

1670. *January 29.*The Laird of RENTOUN, JUSTICE-CLERK *against* HOME, Portioner of Westrestoun.

No 7.

There being a servitude upon a whole abbey pres-table to the forester, he having the lands himself, and disposing or excambing the same without reservation of the servitude, the Lords found the lands free thereof.

IN a declarator at the Justice-Clerk's instance, as having right to so many threaves of corn and straw out of each husband-land of the abbay of Coldingham, as heir to — Ellums, who were foresters to the abbacy; there was a defence proponed for Home, That his lands of Westrestoun were given in excambion with the pursuers predecessors, for certain lands which were a portion of Rentoun, and that without reservation of any such servitude. It was *replied*, That these lands of Rentoun being liable to that servitude before the excambion, *ex natura rei*, the lands of Westrestoun, which were excambed, behoved to be liable to that same servitude as these lands of Rentoun were. — THE LORDS having considered the contract of excambion, and charter following thereupon, which did bear, that the pursuers' predecessors, who did excamb these lands of Westrestoun, had disposed the same to be holden blench, *reddendo denarium pro omni alio onere*; and that, when these lands belonged to the Lairds of Rentoun, who were foresters, they could not be liable to that servitude, *quia res sua nemini servit*, they found the allegiance relevant and proven, and therefore assolizied the defender.

Fol. Dic. v. 1. p. 200. Gosford, MS. p. 97.

No 8.

1687. *July 23.*

ELIES, Supplicant.

MR JOHN ELIES having infest his son in Elieston, to be holden base of himself, and being now dead, and so his son succeeding also to him as heir of tailzie, and serving himself heir, he doubted how to be infest, being both superior and vassal, and if he could direct precepts to infest himself? On a bill given in to the LORDS, they directed precepts to the Sheriff of the shire to infest him. But thereafter the LORDS found he needed no new infestment, but that his old one reconvalesced, and his retour consolidated the property with the superiority without a sasine.

Fol. Dic. v. 1. p. 200. Fountainball, v. 1. p. 470.

1736. *February 4.*CHARLES, EARL of PETERBURROW *against* The CREDITORS of SIR PETER FRASER of Duris.

No 9.

A wadset, purchased by an heir of entail, the reversion of

SIR ALEXANDER FRASER having purchased the estate of Duris, comprehending the lands of Strachan and Culpersheugh, entailed it under the usual prohibitory