

confessed £1200 Scots, but adjected qualities, that he had debursed it on funerals, &c.

The Lords, at the advising his oath, finding the articles with which he charged himself most gross, exorbitant, and uninstructed, they found there was more than room for compensing and taking away the said L.100 bond; and so suspended it simpliciter. *Vol. I. Page 223.*

1683. *February 27.* WILLIAM BAILLIE of TORWOODHEAD *against* FLORENCE GARDINER.

WILLIAM Baillie of Torwoodhead reducing a comprising led by Florence Gardiner against his father; the Lords found it null, because it was led for L.50 Scots more than was due; as was proven by two of his receipts produced.

The Lords now begin to look upon comprising as so odious, that they are but very bad and uncertain securities, if they have but the least crack or flaw in them; for, upon very minute informalities, they reduce them *quoad* penalties, sheriff-fees, and the expiration of the legal, and the accumulative annualrents; and only sustain them as a collateral security for principal, annualrents, and true debursed expenses: though this be done *ex officio maxime nobili*, like a trysting interlocutor; for, in strict law, they should either find them null or valid.

Then Torwoodhead craved he might count for the whole rent of these years whereof he uplifted a part, seeing he does not condescend on a legal impediment that debarred him from the rest.

But this cause being again heard on the 14th March 1683, in presence; the Lords sustained the comprising, because the granter of the receipts was only liferenter in the bond; though it bore a power to him to uplift it: as also found the granting of these receipts was not an entering to the possession of these lands so as to make him countable for the whole rents, but that he behoved only to count for his actual intromission. So that the Lords in effect altered and reversed their former interlocutor. *Vol. I. Page 223.*

1683. *March 8.* ROBERT BURNET *against* STEPHEN BURNTFIELD.

ROBERT Burnet, writer and commissary of Peebles, his charge against Stephen Burntfield being reported; the Lords ordained this point to be heard in presence,—If Stephen could be forced to confirm here money that was owing to a defunct Scotsman in England.

ALLEGED,—He should; because it was the interest and advantage of the defunct's creditors how much were here confirmed in Scotland, it making the larger subject liable to their payment. ANSWERED,—The Commissary's jurisdiction did not extend beyond Scotland; and what locally lay in England, the Englishmen, ere they would pay it, would have it confirmed in their Prero-

gative Court: and there cannot be an instance given of any money lying in England, that ever was confirmed by a Scots Commissary. Yet we say *mobilia sequuntur personam* where he dwells; but Sir George Lockhart said, our law could not force money abroad to be confirmed here. *Vol. I. Page 224.*

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1683. *March 9.* CHARLES FARQUHARSON *against* FARQUHARSON of INVEREY, his Brother.

In this case Pitmedden refused to admit creditors to compear for their interest, to compete and propone defences, or stop the pursuer in his action upon the passive titles for constituting the debt, or in his adjudication; but reserved these to the action for maills and duties: but where it was simply declaratory for constitution of the debt, or upon the warrandice of the father's disposition, he would not admit their interest *hoc loco*. *Vol. I. Page 224.*

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1683. *March 10.* JAMES DALE, and — SYBBALD, his Wife, *against* LAING.

THE Lords found no damage proven by Laing's pasturing on the pursuer's land; but, in regard the witnesses had deponed upon her tilling and riving out the march-balk, they appointed Forret, who lay nearest to it, to visit in the vacance, and to consider the damage and to report. *Vol. I. Page 224.*

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1683. *March 13.* HENRY WALWOOD and — STEVENSON *against* EDWARD GILLESPIE and JOHN SCOT.

HENRY Walwood and Stevenson's reduction, *ex capite inhibitionis*, against Edward Gillespie and John Scot of Vogrie, being reported by Forret; the Lords most justly found, that, the debtor's children being by their mother's contract of marriage in effect heirs of provision to him, (though it was provided to the bairns of the marriage,) they cannot quarrel the rights their father made to the defenders, his lawful creditors; albeit these rights are granted after the inhibition used at the children's instance against their father, upon the mother's contract of marriage. *Vol. I. Page 225.*

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1683. *March 13.* ABERCROMBIE *against* DAVID SEATON.

ABERCROMBIE against David Seaton in Elgine, reported by Saline. The Lords find, the sum in question being but small, *viz.* 200 merks, that the quality of the back-bond, obliging him to all diligence of the law, was sufficiently fulfilled by the diligence of horning and caption, without apprising, adjudging, taking his