

here *penuria testium*; and, though the process be in Aberlady's name, yet it is for Salton and Blackbaronie's behoof, who were his curators, and liable ultimately to make up this to the minor; and the tenants were nothing to the curators, and so receivable. Yet the Lords still rejected them; but declared, if the process had been at the curators' instance, they would have admitted them. Some were for receiving them *cum nota*. *Vol. I. Page 583.*

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1693. *December 23.* JAMES DICKSON *against* ANDREW DUNCAN'S CHILDREN.

JAMES Dickson, pursuing the children of Andrew Duncan, skipper in Borrowstowness, for a debt, they repeated a reduction, that he was furious when he made the transaction; and a mutual probation being led, the Lords laid most weight on the instrumentary witnesses in the bond; who deponed, That they thought him then rational and sober. And, though others declared that, for ten years, he was reputed mad, and used to run naked to the streets, and threaten to burn the house, yet the Lords found the contrary probation more pregnant, that it was done in a lucid interval; especially seeing it depended on an anterior cause; and there was a decreet of the Admiral's for it, though then suspended; seeing he got down, and paid him no more for his share than he had compounded for with Bonhard and others, partners. *Vol. I. Page 584.*

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1693. *December 26.* ANN DOUGLASS *against* JAMES LANGLANDS, her Son.

MERSINGTON reported Ann Douglass against James Langlands, her son. The Lords repelled his first defence, *viz.* that he was only heir to his brother, Mr George; and the rest of his brethren were the executors, and they were first discussable in law: For they thought the mother, as creditrix, by her son Mr George's back-bond, might insist against both heir and executor, or any of them, as she pleased; reserving their relief among themselves, as accords. The Lords also repelled the second allegiance, That the mother was denuded in favours of her children; and so, they being fiars, were bound to relieve him instantly in this process; and for which he produced a nomination by the mother, dividing the 5000 merks equally amongst the rest of her children: for the Lords considered the mother still as fiar, having, by the back-bond, power to assign it to whom she pleased; and that her nomination was but of the nature of a destination, and *donatio mortis causa*, and so revocable by her; and that it did not appear to have been a delivered evident, seeing it was recovered, by an incident, out of her agent's hands. *Vol. I. Page 584.*

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1693. *December 26.* WILLIAM MAIN *against* Mr JOHN DALLAS and his WIFE.

MERSINGTON reported William Main, son to Mr David Main, against Mr John Dallas, and his wife. The Lords inclined to reponc her against the decreet *in*