

read, he had not found so pregnant an example of a contrived and complicated cheat as this was. *Vol. I. Page 199.*

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1682. *December 8.* WILLIAM PATON *against* STIRLING of ARDOCH.

WILLIAM Paton, writer, against Stirling of Ardoch, is reported by Forret. The Lords, notwithstanding all the objections against the decreet *in foro*, did religiously adhere thereto, and would not loose the same. *Vol. I. Page 200.*

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1682. *December 13.* THOMAS WILSON *against* JOHN and JAMES MUIRS.

THE case between Thomas Wilson and John and James Muirs, is reported by Drumcairn. The Lords, in regard he was holden as confessed, refused to repone him presently ; but found the letters orderly proceeded, superseding extract for eight days, to see, if, in a reduction to be raised by Muirs, they could purge their contumacy. *Vol. I. Page 200.*

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1682. *December 21.* SIR JAMES TURNER *against* JAMES PILLANS.

THE competition between Sir James Turner and Mr Pillans about the lands of Craig, being reported by Boyn ; the Lords found that Mr James, though a compriser within year and day, yet ought not to come in *pari passu* to a share of the maills and duties with Sir James ; because Mr James, having intromitted already, had got part of his annualrents, whereas Sir James had got none : and therefore allowed him to possess till he were as far forward as Mr Pillans was : and then allowed them after that to come in *pari passu*.

This was reclaimed against by Mr Pillans, (who had not spread his informations before reporting,) as not the equality meant by the 62d Act Parliament 1621, seeing *vigilantibus jura subveniunt* ; and all that Sir James could claim was by an action to repeat his proportion ; and, even in that case, he would defend himself that he was a *bona fide* possessor, as the Lords found in 1675, *Baird and Johnston*.

But the bill was refused 15th March 1683, and the Lords adhered to their former interlocutor. *Vol. I. Page 203.*

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1682. JAMES PILLANS *against* DAVID PLENDERLEITH and ANDREW BURN.

*January 24.*—THE competition between Mr James Pillans, late one of the Regents of the College of Edinburgh, and David Plenderleith, writer, being reported by Tarbet, Lord Register ; the Lords found, that David Plender-

leith being creditor to Hepburn of Craig, the common debtor, the time of the leading his comprising, in other sums of money besides those contained in his comprising, that he, with consent of the said common debtor, might afterwards, in a stated account betwixt them, apply his intromissions to the payment of these other sums, albeit these other sums were not due to him the time he got the assignation to the mails and duties; and that the comprising is neither null nor extinct thereby, but that the said second apprising does stand; and the order used thereupon is good for purging Pillans's first apprising, in all sums standing in Pillans's person; and therefore ordain Pillans to count and reckon.

This seemed a hard decision; but was to maintain diligence led.

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*December 21.*—David Plenderleith, writer, against the above mentioned Mr James Pillans, (*vide* 24th January 1682,) and Andrew Burn, tenant in Craig; the Lords, on Saline's report, did reponne Mr James, and Burn the tenant, against the decret which David had taken out against them on circumduction, in regard they on a bill had been reponed against that circumduction, and had offered themselves, by way of instrument, ready to depone. But, as to the steelbow, found it was not so much *pars fundi instructi* as to belong to an appriser; who had indeed right to all the mails and duties, the corns and silver-rent, payable by the tenants, but not to the straw so long as his legal was not expired; but that the same was moveable.

But this point may very well be debated, why the straw should rather follow the ground.

And the Lords found Craig the debtor, during the running of the apprisings against him, might dispose the said straw to David Plenderleith, and that he as assignee had right thereto, and not the apprisers: but, in regard Burn the tenant was out of the ground, and had left the straw to the entrant tenant, they assoilyied him; and found, since it was the straw of the crop 1676, that Mr Pillans, or any other intromitter with that year's rent, ought not to be liable for the said steelbow, in so far at least as the rent was meliorated and improven the following years, by having so much steelbow straw upon the ground; which if the tenant had wanted, he could not have paid so great a rent.

But it being represented, that they who uplifted the rent 1676 got not the straw, but it remained still with the tenant; therefore Saline inclined to decern the assignee David Plenderleith to get the straw of this last crop 1682, as, by progress from year to year, surrogated and come in place of the straw crop 1676 *specific* disposed to him.

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1682. *December 22.* DAVID CHRISTY *against* JAMES CHRISTY.

The debate between David and James Christies was this day advised; but the Lords being much divided, they superseded to give answer on it, till some farther points were debated.

The case was:—When Mr James Christy died, he left only a daughter, whom he named his executor and universal legatar; and, failing of her, he leaves 3,000 merks to David Christy, his cousin, a part of whose means Mr James's father had got. He did not consider his wife might be with child; but she,