

No 11.

1625. July 22.

LA. LEY against LA. BARR.

IN an action of removing of ward lands, the LORDS found this exception relevant, that the defunct, by whose decease the ward was craved, was denuded by a comprising, and a third party infest holden of the King; notwithstanding it was *replied*, that the defenders alleged no right from the comprising; next, that the comprising was to the behoof of the defunct and his heirs, and gave bond to use the same to his behoof; because, it was *duplied*, That it elided just actions, and the question being anent vacation of ward, it must be adjudged by the decease of him who was vassal, and not by the decease of him to whose behoof.

Fol. Dic. v. 1. p. 516. Kerse, MS. fol. 112.

1628. November 28. WILLIAM POTTER against WILLIAM BAILLIE.

No 12.
Found in
conformity
with Caddell
against
Vauss, No 10.
P. 7787.

WILLIAM POTTER having charged William Baillie, one of the Bailies of Inverness, to take and apprehend John Cuthbert, by virtue of letters of caption; thereafter he convened the said Bailie to make payment to him of the sums owing to the pursuer by the rebel, as being become debtor to the pursuer *ex delicto*, for not obeying of the charge. *Alleged*, No process, till the horning whereupon the caption proceeded, were produced; which if it were, he would allege the horning null, and so the caption following thereupon could be no sufficient warrant to take the rebel. THE LORDS repelled the allegiance. *2do, Alleged*, No process upon the summons while they were tabled and continued, by reason the same consisted *in facto*, and must abide probation. *Answered*, Ought to be repelled, because the summonses were privileged, and that they were accessory to the executions of the Lords' sentence, and depending upon the executions of the saids letters of caption, which are the chief part of the executions of the said sentence. THE LORDS repelled this allegiance also. 4th December 1628.—Afterwards the defender produced the horning himself, and *alleged* absolutor, because it was null, and so he had no necessity to obey the charge direct upon that horning. The nullity was this, that the rebel was charged by the said letters of horning in Inverness, where he had his residence, as the charge bore, and was denounced rebel at the market-cross of Aberdeen; whereas it should have been, conform to the act of Parliament, at Inverness. *Answered*, The horning could not be taken away *hac via*, but behoved to abide a reduction; and albeit the horning were null, yet that cannot excuse the defender, who was obliged to obey the charge of the King's letters, while the rebel had freed himself by order of law; or otherwise it would open a door to disobedience of the laws. "THE LORDS found the allegiance upon the nullity of the horning relevant, and therefore assoilzied the defender."

Fol. Dic. v. 1. p. 516. Spottiswood, (CAPTION.) p. 31.