

duty in the mean time; but it must be superseded until the decease of the liferenter.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 disponed 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