

lands, they should be subject in payment to the pursuer : but that no execution should follow upon this declarator of the pursuer's right, by letters of horning or poinding, unless particular decreets were, in time coming, obtained against the tenants.

*2d MS. Page 16.*

1636. *March 2.* The EARL of TULLIEBARDEN *against* ALEXANDER FLEMING of MONES.

PATRICK, now Earl of Tulliebarden, assignee constituted by the deceased William, Earl of Tulliebarden, his brother, in and to the reversions granted by the vassals of Atholl, pursues Alexander Fleming of Mones, for exhibition of two contracts, containing the reversions of certain lands, wadset to the said Alexander, to the effect the pursuer might have the transumps of them. It was alleged by the defender, That no process could pass upon the assignation made to the pursuer, because the same is not registrate, conform to the Act of Parliament. To the which it was replied, That the foresaid allegiance ought to be repelled, in respect of the disposition produced, made by the deceased William Earl of Tulliebarden to the pursuer, of the hail earldom of Atholl, containing a procuratory of resignation and an assignation to all reversions ; which disposition, whether registrate or unregistrate, is sufficient to the pursuer to crave exhibition of the contracts containing the reversions ; specially against the defender, granter of the said reversions, who had no other right to the wadset lands but proceeding upon the said contracts, containing the reversions ; and no other assignee, except the pursuer, pretends right to the said reversions. The Lords repelled the allegiance, and decerned exhibition.

*2d MS. Page 81.*

1636. *March 10.* LADY DONYPACE *against* The LAIRD of LOWRIESTOUN and SIR JOHN CARNEGIE.

WHERE lands are disponed in liferent to a woman, and the disponer is obliged to warrant the lands to be worth so much in rental,—if the lands fail afterwards, and the disponer be pursued for warrandice of the rental contained in the disposition ; if he be able to prove that the lands paid that duty ten years before the disposition, and divers years after the same, he will be absolved from the warrandice.

*2d MS. Page 218.*

1636. *March 15.* MARGARET SCOTT *against* ELIOT of STOBS.

MARGARET Scott, having comprised from Archibald Eliot, son to Gilbert Eliot of Burgh, the lands of Over and Nether Jedburgh, charges Gilbert Eliot of Stobs, superior of the said comprised lands, to infest her, conform to her comprising. The superior suspends : The first reason is, that the superior was infest in the

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