having charged the Laird of Closeburn to receive him in the lands of ———, upon a sentence of adjudication against his debtor, viz. the charger's own brother, who held the said lands of Closeburn, as his superior; and the superior suspending, that he ought to have a year's duty, as in comprisings; the Lords found the letters orderly proceeded, without respect to this reason; for they found that the act of Parliament, which was a warrant to the superior to take a year's duty from the compriser, before he could be compelled to enter him, could not be extended to adjudication, in respect of the act of Parliament, which is the ground of adjudication, and which is subjoined to the act anent comprisings immediately, done both in one Parliament 1621, bears no such warrant, and the Lords could not enlarge the act without a warrant, albeit they found there was a like reason of equity for the adjudication as for comprisings, and that the superior was alike prejudged in the one as in the other, by the change of his vassal against his will, which the superior alleged that by no law or reason he ought to do against his own will, without satisfaction therefore; which the Lords could not regard, for the reason foresaid, viz. that there was no act to warrant the same.

Alt. Maxwell.

Clerk, Scot.

*Durie, p. 825.*

1665. *July 22.* JOHNSTON *against* TENANTS of ACHINCORSE.

No. 51.

Found that an appriser must pay an year's duty if he insist for possession, though not infest.

Johnston having apprised the lands of Achincorse, and charged the Lord Dumfries, his superior, to receive him, pursues the tenants thereof for mails and duties. Compearance is made for the Lord Dumfries, superior, who alledged no process, till a year's rent were paid to him, as superior. *2dly*, It is offered to be proved, that Achincorse the vassal was in non-entry, or the life-rent escheat fallen by his rebellion, and therefore the superior ought to be preferred. The pursuer answered to the first, that seeing it was the superior's fault, he received not him upon the charge, albeit he offered to receive him now, he could not have a year's rent, till the pursuer insisted to be infest. To the second, the defender ought to be repelled, seeing there was no declarator intended. The defence answered, that seeing he was to change his vassal, and the appriser sought possession before he had access, he behoved to pay the year's rent, seeing by the apprising, and the charge, the superior will be excluded from his casualties. To the second, the superior being acknowledged by the charge, he might crave the casualties of the superiority, by way of competition, and offered to produce the horning, *cum processu*.

The Lords sustained the first defence, but not the second, seeing there was no horning produced, nor declarator intended.

*Fol. Dic. v. 2. p. 409. Stair, v. 1. p. 301.*