

The Lords found that the party might restrict his discharge to £100; and repelled the allegiance, and sustained the discharge for to liberate from £100.

*Act. Baird. Alt. Gibson. Hay, Clerk.*

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1636. *July 21.* GREIR OF BARRARGE *against* The LAIRD of CLOSBURN.

CERTAIN lands being adjudged to a creditor, whereupon the L. Closburn, who was superior to the lands adjudged, being charged to receive the creditor in the vassal's place; who suspending, that he ought not to do it, while he got a year's duty paid him, according to the order kept in comprisings, seeing adjudications are of the same nature, and in every thing alike and equal, in so far as concerns the superior's receiving and changing of his vassals;—the Lords found the letters orderly proceeded, notwithstanding of the reason, and that they could not compel the creditor to pay a year's duty to the superior, as is used in comprisings; for albeit there may be alike and the same reason for adjudications in this case, as for comprisings, yet seeing there are express laws and Acts of Parliament for comprisings, which are not for adjudications,—the Lords found that they could not extend the Acts, which made only mention of comprisings, that the superior should have a year's duty, for entry of the compriser, and doth not make any such mention of adjudications; it being also clear, that the Act which makes mention of adjudications, is done in the same Parliament wherein the Act of comprising was done, *viz.* the one the sixth Act, and the other the seventh Act, Par. 1621; and that the said Act of adjudication, in sundry parts, has relation to the preceding immediate Act of comprisings, and makes them alike in sundry other points, and has no ordinance in this point; and the Lords thought, that their power reached not safely to them to make any new law, where there was no practise thereanent before; but the Lords ordained the parties to travel, to see if they could agree amongst themselves, for a composition to be paid: which may appear very considerable, seeing the superior ought not to be compelled to change his vassal, not being satisfied therefore, no more than he can be compelled to receive a stranger, or a singular successor, upon his vassal's resignation unsatisfied; otherwise the creditor and the vassal debtor may ever collude to the superior's prejudice.

*Act. Maxwel. Alt. Cunninghame. Vid. 20th January 1637, betwixt the same parties.*

*Page 819.*

1636. *July 21.* ROBERT CORSER *against* ANDREW DURIE.

ONE Robert Corser in Dysert pursues Andrew Durie, as *gerens se pro hærede* to his umquhile father William Durie of Newton, for payment of some money addebted by his father to him; wherein it being qualified, that the said defender had behaved himself as heir by this qualification, *viz.* That his said father had set the lands of Newton, stock and teinds, for five years to a tenant, whereof there being divers years yet to run, the time of his father's decease,