

nantry omitted out of the comprising, whereto the comprising under that clause of annexes, &c. could only be extended; seeing that clause could only be interpreted, and extended to the pertinents of the special lands enumerated in the comprising, and the other lands omitted out of the comprising could not be drawn in under the same. Notwithstanding of the which answer, the exception was sustained; and the Lords found that the lands of Halltree, with the annexes, &c. thereof, being comprised, was all alike as if the tenantry wholly had been comprised; and therefore found the infeftment extended to the whole, and so purged the non-entry of the lands acclaimed, which were a part of the tenantry.

*Act.* Belshes. *Alt.* Oliphant. *Gibson, Clerk.* *Vid.* 16th Jan. 1623, Mr Hary Aitkine, where this concerning Union was thereafter otherwise decided by the Lords. *Page 23.*

---

1622. *July 2.*

CARMICHAEL *against* LERMONTH.

IN an action of declarator of liferent of some lands which were holden by one Lermouth of the Laird of Kilspindie, and pursued by Carmichael, donator constitute by the Laird of Kilspindie;—the Lords found that this summons needed not to abide continuation, seeing the donator produced a sasine to verify that the superior, viz. the Laird of Kilspindie, was infeft in the land, and that there was no other necessity to prove any more that a continuation might appear to be requisite; for that part of the summons, that the defender held the lands of Kilspindie, needed not be proven, seeing he might disclaim him to be his superior:—and so found, that the action needed not be further delayed by continuation. And this is contrary to the decision made, 22d November, 1621, in the action, L. Muckall against Robert Stuart; but the Lords declared in time coming they would decide, where the like question occurred, conform to the last decision, viz. that, in such cases, there should be no continuation where the superior's sasine is shown, and the defender to be year and day at the horn.

*Act.* ———. *Alt.* ———. *Hay, Clerk.* *Vid.* 23d June 1625, Lo. Stormonth; 6th March, 1624, Dowglass; 24th March 1632. L. Lochinvarr. *Page 28.*

---

1622. *July 24.* The LAIRD of LAGG *against* The BAILIE of HALLYWOOD.

IN an action of double poinding, betwixt the Laird of Lagg, as Sheriff of Dumfries, and the Bailie of Hallywood, for an unlaw of blood, the Lords preferred the bailie to the sheriff, because the bailie's decret was given before the sheriff's; albeit the sheriff had done the first diligence, by the first citation and first process; by reason the bailie's decret was long before the sheriff's, as said is.

*Act.* Belshes and Cunningham. *Alt.* ———. *Gibson, Clerk.*

*Page 33.*