

1683. *December 12.* The STEWARD of PERTH *against* ———.

A CAUSE of Steward of the Stewartry of Perth, under my Lord Perth, was reported by the Clerk-register, craving a modification of £100 Scots of fine imposed by him for a petty riot of taking away two pecks of corn; seeing such fines ought not to exceed £50. ANSWERED,—In a former suspension now discussed, where they debated his jurisdiction, this was competent and omitted.

REPLIED,—Competent and omitted does not hold in suspensions. DUPLIED,—That does hold, if the craving the abatement of the fine as too exorbitant had not been a libelled reason of suspension in the very letters of suspension, but not insisted on at the debate.

The Lords found he could not crave a rectification or restriction of the fine now. *Vol. I. Page 250.*

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1683. *December 15.* ANDREW FOSTER *against* MERSTON.

ANDREW FOSTER, bowmaker, and Merston, having mutual processes, they submit them to two arbiters, and give in jointly a bill craving the Lords may empower the arbiters to examine witnesses before them; which the Lords refused.

Yet Stair, in his Decisions, at the 6th of *January 1670*, *Ker and Scot*, shows the Lords granted it then. *Vol. I. Page 250.*

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1683. *December 15.* The CREAMERS of EDINBURGH *against* The MAGISTRATES.

THE Dean of Guild of Edinburgh discharging the Creamers to sit within the Parliament House, seeing there were several shops standing empty within the Town, whither they might remove:

The Lords, upon a bill, continued their possession till further orders, and that some of the Lords' number might meet with the Magistrates thereanent.

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1679 and 1683. JAMES WOOD *against* PATRICK REID.

1679. *January 15.*—IN the case betwixt Mr Patrick Reid and James Wood, merchant; upon the report of Lord Newton, the Lords assoilyied from the reduction, in respect of the three decreets, and bond of corroboration; and allow the defender, Mr Patrick, to go on in his execution; he finding sufficient caution, that, in case James Wood shall prevail in his declarator, he shall refund to him so much of the sums as he shall be found to have right to. As also sustain the declarator at James Wood's instance; and find the sums affectable with the debt whereunto he hath right, unless Mr Patrick Reid can

instruct he hath right to the said sums for an onerous cause, before the pursuer James Wood's right to the said debts, and that otherwise than by his own oath; and find that the onerous cause of his wife's mother's contract of marriage, condescended on by Mr Patrick, is no such onerous cause as to sustain Mr Patrick his assignation and right. But, as to the funeral charges, and aliment furnished to Andrew Balfour, his wife's father, during the time of his imprisonment, the Lords declare they will sustain the same, in so far as it shall be instructed, in such manner and way as things of that nature can be proven. *Vide infra*, 10th Jan. 1683. *Vol. I. Page 33.*

1683. *January 10.*—The Lords, on Castlehill's report, found that the bond of corroboration given by Wood was elicited and extorted *per vim et metum*, because in the messenger's hands; and did not put James to prove that he was then in prison; and therefore reduced the bond, unless Mr Patrick proved some onerous cause of it.

There are two cases wherein bonds granted *metu carceris* are not reputed such final transactions but they may be quarrelled, *Imo*, If the imprisonment be found unjust and illegal. *2do*, If the first bond or decret (whereof the corroboration is given in prison) did labour under some defects or nullities, or stood discharged, and these were not known or were not communed at the time of granting the bond of corroboration. *Vide 16th January 1683, Tolquhon.* *Vol. I. Page 206.*

1683. *December 20.*—Captain James Wood's action against Mr Patrick Reid, mentioned 15th January 1679, was reported by Castlehill. The Lords repelled the right Mr Patrick founded on, acquired from Sir George Nicolson of Kemnay, (for which he paid him 2000 merks,) as no sufficient onerous cause to sustain his disposition from his father-in-law Andrew Balfour; because the right he had taken from Kemnay was 17 months posterior to James Wood's right of his escheat. *Vol. I. Page 252.*

1683. *December 22.* GEORGE ALEXANDER *against* MORISON of BOGNIE.

MORISON of Bognie having, in passion, called Mr George Alexander, advocate, a cheat; he complains to the Lords of Session, and leads Mr Robert Colt, and another, who heard it, as witnesses; and on this probation the Lords ordain Bognie to crave him pardon in their presence, (to the intimation of which they called in all the advocates;) and to pay 100 merks of fine to the poor, and to lie in prison during their pleasure: but he absented himself. See the like case in Stair's Decisions, 14th July 1668, *Mr David Falconer against Sir James Keith.*

In England, upon such complaint, a man gets some part of the fines to himself, as we see in the pursuits lately made on the Statute called *scandalum magnatum*; which were just to be introduced also with us. *Vol. I. Page 254.*