

life-time; the Lords found, That they would grant no defalcation therefore, but declared, that whatever should be modified and decerned to be paid to the superior by the compriser, that the payment thereof should be superseded to the life-renter's decease, and that he should not be subject to pay the same, so long as she lived.

No. 60.

Act. Baird.

Clerk, Gibson,

*Fol. Dic. v. 2. p. 409. Durie, p. 686.*


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1636. March 11. SCOT against ELLIOT.

No. 61.

No deduction allowed the compriser, though the lands be life-rented; but payment may be suspended until the life-renter's death, and in the mean time sufficient security.

*Fol. Dic. v. 2. p. 410. Durie.*\* \* This case is No. 20. p. 201. *voce* ADJUDICATION.See No. 60. *supra.*


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1636. March 29.

WILLIAM COWAN, Bailie of Stirling, *against* The MASTER of ELPHINSTON.

No. 62.

William Cowan charged the Master of Elphinston to infeft him in the superiority of certain lands. The Master having required of him a year's duty, conform to the act of Parliament, as the lands paid, the Lords found the charger could pay no more to the superior but a year's duty of that which he was to get himself when he was entered; which was only so much feu-duty paid to him by his sub-vassals, and not a year's duty of the lands which pertained not to him but to his sub-vassals.

*Fol. Dic. v. 2. p. 409. Spottiswood, p. 56.*\* \* Durie's report of this case is No. 21. p. 202. *voce* ADJUDICATION.

A similar case is reported by Durie, 15th February, 1634, Monkton against Yester, No. 20. p. 15020.

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1637. March 30. PATERSON *against* MURRAY.

No. 63.

Thomas Paterson having charged Walter Murray, superior of the lands of Crobelaw, to receive him therein, upon his comprising thereof, deduced against John Hoppringle, as lawfully charged to enter heir to Sir James Pringle of Gallashiels, his father, for the sum of 2300 merks, addebted by the said umquhile Sir James to him; which charge being suspended by Walter Murray, upon these reasons, that Sir James, from whose son, as charged to enter heir,

If the debt in the comprising be small, the Lords will modify the year's rent proportionally.

No. 63. &c. he had comprised, was never infeft himself in these lands; and also, that he ought to have a year's duty of the lands; and it being answered by the compriser, that his debtor had obtained decret against the said Walter Murray, decerning him to infeft the said Sir James, so that he now coming in Sir James's place, by his comprising from his son, as charged to enter heir, he ought to be entered; and as to the year's duty acclaimed of the lands, he ought to pay no more than the annual-rents of the money for which he was comprised, for the duty of the land was exorbitant; the Lords found, That the defender should infeft the compriser; as becoming in Gallashiels' place, sicklike as if he might have been compelled to infeft himself upon the foresaid decret, or Gallashiels' heir, if any had entered to him; and found, That it was not enough to give the superior the annual-rent of the money for which he had comprised, for an year, seeing he had comprised the land, and not an annual-rent out of the lands; but the Lords modified the duty to be paid to the superior to 300 merks, albeit the lands were worth yearly 800 merks at least.

*Fol. Dic. v. 2. p. 410. Durie, p. 844.*

1639. March 9. LORD ALMOND against HOPE of CARSE.

No. 64.

A compriser of feu-duties and superiorities from an immediate superior, who had granted sub-feus, without the consent of his superior, after act 1606, is liable to pay an year's rent, though he acquire right only to the feu-duties.

The Lord Almond having comprised from the Earl of Linlithgow certain lands, which he had set in feu to some feuers, for a certain small feu-duty yearly, and which lands were holden by the Earl of Linlithgow of the L. of Carse, by wardholding; upon which comprising Sir Thomas Hope, successor to the L. of Carse, in his heritable right of that superiority to the Earl of Linlithgow, being charged to receive the compriser; who suspending, that he was content to receive him, having received a year's duty of the lands for his entry, as use is; and the Lord Almond, compriser, alleging, that he was content to give him a year's feu-duty, contained in the feu-infeftment granted by the Earl of Linlithgow to the feuers, which ought to be found all that he ought to pay, seeing, by his comprising, he can have no right but to that which pertained to the Earl, from whom he hath comprised, and that was only the right of the superiority, and the feu-duty payable to him by his feuers, which was £.10 yearly; and no reason can compel him to pay for his entry to the superior more than a year's duty of that which he acquires by his comprising; the other answered, That he ought to have a year's duty, as the lands are worth by the year, seeing the lands are feued since act of Parl. 1606, which declares all feus null *ope exceptionis*, which are made without consent of the superior: This feu whereof the year's duty is now offered is in this case, being let in feu by the Earl of Linlithgow, since the year 1606, without consent of the L. of Carse, superior, and consequently cannot defend against the superior, to exclude him from the casuality of a year's duty of the lands. And the compriser answering, That he ought not in this place to dispute, especially by way of exception, upon the nullity of another heritor's right, who is not party,