

1625. July 23. WEEMSES *against* DAVIDSON.

In an action betwixt Weemes and Davidson, whereby they, as executors to their father, pursued the defender for a debt owing to the defunct, and which they pursued upon a general licence granted by the Bishop of Glasgow, giving licence to them to pursue for all debts owing to the defunct by any of his debtors, wherein no mention was made of any special debt, the Lords found this general licence null, and would not sustain this pursuit moved thereupon, because no special debt was therein contained, albeit the pursuer's action was for a special debt, which he alleged was warranted by the said general licence, giving him power to pursue for all debts, &c. which was not sustained, as said is.

Act. *Cunninghame.*

Alt. *Stuart.*

Clerk, *Gibson.*

Durie, p. 179.

No. 15.

A general licence, without mention of any particular debt, was found null, although the pursuer's action was for a special debt.

1626. December 19. STUART *against* COMMISSARY OF DUNKELD.

In a suspension betwixt Mr. John Stuart and the Commissary of Dunkeld, the Lords found the decree controverted in that suspension null, because it was given at the instance of an executor dative decerned, and bore not, "that he had licence granted to him to pursue that cause, whereupon he had recovered sentence;" which title, without a licence, or confirmation of a testament, the Lords found not to be sufficient whereupon sentence could be given; and this was so found, albeit the party offered, *cum processu*, to produce and show where this executor dative had confirmed a testament, containing this same debt contained in that decree, which was not sustained to maintain the decree.

Act. *Lermonth.*

Clerk, *Hay.*

Durie, p. 249.

No. 16.

1627. March 2. HEIRS OF LORD YESTER *against* E. BUCCLEUGH.

In a reduction at the instance of the heirs of the Lord Yester, against the Earl of Buccleugh, The Lords found, that the pursuers, as being retoured to their fathers, and infest in the lands libelled, to be holden of the Lord Kilmawers, who held of the King, had good interest to reduce the infestments made to the defender and his predecessors by the King's Majesty; so that one infest by a base infestment might reduce infestments public; but it is to be remembered, that this public infestment granted by the King, and desired to be reduced, proceeded upon a recognition for a fault done by the Lord Kilmawers' predecessors, who were the King's vassals, and authors of the pursuer's rights; so that the infestment quarrelled, which flowed upon the recognition, was accounted, as if the same had

No. 17.

Whether one base infest may pursue reduction of public infestments?

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been given by the Lord Kilmawers' predecessors, and therefore the pursuers' interest was sustained: And it was also found, that the pursuer needed not to summon the Lord Kilmawers, nor these pursuers' own authors to this reduction. Likeas it was found, that they needed not *in ingressu litis* for their interest, show any more to verify that they were infeft by the Lord Kilmawers' predecessors, but their return, bearing them to be served to be holden of him, with the sasine following thereupon; neither needed they in that place, before the reason was disputed, show that the Lord Kilmawers' predecessors were infeft by the King, and that they were his vassals, albeit the sasine produced and used by the pursuers bore, that the same was given upon the King's precept to the Sheriff, in respect of the Lord Kilmawers' refusal to seise them, which refusal in effect made rather, that the Lord Kilmawers was not superior, than that he was their superior, except they shewed where he was infeft, and wherein he was their superior; which was repelled against the interest, and sustained to be disputed after the production against the reason *in causa*, and needed not to be *instanter* shown.

Act. Aiton & Stuart

Alt. Hope & Nicolson.

Clerk, Hay.

Durie, p. 284.

No. 18.

1627. March 10.

DICK against SKELDON.

William Dick sought exhibition of one's writs from whom he had comprised certain lands, to the end that he might form himself a charter upon his comprising, which was refused him likewise.

Spettiswood, (EXHIBITION) p. 123.

* * * Durie reports this case:

In an action for exhibition and delivery of writs of comprised lands, at the instance of William Dick, against Skeldon, haver of the writs, the Lords found, that a compriser not infeft could not call for delivery of charters and sasines of lands, nor such real rights, himself not being really infeft, but that he might call for production of contracts and bonds, the same being comprised; and also found, that a compriser could not seek production of any writs of lands comprised, nor the same to be copied to him, except the party from whom he comprised had been called to that pursuit.

Act. Stuart.

Alt. Nicolson.

Clerk, Scot.

Durie, p. 289.

1628. February 15.

MR. JEDBURGH against EARL HUME.

No. 19.

Found that
a personal
bond to con-

In an action Mr. Jedburgh against Earl Hume, for proving the tenor of a charter of divers lands granted to umquhile Andrew, Abbot of Jedburgh, which um-