

No. 8.

1634. *January 23.* EARL OF MARR *against* HIS VASSALS.

IN the action of reduction of the Earl of Marr against Vassals, *alleged* by one Duguid of Auchinhove, That he and his predecessors had been infeft in his lands holding by the King, for the space of 200 years, which lands were designed to lie in the sheriffdom of Aberdeen only, but not within the earldom of Marr, or Lordship of Garioch; *replied*, He offered to prove them parts and pendicles of the earldom of Marr; which reply the LORDS sustained to be proven by public and authentic writs and evidents, with this declaration, That for proving thereof, they would not think the Exchequer rolls sufficient alone, except the pursuer proved it by other evidents beside.

Spottiswood, p. 226.

No 9.

1638. *December 11.* L. TUSHELAW *against* SIR JOHN SCOT.

IN a removing sought from some lands, which the defender *alleged* to be part and pertinent of the lands of _____ pertaining to him heritably, and which have ever been so bruiked by him these many years bypast; and which the pursuer *alleged* also to be bruiked by him continually as part and pertinent of his lands; the LORDS admitted to both the parties to prove, and ordained either of them to adduce six witnesses to prove the same, and after examination of the witnesses, they decerned to remove in favours of the pursuer, who proved clearly, that it was a part of his lands, except some little peice thereof, which was proven to be a part of the defenders lands, and so here contrary probations were admitted to both parties.

Act. *Hope and Advocatus.* Alt. *Nicolson and Burnet.* Clerk, *Gibson.**Durie, v. 2. p. 866.*1662. *January 30.* LORD BURLY *against* JOHN SIME.

No 10.
Goals found
to be carried
by the com-
mon clause
of pertinents,
against one
expressly in-
feft in the
coal-heughs
of the lands.

THE Lord Burly pursues John Sime for intruding himself in a coal-heugh, wherein the pursuer's author was infeft severally, and not in the land, but only in the coal, with power to set down pits through all the bounds of the land. The defender *alleged* absolvitor, because he stood infeft in the lands libelled, with parts and pertinents, and by virtue thereof, was seven years in possession, which must defend him in possession, until his right be reduced. The pursuer *answered*, That the defender could have no benefit of a possessory judgment, not being expressly infeft with the benefit of the coal, in prejudice of the pursuer, who was expressly infeft, and seased in the coal, and in possession of the

coals past memory. The defender *answered*, there was no necessity of an express infeftment of the coal, which is carried as part and pertinent, as Craig observes *in dieg. de investituris impropriis*, to have been decided betwixt the Sheriff of Ayr and Chalmers of Gaithgirth, and so being infeft, and in possession seven years, he has the benefit of a possessory judgment.

THE LORDS found the defence relevant, but repelled the same, in respect of interruption within seven years, which was proponed.

Stair, v. 1. p. 88.

1668. January 15. EARL of ARGYLE against GEORGE CAMPBELL.

THE Earl of Argyle pursues George Campbell to remove from a tenement of land in Inverary, who alleged no process, because, the pursuer produces no infeftment of this burgh, or tenement therein. The pursuer *answered*, That he produced his infeftment of the barony of Lochow, and offered him to prove, that this is part and pertinent of the barony. The defender *answered*, That this burgh cannot be carried as part and pertinent, but requires a special infeftment; *1st*, Because, by the late Marquis of Argyle's infeftment, in *anno 1610*, produced, this burgh is exprest, and not in the pursuer's infeftment; *2dly*, Because in the pursuer's infeftment, there are exprest particulars of far less moment; *3dly*, Because a burgh of barony is of that nature, that it cannot be conveyed without special infeftment. The pursuer opponed his infeftment of the barony of Lochow, which is *nomen universitatis*, and comprehends all parts of the barony, although there were none exprest, and therefore the expressing of this particular in a former charter, or less particulars in this charter, derogate nothing; it being in the pursuer's option to express none, or any he pleases; and albeit, in an infeftment of an ordinary holding, without erection in a barony, mills, fortalices, salmond fishings, and burghs of barony cannot be conveyed under the name of part and pertinent, yet they are all carried *in baronia*, without being exprest.

“THE LORDS repelled the defence in respect of the reply, and found that this being a barony, might carry a burgh of barony as part and pertinent, though not exprest, albeit it was exprest in a former infeftment, and lesser rights expressed in this infeftment.”

The defender further *alleged* no process, because the pursuer's infeftment is qualified, and restricted to so much of the estate, as was worth, and paid yearly L. 15,000, and the surplus belongs to the creditors, conform to the King's gift, likeas the King granted a commission to clear the rental, and set out the lands to the pursuer, and to the creditors, who accordingly did establish a rental, wherein there is no mention of the lands of Inverary, and therefore they cannot belong to the pursuer. It was *answered* for the pursuer, That he oppones

No 11.

Infeftment in a barony carries a burgh of barony, though not expressed.