

1623. July 1.

CRAWFORD *against* LORD COVINGTON.

THE Captain of Crawford retoured heir to his grandfather in the lands of Merflat, held of the Laird of Covington in *anno* 1595, charged him in *anno* 1622, to grant him a precept according to his retour. Covington suspended *alleging* that he had intented improbation. THE LORDS repelled that reason in respect of the retour standing, reserving his action of improbation as accords of the law. Thereafter, he *alleged*, that all the duties of the bygone non-entries should be paid at the subscribing of the precept, from the time of the Captain's goodsire's decease, which was declared by the retour to have been in *anno* 1563, which the LORDS found reasonable, to the year 1622, which was the time of the charge given to Covington by precepts of the chancellerie. Covington protested, that the granting of the precept should not prejudice him of the Captain's liferent, which the LORDS reserved as accords of the law.

Fol. Dic. v. 1. p. 431. Haddington, MS. No 2878.

No 13.
A vassal, after being year and day at the horn, received from his superior a precept for infesting him in the lands which he held under him. Found, that the superior was notwithstanding entitled to the vassal's liferent escheat, the precept being in obedience to a retour.

1623. July 25.

LO. RAMSAY *against* E. LOTHIAN.

IN a declarator of liferent, pursued at the instance of the Lord Ramsay against the E. of Lothian, for certain lands held by him of the pursuer, the LORDS found, that albeit the lands whereof the defender was vassal to the pursuer; were liferented by one possessing the liferent held of the superior, and that the defender was relaxed before year and day was expired, after the liferenter's decease, by whose decease the defender alleged, that he became only effectually and profitably the pursuer's vassal, seeing he *alleged*, that he could not be counted his vassal, but from the time of the liferenter's decease; yet nevertheless that his liferent of these lands fell, by his rebellion, year and day, albeit the liferenter was living, and that the profit which might belong to the superior, by that rebellion, was suspended only so long as the liferenter lived: Likeas, it was also found, that the giving of a precept by the superior to the vassal, for seasing of him in the lands held of him specially, being a precept for obedience of a retour, prejudged not the superior in the casualty of the vassal's liferent belonging to him, by the vassal's being at the horn year and day before the precept, which precept derogated nothing to the superior of that right of liferent of the said lands, contained in the precept, acquired to him by the vassal's rebellion, year and day before the precept. And also it was found, that an infestment granted by the vassal to another person who had acquired the heritable right of the lands from him, and possession conform thereto, upon causes onerous, and after the precept granted by the superior for sasine of the vassal, was not a right which could prejudice the superior of

No 14.
Found in conformity with Covington against Crawford, *supra*.

No 14.

his liferent foresaid; albeit it was *alleged* for him who had acquired the foresaid right and possession from the vassal, that he was in *bona fide* to bruik conform to his right, seeing he saw the precept subscribed given to his author, and sasine and possession in his person conform thereto, which continued so in his author's person unquarrelled by the space of many years, whereby he was in *bona fide* to contract with him, and ought not to be prejudged in his right lawfully acquired, which was repelled.

Act. Hope & Nicolson.

Alt. Belshe & Foulis.

Clerk, Hay.

Fol. Dic. v. 1. p. 431. Durie, p. 77.

* * Haddington reports the same case.

THE Lord Ramsay, baron of the barony of Dalhousie, pursued the Earl of Lothian to hear and see his liferent of the lands of Cockpen alleged held by the Earl of Lothian off the pursuer, be decerned to pertain to him, because he had remained at the horn above the space of year and day, and to pay to him the mails, farms, and duties of the said lands, since the year 1617. It was excepted, that the sasine produced could give no action, because it was not subscribed "*Et ego vero Abraham Gray notarius, &c.*" but only "*Ita est Abraham Gray.*" It was *answered*, That it proceeded upon the Earl's retour, who could not impugn it; and that he behoved, either to acknowledge himself vassal to the pursuer, or disclaim him. THE LORDS found not the sasine a sufficient title, unless the pursuer would either prove *cum processu*, that the Earl was retoured to the said lands held of the pursuer, or produce his own sasine of the barony of Dalhousie. It was thereafter *alleged*, That no profits could pertain to the pursuer by the Earl's liferent, but only the feu duties aughting by Sir William Ker, who was infeft in the lands held of the Earl before his liferent fell. It was *answered*, That Sir William was obliged to renounce in favour of the Earl, who had sinsyne possessed, and so was debtor to his superior. It was *duplied*, That Sir William was not deceased, and so nothing could fall but his feu mail. I reasoned that the Earl being infeft in the property, and in possession, Sir William could neither remove him, nor evict the mails and duties from him, and therefore he possessing the duties by his own right, the same behoved to pertain to his superior; which was found by the Lords. The defender declared, that he would restrict his exception to a particular quantity of the farms, duties, and coals libelled. The exception was, that the defender had suspended, and relaxed, and warned the party before the day of compearance. It was *replied*, that the exception eliding the hail libel, relieved the pursuer from probation of his libel. Notwithstanding whereof, the LORDS found the exception relevant, and declared, that whatever quantity the pursuer should prove, farther than was contained in the exception, he should have decret for the same.

Haddington, MS. No 2909.