

Jordanhill to hear and see the tenor of a bond of £100 made to them by his father, proven. Alleged, All parties having interest were not warned, *viz.* the executors of his father, who behoved to be summoned, because they must relieve the heir. Replied, No necessity to summon any but the heir, because the defunct having obliged, by the bond, both his heirs and executors, it was in the pursuer's option, as if he were in the execution, (in which he was in effect, because he craved the tenor to be proven, and, being proven, payment,) either to pursue the heir or the executor. Next he convened the defender as heir, at least universal intromittor, at least as executor to his father. The Lords, in respect of this last part of the reply, repelled the exception, unless the defender would condescend upon some other than himself that was executor to his father.

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1628. *March 11.* ANDREW KER *against* The LAIRD of COLDINGKNOWS.

ANDREW Ker pursued a declarator of the Laird of Coldingknows's liferent-eschate of the lands of Smaillum Spittell, as donator thereto by the Earl of Marr Lord Dryburgh, superior of these lands. Alleged, *1mo.* No process upon his summons while they were continued, because the pursuer behoved to verify that Coldingknows was the Earl of Marr's vassal. Replied, No necessity, because, by the Earl of Marr's sasine produced, it is proven that the said lands hold of him. As to that, that Coldingknows is not verified to be vassal of the said lands to the Earl, Answered, It needs not be proven, because he is either vassal, or otherwise he must disclaim; which the pursuer is content he do. The Lords repelled the allegiance. *See the next Case.*

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1628. *March 13.* JOHN BOSWELL of PITTEDIE *against* The LAIRD of COLDINGKNOWS.

NEXT compeared John Boswell of Pittedie, and produced a sasine of the same lands upon a comprising led at his instance against Coldingknows, and alleged, No declarator of Coldingknows's liferent of these lands, because, long before the pursuer's gift, Coldingknows was denuded of these lands by comprising and infestment following thereupon made to this Pittedie. Replied, The sasine produced cannot be obruded to the pursuer's gift, because Pittedie is only seised in these lands, holding of the king, who was not superior to Coldingknows at that time; but, on the contrary, the Earl of Marr, from whom the pursuer's gift proceeds, was infest in the superiority by the king, and so Pittedie's infestment not holding of the right superior, his sasine cannot exclude the pursuer. Duplied, That Coldingknows, standing infest, holding of the king the time of his comprising, he was *in optima fide* to comprise the lands from him to be holden of the same superior; and there was no necessity for him to kenn the Earl of Marr, seeing Coldingknows had taken no new infestment to be holden of the Earl. The Lords repelled the allegiance proponed for Pittedie, in respect of the reply. *See the preceding Case.*

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