

No. 17. been given by the Lord Kilmawers' predecessors, and therefore the pursuers' interest was sustained: And it was also found, that the pursuer needed not to summon the Lord Kilmawers, nor these pursuers' own authors to this reduction. Likeas it was found, that they needed not *in ingressu litis* for their interest, show any more to verify that they were infeft by the Lord Kilmawers' predecessors, but their return, bearing them to be served to be holden of him, with the sasine following thereupon; neither needed they in that place, before the reason was disputed, show that the Lord Kilmawers' predecessors were infeft by the King, and that they were his vassals, albeit the sasine produced and used by the pursuers bore, that the same was given upon the King's precept to the Sheriff, in respect of the Lord Kilmawers' refusal to seise them, which refusal in effect made rather, that the Lord Kilmawers was not superior, than that he was their superior, except they shewed where he was infeft, and wherein he was their superior; which was repelled against the interest, and sustained to be disputed after the production against the reason *in causa*, and needed not to be *instanter* shown.

Act. Aiton & Stuart

Alt. Hope & Nicolson.

Clerk, Hay.

Durie, p. 284.

No. 18.

1627. March 10.

DICK against SKELDON.

William Dick sought exhibition of one's writs from whom he had comprised certain lands, to the end that he might form himself a charter upon his comprising, which was refused him likewise.

Spettiswood, (EXHIBITION) p. 123.

* * * Durie reports this case:

In an action for exhibition and delivery of writs of comprised lands, at the instance of William Dick, against Skeldon, haver of the writs, the Lords found, that a compriser not infeft could not call for delivery of charters and sasines of lands, nor such real rights, himself not being really infeft, but that he might call for production of contracts and bonds, the same being comprised; and also found, that a compriser could not seek production of any writs of lands comprised, nor the same to be copied to him, except the party from whom he comprised had been called to that pursuit.

Act. Stuart.

Alt. Nicolson.

Clerk, Scot.

Durie, p. 289.

1628. February 15.

MR. JEDBURGH against EARL HUME.

No. 19.
Found that
a personal
bond to con-

In an action Mr. Jedburgh against Earl Hume, for proving the tenor of a charter of divers lands granted to umquhile Andrew, Abbot of Jedburgh, which um-

quhile Andrew had given infeftment to the pursuer of certain of these lands, contained in that charter, and by his bond he had obliged himself to give infeftment to the pursuer, of some other lands therein contained. This action was sustained against the Earl Hume, he being now heritor of the lands; albeit it was alleged, that he was minor, and was not holden in his minority, *placitare super hereditate paterna*; for if the tenor of this charter were proved, being anterior to his right, it would make the same fall; which allegiance was repelled in this nature of action, for proving of the tenor of the charter. In this process also the Lords sustained the pursuer's interest, viz. as being infeft in some of the lands contained in that charter, to seek probation of the tenor thereof, for the whole lands therein contained, albeit he had only right to a part, seeing the charter could not be divided anent the trial of the tenor thereof. Likeas they found, that the personal bond concerning some other of the lands therein contained, gave the pursuer interest to seek probation of the tenor of the said charter, albeit the defender alleged, that a personal bond could not produce action for proving of the tenor of a real right, except some other action had been first moved upon that personal bond, which might in law produce a pursuit concerning a real right in the person of the maker of the bond; which was repelled.

Act. *Aiton & Stuart.*Alt. *Hope & Belshes.*Clerk, *Gibson.**Durie, p. 345.*1632. *March 5.* RELICT OF VEITCH OF DAWICK *against* ———

If a woman pursue the tenants of a land, wherein her husband died last vest and seised, for the third part of the mails and duties, her service without the instrument of kenning of terce is sufficient title to instruct her summons.

*Auchinleck MS. (TERCE) p. 328.** * * *Durie* reports this case:

The Relict of Veitch of Dawick pursuing upon her service to her terce, the intrumittors with the duties of the lands, for payment of the third of the duty to her; it being alleged, that she could have no action therefore upon the services used for her title, except she had been particularly kened to the terce, and the instrument of kenning shown and produced, without which no process ought to be granted upon the service; the Lords repelled the allegiance, and sustained the process upon the title of the service produced; and found the kenning not necessary in this action, which was pursued for payment of the third part of the duties, payable for the land; whereas if the action had been real, as in removing, or for apprehending possession of the ground, the Lords *eo casu* would have found necessity for an instrument of kenning.

Act. *Craig,*Clerk, *Gibson.**Durie, p. 630.*

No. 19.

vey certain lands contained in a charter gave sufficient title to sue a proving of the tenor of that charter.

No. 20.