

1583. *November.*

ONE having pursued another for the cutting and destroying of certain corns growing on his ground, and also for wrongous molestation of him therein, concluded likewise to hear and see the defender ordained to desist and cease from the violent occupation thereof;—it was alleged against the libel, that, in so far as it concluded both cutting and destroying of corns, and to desist and cease from occupation of the ground, that it was irrelevant, *et quod esset inepta actionum cumulatio*. Answered, The accumulation might stand in law, *quando ex eodem facto plura et diversa agendi jura competunt, ut in præsentis casu*. Which was admitted by the Lords, and the libel found relevant.

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1584. *March 3.* ————— *against* The TUTOR of CASSILS.

THE Lords of Session may not suspend any decret given by the Lords of Privy Council, neither are judges competent thereto. But the Lords of Privy Council themselves are only judges to all controversies and debates arising upon any decret given by themselves; Bal. 16, 12. According hereto, 3d March 1584, the Tutor of Cassils having obtained a suspension of a decret given against him by the Lords of Privy Council, they, notwithstanding thereof, ordained their decret to be put to further execution, and discharged the Lords of Session to proceed to the discussing of the said suspension; which they did annul and discharge in all time thereafter.

See Laird of Halkerton *against* his Wife, 20th March 1627; *infra*.

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1585.

N. heritable proprietor of the lands of O. sought a decret of molestation obtained by his author, to be transferred in him *active*. Alleged, That decret could not be transferred, because it was personal, and only competent, *tam active quam passive*, to the persons and their heirs between whom it was given. Replied, Albeit the action of molestation might be thought in some case personal, yet, it was according to the law, *actio personalis in rem scripta, et transit in singularem successorem*. The Lords repelled the allegiance.

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1585.

A WOMAN being left tutrix testamentar by her husband to her own children, with provision that her tutory should not expire though she married again;—

the Lords found, that, notwithstanding thereof, the common law should take place, which was made for the will and preservation of pupils and their gear, *et sic provisio hominis non sustulit provisionem legis.*

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1588.

DEFENCES in a summons of violent profits, 1588. *1mo.* Accepted the summons for one of the defenders who was charged as heir to his father; at least lawfully charged to enter heir; at least who had behaved himself as heir by intromission with his goods and gear; at the least was universal successor to him *titulo lucrativo*, &c. and offered to renounce. *2do.* Where he is called universal successor, the pursuer should declare wherein. Replied, He shall prove this last *in termino probatorio*. Ordained to condescend, in special, wherein the defender was universal successor, and ordained Sharp to bring a special procuratory from the defender to renounce *in termino probatorio*, which should be taken to prove him universal successor.

After other frivolous exceptions against the libel, &c. the summons were admitted to probation; with reservation of the modification of the violent profits to the Lords themselves.

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1590. WILLIAM HOME *against* The LAIRD of MELLERSTANES.

WILLIAM Home pursued the Laird of Mellerstanes, to hear and see the tenor of a tack proven; and likewise he pursued Nicoll Cairncross for exhibition and delivery of the same tack, alleging it to be in his hands. Alleged, That thir two actions were incompatible, and so the pursuer could not pursue both the ways. Answered, That it was *inter diversas personas et non eodem modo agendi*. The Lords found that the pursuer behaved to take him only to one of them; and so he insisted to prove the tenor.

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1590. JOHN and MAGNUS ARTHUR *against* GEDDIES and WALLETS.

MR John and Mr Magnus Arthurs pursued the Geddies and the Wallets in St Andrew's, and their cautioners, for the contravention of a decret-arbitral, by which they were decerned to be banished the country for certain years, or during the will of the pursuers, and not to resort within a mile of St Andrew's, under the pain of ———— *lib.* Alleged, That the decret was null, in so far as it had prescribed a pain of banishment, which no private man could do by law, *cum de jure non sit singulis concedendum quod per magistratus fieri potest*: nevertheless the Lords repelled the exception, in respect they thought it a part of the assythment made to the party, 1590, and that it was *quasi voluntarium exilium*.

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