

delinquent be not punished answerable to the offence and wrong sustained, then the party may complain to get him more condignly punished.

The Lords repelled the defences, in respect of the answers; and found, notwithstanding it was not *de recenti*, and that it was judged by the bailies, yet neither of these took away his private interest to complain and seek redress.

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1698. *December 29.* SIR JOHN SHAW of GREENOCK *against* CRAWFURD of CARSEBURN.

SIR John Shaw of Greenock pursues Crawford of Carseburn upon the 19th Act of Parliament 1617, to demolish his dovecote, because he has not ten chalders of victual lying within two miles thereof, as the said Act requires. And a probation having been granted, before answer, to try what kind of dovecote this was, and what rent he had adjacent thereto, and the damages done to Greenock's tenants' corn; and the same coming to be advised this day, it appeared this dovecote was built above a stable, and consisted of 218 holes, besides sundry closed up a little before; and that he had about £1100 Scots of rent there.

ANSWERED for Greenock,—It appeared, by the probation, there was only six chalders of victual of arable ground, and that all the rest of the rents were made up of salt-pans, house-mails, and feu-duties, which could be no sustenance for doves to live on, and did not answer the design of the Act of Parliament, that doves should not oppress other men's corns.

REPLIED,—This cannot be called properly a dove-cote, such as the Act prohibits and condemns, but only a pigeon-house; and, by improvements, he has made his lands now worth £1000 Scots by year, besides the other extrinsic subjects of house-rent, &c.

The Lords considered the process as *in amutationem vicini*, and that few dovecotes had been demolished on this Act, though there be many in some burghs of regalities and baronies, such as Dalkeith, &c. where the proprietor has but little rent adjacent; and yet the Act was reasonable, and could not be said to be in desuetude; therefore they allowed Carseburn a further probation, that he had land rent there, equivalent to the Act of Parliament, before they would discern against him. See Craig *Feudor.* p. 191, who tells, by the customs of Normandy, a land-interest is required in the owner of cunnygars as well as dovecotes, seeing cunnies make as much destruction and waste upon the neighbouring corns, if not more than doves.

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1699. *January 3.* SIR JOHN SHAW of GREENOCK *against* The CREDITORS of DAVID BRUCE of CLACKMANNAN.

MERSINGTON reported Sir John Shaw of Greenock against the Creditors of David Bruce of Clackmannan, being a reduction and improbation of the rights