

bert the Second, King of Scotland ; which David is alleged to have been father to the said Eupham, Countess of Strathern. Thir retours are sought to be reduced at the instance of Charles, King of Great Britain, &c. ; by reason nothing was produced to the inquest bearing Malise to be son to Eupham, nor Eupham to be daughter to David ; and, if any such writ were, the King's Advocate offered to improve the same ; and, in that process, did call for all writs that anyways designed Eupham to be mother to Malise, or daughter to David, to hear and see them improven. And insisting first in the improbation, nothing being produced, certification is granted in favours of the king. Then it was excepted, by the Earl of Monteith's advocates, (himself being present at the bar,) That the retour ought not to be reduced ; because he offered him to prove, by charters under the Great Seal, or extracts furth of the register, That Malise Grahame was son to Eupham, and Eupham was daughter lawful to David, Earl of Strathern. Against the which exception the King's Advocate proponed an emergent reply, That, although the exception was relevant, yet, in respect of the former certification, against all writs that were not produced in the improbation, the same could not be proven by these writs that were not produced therein ; seeing certification was already granted against them, and the writs produced in the cause did not prove the exception. The Lords found the exception relevant, but not proven ; 21st March 1633 ;—and therefore reduced the retours, and the other writs called for to be produced and reduced ; and found the King's Majesty undoubted heir of blood to the said David, Earl of Strathern, and descended from King Robert the Third, who was eldest brother to the said David ; which David had no children ; neither is there any succession extant descended from him or any of his brethren.

And, because the said summons concluded not only reduction of the said retours, but, *per consequentiam*, wilful, at the least ignorant error, against the inquest, for the which they had incurred *pœnam temere jurantum super assysam*, it was alleged for the inquest, That no such pain could be decerned against them ; neither could the king nor his advocate pursue them for error ; because his majesty's advocate, compearing the time of the service, produced a renunciation made by the Earl of Monteith, of the earldom of Strathern, as apparent and undoubted heir of blood to the deceased David, Earl of Strathern, son lawful to King Robert the Second ; and protested that this service should be for corroborating of the said renunciation ; so the assize did no wrong, nor deserved any punishment, in serving the Earl of Monteith heir to the said David, whom the king, in accepting of the said renunciation, acknowledged to be heir to the said David. And if they committed any error, it was not wilful, seeing there was nothing produced or alleged in the contrary ; but the most that could be objected was ignorance, and that not wilful, which deserved no punishment. Which exception the Lords found relevant and proven ; and therefore absolved the assize from the pain concluded in the summons.—26th March 1633.

2d MS. Page 221.

---

1634. January 18. LORD LORN against JAMES STEWART.

JAMES Stewart is pursued by the Lord Lorn for the maills and duties of the

lands of Craiggunnoch, extending yearly to 400 merks, by the space of ten years. He alleges, that he ought to have allowed to him, by other payments made by him, thirty shillings yearly, paid by him to the chamberlain of Dumfermling, which his predecessors, occupiers of the roun, were in use to pay; conform to which use, he had made payment the years of his occupation. It was replied, That the allegiance was not relevant, unless he would allege that he was compelled to make payment thereof, by a sentence or by command of his master; for it were a dangerous preparative, if a tenant, without consent or command of his master, should bring a servitude upon his master's land, by putting the kirk in possession, which might thereby establish a right to the kirk, and prejudge the heritor. The Lords found, that the payment made by the defender should be allowed to him; but declared, that this allowance of payment should noways be obtruded to the Lord Lorn when he should contest with the chamberlain of Dumfermling hereafter upon the right of this annualrent.

*2d MS. Page 190.*

---

1636. *January 16.* The RELICT of SCOTT *against* SCOTT.

IN an improbation of a horning, the messenger and one of the witnesses approves. The other witness depones, That he remembers not that he was taken witness to this particular denunciation, but remembers that he heard the messenger denounce some man at the cross of Lochmaben, but remembers not the person's name that was denounced. The Lords absolved from improbation.

*2d MS. Page 91.*