

1630. *March 18.*LA. MAXWELL *against* HER TENANTS.

IN a removing Lady Maxwell *contra* Her Tenants, she being served, and upon a precept of the macers, before whom she was served, being kened to her terce, produced the instrument of kenning for her title; and the Mr of Yester's son, who, upon comprising from the heritor, was infest by public infestment in the land, and by virtue thereof divers years in possession, being *alleged* to be a necessary party, who was not warned nor summoned, as he ought to have been to this pursuit; and also it being *alleged*, that the kenning, without production of the service, could not be a title to the pursuer for this pursuit; the allegiances were repelled, and the kenning found enough to instruct this pursuit as a sasine, without necessity of the charter or warrant thereof; and that there was no necessity to produce the service, or to warn the compriser, albeit infest and in possession, no more than there was necessity to warn the Earl of Nithsdale heritor, from whom the lands were comprised, who was the heir or apparent heir of her husband, by whose decease she hath right to her terce.

Act. *Douglas.*Alt. *Sharp.*Clerk, *Hay.**Fol. Dic. v. 1. p. 140. Durie, p. 507.*

No 96.

In a removing at the instance of a lady tercer kened, there was found no necessity to call a compriser from her defunct husband, tho' infest and in possession of the rents.

1633. *February 14.*L. LOCHINVAR *against* GRAHAM.

IN a removing, Graham the defender *alleging*, that he is tenant to the apparent heir of one Graham, which — Graham was heritably infest in the lands libelled, and by virtue thereof 30 years in possession of the saids lands libelled; at least the defender bruiked by the tolerance of the said apparent heir, and he is not warned; THE LORDS repelled this allegiance, except the tenant should allege, that the said umquhile — Graham was lawfully infest, and that his infestment was lawfully confirmed, seeing they were kirk-lands, which were controverted; and found that the tenant ought to allege this, otherways that the allegiance should be repelled; and that he ought to condescend, by whom that Graham was infest.

Act. *Gilmour.*

Alt. —.

Clerk, *Gibson.**Fol. Dic. v. 1. p. 140. Durie, p. 672.*

No 97.

Found in conformity with No 90. p. 2226.

1634. *November 13.* MUDIE *against* LIGHTOUN and the TOWN of MONTROSE.

IN an action at Will. Mudie's instance, as infest upon a comprising, for payment of the mails and duties of the land, which Lightoun the defender alleged that he possessed by a right flowing from Graham, who was heritably infest in

No 98.

To found an action of mails and duties against