

for payment of annualrents, when there was none stipulated, and neither *lex* nor *pactum* for annualrents.

Of this decision, as of many others, all the reason that can be given is, *quod sic visum est superis*. *Vide infra*, 15th Nov. 1682. *Vol. I. Page 19.*

1682. November 15.—Between Alexander Home of Linthill, and Mr Alexander Aitkenhead, and Monro, (mentioned 12th of November 1678;) the Lords, after a long debate, religiously adhered to their former decret *in foro*; and found all now proponed either formerly proponed and repelled, or else then competent and omitted; and so repelled it, and refused to reduce their decret, unless they condescended on nullities, informalities, or trinqueting in false extracting. *Vide 8th Dec. 1682, Paton*. Yet see the contrary done for the *Marquis of Queensberry*, 20th Dec. 1682. *Vol. I. Page 195.*

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1682. November 16. SIR JOHN NISBET of DIRLETON and SIR JOHN SETON of GARMILTON *against* ANDREW MARJORIBANKS, &c.

SIR John Nisbet of Dirleton, and Sir John Seton of Garmilton, as creditors to Mr Andrew Marjoribanks, pursue a reduction, against him and his children, of a disposition he had made, giving them the fee of his lands, and declaring their succeeding or meddling should infer no behaviour, or passive title on them.

The Lords reduced it as fraudulent.

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1682. November 21. WILLIAM GAIRDEN and SIR JAMES KEITH *against* IRVINE of DRUM.

IN the competition arising on the process of maills and duties pursued by Mr William Gairden, minister in Edinburgh, and Sir James Keith his cedent, between them and Irvine of Drum; the Lords, upon Castlehill's report, brought in Keith's comprising *pari passu* with Jousse's which Drum had acquired in; because, though it was neither within the year and day before nor after it, yet they found it sufficient that it was deduced and led before the first effectual comprising, and its priority in date before the first said effectual apprising ought at least to give it the privilege of *pari passu* with that whereon charge and infestment had been first taken.

This has been oft so decided. And they found Gairden and Keith were not instantly obliged to pay down their proportional parts of the expenses of the said preferable apprising and its infestment, ere they could have the benefit of coming in *pari passu* with it; but that they might allow the said preferable appriser to possess and uplift the maills and duties aye and until he were paid of these charges and debursements; and then, after that, brought them in *pari*