

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,

having built *in confinio*, and encroached, the Lords thought, in so dubious a case, he behoved to get not only his meliorations, but all his other expenses. And parties, in their humour of demolishing such buildings, are not to be indulged. And the maxim, *ædificatum cedit solo*, has several exceptions.

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1695. *January 5.* MACNAB *against* CULDAIRS and MENZIES of that ilk.

IN a concluded cause, Macnab against Culdairs and Menzies of that ilk, though a minor quarrelled a discharge he had given of some years' annualrents of 100 merks, and, by the act, had proven his minority; yet the Lords assoilied, and would not reduce; because they thought one of twenty, as he was then, might uplift his annualrents for his own entertainment, where it did not amount to a great sum, and it did not appear he had another estate to be alimanted on: And why may not a minor, wanting curators, lift his rents and discharge his tenants? So minority here is not enough without lesion: and that is not presumed, in such a case, till first it be proven.

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1695. *January 9.* BOSWELL of AUCHINLECK *against* The TENANTS of MITCHELL of BRAEHEAD.

THE Lords found, on Arniston's report, That Auchinleck might infest himself on the precept of seaisine in the disposition, though the granter of the precept was dead; conform to the Act of Parliament 1693; and, being infest, might hold courts, and decern the tenants to pay him the maills and duties; and, if Mitchell would not produce him an interest, then they would either find the letters orderly proceeded, or, at least, put in a factor by order of the reporter.

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1694 and 1695. ELLIOTS of LYMECLEUGH and PANCHRIST *against* RIDDEL of HAINING.

[See the beginning of this Case in Stair, 25th February 1681, *Commissioners of the Border against Elliots.*]

1694. *February 16.*—THE Lords inclined to think the two decreets *reductivè* obtained by the Elliots null:—*1mo.* Because one of them was after a written stop given by the Ordinary till he should hear it at his next side-bar day; and yet he gave a discharge on that stop, on perusing their bill, and finding no new matter in it; for the Lords considered that Haining was *in tuto* till they were heard again. *2do.* The other decret was precipitantly extracted by one who was both agent and extractor in the process, and who could not deny it,