

The MARQUIS of HAMILTON *against* The LAIRD of SKERMURLY.

THE servitude of the fee of a crownship sustained upon an anterior infestment of that office, with fees and continual possession of such a particular fee; albeit the same was not expressed in the infestment.

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The SHERIFF of GALLOWAY *against* The TENANTS of SALSET.

The sheriff of Galloway, as being infest in the bailiary of Salset, *anno* 1570, with the services of the tenants, pursued the tenants of Salset for certain services libelled, such as two threaves of straw and a hen out of every plough, so many shearers, &c. Alleged for the Earl of Cassils, master of the ground, That his tenants could not be obliged to do such services; seeing he, by his infestment, was not expressly obliged to the same. Replied, That ought to be repelled, in respect of the pursuer's infestment in the bailiary, *cum servitiis*; likeas, he offers to prove, that, since the date of his infestment, for the space of fifty or sixty years, he and his predecessors have been in use of getting such services libelled, from the tenants of the lands libelled. The Lords .....

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## CROWNER HENDERSON'S CHILDREN Competing.

THE Lords would not sustain Crowner Henderson's testament, made after the form used in the Low Countries, wherein he made all his children, sons and daughters, heirs-portioners; as being made contrary to our laws, making the eldest son to succeed to all lands, heritable bonds, and annuals.

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1469. May 31. NICOL FORMAN of HUTTON *against* GEORGE KER of SAMUELSTON.

IN those days all actions of spoliation, intrusion, and others of that nature, were precognosed by an inquest of twelve men, best knowing the land, whose declaration being presented to the judges thereafter, they used to determine, as they did in the action betwixt Nicol Forman of Hutton *against* George Ker of Samuelston, anent the occupation of certain lands which the said Nicol alleged to belong to him in property. The parties, of their own consent, named twelve gentlemen there present, to inform and give counsel to the Lords in the said matter; who being sworn, &c. and removed, returning, gave their deliverance this way:—"We decree and deliver, after our knowledge and understanding, that in no time bygone we heard ever that the Laird of Samuelston had possession of the said lands into mannor, pasture, &c. or possessed before the last year; and

that Nicol and his predecessors have ever been in peaceable possession of these lands while the last year," &c. After which deliverance the Lords decerned Samuelston to desist therefrom in time coming.

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1481. *February 2.* The KING *against* JAMES \_\_\_\_\_, of DURHAM.

THE Lords found that the horse whereupon umquhile Thomas Bullock, servitor to James \_\_\_\_\_, of Durham, ran in the water of Aven and was drowned, was not escheat to our sovereign lord; because, by an inquest taken before the sheriff of Linlithgow, by command of the Lords of Council, it was found that the said Thomas forced the horse with spurs to take the water, and through his own folly and rashness was drowned; and not the horse's fault. And therefore decerned the horse to the said James \_\_\_\_\_, of Durham.

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1540. The KING'S ADVOCATE *against* LUNDY.

THE King's Advocate seeking a declarator of non-entry of some lands, of one Lundy; the defender produced a charter granted to him by the king, which was found sufficient to stop non-entry for all time before the charter, although there was no sasine shown upon it; because it was thought that it should make faith against the king, that the lands contained in the charter pertained heritably to him to whom it was made.

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1541. *July 20.* HOPPRINGLE *against* KER.

IF the king dispone, in his minority, any of the lands annexed to the crown, and, after, revoke the same in Parliament, the same alienation is null of itself, and needeth no declarator; but, if lands come in his hands by forfeiture, recognition, or other casualty, and be disposed by him in his minority, the same alienation, being revoked in Parliament lawfully, ought and should have a special declarator of a judge conform thereto; without which, he to whom it was disposed cannot be put from his possession.

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1542. WALTER STIRLING *against* The LAIRD of KEIR.

WALTER Stirling having pursued the Laird of Keir for warranting to him a contract; the Laird excepted upon the nullity of the contract, being made by