

at his dwelling place, and the lands thereabout, where it was most likely he should have had goods, and that he was no further obliged but only to seek at the principal message of lands united. After two days' contentious dispute, the Lords at last determined that it was necessary to search the grounds of all lands pertaining in property to him from whom they were comprised, and lying *discontiguè*, howbeit they were united in one barony; but, for lands whereof he had only the superiority, that there was no necessity to search. And so, because he had comprised of both these kinds, the comprising was partly sustained, and partly not; and it was thought no absurdity to divide the comprising thus, since the superiority and property of lands are *heterogenea*: so that a comprising being found in substance, for lack of formality, may partly fall, and stand in part.

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The EARL of CASSILS *against* The LAIRD of LOCHINVAR.

IN an action of spulyie pursued by the Earl of Cassils against the Laird of Lochinvar, of the place and fruits of the abbacy of Glenluce; the Earl having founded his claim upon a tack and assedation of the same,—the Lords ordained him to produce his tack before the defender should answer to his claim. *Et quamvis, in interdicto recuperandæ possessionis, (vel spoli actione,) satis sit probare possessionem, et violentam ejectionem: Item teneant DD. quod narratio proprietatis, facta in libello possessorio, non ardet libellantem ad probandum proprietatem. Tamen, in hoc casu, bene judicatum a Dominis; quia, in casu nostro, dictus Comes rerum ecclesiasticarum et possessionum earundem erat omnino incapax, nisi habuisset titulum aliquem, saltem coloratum, quem titulum prius ostendere debuit, antequam restitutionem possessionis petere posset de jure. Et hoc plene in Decis.*

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ONE being pursued for spulyie of certain goods and gear alleged to have been in the pursuer's possession, as his own proper goods, when they were taken away;—Excepted, No spulyie: because the same goods were lawfully apprised from C. (they being then in his possession,) at the defender's instance, to whom C. was addebted; for, by our practise, albeit this exception be contrary to the libel, *quoad possessionem, (et de consuetudine non admittitur probatio directa contra libellum;)* yet, because faith is given to the officiar, *et præsumptio est pro eo, exceptio admittitur probationi.*

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In an action of spulyie; it being excepted that the goods were lawfully apprised from C. whose goods they were, for a debt, by virtue of letters; Replied, That, the time of the poiding and apprising, the defender's servants came to

the officiar, and offered to make faith that the goods were his, and did not pertain to C. This reply and summons will be admitted to the pursuer's probation, unless the defender will offer him to prove that the goods were C. his proper goods; in which case the probation will be given to the defender, in respect of the pouding; because it is ever presumed for the officiar, and that what he doth is lawfully done. Bal. § *ult.*

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LORD BALMERINO *against* His VASSAL.

A SUMMONS of declarator of liferent against an apparent heir not entered, sustained at Lord Balmerino's instance against his vassal, because it was thought that he could not lie forth to his prejudice.

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ROBERT HALIBURTON *against* LADY BOTHWELL.

ROBERT Haliburton, donator to the Laird of Coldingknows's escheat and liferent, pursued the old Lady Bothwell for a bond of 600 merks, (both principal and annual-rent since the first date,) granted by her to Coldingknows 1604;—it was found that the bond, being conceived after the form of heritable bonds, could not fall under simple escheat. Next, that the annual-rents, by virtue of the simple escheat, is only due to the date of the declarator, and not after. *Stio*, That the king's donator of a liferent-escheat has right to the annual-rents of an heritable bond whereupon no infestment has followed, and which bears no condition of infestment or annual-rent to be holden of any other superior.

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The DUKE of LENNOX *against* The TENANTS of St. ANDREW'S.

A LORD of erection may pursue for reduction of an infestment, *propter non solutum canonem*, although his infestment followed not many years after the cause of the reduction.

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ONE being in possession of lands and fortalice thereof, by reason of ward; the ward being expired, another got assedation of the same lands and fortalice from the heritor. This falling out between terms, albeit the donator could not be removed from the lands before the next term; yet he ought to deliver the tower and fortalice upon six days' warning, conform to our practise.

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