

1649. *December 13.* LINDSAY of PITTERLIE *against* JOHN PETER.

IN the reduction at Lindsay of Pitterlie his instance against John Peter, of an inhibition served by him against the umquhile Bishop of Glasgow, upon that [reason,] That the lands possessed by Pitterlie, or dispoened to him by the umquhile Bishop, did ly within the regality of St Andrew's, and the said inhibition was not served at the cross thereof;—the Lords sustained his interest; suppose it was objected that Pitterlie had only disposition and infeftment of warrandice, and that he was not distressed. *Page 88.*

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1649. *December 13.* KER *against* ANDREW KER.

WHERE James Trotter, as assignee, by Andrew Ker, to a sum of money consigned; it was alleged for the said Andrew his elder brother, That he had right from his father to that sum and wadset, by virtue of his contract of marriage. To the which the said Andrew did answer, That their father did make a posterior right thereof to him, obliging his heirs to make it good. The Lords would have the children to debate the cause between them, and that the Laird of Fairningtoun should take up the money in the meantime, out of the clerk's hands, upon bond in the meantime, for principal, [and] annual, while he got a sufficient renunciation from the heir for purging his land *habili modo.* *Page 88.*

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1649. *December 13.* FAIRTHFULL *against* HAY, MONRO, and MOWAT.

IN that multiplepointing, Fairthfull against Hay, Monro, Mowat,—the Lords inclined much against Hay, donatar to umquhile Alexander Hay's escheat, that he and the rest of the parties should condescend on the justness of their debts, and grounds of decreets, which they had obtained soon after the visitation, as if that escheat had not been granted to the prejudice of lawful creditors, in favours of a brother, who was tutor to the defunct's children. *Page 89.*

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1649. *December 13.* The LAIRD of DURIE and His BROTHER *against* LADY BALNEVES.

BALNEVES, urging the Laird of Durie, and John, his brother, for payment of a yearly duty provided to her in liferent by the procurement of her umquhile husband, Sir James Lundie, who had dealt his estate unto them;—they suspend her charge, upon that they have obtained discharge from George Jamieson, donatar to her escheat, who was denounced rebel, for not payment of 1000 merks, which she was ordained to lend the public. But it was answered, That there was collusion herein, betwixt Durie and George Jamieson, to frustrate her of payment; since she offers her to prove, that she required Durie to give her 1000

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