

denude her of her liferent, or to make it vailable to the said George, to be comprised by his creditor; seeing the said umquhile George was obliged to do some deeds to the said Marion, for the said disposition, which was never yet fulfilled to her, but the said George died before the fulfilling thereof; likeas, the same was consigned to remain in the hands of a third person condescended upon, while it were fulfilled: And albeit the compriser alleged, that that ought not to stay the effect of his comprising, seeing now he has the right, and she has action to seek performing of the deeds obliged by George Reid to her, against his heirs or executors;—yet the Lords found, that she was not prejudged by that disposition, it not being fulfilled to her reciprocally, and consequently that the compriser had no right: And albeit the compriser offered now to perform the same things to her which George Reid was obliged to, yet the Lords respected not the same, in respect it was not fulfilled to her by himself in his own lifetime; seeing she, *bona fide*, thereafter dispoed it to Mr Henry Gibson, thinking the same to be extinct by his decease, and by the consignation thereof, while it had been fulfilled; neither was it respected that the disposition was now in the compriser's hands; seeing the relict and her spouse offered to prove that, after George Reid's decease, Mr Henry Gibson broke up the coffer where the writs were consigned, and took out the same; and, by what condition he knows not, the said Gabriel Cunninghame has comprised it. Which the Lords found relevant to prefer Mr Henry to Gabriel, and to make his comprising to cease, as of a null right, for the foresaid reason received against the comprising and disposition, *hoc ordine*, as said is.

*Act. Cunninghame. Alt. Maxwel. Scot, Clerk. Vid. 22d February 1627, L. Aitkin, and the cases there.*

*Page 841.*

1637. *June 16. SIR JOHN SCOT against ARCHIBALD DRUMMOND.*

SIR John Scot pursuing Archibald Drummond of Giblistoun, for payment of the back-tack duties of the lands of Giblistoun, which were wadset to him, and set back again for payment of the said duties yearly; and, for that effect, to find caution for payment of the said duties bygone, and in time coming: And it being alleged that this summons could not be sustained, it not being executed upon 21 days' warning, and not being tabled in the common table; seeing the nature of this action, and the like, (*viz.* for paying of duties of lands,) ought to abide the common table, and ought to be executed upon 21 days' warning, especially where the summons contains no privilege;—the Lords repelled the allegation, and sustained the order and summons which was executed upon the citation of six days, the same being continued, and the party of new summoned by the continuation; and found no necessity of table or citation upon 21 days' warning.

*Act. Præsens. Alt. Gilmor. Scot, Clerk.*

*Page 845.*