

he wanted payment. The Lords found, that he could not prejudge other creditors to arrest and seek payment of their debts by his several arrestments, thereby to elide and defraud them.

*Vid.* the cases wherein, after comprising, other execution may be sought.

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1628. *March 11.* DALMAHOY and FRANK *against* HORSBURGH.

IN an action, Dalmahoy, and Frank her spouse, *against* Horsburgh, for the mails and duties of a tenement of land, wherein the pursuer was infeft as heir to her brother; and the defender alleging, that he was retoured heir to his predecessor, who was infeft in the same lands, and that the defender, by virtue of his infeftment passed upon a retour, had been five years in possession of the same;—the Lords repelled the allegiance, in respect that the pursuer was infeft as heir to her brother, and that he was infeft in the same land, before the excipient's author's right, and, by virtue thereof, that he was in continual possession ten years together of the same, to the time of his decease, who died *in anno* 1623; and that all the years since then, whereof the defender had acquired only possession, were now controverted in this process, and could not make the excipient to be counted a lawful possessor. Which reply was found relevant in this possessory judgment.

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1628. *March 13.* KER *against* The LAIRD of COLDINGKNOWS.

A DECLARATOR of liferent of some lands pertaining to Coldingknows, holden of the abbacy of Dryburgh, being sought by the Earl of Marr's donator, the abbacy being erected to the Earl of Marr, who thereby became Coldingknow's superior;—in this cause, John Boswell of Pittodrie compearing to exclude the donator, in respect he had comprised the same lands from Coldingknows, for debt owing to him, whereupon he was infeft by the king, who was Coldingknow's superior; for he found Coldingknows standing infeft, holden of the king, by virtue of the act of annexation, whereby he alleged he could not enter by another superior, than him of whom he found his debtor, from whom he comprised, standing infeft. This allegiance was repelled, and the liferent found to pertain to the donator constituted by the lord of erection, notwithstanding of the compriser's infeftment and his author's, holden of the king; for, by the erection which preceded both the comprising and the infeftment taken thereon, the king ceased to be superior, and the right of superiority belonged to the lord of erection, whereby the compriser, not being infeft by the right superior, it could not prejudge the true superior, *viz.* the Earl of Marr the lord of erection, nor his donator, in his vassal's liferent.

*Act. Hart. Alt. Sandilands. Gibson, Clerk. Vid. 24th July 1632, Ja. Reul.*

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