

merks of her byganes, that she might satisfy that ordinance of the public, seeing she had nothing else but that, no, not to live on ;—and while that this should be tried, the Lords ordained, in respect of her miserable estate, that she should get, in the meantime, £500 from them, according to the proportion of their sums.

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1649. December 13. LADY EDNAM *against* Her SON.

IN the action betwixt the Lady Ednam and her son, she, offering him and his tutor an ease of her liferent lands, craved that the tutor, who was named jointly with another, seeing that other did not accept, would be content to have some friends joined with him of his own choosing, together with a factor, in respect of the multiplicity of his business ; as, by the civil law,—*tutorem habenti curator dari potest quando tutor est minus idoneus ad administrandum.*—*Institut. de curator.*—*Et dicitur adjutor et actor.*—*L. solet 13. ff. de Tutel. et ibid. DD.*

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1649. December 14. MR PATRICK MAXWELL *against* SIR JOHN RUTHVEN'S SON.

IN the action of declarator, pursued by Mr Patrick Maxwell against Sir John Ruthven's son, for declaring of some temple lands, lying betwixt the barony of Thorntoune and that of Innerwicke, as being severally kend and known by march stones, dikes and ditches ; and whereof he instructs infestments, successively, to sundry persons, by the space of more than 80 years, and, namely, that one of them obtained a decreet of removing in the year 1616 :—it was accepted, That *minor non tenetur placitare de hæreditate paterna*, conform to the law of the Majesty, which is *in viridi observantia*. In the which cause, comes in to be disputed, what is *hæreditas paterna*?—whether that wherein the minor and his father are *per expressum* infest?—or that also which they allege to be bruiked by them as part and pertinent?—that same being alleged to be *distinctum tenementum*. But the Lords would hear it in their own presence.

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1649. December 14. JAMES SHEARER *against* The TOWN of STIRLING.

IN the process at James Shearer's instance against the Town of Stirling, wherein the town had proponed an exception of payment of some bygone annualrents made by their treasurer, who died of the sickness, and had not delivered the discharges ;—the Lords would not sustain their incident, nor any such discharge, which was presumed to be their own evident, but bade them go on in their ordinary, to prove the allegiance, as they would be served ; especially seeing the