

as could not be foreseen; and that, if the guns had remained with the lenders, they had been lost with that same prevalent power; and, therefore, they could not be liable.

No 11.

Gosford, MS. No 51.

1679. July 16.

JOHN BINNY, Postmaster, *against* MONSIEUR ANDREW VEAUX, Dancingmaster.

No 12.

THE LORDS found, where a man hires a horse, if it die, or fall sick or crooked by the way, (though he can prove that he rode *modo debito*, and no farther than the place agreed upon,) yet the rider must further prove the *casus fortuitus quem nulla præcessit illius culpa*, nor negligence, and the defect or latent disease it had before he hired it; and if he succumb in proving this, he must pay the price of the horse, or the party's damage and interest. The Chancellor's vote cast this decision, *viz.* that the rider should prove the accident, and his own diligence, which is *perquam durum*. This is a difficult probation to burden the rider with, since horses may have latent diseases before the hiring.

*Fol. Dic. v. 4. p. 57. Fountainball, v. 1. p. 51.*

1680. December 21.

MR ALEXANDER BIRNIE, Advocate, *against* The KEEPER of the Park of HOLYROODHOUSE.

No 13.

THE LORDS assolized the defender from the price of the horse, because of the printed placards, unless he would say they were accessory to the loss of the horse, by fraud or negligence; and found it not in the case of the edict *nautæ, cauponæ, stabularii*.

*Fol. Dic. v. 2. p. 56. Fountainball, MS.*

1684. February 20.

PATRICK MAXWELL *against* Mrs TODRIGE.

No 14.

PATRICK MAXWELL, one of the King's guard, pursuing Mrs Todrige, keeper of the King's Park of Holyroodhouse, for the price of a horse he gave in to be grazed there, and which was stolen or lost: *Alleged*, She cannot be liable, *nisi pro dolo et culpa*; and by a placard, or printed program, she had intimated the conditions on which she took them in, *viz.* that the inputer took his hazard of all chances, as breaking their neck, taking out one horse for another