

duty in the mean time; but it must be superseded until the decease of the liferenter. Replied, The superior cannot be compelled to enter a stranger without a year's duty, as the Act of Parliament provides, which makes no exception; and it is not reasonable, because he has bought the liferent, that he should be defrauded of that which the law gives him, or have the payment of it suspended. The Lords found the answer to the reason of suspension relevant, and suspended the payment of the year's duty until the liferenter's decease.

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1636. *March 22.* The EARL of GALLOWAY *against* GORDONS of GRANGE and KILSTURE.

IN a double poinding, raised at the instance of some tenants, against the Earl of Galloway on the one part, and Gordons of Grange and Kilsture on the other; Alleged for the Earl, He should be answered and obeyed of the mails and duties, because he had comprised the lands *in anno* 1630, from the Laird of Sorbie, long before any right in the person of Grange and Kilsture. Replied for them, They should be answered, notwithstanding of the comprising, because they are infest in the same lands in April 1632, by disposition flowing from Sorbie for onerous causes; and, by virtue thereof, in possession for the space of two years and above; and the Earl's comprising cannot be respected, he neither being infest thereupon, nor having done any diligence against the superior to get himself infest; and so, the comprising being no real right, and they having obtained a real infestment for onerous causes, and possession conform thereto, ought to be preferred. The Earl duplied, His comprising, without infestment following thereupon, gave him right to the mails and duties; and that Sorbie, being denuded by the comprising, could not make any voluntary disposition in prejudice of the compriser. The Lords preferred them that were infest and in possession, in respect the compriser had done no diligence against the superior.

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1636. *July.* CAPTAIN PETER ROLLOCK *against* SIR WILLIAM STUART of GAIRNTILLY, &c.

THERE was a contract passed betwixt Sir Walter Rollock, and Sir William Ruthven of Banden, by which the said Sir William disposed certain lands to the said Sir Walter and his heirs. Captain Peter Rollock doth serve himself heir-general to the said Sir Walter, his father; and thereby, having right to the said contract, intented summons of improbation against Sir William Stuart of Gairntilly, and others, that pretended right to the said lands. Alleged against the pursuer's interest, He could not compel them to produce, as heir to his father; because they offered them to prove, that umquhile Andrew Rollock, elder brother to the pursuer, was served and retoured general heir to his said father, Sir Walter, whereby the right of the contract being established in his person, it behoved to pertain to his heirs, and not to his father's heirs; so that, unless the

pursuer were served heir to his brother, he could have no right to the said contract; and consequently could not force them to produce. Replied, *1mo.* This defence was not competent to the defenders, except they did allege some right in their person flowing from the said Andrew; *2do.* Andrew's general service, there having no other thing followed upon it, would never impede his brother to serve himself general heir to his father, and claim right to the contract that way, as well as if he had been served heir to his brother; for the king's advocate and Mr Thomas Nicolson, (who were for the pursuer,) contended that a man might have more general heirs than one; and that if he, who was first served, did no further on his service, he that after him served himself to that same predecessor, would have right to any contract, reversion, &c. made in that predecessor's favours; because a general service was but *actus inchoatus et non completus*, and it is only in special services to lands that one cannot leap over him that was last retoured, but holds not in general services. Sir Lewis Stuart, on the other part, for the defenders, maintained, that a general service was *actus consummatissimus in suo genere*, and did establish the right of contracts, &c. in the person of him who was so served, as perfectly as any special service did settle the right of lands on any one; and the right being once established in him that was served, it was impossible that it could pertain to any other but to his heirs; and instanced, if Andrew had creditors, the right of the libelled contract doubtless would pertain to them, and not to the pursuer as heir to his father. This was not decided by the Lords; for the defenders took the pursuer away by another allegiance, That the right of this contract was disposed to them by Andrew: But the whole Lords, in effect, were of the mind that the allegiance could not be repelled, it being *exclusivum juris agentis*; and that after it was twice or thrice heard in their own presence, in the beginning of July 1636.

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1636. July 19. DAVID SETON *against* The LAIRD of BANF.

THE Laird of Tolquhon, younger, as principal, and the Sheriff of Cromarty, and Laird of Banf, as cautioners for him, gave bond to Alexander Forbes for 3000 merks. Banf being charged for payment of this sum; for his relief, the Laird of Fren draught, as principal, and the same Laird of Banf, as cautioner, gave bond to the said Alexander Forbes, for that same sum; and Banf gave Fren draught a back-bond, declaring, that, although he was principal in this last bond, yet the money was truly addebted by Banf, and that therefore he obliged him to relieve Fren draught thereof: Fren draught makes his man, David Seton, assignee to his back-bond, who raised a summons against Banf, for proving of the tenor thereof, in respect he libelled it was burned in the house of Fren draught amongst many other writs that were lost there. Alleged, He could not prove the tenor of the back-bond libelled, unless he would produce some adminicles in writ; otherwise it should prove a matter of very dangerous consequence to make bonds of great sums this way by the depositions of two witnesses. Replied, Adminicles are indeed required in proving of any writs concerning heritable rights, such as contract, charter, sasine, confirmation, &c. which have a coherence and dependence one upon another; so that one of them