

mons; but when such decreets are craved to be reduced, the clerks are dealt with to produce the said summons. The Lords sustained the summons of reduction, and reponed the pursuer to dispute upon the reasons contained in the first summons, which the clerk of the process is ordained to produce.

*2d MS. Page 184.*

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1636. *February 10.* MR ALEXANDER HOME *against* The LAIRD OF LANGTOUN.

IN a declarator-general, pursued by Mr Alexander Home, of the escheat of Sir Alexander Home, apparent heir of Manderstoun,—compears the Laird of Langtoun, one of Sir Alexander's creditors, and alleges, No declarator; because the gift is taken to the rebel's behoof, the donatar being no creditor himself. To the which it was replied, That he is a creditor, in so far as he is cautioner to the rebel, in a contract containing the sum of 6000 merks, to Peter Home of Harcarse; which contract the said Peter had registrate, and served inhibition thereupon against the said donatar. To the which it was answered, That the said Peter Home was in possession of the lands of Gomdcowden for his annual-rent, and the donatar is not charged nor distressed for the principal sum. The Lords found the registration of the contract and inhibition a sufficient distress.

*2d MS. Page 63.*

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1636. *February 16.* WILLIAM FAIRLIE *against* JAMES JOHNSTOUN.

WILLIAM Fairlie, son to the deceased Sir William Fairlie, having arrested the corns of the deceased David Bickertoun, his tenant, of certain acres in Leith, for payment to him of his farms, crops 1634 and 1635, pursues James Johnstoun, in whose corn-yard the said defunct his corns were set, to make the said arrested corns forthcoming. It is alleged for the defender, That he is confirmed executor to the defunct, as creditor, and has just cause of retention of the corns for payment of his debt. To the which it is replied, That the pursuer, as *dominus fundi*, ought to be preferred to all other creditors. The Lords preferred the pursuer to the last year's farms; and, for the farms 1634, ordained the master of the ground to come in, *pro rata*, with the defunct's creditors; for the master of the grounds has no other privilege nor other creditors, but for the last year's crop.

*2d MS. Page 16.*

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1636. *February 18.* ADAM WHYTFoord *against* The TENANTS OF BLAQUHAN.

ADAM Whytfoord, having comprised the lands of Blaquhan, and having arrested the maills and duties, pursues the tenants to make the arrested farms forthcoming, and concludes his summons, not only to make the arrested farms forthcoming, but, as compriser of the said lands, to hear and see themselves decerned to make payment to him of their farms yearly, in time coming, the terms of payment being bypast. The Lords decerned the farms arrested to be made forthcoming to the pursuer; as also declared, that, so long as they occupied the said

lands, they should be subject in payment to the pursuer : but that no execution should follow upon this declarator of the pursuer's right, by letters of horning or poinding, unless particular decreets were, in time coming, obtained against the tenants.

*2d MS. Page 16.*

1636. *March 2.* The EARL of TULLIEBARDEN *against* ALEXANDER FLEMING of MONES.

PATRICK, now Earl of Tulliebarden, assignee constituted by the deceased William, Earl of Tulliebarden, his brother, in and to the reversions granted by the vassals of Atholl, pursues Alexander Fleming of Mones, for exhibition of two contracts, containing the reversions of certain lands, wadset to the said Alexander, to the effect the pursuer might have the transumps of them. It was alleged by the defender, That no process could pass upon the assignation made to the pursuer, because the same is not registrate, conform to the Act of Parliament. To the which it was replied, That the foresaid allegiance ought to be repelled, in respect of the disposition produced, made by the deceased William Earl of Tulliebarden to the pursuer, of the hail earldom of Atholl, containing a procuratory of resignation and an assignation to all reversions ; which disposition, whether registrate or unregistrate, is sufficient to the pursuer to crave exhibition of the contracts containing the reversions ; specially against the defender, granter of the said reversions, who had no other right to the wadset lands but proceeding upon the said contracts, containing the reversions ; and no other assignee, except the pursuer, pretends right to the said reversions. The Lords repelled the allegiance, and decerned exhibition.

*2d MS. Page 81.*

1636. *March 10.* LADY DONYPACE *against* The LAIRD of LOWRIESTOUN and SIR JOHN CARNEGIE.

WHERE lands are disponed in liferent to a woman, and the disponer is obliged to warrant the lands to be worth so much in rental,—if the lands fail afterwards, and the disponer be pursued for warrandice of the rental contained in the disposition ; if he be able to prove that the lands paid that duty ten years before the disposition, and divers years after the same, he will be absolved from the warrandice.

*2d MS. Page 218.*

1636. *March 15.* MARGARET SCOTT *against* ELIOT of STOBS.

MARGARET Scott, having comprised from Archibald Eliot, son to Gilbert Eliot of Burgh, the lands of Over and Nether Jedburgh, charges Gilbert Eliot of Stobs, superior of the said comprised lands, to infest her, conform to her comprising. The superior suspends : The first reason is, that the superior was infest in the