

merks of her byganes, that she might satisfy that ordinance of the public, seeing she had nothing else but that, no, not to live on ;—and while that this should be tried, the Lords ordained, in respect of her miserable estate, that she should get, in the meantime, £500 from them, according to the proportion of their sums.

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1649. December 13. LADY EDNAM *against* Her SON.

IN the action betwixt the Lady Ednam and her son, she, offering him and his tutor an ease of her liferent lands, craved that the tutor, who was named jointly with another, seeing that other did not accept, would be content to have some friends joined with him of his own choosing, together with a factor, in respect of the multiplicity of his business ; as, by the civil law,—*tutorem habenti curator dari potest quando tutor est minus idoneus ad administrandum.*—*Institut. de curator.*—*Et dicitur adjutor et actor.*—*L. solet 13. ff. de Tutel. et ibid. DD.*

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1649. December 14. MR PATRICK MAXWELL *against* SIR JOHN RUTHVEN'S SON.

IN the action of declarator, pursued by Mr Patrick Maxwell against Sir John Ruthven's son, for declaring of some temple lands, lying betwixt the barony of Thorntoune and that of Innerwicke, as being severally kend and known by march stones, dikes and ditches ; and whereof he instructs infestments, successively, to sundry persons, by the space of more than 80 years, and, namely, that one of them obtained a decreet of removing in the year 1616 :—it was accepted, That *minor non tenetur placitare de hæreditate paterna*, conform to the law of the Majesty, which is *in viridi observantia*. In the which cause, comes in to be disputed, what is *hæreditas paterna*?—whether that wherein the minor and his father are *per expressum* infest?—or that also which they allege to be bruiked by them as part and pertinent?—that same being alleged to be *distinctum tenementum*. But the Lords would hear it in their own presence.

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1649. December 14. JAMES SHEARER *against* The TOWN of STIRLING.

IN the process at James Shearer's instance against the Town of Stirling, wherein the town had proponed an exception of payment of some bygone annualrents made by their treasurer, who died of the sickness, and had not delivered the discharges ;—the Lords would not sustain their incident, nor any such discharge, which was presumed to be their own evident, but bade them go on in their ordinary, to prove the allegiance, as they would be served ; especially seeing the

principal sum of a 1000 merks, wherefore this annualrent was payable, was mortified to their town by the pursuer's kinsman, they paying to the pursuer the said annualrent yearly, which was brought from 100 merks to 80 merks this last bygone session, and is likely now to be brought to 60.

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1649. *December 14.* LOUTHIANE *against* NISBET.

IN the declarator of redemption pursued by Louthiane against Nisbet, of lands lying within the regality of Glasgow;—it was excepted against the pursuer's title, That it was a naked service, which could not be sufficient to sustain an action, except it had been retoured. It was replied, That the regality of Glasgow, and others of that nature, had a chapel of their own, which required no retour: and the custom was not to retour to the king's chancellery; and, suppose it were, it did multiply charges upon the poor lieges.

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1649. *December 14.* YOUNGES *against* The LADIES MURRAY and LAWDERDALE.

IN the transferring, Younges against the Ladies Murray and Lawderdale,—the exception proponed by them and the Earl of Home, That the bond was made *in lecto ægritudinis*, by their predecessor, was not sustained *hoc loco*, suppose their action of reduction, *super hoc medio*, was obtruded instantly. But the Lords bade them insist thereon, as they would be served.

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1649. *December 14.* SIR WILLIAM DICK *against* ALEXANDER KEIR.

IN the suspension by Sir William Dick against Alexander Keir, his reason of compensation upon that, That umquhile Patrick Keir, father to the charger, was debtful to him in greater sums, as he who had taken upon him, through his wife, one of the three heirs and executors of umquhile James Houstone, factor, to satisfy the said James his creditors,—was not found relevant; because those sums were not made liquid either against the said umquhile Patrick or against his son, who would neither be heir nor executor to him, but would bide as before; so yet still a process of count and reckoning; and so were not compensable: *As Cod. de Compensat. L. ultima, ubi vult imperator causam esse liquidam, nec multis ambagibus innodatam sed debitum certum non contraversum et presens, ut nec quod alteri debetur ad compensandum. adjici L. 13, ff. L. 9, Cod. eod.* It is to be marked, that the bond charged upon was made by Sir William Dick to umquhile Patrick Keir, during his lifetime, and to the said Alexander and his sister, after his decease; the which bond was thought to be the father's money, as proceeding from him, and payable to him during his lifetime; so that the said William,