receipts were extant and seen, (they wanting writer's name and witnesses, and appearing to be holograph,) before the intimation of Alexander Lesley's assignation, made to John Elies the appriser. Which the pursuer offering to prove, they allow the same term to the defender to prove that the £480 were accordingly delivered to Thomson or Troutback, and Jerdane's bond retired in the terms of the receipt; as likewise, to prove that the 500 merks to Pennicook, and Jerdane's bond retired from him in the terms of the ticket: and remit to my Lord Pitmedden, (in respect of Nairn, the former auditor's infirmity,) to see the calcul of the balance adjusted; as also, to hear the parties upon any thing farther they have to say, not already debated and determined by former minutes. *Vol. I. Page* 208.

1683. *January* 20. MAXWELL of NETHERYETT *against* STEWART of SHAMBELLY.

MAXWELL of Netheryett's probation against Stewart of Shambelly being advised; the Lords found Shambelly had contravened the 138th Act, Parl. 1584, in beating and invading Netheryett, during the dependance of the plea betwixt them, and so had lost the cause.

Notwithstanding it was ALLEGED for Shambelly,—That the Act of Parliament meant only invasion to the effusion of blood; which was not here, but only a dry cuff. *2do*, That it was only such hurting as might be the ground of a criminal process; which this was not. *3tio*, Though it were, yet self-defence should excuse, he being provoked; and Netheryet being the aggressor, with a false caption, which he did of purpose to provoke, knowing Shambelly's passion; and so, *ex suo dolo non debet lucrari*. *4to*, That there were several compensations already sustained, and other points decided in the cause, as to which Shambelly could not lose these but only the points standing yet undetermined.

All which the Lords repelled; and decerned against him in the whole cause, because they found the Acts of Parliament very strict. *Vol. I. Page* 212.

1682 *and* 1683. ANDREW CASSIE, Slater, *against* JOHN WILKIE and JAMES BROADFOOT.

1682. *February* 11.—THE Lords assoilyied Wilkie from Cassie's action of damage, (qualified thus, that, by Wilkie's building up his new land in the fore street of Edinburgh, his shops near adjacent were incommoded;) seeing he behoved to lay his rubbish and materials on the street, when he was rebuilding; and the neighbours' prejudice thereby was both casual and necessary, and no ways *in æmulationem vicini; et qui jure suo utitur alteri injuriam facere non videtur*. *Vol. I. Page* 173.

1683. *January* 20.—The Lords,—having considered the report of the masons upon oath, to whom the consideration and visitation of the chimney was