

conform to the said decret obtained in the baron court. Alleged, That the decret in the baron court was null, because there was confusion of diets in it ; the day of compearance, litiscontestation, and sentence, being all in one day. The Lords repelled the exception ; for the formalities used in other judicatories are not used in baron courts, where it is proceeded more summarily, specially when the parties are compearing.

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1629. *February 11.* ALEXANDER FRASER, Petitioner.

MARGARET Hay, having led a comprising of certain lands against Alexander Fraser of Philorth ; before her comprising was allowed by the Lords she died ; and her son, Alexander Fraser, being served and retoured heir to her, gave in a supplication to the Lords, desiring that the same comprising, led at his mother's instance, should be allowed in his name, and that he might have a warrant to the director of the chancery to direct out precepts for infesting of him, as if the comprising had been deduced by himself. Some were of opinion that he behoved to transfer the comprising in his own person first ; but, by the most part, the desire of the bill was granted.

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1629. *February 11.* GILBERT WILSON *against* MARGARET STUART.

IN an action pursued by Mr Gilbert Wilson against Margaret Stuart ; Alleged, No process at the pursuer's instance, because he pursued as son and heir served and retoured to his father, and the retour was not produced to verify his interest. Replied, The defender could not be heard, because she had herself obtained decreets against the pursuer as heir to his father, and so had acknowledged him to be heir. Duplied, Albeit she had gotten decreets against him as heir, yet that will not furnish him action against her, because he may be heir *passivè*, and yet not *activè*, as by a service not retoured. The Lords found the exception relevant.

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1629. *February 14.* GRANT *against* INNES OF BALVENY.

GRANT having comprised certain lands from N. charged Innes of Balveny, superior thereof, to infest him. He suspended upon this reason, That he from whom he had comprised was not infest. The charger Alleged, That the suspender acknowledged N. to be his vassal, in respect that he had received from him a resignation *ad remanentiam* ; and likewise had taken from him the feuduties of the same lands divers years, and given him discharges thereof. The