

and pursues general declarator of both their escheats. It is alleged for Bannerman, That the horning is null *quoad eam*, in so far as she was clothed with a husband when she was denounced. To the which it was replied, That the horning stands good, in respect the same proceeds upon a fact and deed done by herself as well as her husband, whereupon decret was obtained against them both compearing. The Lords found the horning null *quoad* the woman.

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1633. February 16. JOHN KERR against MARK KERR.

JOHN Kerr pursues his brother Mark, as heir to his brother James, for fulfilling of a bond made by the said James to the said John; Mark takes a day to produce his renunciation to be heir; and at that day offers to improve the bond produced registrate; but produces no renunciation. It is alleged by the pursuer, That he cannot improve the registrate bond *hoc ordine*, but must use an ordinary action, seeing the principal bond was not produced, but the extract out of the register. The Lords ordained the defender to pursue improbation by way of action.

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1633. February 20. MARY STEWART, Relict of the late Earl of Athole, against
The present EARL of ATHOLE.

DAME Mary Stewart, relict of unquhile James, Earl of Athole, being infest, conform to her contract of marriage, in the lands and barony of Reidcastle, which, by contract, her husband bound him and his heirs to warrant to be worth at least fifty chalders victual,—pursues the tenants and the Earl of Tullibardin, for his interest, for the maills and duties of the crop 1632. Compears the Earl of Athole for his interest, and alleges, That the pursuer cannot claim the maills and duties: because by decret-arbitral pronounced by the Earl of Kinghorn, the Viscount of Stormonth and the Laird of Inchmartine, to whom the said pursuer had submitted herself in a compromitt betwixt her and the said Earl of Athole, her sister son, who was bound to warrant the lands of Reidcastle to the Earl of Tullibardin, of her conjunct fee, what she should have for her right to the said lands of Reidcastle; the said arbiters had, by their decret, ordained her to renounce her conjunct fee and right to the earldom of Athole for 500 merks by year during her lifetime. It was alleged by the pursuer, That this decret ought to be reduced, because it was given against all equity and reason; and, in respect of her enorm lesion, ought to be reduced *ad arbitrium boni viri*, and to be rectified by the Lords of Session, who were supreme judges in such causes. It was triplied by the defender, That, in decreets-arbitral, *standum est sententiæ, sive æqua, sive iniqua sit*. The Lords first ordained the parties to dispute upon the lesion. The defenders then alleged, That the lands were burdened with infestments prior to the pursuer's infestment which would exhaust