

1624. July 1. LORD FRENDRAUGHT *against* L. BALVENIE.

By the practice observed when lands are comprised lawfully, and sasine follows thereupon, albeit sasine be divers years after the comprising, yet that sasine will be drawn back to the date of the comprising, and furnish action for the mails and duties of the lands comprised, of all years subsequent, since the comprising; as was found in the suspension betwixt the Lord Frendraught and Balvenie: But it is considerable who are called for these by-gone duties, &c. for in the said suspension, Balvenie being charged by Frendraught, to warrant certain lands disposed to him by John Leslie, heritor of these lands, with consent of Balvenie, superior of the same, and which they were both obliged to warrant, from an inhibition and comprising deduced thereupon, at the instance of one Innes, for debt owing by Leslie to the disponent, whereupon inhibition was served before the right made to Frendraught; he alleged, that that inhibition and comprising, could not be a distress to produce present execution of warrantice, seeing Frendraught was in real and peaceable possession of the lands, and no trouble nor action moved against him, upon the said inhibition or comprising, to impede him to bruike: Likeas, no sasine was taken upon the comprising, nor the compriser received or entered by Balvenie, who was superior of these lands, before whose entry, he being superior, he offered to take order to remove that impediment, and therefore he contended, that before sasine, or before some deed, done upon that inhibition and comprising, which could disturb his right and possession, he could not be charged to warrant. The Lords, notwithstanding of this reason, ordained Balvenie to warrant from the said inhibition and comprising, albeit the charger was not troubled in his possession, seeing the same were such rights as might prejudice his right to bruike, being anterior to him; and that the comprising, when ever sasine should follow, would make him countable for the mails of the lands, since the date thereof, as said is; and therefore the Lords decerned to warrant, but superseded the execution to a certain day, that betwixt and the day assigned, Balvenie might remove that impediment of the inhibition and comprising, either by some lawful process, or by consent of the compriser.

Act. *Hope & Oliphant.*

Alt. *Burnet.*

Clerk, *Gibson.*

*Durie, p. 133.*

1628. June 14.

FORBES *against* GARIOCH.

James Garioch of Kinstairs disposes to Leith of Whitehaugh a part of his lands of Hauchston, lying on the other side of the water of Don; and in the disposition, the said portion of lands is called a part and pertinent of Hauchston. He disposes to him both the lands and his right to the teind sheaves of the same; conform to the which disposition, the good-man of Whitehaugh bruike and possesses the same

No. 20.

Where eviction is imminent.

No. 21.

Warrantice from fact and deed.