

SERVICES PERSONAL.

1624. *January 31.* LAIRD CARNOUSIE *against* KEITH.

BETWIXT the Laird of Carnousie and Keith, for payment of certain duties of lands, contained in a bond, the right to the which duties mentioned in the said bond was established in the person of Carnousie, by comprising from the Laird Philorth, to whom the duties by that bond are obliged to be paid; the Lords found, that these duties, which consisted in services to have been yearly paid, as leading of hay yearly, and of the corns in harvest, and shearing, and leading of muck, and other services of that nature, if they were not yearly required to be done by the person who was subject to do the same; that the person so addebted, is not, after the intervening of other subsequent years, holden to pay any prices for the duties which were not required, *debito tempore*, to be performed yearly, conform to the bond; and therefore would not sustain the pursuit for these services, the same being pursued long after the years for which the services were acclaimed.

No. 1.

Duties of land, consisting of services payable early, such as leading hay, corn, &c. if not yearly required, *debito tempore*, the debtor is not liable for any prices in lieu thereof.

Act. King.

Alt. Mouat.

Gibson, Clerk.

Fol. Dic. v. 2. p. 372. Durie, p. 104.

Haddington reports this case :

Carnousie pursued Keith to pay to him the duties and due farms of certain lands comprised by him from Philorth, according to the defender's father's bond, in the which action it was found, that a bond to a man to possess lands, while 2,000 merks were paid to him, made him to be of the quality of a Baron who might have an heir; and that his eldest son succeeding to the possession of the said land behoved to be reputed the father's heir *passive*. They likewise found, that the service of the land appointed to be paid, if it were not required, the estimation thereof could not be craved, if the service had not been craved in the year that it should have been done.

Haddington MS. No. 2984.