

him in his minority, without consent of his curator, Mr Abraham Crichton, *unde non tenebatur warrantizare eundem*. The Lords repelled the exception, as not being in use to admit any to impugn any writ or evident *ex causa nullitatis per viam exceptionis*.

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1542.

PROBATION BY WRIT.

ONE having pursued another for accusing him of theft wrongously, of which he was acquit by an assize, and therefore to pay him ten pounds, conform to the Act of Parliament ;—the Lords would not admit the judge and bailie, and certain other honest men, that were upon the assize, to prove that the other accused him ; but found *quod acta judicialia probari debent per scripta*.

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1543. The EARL of MORTON *against* The QUEEN and her TUTOR.

IF any be compelled by the king, through just fear and dread, to make disposition to his majesty and successors, *ad perpetuam remanentiam*, of his lands, &c. the maker thereof and his heirs have good action to call for reduction of the same against his majesty's successors, albeit they be minors and of less age : *quia absurdum est, et contra rationem communem, ut minor, ex suo suorumve dolo, fiat locupletior ; et res aliqua, quæ ejus non est, maneat apud eum ad ejus perfectam ætatem*. Moreover, the action being founded *super metu*, the same fear continued until his majesty's decease, who was the cause thereof ; so that, in his lifetime, the maker of the said disposition durst not pursue for reduction thereof. Bal. T. 28. N. 14.

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1543. The LAIRD of FYVIE *against* The LAIRD of PITSLIGO.

IN a declarator of non-entry, pursued by the Laird of Fyvie, the summons concluded that the lands should be decerned to have been in non-entry for the space of eleven years, and the Laird of Pitsligo condemned to restore and pay the mails thereof during the said space, because he had intromitted with them all that time. Alleged by Pitsligo, That it was against all practique that he should be called for the mails and duties bygone of these lands ; but first, in such cases, the ground ought to be pointed, and the same not being streinyieable, then the lands to be apprised for the mails. The Lords, nevertheless, sustained that part of the summons.

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