

against Skeen of Halyeards, for a mortification of twenty merks yearly out of the lands of Pitlour, left by the Pitcairns, heritors thereof; which lands he had now bought; and, to make it real, he offered to prove that Halyeards's disposition was expressly burdened with it; and circumduced the term for not producing it. Halyeards ALLEGED he had lost it in a process, whereon he was content to make faith; and therefore offered to make up the tenor of it by sundry pregnant adminicles; but left out that reservation that he might cut off the mortification.

The Lords found his oath might be taken as to the *casus amissionis*, and that the tenor might be made up *quoad* this effect, to connect and supply his progress; but refused it *quoad* the shunning the mortification; and therefore held the circumduction fast against him, and found him liable. *Vol. I. Page 670.*

1695. *February 15.* ISOBEL SCRIMZEOR, Lady Corseclays, *against* MONCRIEF of TIPPERMALLOCH.

PHILIPHAUGH reported Isobel Scrimzeor, Lady Corseclays, against Moncrief of Tippermalloch, for some bygone stipends due out of his lands. ALLEGED,—He was decerned conform to the minister's decret of locality, and he had obtained a reduction of it because of its valuation: and there was other free teind in the parish; and so he could not be liable for the old extravagant duty.

The Lords found the decret of reduction could not strike against years prior thereto; but that these years behoved to be paid conform to the then standing decret of locality. *Vol. I. Page 670.*

1695. *February 15.* FALCONER of GLENFARQUHAR *against* SIR DAVID CARNEGIE of PITTARROW.

THE Lords advised the bill given in by Falconer of Glenfarquhar, against Sir David Carnegie of Pittarrow, on the 138th Act, Parliament 8th, James VI, That he who beats, hurts, or invades another, during the dependence of their process, shall lose the plea. ALLEGED,—The drawing a sword, and threatening therewith, could not be *invasion*, in the terms of the Act of Parliament, unless something more had followed on it. *2do.* It should be precognosced first in a criminal court. *3tio.* He was drunk; and he believed Glenfarquhar had contributed thereto of purpose to provoke him. But this last he would not burden himself to prove.

The Lords found this *invasion*, in the terms of the Act of Parliament; and admitted the same to Glenfarquhar's probation.

On the 28th of February Pittarrow presented an appeal against his interlocutor. This was too hasty; for appeals should only be from ultimate and definitive sentences whereon execution is to pass; whereas this was only an interlocutor admitting the fact to probation; and it might happen not to be proven.

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