

property of thir lands himself, holden of the Lord of Jedburgh. This reason was repelled, *hoc loco*, and the letters found orderly proceeded against the superior, for infesting of the compriser, reserving to him to dispute his right of property when the compriser should pursue for the maills and duties. The other reason of suspension is, That the superior should be paid of a year's duty. To the which it was answered by the compriser, charger, That she could not pay a year's duty presently, because the lands were bruiked by the good-dame of him from whom the same were comprised, by her right of liferent; and, till the time of her decease, the compriser could get no intromission with the rents of the lands, so that, until then, her comprising would be unprofitable. The Lords found the letters orderly proceeded against the superior, and suspended the payment of the year's duty to the superior till the liferenter's decease, the charger finding caution after the liferenter's decease to pay the year's duty to the superior.

*2d MS. Page 36.*

---

1636. *March 17.* JAMES HOME of COLDINGKNOWES *against* ANNA and JEAN HOME, and the LORDS DOUN and MAITLAND.

IN an action of transferring pursued by James Home of Coldingknowes against Dames Anna and Jean Homes, and the Lords Doun and Maitland, their spouses, for their interests,—for transferring of the contract of tailie made betwixt the deceased Alexander Earl of Home, their father, and the deceased Sir John and Sir James Homes of Coldingknowes, against the said ladies and their spouses *passivè*,—it was alleged, *dilatorie*, That the summons, since the first execution, was eiked. It was answered, That the defender's procurator had seen the summons since they were eiked. Which dilator was repelled. *2do*. The said summons, whereby the said ladies were charged to enter heir to their brother and father, was cut, and a new sheet put in above the signet, whereby the charge was vitiated; which cutting is forbidden by an Act of Sederunt. It was thereto answered, That the charge did agree with the warrant of the signet; and the said sheet was written over, for some lines that had been negligently written wrong by the writer; and the pursuer's procurators offered to abide by the verity of the deed, both of the summons and executions. Whereupon the writer and messenger were both examined *in presentia*; and so this dilator was also repelled.

*2d MS. Page 227.*

---

1636. *March 23.* GIDEON FULLERTOUN *against* FULLERTOUN.

JOHN Fullertoun of Kinnaber, by contract of marriage betwixt him and Janet Lindsay, his second spouse, obliges him and his heirs to provide the heir-male to be gotten of that marriage to 4000 merks. After this contract, he infests his son of the first marriage, who is his apparent heir, in liferent, and his oye in fee, of his hail lands. After his decease, Gideon Fullertoun, heir procreated betwixt him and the said Janet Lindsay, pursues his father's eldest son of the first