

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 bruik: 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 bruik, 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for the mails of the lands, since the date thereof, as said is; and therefore the Lords decerned to warrant, but superseded the execution to a certain day, that betwixt and the day assigned, Balvenie might remove that impediment of the inhibition and comprising, either by some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 bruiks and possesses the same

No. 20.

Where eviction is imminent.

No. 21.

Warrantice from fact and deed.

- No. 21. piece of land, stock, and teind, by the space of twenty years or thereby. Afterwards the said James disposes to his son William Garioch the said land of Hauchston, with the teind thereof, and the pertinents; and William assigned his right made to him by his father to Mr. James Forbes, brother to the Laird of Monymusk, with warrandice also of his own proper deed. The said Mr. James pursues the first disponent for the teind of the said piece, disponent to the said Leith of Whitehaugh, as being a pertinent of Hauchston, whereof the teind was disponent by him. The defender alleged, Albeit this piece of ground was sometime a pertinent of Hauchston, yet it was dismembered therefrom, and disponent to Leith of Whitehaugh, who had bruiked the same twenty years severally from the lands to Hauchston, and ought no longer to be reputed as pertinent thereof. The Lords found that the word "pertinents" must be interpreted of such as were the time of the making of the right to Mr. James, and not such rights as were disponent long before.

*Auchinleck MS. p. 249.*

- No. 22. 1629. *March 13.*  
LAIRD OF OLD FARR *against* DRUMMELZIER and LORD YESTER.

A decret obtained against tenants for spoliation of their teinds, who suffered great quantity above the avail to be obtained against them for their contumacy not comparing to depone upon the quantity of the same, being referred to their oath, can infer no lawful distress, whereupon their master being tacksman, can crave warrandice against the letter of the tack, except the quantities had been otherwise proved; but the Lords permitted David Murray, pursuer by the same summons, to prove the just quantity of the said teind, verified, that according thereto he might pursue his warrandice.

*Auchinleck, MS. p. 250.*

- No. 23.  
Eviction by  
process.

1629. *June 10.* HARPER *against* BUCHAN.

William Buchan, in Aberbrothick, having sold a bark to William Harper in Borrowstoness, gave his bond for warranting of the said bark free in all water. The said bark was arrested in ———, by William Smith, alleging he had right to the half of the bark from John Symson his brother, which George sold the bark to John Dugail, who disponent the same to the said William Harper; and before the Admiral the said William Symson obtained decree against the said William Harper, notwithstanding that the said Harper did intimate the plea to the said George Symson, and likewise proponed a relevant defence, which was repelled. Harper pursues the said Buchan for warrandice. He compares, and alleges that