

SUMMARY DILIGENCE.

1542. *December.* CUNNINGHAM *against* CUNNINGHAM.

THE Lords decerned in a cause of Cunningham *contra* alium Cunningham, that albeit one of them had by gift of ward the lands and fortalice of ———, and the ward being out-run, the other got assedation of the said lands and tower of the heritor; and that the other being included within terms, that albeit he could not be removed from the lands until the next term, nevertheless that he ought and should leave the house and fortalice, and deliver it incontinent to the other; because the practice of the realm is, that houses and fortalices should be delivered to them that have right thereto, upon six days warning, without any delay or expectation of another term.

Fol. Dic. v. 2. p. 403. Sinclair MS. p. 45.

1583. *February.* KER *against* KER.

Ker of Mersington having obtained a decret of non-entry of the lands of Dalcorisie, with the tower and fortalice of the same, pursued Ker of the Shaw for delivery of the said house, upon six days warning. It was answered, that the pursuer had no action to pursue for delivery of the said house by that order, but it behoved to make warning for the same, or to apprise the lands and obtain sasine, and thereafter pursue for delivery of the house. To this it was answered, That the pursuer having the gift of the non-entry, and donatar to the same, was in place of the King's Majesty; and the King's Majesty, when any lands fall in ward or non-entry, whereof any fortalice or a house is a pertinent, may pursue and call for delivery of the said house upon six days warning; and now the pursuer having obtained a decret upon the gift, in which the house is specified, the pursuer had good action to pursue by virtue of his decret of non-entry, as if he had obtained the gift of a ward. The Lords being equally divided, it was voted and pronounced by the Lord Chancellor, that the order was good, and that the house might be delivered without any warning.

Fol. Dic. v. 2. p. 403. Colvil MS. p. 387.

No. 1.
Summary diligence competent, for obtaining possession of the mansion-house of an estate. See No. 8.

No. 2.
Found in conformity with the above.