No. 62.
cur in pursuing and discharging?

It was the unanimous opinion of the Court, that co-executors must all concur in pursuing or discharging, because they have but one office, are one body, and represent the defunct as one person; and therefore, any one making payment to a co-executor, without concurrence of the rest, does it at his peril. It is true, the danger is not great where the co-executors are nearest of kin, who have an equal interest, in case the payment do not exceed the co-executor's share; but the case of co-executor creditors is different; a voluntary payment to one of them will be sustained or not, according as the person receiving payment shall in the event be found entitled to the extent of the sum he receives.

Kilkerran, (EXECUTOR) *No.* 3. *p.* 171.

1739. *January* 23. KEITH *against* LORD BRACO.

No. 63.

An adjudication proceeding upon a charge to enter heir, though no infeftment had followed on it, found a good title in a reduction and improbation to force production of all writs flowing from the person to whom the party was charged to enter, or from his predecessors; but not to force production of writs flowing from the authors of said person or of their predecessors, unless the pursuer should first condescend upon such authors, and give reasonable evidence that they were his authors.

Kilkerran, (TITLE TO PURSUE) *No.* 1. *p.* 578.

1739. *November* 2. GRAHAMS *against* WILSON.

No. 64.

A precept of *clare constat* is a sufficient title to pursue, where neither the granter is refused to be superior, nor the receiver to be heir upon a colourable ground.

Kilkerran, (PRECEPT OF CLARE CONSTAT) *No.* 1. *p.* 413.

1740. *February* 19. SPRUEL *against* SPRUEL CRAWFORD.

No. 65.
General service to an apparent heir, against whom an adjudication was led, a sufficient title to quarrel the adjudication.

Where an adjudication proceeds against an apparent heir upon a special charge, the next heir needs no other title to quarrel the adjudication than a general service to the former apparent heir, against whom the adjudication was led: And of this there is no doubt, so far as concerns his title to quarrel the decree of constitution, being himself liable to the debt in the decree, by his service to the person against whom it was obtained. But it was not so clear, that supposing no objection to lie to the decree of constitution, he could quarrel the adjudication upon nullities, until he served in special to the person last infeft in the lands.

Nevertheless, it was in this case found, that the general service to the apparent heir, against whom the adjudication was led, was a sufficient title to quarrel not only the decree of constitution, but also the adjudication, upon whatever ground.—*Vide* 19th January, 1669, Johnston *contra* Sir Charles Erskine, No. 10. p. 213. No. 65.

Kilkerran, (TITLE TO PURSUE) *No.* 2. *p.* 579.

1746. *November* 6. HORNS *against* STEVENSON.

No. 66.
If a general service is a sufficient title in reduction of rights on which infeftment has followed?

The defender in a reduction and improbation having produced an adjudication, with a sasine thereon, objected to the pursuer's title, which was only a general service, as not a sufficient title to carry on a reduction of an adjudication on which infeftment had followed.

The Lords repelled the objection.

A general service has always been sustained as a sufficient title to reduce all right to whatever subjects belonged to the predecessor, although the predecessor was thereon infeft, not only because it has been thought unreasonable to put one to the expense of a special service and infeftment, till it should appear whether he was to have any benefit by it, but that the objection to the title would otherwise be a circle; for it is a good objection to a special service, that another deriving right from the predecessor stands infeft in the subject: The heir served in general must therefore be allowed to have a good title to reduce, else the heir cannot have a title at all.

Kilkerran, *No.* 3. *p.* 579.

1747. *February* 28.

MAGISTRATES of KILMARNOCK *against* WILSON and CAMPBELL.

No. 67.
Use of uplifting a small duty by a body corporate, a sufficient title *in possessoria*.

James Wilson and Margaret Campbell being charged upon a decree of the Baron-bailie of Kilmarnock, to make payment to the Magistrates and their tacksman of the rate and duty of twelve pennies Scots for each boll of salt retailed by them within the said burgh, from Martinmas 1744 to Martinmas 1745, liquidated to £.3 7*s.* Scots due by Wilson, and to £.5 2*s.* Scots due by Margaret Campbell; and, at the same time, sundry of the other burgesses being pursued for certain rates and duties upon lint-seed, bear, barley, and meal, sold by them within the burgh, Wilson and Campbell suspended, and the others advocated.

At discussing the suspension, the only reason insisted on was, That no right or title whatever to the duty claimed was given out by the chargers, nor had been produced in the decree. But in regard use and wont of uplifting the duty upon salt was acknowledged by the suspenders' procurator to be proved, and that the