

1630. July 9.

L. ROWALLAN *against* BOYD.

IN a removing from a piece of land, set in rental to the defender by Rowallan, wherein the Lord Boyd compeared for his interest, *alleging*, That that land was part and pertinent of his land, and was so bruiked before this rental produced, past memory of man; and the other alleging the same to be part of his lands, and so bruiked by him continually; and so the parties being alike pregnant in their contrary qualifications; the LORDS found, that the readiest way to try the verity was, by giving a commission to a Gentleman in the country, to see the ground controverted, and both the parties' lands alleged, and to take all the most exact trial that might be had by inspection, and deposition of witnesses *hinc inde* unsuspected, and by any other presumption, or probable circumstance, and to report the same to the Lords.

Act. ———.

Alt. *Boyd*.Clerk, *Gibson*.*Durie, p. 528.*

No 639.

Part and pertinent.

1631. January 29.

BUTLER, L. HIRDMISTON, *against* VAUSE.

THE heritor, after the liferenter's decease, charging summarily, without preceding warning, to remove from the tower and manor-place, and some other houses pertaining thereto, wherein the defender *alleging*, That these other houses, by and attour the principal house acclaimed by the pursuer, pertained not to the pursuer's predecessors, nor to those lands wherein they were infest, but that the same pertained to the defender, and stood upon the lands pertaining to the defender heritably, which were lying contiguous to the pursuer's lands; and either of the parties qualifying certain arguments and presumptions, whereby they alleged these houses controverted to pertain to either of them; the LORDS, before, having given commission to two of their number to visit the said lands and houses, and to take trial by witnesses, and all other lawful manner, to which of the party's lands these houses belonged; after report made by the two Lords, and consideration of the depositions of witnesses taken by them, which were produced by either of the parties, they finding the matter not to be clear, to which of the parties they belonged properly, they ordained both parties to produce before them an equal number of witnesses, for qualifying of either of their arguments, that, after consideration thereof, they might proceed and decide the cause: And this was done, albeit it is not ordinary in this judgment to take witnesses for both parties; but this was ordained in this case, where the matter was perplexed and uncertain on both sides, for their claims to the houses controverted; and as their probation should be found most clear and un-

No 640.

A party, who had sold the lands in dispute, and was liable in warrandice, was received as a witness.