

to hear and see a decret-arbitral pronounced betwixt the said Hugh and the said umquhile Gilbert, which was registered by way of action at the instance of the said umquhile Gilbert against the said Hugh, transferred against the heirs of the said umquhile Gilbert. It was excepted by the said defender, That this decret, registered at the instance of the said Gilbert, cannot be transferred against his heirs *passivè*, at the instance of this pursuer, except the decret had been registered at the pursuer's instance against the defender; or, at the least, when the same was decerned to be registrate, that the pursuer had protested, that he, against whom it was registrate, might have execution against the said Gilbert and his heirs upon the said registration. Which exception the Lords found relevant; nevertheless, they gave licence to Hugh to mend the conclusion of his summons; and, in place of transferring, to pursue for implement of the said decret.—*22d January 1629.*

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1632. *January 1, and December 1.* JOHN FERGUSON of KILKERRAN *against* THOMAS DAVIDSON; and
 1632. *January 31, and July —.* JOHN FERGUSON of KILKERRAN *against* JOHN FERGUSON.

MR John Ferguson of Kilkerran being heritably infest in certain lands in Carrick, holden of the Earl of Cassils, upon a comprising, charges the tenants for the maills and duties. The tenants suspend upon double pointing, being troubled by Mr John Ferguson on the one part, and Thomas Davidson on the other part. It was alleged by the said Thomas Davidson, That he ought to be answered and obeyed, because he had comprised the said lands, and had obtained himself infest by the superior; and, by virtue thereof, was in possession thir four years. To the which it was first alleged by Mr John Ferguson, That he had first comprised the said lands, and charged the superior to infest him, who having suspended, the compriser has obtained decret against the superior; and so his diligence being prior, no voluntary infestment, granted by the superior to the later compriser, can prejudge him that used the first diligence; neither ought the last appriser's possession to be respected, proceeding upon the voluntary deed of the superior. The Lords found the first compriser should be preferred.—*1st January 1632.*

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Another suspension of double pointing being raised by the said tenants, (of Dalduff,) for crop 1631, against the said John Ferguson of Kilkerran on the one part, and John Ferguson, taylor, on the other part; Kilkerran alleges, That he ought to be answered, as having first comprised, and charged the superior to enter him; which is equivalent to a charter and seasine; and which must ever be drawn back to the time of the charge, which was prior to any diligence done by John Ferguson. To the which it was answered by the said John Ferguson, That he ought to be preferred, as having obtained the first infestment upon a charge given to the superior; and, as to Kilkerran's charge, the same was suspended by the superior, and lies yet undiscussed; whereas John Ferguson obtained infestment, and, by virtue thereof, obtained possession, by

uplifting the maills and duties thir two last terms. The Lords preferred John Ferguson aye and while Kilkerran obtained the suspension discussed.—31st January 1632.

Thereafter the said suspension was discussed in July 1632, and the superior ordained to infest the charger ; after the which decret, of suspension, the action of double poinding being again called, the Lords ordained Kilkerran to be answered and obeyed. Page 39.

The said Mr John Ferguson of Kilkerran,—having comprised the lands of Dalduff, holden of the Earl of Cassils, and having charged the said Earl to receive him vassal, who suspending ; and having discussed the said suspension, and being willing to satisfy for his entry, yet the said sum not being paid to the superior, nor he infest ;—pursues Thomas Davidson of Pennieglen, who had comprised the said lands, and procured himself infest ; and, by virtue thereof, had uplifted the maills and duties of the lands comprised for the space of three years ; to refund to him the said maills and duties, as he who had used the first diligence by comprising and charging the superior. It is excepted by the defender, That he ought not to refund the maills and duties intromitted with by him ; because he had uplifted the same, by virtue of his infestment ; and, as yet, the pursuer was not infest, in his own default, for not paying to the superior his due ; and, since his charge, which was suspended, he has done no diligence to discuss the suspension, for the space of three or four years ; in the which time the defender had good reason to uplift the maills and duties, by virtue of his infestment. Which exception the Lords found relevant, *quoad fructus perceptos*.—1st December 1632.

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1632. December 1. ROBERT MASTERTON and GRAHAM *against* ANDREW STEWART.

ROBERT Masterton and Graham pursue Archibald Stewart for the sums addebted to them by bond, bearing annualrent and expenses. Other creditors of the said Archibald, compear, and allege, That if annualrent and expenses be allowed to the pursuer, nothing or little will be left among them, who are content to quit a great part of their just debt. The Lords, in respect of the inhability of the debtor, and that some help might be gotten to the rest of the creditors, will neither allow annualrent nor expenses to the pursuers, albeit one of the pursuers's bond bears annualrent.

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1633. January 17. WOOD *against* BLAIR.

AN heir being pursued as lawfully charged to enter heir, his procurator produces a renunciation. It is alleged, The renunciation produced is not sufficient ; because it was general, and made no mention that it was given for obedience of the charge ; so that, in respect of the generality thereof, the charger cannot pursue for adjudication. The Lords found it sufficient, seeing the party charged