payment, by intromission with the rent of the debtor's estate, and by poinding of his goods:—

The Lords, finding great trouble by such bills, where the charger was not present to answer, and resolving to take a just course in these cases in time coming, did all agree to make an act of sederunt for the future: and did enact, That all prisoners who were to present such bills, after the 1st of November next, should intimate to the chargers, at whose instance they were imprisoned; and to other creditors who had arrested them in for debt; that they were to present such a bill to the Lords betwixt and a certain time, and thereupon take instruments in a notary's hands, and send the same, with their bill; without which, neither in the time of session, nor any three Lords in the vacancy, should pass such bills: which act, as it is most just in itself, the utmost of legal diligence being used, the creditors ought not to be frustrated thereof, without they were heard; so it will prevent many gross abuses and trouble arising upon base allegeances, setting at liberty debtors who are denounced rebels, who, having their persons free, take no care to pay their debt.

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1675. *July* 14. The Viscount of Stormont *against* Robert and Grizell Andersons.

In a reduction of a decreet of spuilyie, obtained before the sheriff of Perth, upon this reason,—That the pursuer did lawfully poind the goods alleged spuilyied, upon a decreet for the feu-duties of the vassal, which are *debitum fundi;* and so did affect the lands and corns that were in the barnyards upon that same ground:—It was answered, That the corns being sold by the vassal, delivered and transported to another barnyard than that of the vassal's, against whom the decreet was given, and so the proper goods of the buyer, could not be poinded for the seller's feu-duties.

It was replied, That that roume and barnyard to which the corns were carried, being part and pertinent of these same feu-lands, out of which the feu-duties were payable, he might lawfully poind for the same.

The Lords did repel the answer in respect of the reply, and reduced the decreet; and found it lawful to the superior to poind upon any part of the lands set in feu, out of which the feu-duty was paid, whether it be the principal lands denominated in the feu-charter, or part and pertinent thereof; albeit the roume or barnyard, out of which the corns were spuilyied, be distinct from that of the vassal's, and the tacksman or possessor not convened or decerned.

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1675. *July* 21. Henry Trotter of Mortounhall *against* The Heirs of Line of Mr John Trotter of Charterhall, and The Laird of Rentoun.

Mortounhall, as having right by translation to the sum of two thousand

five hundred merks, due by the Laird of Rentoun to Trotter of Charterhall, did pursue for payment.

It was ALLEGED for Rentoun, That he could not be *in tuto* to make payment, because the assignation was so qualified that the monies could not be uplifted but to reëmploy, conform to the particular provision therein contained, in favours of the heirs of provision and persons substituted after the death of the assignee.

It was ANSWERED, That it was *jus tertii* to the Laird of Rentoun, who was debtor, and in whose favours there was no clause of provision.

The Lords did repel the defence, and found, that the debtor ought to be decerned to make payment, which would exoner him: reserving to the heirs of line, or any other person substituted, to be heard before the extracting of the decreet, upon the reëmployment of the said sum; conform to the special provisions contained in the assignation. Thereafter, compearance was made for Walter Stewart, as creditor to the heirs of line of Charterhall, who did grant the assignation, and, having arrested and intented reduction, in their name, of the assignation, *ex capite lecti*, did crave that the money ought to be made forthcoming to him; and the reason of his reduction might be admitted to his probation.

It was ANSWERED, That the arrestment could give no right, because the pursuer was content to lose the same: and, for the reduction *ex capite lecti*, it could not be sustained at the instance of a creditor of an apparent heir, seeing he could have no interest, unless there were an heir served and retoured, whereby he might establish a title in his person, as a lawful creditor, and thereby affect the sums by a legal diligence which was not yet done; and so could not be reserved to him, as accords.

It was REPLIED, That a creditor of an apparent heir may pursue any right which may be competent to his debtor, if he were served heir.

The Lords did repel the defence, in respect of the reply; and found, that a lawful creditor to an apparent heir had a good interest to reduce any right made by the defunct, to whom they might be served, seeing their voluntary lying out ought not to prejudge their creditors; and that they having reduced any right might stand in their way, they might with an assurance take a legal course how to establish a lawful title in their person, to recover any debt or right that would belong to the apparent heir, their debtor.

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1675. *July* 27. The COUNTESS of ERROLL *against* The EARL of ERROLL.

THE Countess having pursued the Earl to purge the little Mill of Esselmount, which was a part of her conjunct-fee lands, of a wadset which did affect the same, and whereof the wadsetter was in possession; which distress was referred to the Earl's oath of verity:—It was ALLEGED, That the distress being *factum alienum*, and not a deed of this Earl, but of his predecessor, to whom he was heir, he was not in law obliged to give his oath of verity thereupon: and the legal course that the Countess must take, is first to pursue for possession