

wholly evacuated, by keeping up their corns till that accident of the want of water happened : especially seeing the heritor of the second mill had purchased in some of the thirled lands, the first feu-charter bearing dry multures.

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1695. *January 4.* MR ARCHIBALD NISBET of CARPHIN *against* WILLIAM SPENCE.

HALCRAIG reported Mr Archibald Nisbet of Carphin, against William Spence, in Orkney. The Lords found, seeing there was a submission and decret-arbitral between them, whereby Spence's sum of £1000 was restricted to 700 merks, and which was founded on by Mr Archibald, That he could not now crave compensation on articles due by Spence to him preceding that arbitration ; unless he would prove, by Spence's oath, that they were not under consideration, nor allowed ; because law presumes they were deduced then in the claim, and discounted. It moved also the Lords, in this case, that there was an act extracted in these terms, and which Mr Archibald was now reclaiming against.

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1695. *January 4.* REYNOLD *against* ERSKINE of KIRKBODDO.

THE Lords discovering some probability that the pursuit before the Sheriff of Forfar was to the Earl of Strathmore's behoof, where he was Sheriff-principal, and his natural brother was clerk, and that Kirkboddo had a prejudicial action of reduction of these bonds on concussion, as extorted *per vim et metum*, they advocated the cause ; but ordained Kirkboddo summarily to insist in his reduction, and discuss the reasons.

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1695. *January 4.* MR GEORGE WILSON of PLEWLANDS *against* GEORGE DUNDAS of that ilk.

IN the mutual declarator of property, between Mr George Wilson of Plewlands and George Dundas of that ilk, anent the right of a loaning, the possession not being of that length that it could give Plewlands a right, they considered the point *in jure* ; and found Dundas's disposition to Plewlands, being of the same tenantry, lying on the east and west side of the loaning, it could not include or comprehend the same ; because bounding charters cannot comprehend part and pertinent, because all without the bounding is excluded ; as was found, *17th November 1671, Young against Carmichael* : And this is one of the differences lawyers make between *ager limitatus et arcifnuius*. But Plewlands,