

1632. July 21.

HAMILTON against _____.

IN a reduction of a consent, given by the wife to her husband's alienation of the lands wherein she was conjunct fiar, desired to be reduced *ex capite metus*, &c. ; and an exception of her voluntary consent being proponed, that she compared before the bailies of Glasgow, and town-clerk, and before certain witnesses, and made faith that she did it voluntarily, testified by a note written by the clerk upon the back of the contract ; albeit neither that note was subscribed by the bailie nor clerk, nor an act extracted and delivered to the party thereon, nor no further extant in the clerk's books to verify it ; whereby the pursuer alleged, that it ought not to be respected ;—the Lords, *ex officio*, ordained both the parties' witnesses, *hinc inde*, to be condescended on, and the witnesses mentioned in the foresaid note to be examined ; and thereafter they would consider of the reason of *metus* and exception, and decide the cause, (for the bailie and clerk were dead,) as was decided 27th June 1632, betwixt Cassie and Fleming.

Act. Nicolson and Dunlop. *Alt.* Stuart. Scot, Clerk.

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1632. December 1. The LAIRD of KILKERRAN against FERGUSON.

THE L. Kilkerran,—having comprised certain lands from one Ferguson, and having charged the superior to enter him therein ; and the same lands being thereafter adjudged to another creditor of this same common debtor's, who was infest by virtue of the said sentence of adjudication therein, *in anno* 1626, and, conform thereto, in possession of the lands ; but after Kilkerran's comprising, and charge given to the superior, which preceded the other party's adjudication, the said comprising being *in anno* 1625,—pursues this other creditor for repayment of the duties of the lands uplifted by the said other creditor, by virtue of his adjudication of the years 1627, 1628, 1629, and 1630. Wherein this creditor, defending himself with his adjudication, infestment, and real possession, and thereby claiming preference, seeing he alleged that Kilkerran was not infest nor seised, without which he could claim no right to the lands, especially against another creditor infest, as said is ; and that his diligence against the superior could not be equivalent to a sasine against this excipient ;—and Kilkerran claiming preference, in respect of the anteriority of his comprising and diligence : likewise, in another process of double poinding, wherein this same excipient was party, for the duty of these lands, *anno* 1631, he was decerned to be answered of that year, which must give him alike right to all years since his comprising ;—the Lords, notwithstanding of the anteriority of Kilkerran's comprising and diligence against the superior, and sentence for the year 1631 in his favours, which was given, this party being absent,—found that the excipient ought not to repay the bygone years acclaimed ; for the sentence for the year 1631 was given upon the duties of the lands then extant, neither uplifted nor consumed ; and the other years bypast, now controverted, were uplifted, and were, *bona fide*, *percepti et consumpti*, conform to a true title, and *bona fide* ; the other party hav-