

marriage, liferenter, and his son fiar, as *successor titulo lucrativo post contractum debitum*, for implement of the said contract of marriage. It was alleged for the defender, That the father could not be convened as successor; because he succeeds to none of his father's heritage but a bare liferent; and his son, oye to the goodsire, could not be convened; because, his father being living, he is not *alioqui successurus*. The Lords found this sort of disposition sufficient to make the father *successor titulo lucrativo post contractum debitum*.

2d MS. Page 6.

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1636. *March 26.* JAMES MOUBRAY *against* DAVID SOMMER.

ALTHOUGH, by the law and practique of this kingdom, if the wife die within year and day after the marriage, not bearing a quick child, the tocher must be restored again to the woman's heirs; yet the expenses bestowed by the husband upon his wife's entertainment, clothing, doctors, and apothecaries, and funeral, should be allowed to the husband, before he be holden to restore the hail tocher.

2d MS. Page 138.

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1636. *March 29.* The EARL of GALLOWAY *against* HARIE GORDON.

THE Earl of Galloway comprises a mill from ————, but takes no infestment, nor yet charges the superior to infest him, for the space of five years after the comprising. His debtor's son, after the comprising, disposes the mill to Harie Gordon of Kilsture, who obtains possession, and uplifts the duties from the tenants by the space of two or three years. In the meantime the Earl of Galloway pursues the tenants to pay their duties to him, and to misken Harie Gordon for the crop 1635. They suspend upon double pouding. Harie Gordon alleges, That he ought to be answered, as having best right, by virtue of his infestment clad with divers years' possession. The Earl of Galloway alleges him to have best right, as having comprised the mill before the other was infest; and the common debtor could make no voluntary disposition in prejudice of him who had comprised the lands before; by the which the disponent was denuded of all right that was in his person. The Lords preferred the infestment clad with possession to the comprising whereupon no infestment nor charge to the superior had followed by the space of five years.

2d MS. Page 37.

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1636. *July 13.* JOHN HALIEBURTON *against* JOHN PATERSON.

HALIEBURTON, minister of Kinneill, having gotten designed to him a croft of land pertaining to Mr John Paterson, and holden by him of a chaplainry; and being charged to remove therefrom, suspends, alleging, That his croft could not be designed for a part of the minister's glebe; because, by Act of Parliament Ja. VI,