

1627. July 26. HAY against CRICHTON.

CRICHTON being infeft in Creichie, holden of the Laird of Wardes *cum curiis*, pursues John Hay, his tenant, in his own court, before his own bailie, for other debts alleged owing to him, than the duties of the ground; this Crichton being addebted to the said tenant for a certain sum of money upon bond. Hay registers the bond, and charges his master to make payment. The master suspends and craves the benefit of compensation of the said sums, recovered against his tenant in his own court. THE LORDS would not allow compensation of such debts.

*Fol. Dic. v. I. p. 504. Auchinleck, MS. p. 252.*

No 262.

The Lords refused to sustain a decree obtained by a landlord against his tenant, in his own Court, being for another cause than the duty of the ground.

1630. January 30. DENNISTOUN against M'LINTO.

DENNISTOUN having obtained decret against M'Linto, in his own court, he being his tenant of the lands, which were holden by Dennistoun of the D. of Lennox, for payment of certain sums incurred for cutting of his wood, conform to a contract betwixt the parties, whereby the tenant was obliged to pay the same, if it were tried in his master's court, that he had contravened; and upon this decret, seeking letters conform, the D. of Lennox compeared, and *alleged*, That that decret was null, being given in his vassal's court, in prejudice of his regality, where the same should only have been tried and judged. THE LORDS found, That in respect that the sentence proceeded upon a mutual contract betwixt the master and his tenant, who consented that the trial should be taken in his master's own court (he being infeft *cum curiis*), that therefore the master might judge the same in his own court, wherein the superior and lord of the jurisdiction could not pretend prejudice; for if the tenant had done any thing against the law, in cutting green wood, or otherwise, which might bring him under censure, the lord having the sovereign jurisdiction might pursue him therefor, wherein this sentence, upon a mutual convention, could not derogate; and it was found, that the vassal infeft *cum curiis*, had power thereby to convene his tenant upon his own consent, and that the clause *cum curiis* extended not only to a power to hold courts upon his tenants for their farms, but also to any other act against his tenants, specially, it being so convened between them; and it was not respected where the D. alleged, that if all the vassals should so contract, his jurisdiction would be eluded; nevertheless the decret was rescinded, and the defender reponed to propone all his defences *in causa* in this place. here before the Lords, in respect the defender produced an instrument, where he offered to give his oath (the action being referred thereto), and nevertheless was decerned as contumax.

No 263.

The clause *cum curiis* extends not only to a power of holding courts upon tenants for their rents, but for other breaches of their duty as tenants.

Act. ———.

Alt. Burnet.

Clerk, Gibson.

*Fol. Dic. v. I. p. 504. Durie, p. 487.*