

No 16.

1611. *January 11.* LADY CRAWFORDJOHN *against* LAIRD OF GLASPEN.

A MAN, denuded of the fee of a barony, with reservation of his own liferent, may resume and enter the heirs of his vassals, which will be lawful and sufficient to them; but he may not resume strangers, nor change the vassals and free tenants, neither may he thereafter set any tacks or rentals that may last longer than his lifetime.

*Fol. Dic. v. 1. p. 549. Haddington, MS. No 2080.*

No 17.

A liferenter, after the decease of another liferenter, whose liferent was reserved in this liferenter's right, pursued a tenant summarily to remove. Found entitled to continue possession till the next term.

1628. *February 16.* THOMSON *against* MERSTON.

IN a removing betwixt Thomson and Merston, wherein a liferenter of certain acres of lands in New-haven, after the decease of another liferenter, whose liferent was reserved in this pursuer's right, pursues the defender, without order of warning, as fiars are in use to do after the liferenter's decease, for making the ground void, that the pursuer may enter to the land;—the LORDS sustained the defender's exception to elide this pursuit, proponed upon his occupation of the land, as tenant to the liferenter deceased, albeit he was not tacksman to her, neither could prove him to be tenant to her, by writ; and albeit the pursuer replied, that the defender's possession was the deceased liferenter's possession, seeing he remained in house and family with her, and laboured the ground as her servant, and never was able to prove that he paid her any farm or duty for the ground. Notwithstanding whereof the exception was sustained, seeing the defender alleged, that his said possession was as her tenant, although he remained in the house with her, which he alleged became his house during his occupation, and that he paid farm for the land *hoc modo*, by converting of the profit of the land to her entertainment and maintenance; which the LORDS found sufficient to elide this pursuit against the defender, and to keep him from present removing; but the LORDS found, That the pursuer needed not to be put to a new warning, only they found that the defender might labour the land this present crop, without danger of violence, and that he should remove without warning after the separation of the crop from the ground, and that he should pay to the pursuer for the crop possessed by him, as much farm as such-like land is worth, and uses ordinarily to pay in farm; but that he ought not to remove, being closed betwixt terms, till after the term.

Act. ———.

Alt. *Sandilands.*Clerk, *Hay.**Durie, p. 346.*

\* \* \* Auchinleck reports this case :

A LIFERENTER, who had her goodson in house with her six or seven years before her decease, who occupied certain acres of land wherein his mother-in-

law was liferenter, with his own goods and gear, as he alleged; after the liferenter's decease, he is pursued by the heritor to remove. He alleges he cannot be holden to remove till he were lawfully warned, seeing he laboured the lands with his own goods and gear.—THE LORDS found no necessity to warn him, except he condescended that he was tenant for payment of a duty; but ordained him to remove at Whitsunday, and to find caution for that effect, and to pay as much duty for the crop 1628, as the land libelled paid before, when it was set, or as much land pays beside.

No 17.

*Auchinleck, MS. p. 120.*

1633. December 21. WEMYSS against STUART.

A DECLARATOR of property is competent at the instance of a liferenter, by reservation, though the fiar be debarred from having *personam standi in judicio* by a horning.

No 18.

*Fol. Dic. v. 1. p. 549. Durie.*

\* \* \* This case is No 44. p. 2197. *voce* CITATION.

1663. January 17. The EARL of CALLENDER against RUSSEL.

IN a process pursued by the Earl of Callender against Thomas Russel, it was found, That a vassal's son being infeft, holding of the superior, reserving the father's liferent, the son is not obliged to keep the superior's head courts, during the father's lifetime.

No 19.

*Fol. Dic. v. 1. p. 549. Gilmour, No 65. p. 48.*

1683. March. CREDITORS of MOUSWELL against The CHILDREN.

FOUND, That *sylva cædua*, or hewing woods, were not the property of a father who had disposed the fee of his lands to his son, reserving his liferent, and that he, the father, had only liberty to cut so much as was needful for the repairing of the houses, and could not dispose upon, or sell any part, unless the wood was used formerly to be cut in yearly hags.

No 20.

*Fol. Dic. v. 1. p. 549. Harcarse, (LIFERENTS.) No. 670. p. 190.*