horning and infeftment replied upon were after the warning; and this was the rather found by the LORDS, seeing this removing was sought only against the debtor, from whom he comprised, his son, and his father, and their tenants, and not against any other, who clothed themselves with any other right to the lands, which might have excluded this compriser, and maintained their own possession; but the LORDS superceded the execution of removing to Whitsunday, betwixt and which the defenders might remove; and declared they would grant no violent profits, the defenders paying to the pursuers the ordinary duties of the lands. No 46.

Act. —— & *Belshes.* Alt. *Gilmore.* Clerk, *Gibson.*

Fol. Dic. v. 2. p. 306. Durie, p. 659.

1666. *November* 15. KENNEDY *against* HAMILTON.

THE LORDS found a comprising, upon a charge to enter heir, null; because the person, at whose instance the charge was, had no right to the debt the time of the charge; the assignation, whereby he had right, being acquired thereafter, so that the charge was *inanis*, and without ground. *Me referente.* No 47.

Fol. Dic. v. 2. p. 304. Dirleton, No 47. p. 19.

*** This case is mentioned by Stair in his report of Abercrombie against Anderson, which follows.

1666. *November* 15. ABERCROMBIE *against* ANDERSON

FOUND that a pursuit upon an assignation after the summons executed, should not be sustained, though the cedent concurred, the pursuit not being at his instance. No 48.

Reporter, *Newbyth.*

Fol. Dic. v. 2. p. 304. Dirleton, No 46. p. 19.

*** Stair reports this case:

MR JOHN ABERCROMBIE, as assignee, having pursued Anderson, as debtor for the debt assigned, he *alleged*, No process, because the assignation was posterior to the date of the summons and executions; so that the assignation being his sole title, the process could not be sustained. It was *answered*, That the defender had no prejudice, and that the cedent concurred. It was *answered*, That the summons was not in the cedent's name, and so his concourse could operate nothing, so that the decreet thereupon would be null; for, in the like case, the LORDS, last week, in the cause betwixt David Hamilton and John Kennedy, and Symington, *supra*, reduced an apprising led twenty years since, because the apprising proceeded upon a charge to enter heir; and

No 48. some of the debts were assigned to the appriser, after the date of the charge, as to which the LORDS found the apprising null.

THE LORDS sustained the defence, and found no process; and had respect to the said decision of reduction of the apprising, which they found to be, as is related; though it was alleged, that after so long time, an appriser was not obliged to produce the letters of apprising, or charge to enter heir, or executions; yet, seeing *de facto* these were produced, and deduced in the apprising, and mentioning the dates as aforesaid, the same was reduced *pro tanto*; but there was no debate reported, whether it should stand *pro reliquo*, or how far it should extend, seeing the appriser, as to the rest, offered to prove it satisfied by intromission.

Stair, 1. 2. *p.* 405.

*** Newbyth reports this case:

IN a pursuit, Abercrombie against Anderson, for payment of a debt, to which Abercrombie was assignee, the LORDS would not sustain process at the pursuer's instance, upon the assignation to the debt, in respect the assignation was posterior to the date of the summons; albeit there was compearance made for the cedent, who concurred; and found that they would not in any time coming sustain process whereof the summons was of a prior date to the ground thereof.

Newbyth, MS. p. 84.

1672. *January* 19. Lord LOVAT and KINTAIL *against* Lord M'DONALD.

No 49.
Found the reverse of Kinghorn against Arbuthnot, No 28. p. 13265.

THE Lord Lovat's grandfather having disponed certain lands in wadset to the Lord M'Donald's predecessor, and he having used an order before Whitsunday last, is now pursuing a declarator of redemption. The defender *alleged*, Absolvitor, because the order of redemption was not orderly made, in so far as the Lord Lovat did neither, by the requisition nor consignation, instruct that he was heir to his goodsire, to whom the reversion was granted, either immediately or mediately, as being served heir to his father, who was served heir to his goodsire; for it is not at all instructed, that his father was heir served to his goodsire; and albeit Lovat hath since the order, and since the term of Whitsunday, served heir to his goodsire, yet that cannot supply the order, because the defender was not obliged to receive the money, or quit his possession to any party, unless there had been a formal title in his person at that time. It was *answered*, That the defender had no further interest but his money, and was no further to inquire into the pursuer's progress, who was commonly known to succeed to his goodsire in all his estate, especially seeing that before declarator he was served; and it is very ordinary to sustain removing, at the instance of one heir, though not infeft the time of the warning, if infeft thereafter, before in-