

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

him in his minority, without consent of his curator, Mr Abraham Crichton, *unde non tenebatur warrantizare eundem*. The Lords repelled the exception, as not being in use to admit any to impugn any writ or evident *ex causa nullitatis per viam exceptionis*.

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1542.

PROBATION BY WRIT.

ONE having pursued another for accusing him of theft wrongously, of which he was acquit by an assize, and therefore to pay him ten pounds, conform to the Act of Parliament ;—the Lords would not admit the judge and bailie, and certain other honest men, that were upon the assize, to prove that the other accused him ; but found *quod acta judicialia probari debent per scripta*.

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1543. The EARL of MORTON *against* The QUEEN and her TUTOR.

IF any be compelled by the king, through just fear and dread, to make disposition to his majesty and successors, *ad perpetuam remanentiam*, of his lands, &c. the maker thereof and his heirs have good action to call for reduction of the same against his majesty's successors, albeit they be minors and of less age : *quia absurdum est, et contra rationem communem, ut minor, ex suo suorumve dolo, fiat locupletior ; et res aliqua, quæ ejus non est, maneat apud eum ad ejus perfectam ætatem*. Moreover, the action being founded *super metu*, the same fear continued until his majesty's decease, who was the cause thereof ; so that, in his lifetime, the maker of the said disposition durst not pursue for reduction thereof. Bal. T. 28. N. 14.

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1543. The LAIRD of FYVIE *against* The LAIRD of PITSLIGO.

IN a declarator of non-entry, pursued by the Laird of Fyvie, the summons concluded that the lands should be decerned to have been in non-entry for the space of eleven years, and the Laird of Pitsligo condemned to restore and pay the mails thereof during the said space, because he had intromitted with them all that time. Alleged by Pitsligo, That it was against all practique that he should be called for the mails and duties bygone of these lands ; but first, in such cases, the ground ought to be pointed, and the same not being streinyieable, then the lands to be appraised for the mails. The Lords, nevertheless, sustained that part of the summons.

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