

to the tenement and yards in Culross, or not. But there seemed to be no du-biety in the clause.

There was a bill given in against this by Stanhope, which was referred to Carse and Drumcairn; and they having reported it on the 25th of February, the Lords adhered to their former interlocutor. And Stanhope reclaiming again by a bill, containing some reflections on the Lady, the Lords resented it, and referred it to the President, to consider how far the papers produced (the originals were in Dutch,) proved Van Arsen was cautioner, and that this 12,000 guilders was a part of the 25,000; and Mr William Stirling's oath was taken on the last point, as one of the commoners.

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1687. *January 14.* FERGUSSON of CRAIGDARROCH *against* WILSON.

FERGUSSON of Craigdarroch pursues Wilson for payment of the price of a house. ALLEGED,—By the bond, you are tied to purge certain inhibitions. ANSWERED,—I will find caution to secure you against them.

The Lords, on Edmonston's report, ordained the decret to be extracted, as to the annualrents, (seeing they were in possession of the land;) and, as to the principal sum, sustained the defence founded on the inhibition, until the same be purged; and ordained the pursuer to exhibit the progress and other writs to the defender, upon oath, and the defender to condescend on his damage and prejudice through the want of the Earl of Nithsdale's consent; and likewise to condescend on such writs as are wanting in the progress: and remitted to Edmonston to consider the progress and the damage, and to report.

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1687. *January 14.* The DUCHESS of LAUDERDALE *against* JAMES STEILL.

THE Duchess of Lauderdale pursues James Steill, her coal-grieve, to remove from a house. ALLEGED,—He could not be removed between terms, and he had made sundry reparations thereon. ANSWERED,—He was *in mala fide*. Yet *l. 38 D. de Petit. Hæredit.* allows even *prædonem deducere impensas utiles et necessarias*.

The Lords, on Edmonston's report, superseded execution of the removing till Whitsunday, and ordained the meliorations to be visited and valued.

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1687. *January 14.* CONGALTON of SCAITSBUSS *against* BUTLER of HARPEN-DEAN.

THE case of Congalton of Scaitsbuss against Butler of Harpendean, was advised. He was pursuing for 5000 merks of his wife's tocher. ALLEGED,—*Imo,*

The pursuer had, by a paper, restricted it to 4000 merks. *2do*, In payment of part, he had taken an assignation to some victual; and referred both to oath. Scaitsbuss deponed to the first, he gave a declaration, in 1681, that if, within a year, they paid him 4000 merks, he should accept it; and being put in Hepburn of Beinston's hand, and not fulfilled, he, four years after, gave it him back, and he cancelled it.

ALLEGED,—This was *pactum legis commissoriæ*, and still purgeable for 4000 merks.

The Lords refused to restrict him: but, as to the second, of the victual, they ordained him to be reëxamined, whether it was for this debt or another. See the like decided in Stair, *20th February 1680, Jameson. Vol. I. Page 440.*

1687. *January 15.* BAILIE BAIRD *against* HAMILTON of FALAWHILL.

[HAMILTON of Falawhill owing Bailie Baird a sum of money, and he having received some of the rents of his lands for his annualrent, he offered to improve one of the receipts as false: but the Lords, after trial, sustained the discharge.

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1687. *January 18.* A SHETLANDER *against* ———.

A SHETLANDER pursues for maills and duties of some lands in Shetland, on a tack set to him by this King of Denmark's father. ALLEGED,—This was treason for the pursuer to take rights from a foreign Prince, and a disclaiming of our King. ANSWERED,—The King of Denmark might be our King's vassal in thir lands, even as a nobleman or gentleman, holding of the King, might give a charter to his sub-vassal. But, in Shetland, they have no infestments, but only allodial rights; and the Crown of Denmark of old had right to it and Orkney.

The Lords ordained the tack and process to be razed and destroyed, and the pursuer to be insisted against for treason.

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1687. *January 22.* SIR JAMES COCKBURN *against* LAWRENCE POWER and ——— DEANS.

THE case of Sir James Cockburn against Laurence Power and Deans, was advised. It was a pursuit against the heir of a cautioner for a sub-collector of the customs, excise, and bullion, in 1662, and thereafter, to count and reckon, when all the parties are now dead; wherein allowance was craved for his salaries, which they alleged were to be presumed to have been paid, though counts were not yet cleared betwixt them; and they were charged with twelve-pence for the ounce of bullion; whereas, by Act of Parliament, it was but nine-pence.