

property of thir lands himself, holden of the Lord of Jedburgh. This reason was repelled, *hoc loco*, and the letters found orderly proceeded against the superior, for infesting of the compriser, reserving to him to dispute his right of property when the compriser should pursue for the maills and duties. The other reason of suspension is, That the superior should be paid of a year's duty. To the which it was answered by the compriser, charger, That she could not pay a year's duty presently, because the lands were bruiked by the good-dame of him from whom the same were comprised, by her right of liferent; and, till the time of her decease, the compriser could get no intromission with the rents of the lands, so that, until then, her comprising would be unprofitable. The Lords found the letters orderly proceeded against the superior, and suspended the payment of the year's duty to the superior till the liferenter's decease, the charger finding caution after the liferenter's decease to pay the year's duty to the superior.

*2d MS. Page 36.*

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1636. *March 17.* JAMES HOME of COLDINGKNOWES *against* ANNA and JEAN HOME, and the LORDS DOUN and MAITLAND.

IN an action of transferring pursued by James Home of Coldingknowes against Dames Anna and Jean Homes, and the Lords Doun and Maitland, their spouses, for their interests,—for transferring of the contract of tailie made betwixt the deceased Alexander Earl of Home, their father, and the deceased Sir John and Sir James Homes of Coldingknowes, against the said ladies and their spouses *passivè*,—it was alleged, *dilatorie*, That the summons, since the first execution, was eiked. It was answered, That the defender's procurator had seen the summons since they were eiked. Which dilator was repelled. *2do*. The said summons, whereby the said ladies were charged to enter heir to their brother and father, was cut, and a new sheet put in above the signet, whereby the charge was vitiated; which cutting is forbidden by an Act of Sederunt. It was thereto answered, That the charge did agree with the warrant of the signet; and the said sheet was written over, for some lines that had been negligently written wrong by the writer; and the pursuer's procurators offered to abide by the verity of the deed, both of the summons and executions. Whereupon the writer and messenger were both examined *in presentia*; and so this dilator was also repelled.

*2d MS. Page 227.*

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1636. *March 23.* GIDEON FULLERTOUN *against* FULLERTOUN.

JOHN Fullertoun of Kinnaber, by contract of marriage betwixt him and Janet Lindsay, his second spouse, obliges him and his heirs to provide the heir-male to be gotten of that marriage to 4000 merks. After this contract, he infests his son of the first marriage, who is his apparent heir, in liferent, and his oye in fee, of his hail lands. After his decease, Gideon Fullertoun, heir procreated betwixt him and the said Janet Lindsay, pursues his father's eldest son of the first

marriage, liferenter, and his son fiar, as *successor titulo lucrativo post contractum debitum*, for implement of the said contract of marriage. It was alleged for the defender, That the father could not be convened as successor; because he succeeds to none of his father's heritage but a bare liferent; and his son, oye to the goodsire, could not be convened; because, his father being living, he is not *alioqui successurus*. The Lords found this sort of disposition sufficient to make the father *successor titulo lucrativo post contractum debitum*.

2d MS. Page 6.

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1636. *March 26.* JAMES MOUBRAY *against* DAVID SOMMER.

ALTHOUGH, by the law and practique of this kingdom, if the wife die within year and day after the marriage, not bearing a quick child, the tocher must be restored again to the woman's heirs; yet the expenses bestowed by the husband upon his wife's entertainment, clothing, doctors, and apothecaries, and funeral, should be allowed to the husband, before he be holden to restore the hail tocher.

2d MS. Page 138.

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1636. *March 29.* The EARL of GALLOWAY *against* HARIE GORDON.

THE Earl of Galloway comprises a mill from ————, but takes no infestment, nor yet charges the superior to infest him, for the space of five years after the comprising. His debtor's son, after the comprising, disposes the mill to Harie Gordon of Kilsture, who obtains possession, and uplifts the duties from the tenants by the space of two or three years. In the meantime the Earl of Galloway pursues the tenants to pay their duties to him, and to misken Harie Gordon for the crop 1635. They suspend upon double pouding. Harie Gordon alleges, That he ought to be answered, as having best right, by virtue of his infestment clad with divers years' possession. The Earl of Galloway alleges him to have best right, as having comprised the mill before the other was infest; and the common debtor could make no voluntary disposition in prejudice of him who had comprised the lands before; by the which the disponent was denuded of all right that was in his person. The Lords preferred the infestment clad with possession to the comprising whereupon no infestment nor charge to the superior had followed by the space of five years.

2d MS. Page 37.

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1636. *July 13.* JOHN HALIEBURTON *against* JOHN PATERSON.

HALIEBURTON, minister of Kinneill, having gotten designed to him a croft of land pertaining to Mr John Paterson, and holden by him of a chaplainry; and being charged to remove therefrom, suspends, alleging, That his croft could not be designed for a part of the minister's glebe; because, by Act of Parliament Ja. VI,