

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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