

of Dean, the Lady Rosline, and Colonel Ramsay,—the Lords, before answer, appointed trial to be taken anent the offer made to the said Lady of her legacy, and her refusal of it ; as also, of her being then minor, &c. *Vol. I. Page 565.*

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1693. *February 23.* CHARLES FLEMING *against* HAY and NISBET.

THE Lords preferred the first disposition made by Mary Sinclair, relict of Captain Ross, to Nisbet ; and found her a creditor by the clause of absolute warrandice, and so had sufficient interest to reduce the posterior disposition made to Fleming ; but found the first, being lucrative, was burdened with all her debts. *Vol. I. Page 565.*

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1693. *February 24.* IRVING of FEDDERET *against* ROBERT and WILLIAM KEITHS.

THE Lords found, seeing the charge was at the instance of Mr William, That the reasons of suspension for setting Fedderet at liberty, being only against his brother Lentush, they could not operate against Mr William, unless he first confessed, upon oath, that it was to Mr Robert's behoof : but, in respect of Lentush's declaration, that all his reason for keeping him in prison, was, because he disturbed Lentush's possession, and would not cede his own possession of the lands of Loanmay ; therefore, they allowed him to be set at liberty, he finding caution not to disquiet Lentush, but to cede his possession *ut supra.* *Vol. I. Page 565.*

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1693. *February 24.* ROBERT MACCALLAN *against* The MAGISTRATES of AYR.

THE Lords adhered to their former interlocutor ; and found, That his infestment, though it was in the nolt-fauld, yet not bearing to be in the market-place, it did not hinder the town of Ayr to alter their market-place : albeit he had immemorial possession, and that the whole cattle came there, and paid custom ; which was only *actus meræ facultatis*, and arbitrary to the town to continue it in that place, or transport it elsewhere at their pleasure ; even as it is with the markets of Edinburgh, where the neighbouring heritors of the flesh-market, and others, get their houses much higher and better set ; this would not hinder the altering and taking them to another place, though the adjacent tenements would suffer prejudice thereby. And, on the other hand, it was urged, That a dubious and a general charter, bearing the nolt-fauld, with all its pertinent, might be explained and enlarged by a long custom and possession, and might introduce such a servitude ; especially seeing he bought the ground at a dearer rate upon that account. *Vol. I. Page 565.*