

No 45. 1629. February 20. BLACKBURN against GIBSON.

IN an action of removing upon a comprising from the debtor, of the right which he had to some lands *jure mariti*, by reason that his wife was liferentrix thereof, it was sustained at the compriser's instance, the husband being dead, who was the debtor at the time of the discussing of the removing, he being dead only after the term, against which he was warned to remove, and so being on life at that term, seeing thereby he might have attained possession of the land; and it was not respected which was alleged, that that ought not to be admitted against the woman who was liferentrix, and who was not debtor, and who by the entry would be prejudged if she were forced to remove.

{ Act. M'Gill.

Alt. Mowat.

Clerk, Hay.

Durie, p. 428.

\* \* \* Auchinleck reports this case:

1629. March 10.—PETER BLACKBURN comprises the liferent of some lands pertaining to the wife of Walter Balware *jure mariti*, and being infest, pursues the tenants upon a warning made before Whitsunday 1627. The action depends till February 1628; after many allegiances discussed, they propone at last that the husband is dead, and so no process can be granted against his tenant. THE LORDS repelled the allegiance, except he would allege, that he died before the term immediately subsequent to the warning, otherwise the pursuer would not be prejudged of his violent profits, and the same repelled.

Auchinleck, MS. p. 194.

1632. March 6. LA. LAWRISTON against Her TENANTS.

No 46.  
In opposition  
to No 40. See  
No 48.

IN a removing, the defender alleging, that he was sub-tenant to ———, who was tacksman of the lands, and whose tack, albeit it was expired the time of the warning, yet he bruiking still *per tacitam relocationem*, it must defend this defender his sub-tenant, ay and while the tacksman were warned; this exception was repelled, and found there was no necessity to warn the tacksman, whose right was expired before the warning, seeing *tacita relocatio* was found could avail to none, but to the actual possessor, and he not being naturally in possession of the land, albeit he alleges, he bruiked by his sub-tenant, whose possession he alleged to be his possession, seeing *is possidet cujus nomine possidetur*, which was repelled by the LORDS; but the defender, who was warned, being only natural possessor, and having also paid of before duty for the lands to the pursuer, the LORDS found, there was no necessity to aknowledge