

1621. *November 22.* The L. MUCKALL *against* STUART.

IN a pursuit by the L. Muckall, against Robert Stuart, for declarator of his liferent of such lands as he held of Muckall, the LORDS found, That no such general summons could be sustained in favour and at the instance of a subject, albeit the King has that privilege by his Crown; whereby it is presumed that all subjects hold their lands of his Majesty, except it be verified and shown otherwise; whereas another superior, if he claim any thing of his vassal, he must qualify him to be his vassal, and be special therein, and so could not have that general action sustained; and if the superior libelled his summons upon any special lands, the LORDS found it ought to be proved that he held the lands of him, and so ought to abide continuation. (*See PROCESS.*)

No 297.

Act. *Peebles & Baird.*Alt. *Hope.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 162. Durie, p. 3.*

1626. *July 1.* HALYBURTON *against* STEWART.

AN heritable bond being granted, and not bearing, that the infeftment of annualrent should be holden of the annalzier himself, but indefinitely without mention of any superior; it was found presumed for the King, that he behoved to be the superior of whom the annualrent should be holden, and therefore that the liferent escheat of the annualrenter belonged to his Majesty.

No 298.

*Fol. Dic. v. 2. p. 162. Durie.*\* \* \* This case is No 9. p. 3618. *voce* ESCHEAT.

1662. *February 25.* ARBUTHNOT *against* KEITHS.

No 299.

A PURSUIT at a donatar's instance against a vassal for the avail of his marriage, was sustained, without necessity to prove that it was a ward-holding, which is presumed where the contrary is not proved.

*Fol. Dic. v. 2. p. 162. Stair.*\* \* \* This case is No 29. p. 8528. *voce* MARRIAGE, AVAIL of.

1665. *July 29.* DOUGLAS *against* COWAN and RUSSEL.

No 300.  
A bond obliging a person to pay the price of wine.

PETER RUSSEL, by his ticket, acknowledged him to have received a certain quantity of wine, and obliged him to make payment thereof, according to the condition agreed upon, Douglas being assigned to the ticket, insists for the or-

No 300.  
according to  
certain condi-  
tions, the or-  
dinary price  
was found due,  
unless the  
debtor would  
prove that  
the condi-  
tions affected  
it.

dinary price of wine. It was *alleged* no process, for the ordinary price of wine; but only for the price agreed on, which behoved to be condescended on, and proved by the debtor's oath, being above L. 100. It was *answered*, That, seeing these conditions were not adjected, the ordinary price was to be understood, unless it were proved by the debtor, what they were, and that they differed from the common price.

THE LORDS found, That the debtor, by his ticket, behoved to condescend on the conditions, *qui potuit legem apertius dicere*, and not the pursuer, but they found witnesses might prove the condition.

*Fol. Dic. v. 2, p. 161. Stair, v. 1. p. 305.*

\* \* \* Gilmour reports this case :

PETER RUSSEL and James Gordon gave a bond to Cowan for payment of the price of certain wines according to condition (these are the very words.) The bond is assigned to Stephen Douglas, who charges the debtors, and they suspend upon this reason, That the bond being relative to a condition agreed upon, he is obliged to condescend upon and prove the condition. It was *answered*, That unless the suspenders condescend upon, and prove the condition, they must be obliged to pay the ordinary price of wine as wine then gave.

THE LORDS found no necessity to the charger to condescend upon, and prove any condition, he nevertheless proving the sufficiency of the wine the time of the delivery, and the price which such wines gave the time of the bond or delivery.

*Gilmour, No 163. p. 115.*

1674. July 3.

YOUNG *against* COCKBURN.

No 301.  
In a pursuit  
for rent by a  
verbal tack,  
the real worth  
of the lands  
was presumed  
the rent a-  
greed on, un-  
less the ten-  
ant would  
prove an a-  
greement for  
a lesser duty.

GEORGE YOUNG, as assignee by the Earl of Winton, pursues John Cockburn for 250 marks, as the rent of certain lands of the Earl of Winton's, possessed by him, libelling that the same was set by the Earl's chamberlain at that rate: And the pursuer, in the debate, declared, that he insisted against the defender for that duty, as that for which the land was worth and in use to pay, immediately before and after the defender's possession, and would not burden himself with probation of any agreement, which would put the quantity of the rent upon the tenant's oath, which were a great detriment to all heritors throughout the kingdom, who, for most part, have no tacks in writing; and, therefore, it hath always been sustained to prove *prout de jure* what they possessed, and that the lands were worth so much, unless they did except upon an agreement for a lesser duty, and proved the same. The defender *answered*, That a particular