

on error and iniquity committed by them; it came to be debated, if the verdict of an assize might be reduced on that ground before the Lords.

CONTENDED,—The Justice-depute being a Judge distinct and independent from the civil Judge, and the verdict of an assize being a sovereign sentence of a criminal Court, it could not fall under the compass of the Lords of the Session, or their review; and it is a novelty, and of a dangerous consequence, to reduce the verdict of a criminal assize. On the other hand ALLEGED,—That they craved only the verdict to be reduced as to the civil effects of it, and not as to the criminal.

This was an action extraordinary, and never heard of before; the same came not to a sentence, but was agreed.

*Act. Harper and Wallace.*

*Alt. Lockhart.  
Advocates' MS. folio 59.*

1668. *February 4.* FARQUHAR *against* FARQUHAR.

PATRICK FARQUHAR being engaged in several sums of money, as cautioner for Sir Robert Farquhar, he raises reduction of these bonds as done by him in his minority and to his lesion.

ALLEGED, *Esto* he were minor and lesed, yet after he was major he had homologated these bonds, in so far as he was pursuing Sir Robert, the principal, his heirs, for his relief, and had gotten decreet *cognitionis causa*, and was to adjudge his estate therefore.

ANSWER,—Nothing could be called a homologation but an express approbation, or payment of annualrent, after he was major: because the event of the reduction might be dubious, and might take a time before it might be closed; and in the interim, the other creditors might prevent him in diligence, and prejudice him of his relief.

This was not decided. Nor do I remember that ever that point came to be debated before, If a major's craving relief of a debt contracted by him in his minority will import an homologation.

In this same process, found that women could not be adduced to prove minority. Likeas there was a joint probation allowed to the pursuer and defender.

*Act. Lockhart.*

*Alt. Dinmuire.  
Advocates' MS. folio 59.*

1668. *February 4.* LADY CARLIPS *against* The LAIRD of Posso.

IN the case betwixt Lady Carlips and the Laird of Posso, it was found, that as an apparent heir, by the late act of Parliament, cannot buy an apprising of his father's estate, without being made liable to his father's debts, so the Lords did extend this statute to apparent heirs who buy comprisings against their father's

estate even while their father is in life. Which was well decided; because it is presumed to be bought with the father's means.

See *Mascardus de Probationibus, verbo, Bona conclusione, 221.*

*Act. Cunyghame.*

*Alt. Lockhart.*

*Advocates' MS. folio 59.*

1668. *February 4.*

Anent WARDHOLDINGS.

As vassals of ward-lands may feu their lands without their superior's consent, so they who hold lands ward of subjects may do the same; albeit, the act of Parliament be only express as to lands holding ward of the king.

*Act. Wallace.*

*Alt. Lockhart.*

*Advocates' MS. folio 59.*

1668. *February 4.*

Anent COMMONTIES.

THE Laird of Haining being infeft in the lands of Haining, with its parts and pertinents, *cum pascuis et pasturis*, but not *cum communi pastura*; holding feu of the king; and the town of Selkirk, by their charter of erection, granted to them by the king, being specially infeft in the muir, as the commonty of their town: and both pursuing molestations against others,

The Lords found that Haining being infeft *cum pascuis, &c.* and in possession of pasturage past memory of man, he had right to pasture there, but not to cast feal and divot. But if he had been infeft *cum communi pastura*, and so in possession, The Lords declared, that having right of pasturage, the right of casting had been included; because *major servitus includit minorem*: and that *cum pascuis, &c.* in Haining's charter, did relate to the lands, but not to the commonty.

*Act. Wallace.*

*Alt. Wedderburne.*

*Advocates' MS. folio 59.*

1668. *February 24.*

HENDERSON *against* HENDERSON.

HENDERSON having disponed some tenements of land to another, so called; in the narratory part of the which disposition, the consideration of his mortality, and his going off the country are the impulsive causes of the right: and it had the common style of a testament; but thereafter, in the body of it, he assignees him to the mails and duties, and gives him power to dispone thereon; and contains