

ing the more ancient right; and it being in his option to ascribe his possession to any of the two rights he pleased.

The Lords did, notwithstanding, find, That he could only ascribe his possession to the decret *in anno* 1643; and that in respect that the first decret, *in anno* 1631, was never settled in his person by transferring, either at his own instance, or at the heirs of line, who were his authors: But, withal, the Lords declared, that the pursuer having forced the Earl to ascribe his possession to that decret, he should never be heard thereafter to quarrel the same by way of reduction or declarator.

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1670. July 14. GARDENER *against* The LADY LETHAM.

IN a spuilie, pursued at Gardener's instance against the lady,—It was ALLEGED Absolvitor; because the corns were lawfully poinded; and that, before any diligence done by the pursuer, the defender had arrested the corns upon the ground. It was REPLIED, That, before the defender did poind, the pursuer had poinded upon his letters, and was in possession of the corns.

The Lords did repel the defence, in respect of the reply; and found, That a naked arrestment could not hinder another creditor to poind; and that the corns, being poinded, were not affected with the prior arrestments, albeit it be a real diligence.

This interlocutor was indeed conform to prior decisions; yet there appears to be much reason against it, in respect that real diligences affect singular successors.

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1670. July 19. SCOTT, Bailie of Aberdeen, *against* THOMAS BOYES.

BAILIE Scott being heritor of a tenement in Aberdeen, whereof Margaret Forbes was liferenter; the said Margaret did assign her liferent to Robert Smith, bearing in satisfaction of 400 merks paid to her; as likewise upon a backbond to reponer her to the possession, how soon the said Robert should be satisfied of the said sum: Which assignation being transferred to Thomas Boyes, the said Thomas disposes his right in favours of Scott the heritor, who did pay him the said 400 merks, and 70 merks beside: Which translation Boyes did oblige himself to warrant from his own, and the facts and deeds of Smith the cedent; as likewise became obliged to refund the said 400 merks, at the first term after Scott should be distressed. Thereafter, Margaret Forbes, the liferenter, having distressed Scott, and recovered decret against him, for three years' possession, Scott did pursue Boyes for warrandice of his translation, upon these two grounds:—*First*, That, in the translation made by Boyes, he was obliged for Smith, his author's fact and deed: but so it is, that the ground of his distress was a backbond granted by Smith, which was not mentioned in the translation made by Boyes to Scott, but was concealed.