

hosue, *viz.* he offered to prove, that these lands were not the common debtor's the time of leading of any of the apprisings against his estate; and also for freeing him from Torhendry and Bogend: and siclike for allowing Pitsligo a new diligence for proving Ludquhairn's bangistry, whereby the Town of Aberdeen were debarred from the rents of Torhendry and Bogend, several years after their entry to the possession of the same; as also for proving sundry other articles.

The Lords, on the 27th of March, having heard this petition and answers, they refused to grant any commission, or further term, but decerned; and remitted to Carse, to whom the calcul is referred, to consider what shall be produced by the petitioner before extracting, for further instructing his defalcations; and to allow the same.

Pitsligo complained, that the Lords had decerned, (only it was the end of a Session,) before an auditor was nominated, and before any of the parties had given in their accounts, that objections might be made against the same, and before Pitsligo could have time to instruct or produce anent his defalcations; and therefore he gave in another bill, craving the Lords would allow him to be heard before an auditor, whom he desired they would appoint; and, seeing nothing was remitted to my Lord Carse, but the adjusting of the calcul, that they would remit the whole matter to him, with power to receive what documents Pitsligo should produce, and to hear and determine thereanent.

The Lords, on the last of March, referred to Carse to adjust the accounts and calcul, when he orders the extracting the decret. *Vol. I. Page 404.*

1686. *February 19.* SIR THOMAS BURNET of LEYS *against* SIR PETER FRASER of DOORS.

IN the action for payment, pursued by Sir Thomas Burnet of Leys, against Sir Peter Fraser of Doors, upon Dr Fraser's bond, as executor to Doctor Reid, for the use of his legatars; Kemnay having refused a diligence, the Lords, on Sir Peter's bill, ordained him and Dr Andrew Fraser of Kinmundy to condescend on the writs, and to give their oaths of calumny if they had the writs they craved, in town, or in whose custody they were; and if they deponed *negative*, or if Leys could not produce or supply them, then they granted a diligence.

*Vol. I. Page 405.*

1686. *February 19.* THE KING *against* MURRAY of LIVINGSTON, LORD TORPHICHEN, and ELIES of ELIESTON.

THE King's reduction against Murray of Livingston, the Lord Torphichen, Mr John Elies, and other heritors adjacent to Drumshorlan-muir, was reported by Pitmedden; and the Lords find not only those heritors whose charters bear the muir of Drumshorlan *per expressum*, but even those which only carry the common clause, *cum communi pastura*, have a right of servitude on it, if they