

ments as done *ex vi et metu*, when he was under caption, and that this obligation was not the ground of the caption, but only the rent 1680;—the Lords reduced the disposition as to these obligations, *ex capite vis et metus*.

Page 54, No. 228.

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1681. *December.* FLOCKART *against* LORD ROLLO.

MY Lord Rollo, being pursued as vitious intromittor with his father's robes and best horse, at the riding of the Parliament;—he Alleged, That the goods intromitted with fell under escheat by his father's dying at the horning, and the said escheat was gifted, and declared, before commencing of the cause; which ought to purge the vitiosity, though the gift was posterior to the defender's intromission, and he derived no right from the donator. The Lords sustained the allegiance, as relevant to purge the passive title.

Page 6, No. 26.

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1681. *December.* ————— *against* DR HAY, and CAMPBELL *against* CAMPBELL.

FOUND, That, in the case of three brothers, the second and not the eldest succeeds both as heir of line and conquest.

Page 7, No. 32.

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1681. *December.* JOHN GEDDY *against* PATRICK TELFER.

AN adjudication against one Geddy, that was out of the kingdom, being quarrelled as null, for that the citation in the summons was not given upon sixty days at the market-cross of Edinburgh and pier of Leith;—it was Alleged for the adjudger, That the debtor had ratified the decret of adjudication, and so had passed from an informality or nullity therein. Answered, The adjudger gave a back-bond, the time of the said ratification, to allow all things to the debtor that could be acclaimed by law, reason, or equity, which took off the total effect of the ratification. 1. The Lords sustained the ratification to make the adjudication subsist; but that the effect of the said ratification was elided and taken off by the back-bond. 2*do.* The said adjudication was alleged to be null, for that it adjudged for a fifth part more than was due, which was *pluris petitio*. Answered, The adjudger had libelled a fifth part more, not knowing but the debtor might have appeared and produced a progress; in which case, the Act of Parliament allows to adjudge for an additional fifth part; and the clerks, at the beginning, before the import of the Act was well understood, used to extract for the superplus fifth part, even in absence. 2. The Lords, in respect of the clerk's mistake, did not find the adjudication simply null, but restricted it to the principal annual-rent and composition to the superior, without allowing

accumulations, or any expenses of leading the adjudication: and in this they had respect to the voluntary ratification above mentioned, which would have made the adjudication subsist to all effects, had it not been for the adjudger's back-bond. Page 64, No. 270.

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1681. *December.* ROBERTSON *against* SIR PATRICK NISBET.

FOUND, That Sir Patrick Nisbet having given his vassal a feu-charter of some lands, with pertinents, for a feu-duty *pro omni alio onere*; the vassal might erect a brewery *in suo feudo*, though in barony, and the clause *cum breueriis*, was not insert in the charter; which, in Craig's opinion, page 181, passes with the feu, though not expressed. Page 162, No. 584.

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1681. *December.* ROBERT SPEED *against* JOHN SPEED.

A PERSON being infeft by cognition, and hasp and staple, in a tenement of land in Brechin, and his sasine not registrat,—as if the tenement had been burgage, whereas it truly held feu of the bishop, and was only granted to the town during the suppression of prelacy,—he disposed the tenement; the disposer's son served heir to his grandfather, and raised reduction of his father's infeftment, as null, for not being expedite *habili modo* by charter and sasine, upon retour or precept of *clare constat*, as other feus are acquired, nor yet registrat. The Lords found the father's infeftment null.

*Index.* Infeftment without registration, taken in feu-lands by cognition and hasp and staple, *ex errore*, as if they had been burgage, and not by charter and sasine, upon retour and precept of *clare*, found null. Page 164, No. 591.

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1681. *December.* The LAIRD of CRAIGIVAR *against* JAMES SCOT.

THE defender, in a process of spuilzie, dying before litiscontestation, and decret being extracted without any such objection made by his procurators, and his lands appraised thereon,—the Lords reduced the appraising as simply null, at the instance of another of the defunct's creditors, who had used posterior real diligence; and would not sustain it as a security for the sum that should be instructed to be due, otherwise than by not denying the libel.

Page 173, No. 629.

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1681. *December.* DONNES *against* LISLE.

ALEXANDER Donne having died infeft in a tenement in the year 1658, his son, the apparent heir, continued in possession till 1663; after this Lisle entered up-