

1626. November 15. WYLIE against BELLENDEN.

IN an action pursued at the instance of James Wylie, son and heir to umquhile William Wylie, writer, against Sir William Bellenden of Broughton, for pointing of the ground for an annualrent, by personal execution against the defender; this pursuit was instructed by production of a sasine of the said annualrent, given to the pursuer, bearing the same to proceed upon a precept of *clare constat* granted to him, as heir to his father, by the Lady Broughton as commissioner, and having power to receive vassals and tenants, in name of the said defender's son, which precept of that tenor was inserted in the sasine, but nothing was produced but the sasine. THE LORDS found this sasine was not sufficient to produce this personal action against the defender, seeing it was neither libelled nor replied, that the defender was heir to the person disponent of the annualrents to the pursuer's father, without the which were alleged, albeit the real action might be sustained, yet the personal could not be granted against him; and also, the LORDS found, that the said sasine was not sufficient to produce the real action, except the precept of *clare constat* were produced, and the lady's warrant to grant the same, whereto it was relative, which the LORDS ordained the pursuer to produce before process could be sustained upon the sasine.

Act. *Mowat*..Alt. *Primrose*.Clerk, *Gibson*.*Fol. Dic. v. 2. p. 244. Durie, p. 232.*

No 382.

In a process of pointing the ground proceeding upon an infestment of annualrent, a sasine produced found not sufficient without a precept of *clare constat*, and a warrant referred to in it.

1627. June 21. BAD against ORD and Others.

MY Lord Balmerinoch having comprised the lands of Drumbreck, constituted Adam Bad cessioner and assignee thereto, who pursued a removing therefrom against Mr James Ord and others. *Alleged, imo*, No process till the comprising be produced. *Answered*, His sasine was sufficient to give interest. THE LORDS found a sasine enough to give one interest in a removing.

Next *alleged*, Absolvitor, because the defenders were infest in the lands libelled, long before the pursuer's warning, and by virtue thereof in possession. *Replied*, That ought to be repelled, because any infestment they had was reduced at the pursuer's instance. *Duplied*, His allegiance stands relevant notwithstanding, because the pursuer's reduction was long after the warning, and they were *in bona fide* to possess still, knowing the pursuer to have no right, and should possess yet until they be warned of new. *Triplied*, All this has some force to free the defenders from violent profits, but cannot hinder the removing, seeing the defender's infestments are now taken away by reduction. THE LORDS found they behoved to be warned of new again.

*Fol. Dic. v. 2. p. 244. Spottiswood, (REMOVING.) p. 281.*

No 383.

A process of removing was sustained upon production of a simple sasine, even at the instance of a compriser.