

and 27th April, so it was before the last date of its warrant ; which made it not only null, but false, and gave preference to Braco's wadset, which was confirmed betwixt the first and the second date of the charter ; for it seems, when the Bishop signed on the last of March, there were few of his chapter present, and that occasioned it to have two dates. And the Lords found it was *actus incompletus et inchoatus* till the subscription of the whole was obtained ; and that the last date was the *ultima manus ; et nil putamus factum quamdiu quid restat agendum*. And, though it was offered to be proven that a sufficient number of the chapter signed with the Bishop before the taking of the seasine, yet the Lords preferred Braco's confirmation ; because the seasine was prior to the charter's last date, its warrant. *Vol. I. Page 669.*

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1695. *February 15.* The VISCOUNTESS of FRENDRAUGHT and MORISON of BOGNY *against* DAVID GREGORY of KINNAIRDY.

MERSINGTON reported the Viscountess of Fren draught, and Morison of Bogny, now her husband, against David Gregory of Kinnairdy, for declaring their right, by tolerance, in his moss ; and to refund the damage arising by his disturbing them ; and to discharge him to molest her during her lifetime. ALLEGED,—The tolerance was gratuitous, and for sixteen years, and now expired. The Lords, having read it, found the sixteen years were not restrictive of the first clause, giving it during her lifetime, but related to the son, for sixteen years after his entry. Then ALLEGED,—It bore an irritancy that she should lose the tolerance if her tenants spoiled his grass, &c. ; and offered to prove it. ANSWERED,—*Imo.* He must raise a process ; *2do.* He should have intimated it.

The Lords found it relevant, *first*, to compensate the bygone damages ; and, *next*, to annul the tolerance in time coming, without necessity of putting him to a new process. *Vol. I. Page 669.*

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1695. *February 15.* MACCULLOCH *against* SIR JOHN COCHRAN.

PHILIPHAUGH reported Macculloch against Sir John Cochran, for the price of 100 bolls of meal bought from him. ALLEGED,—I bought it from you, not as your own, but as factor for Sir George Campbell of Cesnock, and as his victual ; and he owes me the equivalent sum. ANSWERED,—By your letter you bid me come and receive the money. But, seeing it was clear he bought it as Cesnock's meal, the Lords sustained the compensation. *Vol. I. Page 670.*

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1695. *February 15.* MR DAVID GOODWILLY *against* SKEEN of HALYEARDS.

PHILIPHAUGH reported Mr David Goodwilly, schoolmaster at Strathmigle,

against Skeen of Halyeards, for a mortification of twenty merks yearly out of the lands of Pitlour, left by the Pitcairns, heritors thereof; which lands he had now bought; and, to make it real, he offered to prove that Halyeards's disposition was expressly burdened with it; and circumduced the term for not producing it. Halyeards ALLEGED he had lost it in a process, whereon he was content to make faith; and therefore offered to make up the tenor of it by sundry pregnant adminicles; but left out that reservation that he might cut off the mortification.

The Lords found his oath might be taken as to the *casus amissionis*, and that the tenor might be made up *quoad* this effect, to connect and supply his progress; but refused it *quoad* the shunning the mortification; and therefore held the circumduction fast against him, and found him liable. *Vol. I. Page 670.*

1695. *February 15.* ISOBEL SCRIMZEOR, Lady Corseclays, *against* MONCRIEF of TIPPERMALLOCH.

PHILIPHAUGH reported Isobel Scrimzeor, Lady Corseclays, against Moncrief of Tippermalloch, for some bygone stipends due out of his lands. ALLEGED,—He was decerned conform to the minister's decret of locality, and he had obtained a reduction of it because of its valuation: and there was other free teind in the parish; and so he could not be liable for the old extravagant duty.

The Lords found the decret of reduction could not strike against years prior thereto; but that these years behoved to be paid conform to the then standing decret of locality. *Vol. I. Page 670.*

1695. *February 15.* FALCONER of GLENFARQUHAR *against* SIR DAVID CARNEGIE of PITTARROW.

THE Lords advised the bill given in by Falconer of Glenfarquhar, against Sir David Carnegie of Pittarrow, on the 138th Act, Parliament 8th, James VI, That he who beats, hurts, or invades another, during the dependence of their process, shall lose the plea. ALLEGED,—The drawing a sword, and threatening therewith, could not be *invasion*, in the terms of the Act of Parliament, unless something more had followed on it. *2do.* It should be precognosced first in a criminal court. *3tio.* He was drunk; and he believed Glenfarquhar had contributed thereto of purpose to provoke him. But this last he would not burden himself to prove.

The Lords found this *invasion*, in the terms of the Act of Parliament; and admitted the same to Glenfarquhar's probation.

On the 28th of February Pittarrow presented an appeal against his interlocutor. This was too hasty; for appeals should only be from ultimate and definitive sentences whereon execution is to pass; whereas this was only an interlocutor admitting the fact to probation; and it might happen not to be proven.

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