

uplifting the maills and duties thir two last terms. The Lords preferred John Ferguson aye and while Kilkerran obtained the suspension discussed.—31st January 1632.

Thereafter the said suspension was discussed in July 1632, and the superior ordained to infest the charger ; after the which decret, of suspension, the action of double poiding being again called, the Lords ordained Kilkerran to be answered and obeyed. Page 39.

The said Mr John Ferguson of Kilkerran,—having comprised the lands of Dalduff, holden of the Earl of Cassils, and having charged the said Earl to receive him vassal, who suspending ; and having discussed the said suspension, and being willing to satisfy for his entry, yet the said sum not being paid to the superior, nor he infest ;—pursues Thomas Davidson of Pennieglen, who had comprised the said lands, and procured himself infest ; and, by virtue thereof, had uplifted the maills and duties of the lands comprised for the space of three years ; to refund to him the said maills and duties, as he who had used the first diligence by comprising and charging the superior. It is excepted by the defender, That he ought not to refund the maills and duties intromitted with by him ; because he had uplifted the same, by virtue of his infestment ; and, as yet, the pursuer was not infest, in his own default, for not paying to the superior his due ; and, since his charge, which was suspended, he has done no diligence to discuss the suspension, for the space of three or four years ; in the which time the defender had good reason to uplift the maills and duties, by virtue of his infestment. Which exception the Lords found relevant, *quoad fructus perceptos*.—1st December 1632.

Page 39.

---

1632. December 1. ROBERT MASTERTON and GRAHAM *against* ANDREW STEWART.

ROBERT Masterton and Graham pursue Archibald Stewart for the sums addebted to them by bond, bearing annualrent and expenses. Other creditors of the said Archibald, compear, and allege, That if annualrent and expenses be allowed to the pursuer, nothing or little will be left among them, who are content to quit a great part of their just debt. The Lords, in respect of the inhability of the debtor, and that some help might be gotten to the rest of the creditors, will neither allow annualrent nor expenses to the pursuers, albeit one of the pursuers's bond bears annualrent.

Page 39.

---

1633. January 17. WOOD *against* BLAIR.

AN heir being pursued as lawfully charged to enter heir, his procurator produces a renunciation. It is alleged, The renunciation produced is not sufficient ; because it was general, and made no mention that it was given for obedience of the charge ; so that, in respect of the generality thereof, the charger cannot pursue for adjudication. The Lords found it sufficient, seeing the party charged

and granter of the renunciation was out of the country; and found it not only sufficient for this charger, but for any other creditor, to pursue adjudication.

*Page 5.*

---

1633. *January 18.* The EARL MARISHALL *against* ANDREW FRASER.

EARL Marishall pursues Andrew Fraser for removing. The defender alleged, He had right, by a tack set by the pursuer's father, who had power to set tacks for his lifetime and fifteen years after, to the kindly tenant, but diminution of the rental. To the which it was replied, That this tack cannot defend him; because the defender was not a kindly tenant, and the tack was set with diminution. It was duplied, That the Earl had approven the tack, in so far as he had suffered him to bruik the tack; and, by his chamberlains, he received the duty therein contained, ever since his father's decease. It was answered, That the acceptance of the tack-duty can only defend him for years bypast, but cannot hinder the master to quarrel the tack in time to come: as was decided betwixt the Lady Dumfermling and her tenants. Which answer the Lords found relevant.

*Page 235.*

---

1633. *January 31.* LORD ELPHINSTON *against* EASON'S [OF LAURIE'S] CREDITORS, RELICT, and BAIRNS.

MY Lord Elphinston, having obtained a decret for a certain sum against Eason, arrests, in some of Eason's debtors' hands, certain sums addebted by them to him; in the meantime Eason dies; after his decease, Elphinston intents action against Eason's debtors, for making the arrested goods forthcoming; and, in this action, calls the defunct's relict and bairns to represent the defunct for their interest. It was alleged, No process upon this summons; because no decret is obtained, at my Lord's instance, against the defunct's relict or executors, constituting them debtors; and, until this be done, there can be no process against the debtors to make the arrested goods forthcoming. Which exception the Lords found relevant.

The like found, *3d February 1633, Creigh against Mr Alexander Kinneir.*

*Page 12.*

---

1633. *January 31.* MILLAR *against* LINDSAY.

AN executor may not make an assignation to any duties awarded to the defunct before, by sentence, till the debt be established in the executor's person; but, after sentence, the executors may either assign or discharge the debt, at their pleasure.

*Page 78.*