

1632. *November 17.* The EARL of KINGHORN *against* GEORGE STRANG.

IN a diligence against witnesses out of the country, the first citation is granted upon sixty days, under the pain of horning; but the rest of the diets for denunciation and caption are granted but upon such spaces as the Lords please, and not upon sixty days. And this ordered to be observed in time coming, notwithstanding of any other custom preceding. *Page 53.*

1632. *November 22.* ISOBELL WARDLAW, Petitioner.

ISOBELL Wardlaw, spouse to James Inglis, being provided by her husband, not by contract of marriage, but by a decret-arbitral betwixt her husband and Westnisbett; by the which decret Westnisbett was decerned to pay the said James Inglis and his said spouse, the longest liver of them two, and the heirs to be gotten betwixt them, which failing, the heirs and assignees of the said James, the sum of 300 merks: the said Isobell gave in a bill, making mention, that she and her said bairns, by decret-arbitral, are provided to the said sum; nevertheless her said spouse had uplifted the half thereof, and had disposed at his pleasure: and the other half thereof being in the Earl of Linlithgow his hand, she desired that the same might be arrested at her instance, to the effect her husband might not defraud her and her bairns thereof, as he had done of the other half. The Lords refused to grant arrestment, but ordained James Inglis to answer to the bill. *Page 258.*

1632. *July 25 and November 24.* ANNAN *against* ANNAN.

A PARTY renouncing to be heir, and willing to propone another exception, is debarred therefrom, because he is not a party against whom decret, either absolutor or condemnator, can be pronounced.—*November 24, 1632.*

In the same action, the executor of the defender his father compears, and desires to be admitted for his interest; because he offers him to prove that the debt for the which he pursues the heir, is paid; at the least, he has as much in his hands, of maills and duties resting by him to the defunct, and confirmed in the defunct's testament, as will exceed the debt he pursues for; which he is content to refer to the pursuer's oath. To this it is answered, That the executor is not called in this process, and so has no interest to compear therein. The Lords admitted him for his interest, and to propone the said exception of payment, to be proven by the defender's oath.—*25th July 1632.* *Page 5.*

1632. *November 27.* HUGH SOMERVELL *against* GILBERT SOMERVELL'S HEIR.

HUGH Somervell, in Drum, pursues the heir of umquhile Gilbert Somervell,

to hear and see a decret-arbitral pronounced betwixt the said Hugh and the said umquhile Gilbert, which was registered by way of action at the instance of the said umquhile Gilbert against the said Hugh, transferred against the heirs of the said umquhile Gilbert. It was excepted by the said defender, That this decret, registered at the instance of the said Gilbert, cannot be transferred against his heirs *passivè*, at the instance of this pursuer, except the decret had been registered at the pursuer's instance against the defender; or, at the least, when the same was decerned to be registrate, that the pursuer had protested, that he, against whom it was registrate, might have execution against the said Gilbert and his heirs upon the said registration. Which exception the Lords found relevant; nevertheless, they gave licence to Hugh to mend the conclusion of his summons; and, in place of transferring, to pursue for implement of the said decret.—*22d January 1629.*

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1632. *January 1, and December 1.* JOHN FERGUSON of KILKERRAN *against* THOMAS DAVIDSON; and
 1632. *January 31, and July —.* JOHN FERGUSON of KILKERRAN *against* JOHN FERGUSON.

MR John Ferguson of Kilkerran being heritably infest in certain lands in Carrick, holden of the Earl of Cassils, upon a comprising, charges the tenants for the maills and duties. The tenants suspend upon double pointing, being troubled by Mr John Ferguson on the one part, and Thomas Davidson on the other part. It was alleged by the said Thomas Davidson, That he ought to be answered and obeyed, because he had comprised the said lands, and had obtained himself infest by the superior; and, by virtue thereof, was in possession thir four years. To the which it was first alleged by Mr John Ferguson, That he had first comprised the said lands, and charged the superior to infest him, who having suspended, the compriser has obtained decret against the superior; and so his diligence being prior, no voluntary infestment, granted by the superior to the later compriser, can prejudge him that used the first diligence; neither ought the last appriser's possession to be respected, proceeding upon the voluntary deed of the superior. The Lords found the first compriser should be preferred.—*1st January 1632.*

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Another suspension of double pointing being raised by the said tenants, (of Dalduff,) for crop 1631, against the said John Ferguson of Kilkerran on the one part, and John Ferguson, taylor, on the other part; Kilkerran alleges, That he ought to be answered, as having first comprised, and charged the superior to enter him; which is equivalent to a charter and seasine; and which must ever be drawn back to the time of the charge, which was prior to any diligence done by John Ferguson. To the which it was answered by the said John Ferguson, That he ought to be preferred, as having obtained the first infestment upon a charge given to the superior; and, as to Kilkerran's charge, the same was suspended by the superior, and lies yet undiscussed; whereas John Ferguson obtained infestment, and, by virtue thereof, obtained possession, by