

No. 34. obedience of charges; and declared, that this entry should not hinder the parties, in their own time and place, to dispute upon the priority and preference of their rights to the lands, which was not proper now to be handled in this place; but the Lords were of the mind, that where parties were equal in diligence, that the superior might prefer his son to the rest, in all which he might lawfully advance him unto concerning his entry.

Act. *Nicolson.*

Alt. *Miller.*

Clerk, *Hay.*

*Fol. Dic. v. 2. p. 408. Durie, p. 358.*

\* \* Auchinleck reports this case :

A comprising is led by divers persons upon any of certain lands, whereof one of the parties was son to the superior of the lands comprised, before the rest of the comprisers could get the superior charged, he infeft his son, by virtue of his comprising; and being charged to infeft the rest of the parties, the superior suspended, that he cannot infeft them, because he had infeft his son before he was charged. The Lords ordained him notwithstanding, reserving his son's right *prout de jure.*

*Auchinleck MS. p. 223.*

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1628. July 22. LORD BORTHWICK, &c. against HILSTAIN, &c.

No. 35.

Found in conformity with the above.

In a suspension, Lord Borthwick and Walter Hay against Hilstain and Smith, where two creditors had comprised the lands of their common debtor, and had charged the Lord Borthwick, superior of the lands, to enter them both, and the creditor who was prior in comprising and diligence, alleging, that he only ought to be received by the superior, in respect of his said diligence, and the other contending, that the superior ought to receive him also, the Lords found, That the superior ought to receive both the comprisers, without prejudice to them, in their own time and place, to dispute which of their rights should be preferred to others; for the Lords declared, that the superior's receiving of them both at one time, now conform to this ordinance, should not prejudice any of the comprisers in the just advantage which the priority of diligence might give to the one before the other; which priority should not be prejudged by this receiving of the last as soon in his entry by the superior as the first; and as concerning the duty to be paid to the superior, because it was questioned if both the comprisers, and each one of them, should pay a year's duty of the land to the superior, or that one year's duty should only be paid, and by which of the two the same should be paid, the Lords decided not that point that day; but thereafter, upon the 26th of July, 1628, in this same cause, the point being heard and considered, they found, that the superior ought to have one year's duty from all the comprisers, or any of them who most trusted to his comprising; which year's duty, so to be paid by

the compriser to the superior, the Lords found, in the like cases in all time coming, should be repaid again to the payer, if his right shall be rejected, and another preferred to him, he who shall be preferred, and by whom he shall be excluded, shall reimburse him. No. 35.

Act. Hay.

Clerk, Gibson.

*Fol. Dic. v. 2. p. 409. Durie, p. 392.*

1629. March 12. COLMSLIE against EARL ROXBURGH.

No. 36.

A superior was found obliged to receive a compriser's assignee as well as himself.

*Fol. Dic. v. 2. p. 408. Durie.*

\* \* \* This case is No. 18. p. 200. *voce* ADJUDICATION.

1634. July 22. HAY against BAILIES of ABERDEEN.

Hay of Crimonmogat having charged the Bailies of Aberdeen, upon a procuratory of resignation made of some tenements of land in Aberdeen, holding burgage in his favours, to infeft him therein; and they suspending, that they were not holden to receive the resignation, being done in favours of one who is not burges of their burgh; and if, in law, they could be obliged to infeft him, as they alleged they were not, (any more than other superiors can be compelled to receive and change their vassals, upon a prior vassal's resignation, or disposition, which no superior is bound, in law, to acknowledge), yet, if they might be compelled in law, they ought to have a year's duty, as the land paid, and be otherwise satisfied in a composition, for receiving and infefting him; the Lords found not this reason relevant; but found, that the Magistrates ought to receive and infeft this person, albeit he was not a burges, upon the foresaid procuratory of resignation made in his favours, and that without payment of a year's rent of the land, or any other composition therefore, albeit other superiors of other lands, not burgage, are not compelled to receive such resignations, and to change their vassals, against their will; for they ought to claim no satisfaction therefore, seeing the land is not holden of them as superiors, but in burgage of the King; and the Magistrates are but the King's Bailies, and so should have nothing done therefore, but the services of the burgh; yet the scruple abides, viz. That lands of burghs, granted in burgage holding, ought not to be transmitted to any other, not being burgeses; for it appears to change the tenor of the concession given to the incorporation of the burgh by the Prince, which none can bruik, not being burgeses, and of that Corporation; and which the Magistrate, although he be not superior,

No. 37.

The Magistrates of a Burgh Royal were found obliged to give infeftment to a singular successor upon the prior vassal's resignation.