

if he can make him, in the ordinary pursuit moved thereanent, to be liable in law for any intromission with the duties of the lands, whereto the compriser may claim right, he shall make answer in its own time and place thereto; but it is not proper to be handled in this place, where, in law, the year's duty is justly acclaimed and payable by the vassal. The Lords found, nevertheless, that,—seeing the superior had intromitted with a year's duty of the land since the charge given by the compriser, and that after the parties had disputed upon their rights, which either of them might claim to that year's duty,—that the same was due to the compriser, and not to the superior; albeit he was, that year and many other preceding years, in possession of the lands by the space of 20 or 30 years preceding, by virtue of an heritable disposition made to him of the lands; and therefore the same being due to the compriser, seeing he allowed that year's intromission to the superior, they found it should compensate for the year's duty acclaimed for entering of the compriser, and that they would not astrict the compriser to pay a year's duty, and reserve his action against the superior for his intromission; but found that the one should compensate the other;—and therefore ordained the superior to enter the compriser without paying of any other new duty.

*Act.* Stuart. *Alt.* Nicolson and Baird. Hay, Clerk. *Vid.* 18th July 1633, Branden Baird and the cases there.

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1634. February 1.

HORN against Pow.

JOHN Horn, notary, in his testament leaves his writs and registers to one Pow, and ordains the said Pow to pay to his son, George Horn, therefore, 100 merks; which Pow promised to do: in this testament umquhile John Horn gives up a debt of ———, owing by him to George Grieve, which George had paid as cautioner for the said John; and, after the said John Horn's decease, George Grieve arrests this 100 merks in Pow's hands for satisfying of that debt, and obtains decret against him therefore; and by virtue thereof recovers payment. Thereafter John Horn's son convenes Pow for payment of the said sum; who, excepting upon the said decret and payment, the Lords repelled the exception, and found that the said sum was not arrestable for the debt owing by umquhile John Horn to his creditors, being promised to be paid to the son, and never being *in bonis defuncti*, whereby it could be subject to his debt; and it was not respected that the party alleged that the money was promised to be paid for a legacy of writs left by the defunct, who could never leave any legacy effectually, which could not be subject to his debts; specially seeing, in this same testament, which bore the writs to be left for this sum, the defunct acknowledged this debt, and so he could leave no legacy in prejudice thereof. Which was repelled, and the sum found due to the son, according to the promise made by the defender, and not to the creditor, who, as he could not arrest the writs left to Pow, no more could he arrest the money promised therefore.

*Act.* ———. *Alt.* Craig.

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