

1685. *March 25.* ELIZABETH PITILLO *against* ———.

IN a case between Elizabeth Pitillo and _____, the following point was decided, and much complained of. My Lord Couper having apprised some lands, his assignee gives a declaration, that, though the legal was expired, yet, if the 1000 merks still resting of the sum should be paid him within two years, he was content to accept of it. The two years expire without payment: he is afterwards called to a count and reckoning, and he defends himself with the legal, which, *ex gratia* only, he had prorogated conditionally, if he were paid; which failing, he was in his own place. ANSWERED,—It was odious to take the benefit of the legal, and he had not declared the failie, (but it was not conceived in the terms of a clause irritant, and so needed not declarator;) and therefore it might still be purged; especially seeing he had intromitted with the rents, and was paid; but, the public burdens being great, he only wanted about 200 merks of his sum.

The Lords would not give him the benefit of an expired legal, but found it still open, and redeemable by payment of what was yet resting.

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1685. *March 27.* JOHN SMITH and ——— Hog *against* Dods.

JOHN Smith, procurator-fiscal of the Sheriff-court of Haddington, and Hog, party grieved, having obtained a decret against Dods, fining him in L.100 Scots for two riots, in breaking up a barn, &c.,—and he being holden as confessed, suspended upon thir reasons. *1mo*, That the decret was truly in absence; for though a procurator took a day to produce him, yet he wanted a mandate. *2do*, The Sheriff's fine was exorbitant and beyond his power. ANSWERED,—He was at the Tolbooth-door when the cause was called, and yet refused to appear. *2do*, There were two riots.

The Lords, on Saline's report, found he was guilty of two several riots; and therefore sustained the Sheriff's decret, and found the letters orderly proceeded for the whole fine.

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1685. *March 27.* JOHN INGLIS *against* THOMAS FISHER.

JOHN Inglis, wright, gives in a bill against Thomas Fisher, his uncle, bearing that, in 1678, when he went to London, he gave Thomas a disposition to his houses in trust, on a back-bond; and that, by his intromission, he is now paid more than all the sums owing him, as will appear by the count and reckoning depending; and therefore, craving the Lords would either put him in posses-

sion of his own land, or else name a chamberlain, or sequestrate the rents in some responsal man's hands, till the event of the count and reckoning.

The Lords refused this bill, in regard it did no ways appear that Thomas was paid.

Then John, by a second bill, craved that he might be ordained to uphold the houses, and not let them go to ruin.

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1685. *March 28.* SIR ALEXANDER FORBES *against* OGILVY.

SIR Alexander Forbes of Tolquhon pursues Ogilvy of Forglen, brother to the Lord Banff, for taking away a gilded mazer cup out of his house, *rei vindicatione*, for restitution or for the value. The libel was admitted to probation, and witnesses were led thereon, who proved nothing. It was at length discovered, that Tolquhon himself had, some years ago, given in this cup to a goldsmith in Aberdeen to be mended; and he having forgot, it was lying there unrelieved for not paying a half crown for it.

The Lords, getting notice of this, proceeded to advise the cause; though Tolquhon, by a bill, craved they might delay till they examined witnesses, who had laid it in beside that goldsmith, seeing Forglen might have shuffled it in there. And the Lords finding it not proven, they assoilyied Forglen, and ordained Tolquhon to pay 1000 merks of expenses, *tanquam temere litigans*: and allowed Forglen to pursue him at Privy Council, or elsewhere, for defamation.

Vide 30th April 1685.

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1685. *March 28.* CATHCART of CARLETON *against* BOYD of PINKILL.

IN a cause between Cathcart of Carleton and Boyd of Pinkill, the Lords reponed Carleton to the possession, and found it was proven to be part and pertinent of his land; and ordained Pinkill to restore the bygone maills and duties intromitted with by him.

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1685. *March 28.* ——— *against* DOUGLAS and WADDEL.

ONE having given in a bond of L.80 Scots to a lad in Mr Rory M'Kenzie's chamber, called Douglas, to be registrate against one Waddel, who wrote in the same chamber; Douglas gave him back his principal bond, and took a dollar from him in hand, with the promise of three more; but having kept a just double of it, he gave the party an extract, who raising horning thereon, Waddel discovered that he was master of the principal bond.

The Lords imprisoned them both, and ordained them to be carried to the Trone, on the 3d April, being a market-day, at 11 o'clock, and both their lugs to be nailed to it, and to stand there till 12, with a paper on their breasts,