

VIS ET METUS.

1543. *April 12.* EARL of MORTON *against* LOCHLEVEN.

THE King's advocate alleged that the Lords must not proceed *contra reginam pupillam et minorem* upon the retraction of the resignation of the lands of the Earldom of Morton, made by the Earl in the King's hands *quia hic agit de perdenda hereditate et minor non tenetur placitare, uti habetur in Regia Majestate*. Nevertheless the Lords, by interlocutor, decerned the King's advocate to answer, because it is provided by act of the Lords of Council lately made since the decease of the King, that whosomever pleads that they were hurt in their persons, lands, heritages, goods or gear, by the King or his servants, in and to his profit, *mediate vel immediate*, that it should be leisom to them to call the King's advocate and controller by a simple bill, without delay of table or diet, and to hear them restored again to their possessions.

Therefore the Lord decerned as said is. The Laird of Lochleven excepted that the Earl's summons might not come in by that order, because it was tabled in one table before the while there was another table undecided, and so the first standing not decided, the Lords must proceed upon no summons in the two tables. The Lords decerned process to the Earl, because the first table was all called the day before the calling of the table and not decided, albeit there came none to pursue the summons contained in it, because the Lords would not do the same, for it was but the beginning of the Session after the Pasche; and the King's leiges trusted not that the Lords would sit so soon; and not the less the Lords thought the negligence of them that were in the first table should not prejudge them that are in the second table; and therefore ready to have process and justice, they caused call by

No. 1.

The Lords reduced a resignation *ad remanentiam* of an Earldom, because, upon the Earl's refusal, the King had ordered him to prison.

No. 1.

the second table, because they had not adoe in the first as said is ; and there the said Earl by the said second table desired process, and the Lords decerned the same for the causes foresaid, and the said second table was put up upon the doors long before the said summons calling in the said Earl's cause. He alleged he was compelled to resign his lands and lordship of Morton in the King's hands, compulsus regio metu qui poterat cadere in constantem virum ; and to prove that the King had before long great and ardent desire to his lands, and devised divers causes to get them to himself, and that he was before the resignation made in the King's hands in favours of the Laird of Lochleven, lawfully charged by the King to waird in winter at,

and might not sustain the said travel and waird, but danger of his life ; and that incontinent after he had made that resignation, viz. *eodem die* he got a discharge of his waird and passing thereto, and a little afore the resignation made in favours of the said Laird of Lochleven, he resigned the same in the King's hands to remain perpetually with his Grace, and that he was charged to waird for no other just cause, and could get no relaxation and discharge of the waird while he had made that resignation, wherethrough of these presumptions he alleged was sufficiently proved that he did the same for just dread and fear of his life ; and so the Lords gave sentence *definitive*, and thereafter retreated both the resignations foresaid, and reponed him in the same estate he was in before the making of them.

Sinclair MS. p. 83.

No. 2.

1555. July 4. MARION CRAIG *against* JAMES MOWAT.

Discharge of ony debt, sowmis of money, or obligatioun maid be ony persoun beand in captivitie or prisoun, is null be way of exceptioun.

Balfour, p. 151.

1586. April.

LOVE *against* DOWNIE.

No. 3.
What is given by a person in ward is presumed to be *metus causa*.

John Love, indweller in Leith, pursued one Downie in Leith to restore and deliver to him again the sum of 400 merks, which sum he was compelled to give to the said Downie, being put in ward into the Castle of Edinburgh by James Stewart, sometime Earl of Arran ; and so he having given the said sum of money, ought to have the same restored, *L. 22. D. Quod metus causa*. It was answered, That the said Downie being hurt and bled by the pursuer, the said sum was given to him as a satisfaction. It was answered, That it was not relevant except