

1565. *January 29.* The CONVENT of ST. ANDREW'S *against* The BISHOP.

THE Bishop of St Andrew's alleging the profit of the priory thereof to belong to him by the Prior of St Andrew's, his being at the horn year and day; made arrestment of the whole farms and duties of the priory. This arrestment was sought to be loosed at the convent's instance, who alleged that the bishop could not, by virtue of his regality, arrest the profits of the said priory, nor intronit therewith as escheat, for any fault done by the prior, without the said convent had consented, and had been partakers thereof; for all the lands and teinds, &c. doted to their place, were given for the upholding of the place and convent serving God therein, and nothing given to the prior in particular, who was but a minister and officer to them. The Lords found this allegiance relevant, and assoilyed them.

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1565. *July 6.* UMPHREY CUNNINGHAM *against* N. MACKCALLOT.

IN an action of spulyie, pursued by Umphrey Cunningham *against* N. Mackcallot, the pursuer, *in termino ad probandum*, produced four witnesses. Excepted, That they were at the spulyie libelled, and partakers of the same; so that they might relieve themselves by their depositions. Replied, That in spulyies and other crimes, all were alike guilty; and one being convict, that relieved not the rest. In respect of which reply, the Lords admitted the witnesses.

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1565. *July 30.* DUNIPACE *against* LORD OCHILTREE.

IN an action of warrandice moved by Dunipace against my Lord Ochiltree, for warranting to him the lands of Sethes, sold by the defender's father to Mr David Spence, minister of Flisk, who had resigned the same in the king's hands for infetment of the same to be given to the pursuer's father;—the pursuer, to verify his allegiance, produced a charter, given by the defender's father to Mr David Spence, but had no sasine to show thereupon. Alleged, That a bare charter, though it was sufficient to give a day to call a warrant, and would also give action to compel the giver to give a sasine, yet it was not sufficient to obtain warrandice, because it was not *plena venditio, nulla sasina et traditione subsequuta*. Answered, That *emptio et venditio solo consensu perficiuntur, et talis emptio parit actionem de evictione*; and so the buying and selling, being verified by the charter, warrandice behoved to follow, especially an obligation of warrandice being contained in the charter. The Lords found that the defender was not subject in warrandice by virtue of that charter, whereupon there was no sasine produced; because, the naked charter did not transfer *dominium, et sic non erat perfectus contractus*; though it appeared, by Mr David's resignation and

Dunipace's (father and son,) long possession following, that there was a sasine given. Yet, because it was not produced, the allegiance was sustained.

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1565. *November 28.* JOHN FORMAN *against* His Uncle GEORGE.

THERE was an action pursued by John Forman against his uncle George, to whom he had made alienation of a tenement in the Cannongate, to hear and see the same reduced and declared to be null, with all that followed thereupon; because the said alienation was made by the pursuer, he being a pupil within thirteen years of age, not being authorized by a decreet of the judge interponed thereto, and no profit redounding to him thereof. Alleged, That the libel was not relevant, in so far as it concluded only nullity, and craved not to be restored *in integrum* by reason of his enormous hurt and lesion, which, by the received practise, he should have libelled. This allegiance was found relevant, and the defender assoilyed from the summons, as they were libelled.

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1566.

A CONTENTION being between a tutor testamentar and a wardatar, about the keeping of the person of a pupil, the wardatar was preferred, and ordained to have the keeping of him during the time of the ward.

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1583.

WHERE a party is obliged to another by virtue of a contract, (as if one hath obliged himself, by contract of marriage, to infest the children begotten of that marriage, in all lands conquest by him during the said marriage,) there needs no declarator proceed, (as to what lands were acquired that time;) but he may pursue for fulfilling the contract itself.

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1583.

AN exception against a spuilyie (that the goods were sold and delivered by the pursuer to the defender, which was observed to be proven *per scripta*,) admitted, notwithstanding that it was contrary to the libel; because of the probation by writ.

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