

him, of which she got payment; as also, that there was a preferable debt due to Mr. John Fraser affecting the lands disposed to the defender by the said Major Maxwell, to which he acquired right: relevant to assoilye from the pursuers' process, in so far as she received from Earlston.

*Act.* Ferguson. *Alt.* Boswall. Sir James Justice, *Clerk.*

*Vol. II. No. 16. Page 19.*

1716. *July 17.* MAXWELL of Orchardtown and MAXWELL of Cuil, *against* M'LELAND of Barklay.

THERE having been a complaint given in to the Lords by Sir George Maxwell and Cuil his factor, against Barklay, as having unwarrantably ejected them from some lands whereof they were tacksmen; in so far as, notwithstanding of a protestation scored on production of a suspension, a second was put up and extracted, and Cuil ejected; and concluding damages, &c.—the defender urged the constant form, viz. That, when there is a protestation put up in the minute-book, calling for production of a suspension or advocacion, and that the same is thereafter produced and scored; the practice is, that the suspender, or his doers, cause the keeper of the minute-book score the said second protestation, because the suspension was formerly produced.

ANSWERED for the plaintiff,—That, if the suspension was in the charger or his doer's hands, (as here it must be presumed it was,) he can have no pretence to justify his putting up and extracting a second protestation, and using execution upon a decret, whereof the suspension was presumed to be in his own hand undiscussed.

The Lords found the charger liable in damages and expenses.

*Act.* Ja. Ferguson, jun. *Alt.* Erskine, jun. Robertson, *Clerk.*

*Vol. II. No. 19. page 23.*

1716. *July 26.* PITCAIRN of Dreghorn *against* COCHRAN of Ferguslie.

MR. DAVID PITCAIRN of Dreghorn, being appointed to take up a list of the pollable persons in the parish of Collington, he himself was contained in the list, and classed at nine pounds Scots; and the said list having been given in to Ferguslie, the general tacksman of the poll, Dreghorn accordingly made offer of the said sum, which Ferguslie refused, alleging he was not given up in the list. After some reasoning, Dreghorn asserting, and Ferguslie denying, that he was in the list: at last Dreghorn wagered the whole poll in Collington parish that he was contained in it, and Ferguslie did wager the quadruple of the said poll that Dreghorn was not in the list. There having occurred several points to be discussed in the