

No 84.
 necessary to
 be summoned,
 although the
 warrants
 thereof were
 called for ;
 as he was
 not a public
 person, but
 chosen at the
 pleasure of
 the compriser,
 who
 chuses his
 clerk at his
 own hazard.

was infest thereupon by the superior ; the defender *alleging*, that no process could be granted, because the warrants of the defender's comprising were called to be produced and improven, and the clerk to the comprising, who kept the saids warrants, not being called in this process, no process ought to be granted therefor ; likeas she *alleged*, that seeing the infestments made to her by the superior were quarrelled, the superior ought to be called ; both these exceptions were repelled, for the clerk to the comprising was not found needful to be summoned, seeing he was not a public person, but in this case of comprising, was but a private person chosen by the election, and at the pleasure of the party compriser, who, upon his own hazard, chuses his clerk, and so who must be answerable to produce the warrants of his own evidents, and to be liable in law for the same, and not the clerk. And the LORDS found no necessity to summon the superior, seeing the pursuer quarrelled not the superior's right, but the right personally made to the defender by the superior of the property, which superior was also granter of the pursuer's right.

Act. *Advocatus.*

Alt. *Kinross.*

Clerk, *Hay.*

Fol. Dic. v. 1. p. 139. Durie, p. 378.

No 85.
 Found that
 sub-vassals
 being in pos-
 session ought
 to be called
 in an impro-
 bation against
 the vassal
 their author,
 because they
 could not be
 unknown, be-
 ing heritable
 possessors ;
 but as to te-
 nants brui-
 ing lands by
 tacks, or he-
 ritors brui-
 ing by sub-
 tacks their
 own teinds,
 The Lords
 thought
 that it could
 not be so well
 known that
 they had
 right, and so
 were not par-
 ties necessary
 to be called.

1668. *January 23.* The TOWN OF GLASGOW *against* —.

THE TOWN of Glasgow having a right from the Bishop to the parsonage teinds, pursued a spuilzie. It was *alleged* for some of the defenders, That they possessed by sub-tacks from Blantyre tacksman. It was *answered*, That certification was granted against the principal tack, and that the sub-tacks were void in consequence. It was *replied*, That the defenders were not called to the improbation ; and that they being in possession, the collusion or negligence of their author cannot prejudice them.

THE LORDS, upon a debate among themselves, thought, that sub-vassals being in possession, ought to be called in an improbation against the vassal their author ; because they could not be miskenned, being heritable possessors ; but as to the tenants bruiing lands by tacks, or heritors bruiing by sub-tacks their own teinds ; they thought, that it could not so well be known that they had right, and so were not parties necessary to be called ; and therefore, before answer, they ordained to condescend upon the manner and quality of their possession, and whether it was such as the Bishop could not but know.

Act. *Stinclair et Lockhart.*

Alt. *Cunninghame.*

Fol. Dic. v. 1. p. 139. Dirleton, No 145. p. 58.