

burden that the meanest subject must bear, is an object not worthy the attention of the city of Edinburgh, so it is with a very bad grace that the defenders acknowledge their ignorance of the state of the town's revenue, and that they have no regular inventory of the writings relative to it. In whatever disorder or confusion a private person may keep his own writings, it certainly becomes the administrators of the funds of a community to keep the writings relative to those funds in proper order.

To the *third*; Although the pursuers condescended upon the whole funds which they at the time had been informed were subjected to their provision; yet it was never understood by them that they were to be confined to these funds, if others did truly exist; and so, in their first memorial, it is set forth, 'That they would lay before the Court the several funds subject to their provision, in so far as they had been able to discover them; of which a more perfect knowledge will be had, when the defenders, who are masters of every document relating thereto, shall be ordained to give such inspection of the writings in their hands as may be necessary for that purpose.'

To the *fourth*; The pursuers condescended, according to their best information, upon the several grants which, they believed, were subject to their maintenance, and upon the import of them. But, as the condescending upon these particular grants will not bar them from demanding production of every other grant which may be conceived in their favour; so, if the grants particularly specified shall be found to contain clauses of a different import from what has been set forth, the pursuers will still be entitled to found upon them; and have therefore an undoubted right to call for production of them, that their true import may appear.

'THE LORDS adhered to their former interlocutor; and ordained the Magistrates to produce the writs therein mentioned betwixt and the first sederunt-day of November next.'

Act. Geo. Wallace, Da. Dalrymple, M<sup>c</sup>Queen, Ferguson. Alt. Rae, Garden, Johnstone,  
Montgomery, Advocatus.

Fol. Dic. v. 3. p. 195. Fac. Col. No 115. p. 268.

1781. December 5.

WILLIAM ROSE *against* SIR LUDOVICK GRANT, and Others.

ROSE having obtained from his Majesty a liferent-grant of the duties and revenues which had belonged to certain chaplainries situated in several of the northern dioceses of Scotland, and which at the Reformation fell to the Crown, brought an action against Sir Ludovick Grant, and other proprietors of lands holding of these chaplainries, for payment of the arrears of the duties, and for

No 13.

No 14.

The Crown's donatory to chaplain-duties is entitled to production of the title-deeds of the lands liable to these duties.

No 14.

exhibition of the charters containing the lands subject to them, in order that the amount might be ascertained.

*Pleaded* for the defenders; It is a rule of law, *Quod nemo tenetur instrumenta edere contra se*, Haddington, 10th February 1623, Monteith, No 7. p. 3963. Though this rule so far admits an exception, that a vassal may be compelled by his superior to exhibit his titles; yet as this can be done only in a process of reduction-improbation, Stair, b. 2. tit. 11. § 33.; Erskine, b. 2. tit. 5. § 3.; the present case being a simple action of debt, falls not within that exception. Nor is the Crown itself to be distinguished in this respect from other superiors; much less the pursuer, its donatary, possessed of nothing more than a mere personal assignment to the duties claimed.

But were such a compulsory competent, the law would yet never authorise a general exhibition of writings. On the contrary, those which are called for must be particularly specified or described; Erskine, b. 4. tit. 1. § 52. A just jealousy is entertained of the tendency of an unlimited access to the charter-chests, or of an uncontrolled inspection of the title-deeds of parties; Clerk Home, 8th July 1737, Scot *contra* Lord Napier, No 27. p. 358.; Hamilton of Dalziel *contra* Hamilton; Duke of Hamilton and Lord Selkirk *contra* Douglas, No 12. p. 3966.

*Answered*; An action for exhibition merely, is competent to superiors; Stair, b. 3. tit. 5. § 49.; Erskine, b. 2. tit. 5. § 3. Nay, such a production as that now claimed, is enjoined by act of Parliament 1592, c. 133.

The COURT adhered to the interlocutor of the Lord Ordinary, which was as follows: 'As the exhibition required stands confined to such of the defenders' charters of land as fall under the pursuer's grant, the *reddendos* of which specify certain chaplainry, feu, and other duties payable out of their respective lands; and the Lord Ordinary being of opinion, that this exhibition could not be disputed in an action at the Crown's instance for payment of those duties, and proof of the extent thereof, and that the same remedy must be competent to the same purpose and effect when pursued at the instance of the Crown's donatary and grantee; ordains the defenders to exhibit upon oath all the charters in their custody which contain the lands liable in the said chaplain-duties, and make mention thereof in the *reddendo*.'

Lord Ordinary, Covington.

Act. J. Swinton.  
Clerk, Home.

Alt. D. Rat, Ilay Campbell.

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Fol. Dic. v. 3. p. 196. Fac. Col. No 10. p. 19.

\* \* This cause was appealed.

THE House of Lords, 15th April 1782, 'ORDERED and ADJUDGED, that the appeal be dismissed, and the interlocutors complained of affirmed.'