

charging and denouncing Buchan unwarrantable, he having scored his name out of the decret; and therefore ordained Thomas Young, on his own charges, to relax Alexander Buchan, and to obtain him the gift of his own escheat.

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1686. *February 11.* COLIN LAUDER *against* JANET TROTTER.

JANET Trotter, relict of one Brisbane, being incarcerated by Colin Lauder for a debt; upon Redford's report she was liberated, on an intimation made to him in terms of the Act of Sederunt 1675, and presenting a bill of suspension, and offering upon oath to consign a disposition of her means. So, if this course hold, there need no more decreets of *cessio bonorum*; for this is a far more summary way.

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1686. *February 12.* ANENT TRANSFERENCE.

The Lords, on Kemnay's report, found a summons of transferring could not be summarily called like an Act, but behoved to be seen and returned, but needed not then abide the course of the roll.

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1686. *February 13.* CALDERWOOD of PITTEDY *against* BELCHES of TOFTS.

THE Lords reponed Calderwood of Pittedy in his action against Belches of Tofts, to all his defences against that decret of reduction of his author's right, because he had then a comprising, and was not called to that decret.

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1682 and 1686. SIR ROGER HOGG, Lord Harcouis, *against* LORD PITSLIGO; or LORD PITSLIGO *against* ROBERT and ALEXANDER MILN.

1682. *March 24.*—THE Lords, on Saline's report, found a comprising, led by a conjunct fiar or liferenter, not only for his liferent use, but also for the very stock and fee of the money, to which he had no right, accresced and belonged to the fiar of the sum, and was a valid comprising, and subsisted *quoad* both.

Though it was objected that the fiar's name was not in all the comprising, nor had he given either factory or assignation; and it was not led at his instance; and though it was an heritable sum bearing annualrent, being before the Act of Parliament 1641, made anent such sums; and yet was not first rendered moveable by a charge.

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See the intermediate parts of Fountainhall's Report of this case in the Dictionary, page 6,040, *et seq.* under the names, *Pitsligo against Hilstone and Hog.*

1686. *February 17.*—The Lords bestow the whole afternoon in advising the mutual probation led by the Lords Pitsligo and Harcou, Robert and Alexander Milns, and Keith of Ludquhairn, mentioned 5th March 1684. The Lords ordained the clerk to draw out a scheme of the probation of the rental adduced by both parties, that they might make up one betwixt the two. And found that it was not proven that Sir Archibald Primrose, one of Pitsligo's authors in his comprising, possessed Blackhouse, &c.: seeing the witnesses only deponed on hearsay, that one bruiked by a factory from him. And found his entry to the possession was in 1653; and that the Town of Aberdeen, another of his authors, possessed three years before that; but sustained this allegiance to elide it, That they were debarred *manu forti* by old Ludquhairn. And found his reparations necessary; but desired to be cleared if they were before or after the legal expired. And inclined to find, that Pitsligo should count for the two roums of Torhendry and Bogend, because he set a tack thereof; though he says the common debtor violently possessed them. And he farther alleged, that the lands were racked at his entry, and he convened all the neighbouring tenants, and consulted with them how he might keep up the rent; and that all Miln's witnesses were but obscure, beggarly fellows.

Lord Carse having prepared, and reported the probation, on the 23d of March; the Lords found the Town of Aberdeen did enter to the possession of the crop 1652; and allowed both parties a diligence for 48 hours, (for Pitsligo craved it in common form, and the Lords gave it only against those within Edinburgh,) to prove whether the common debtor was brother or nephew to Keith of Balmuire, the disponer of the tacks. And find that the disposition, notwithstanding of the objections and nullities alleged, does convey the right to Ludquhairn. And find it proven, that Sir Archibald Primrose did enter to the possession, and lifted the rents of the crop 1657. And find, by the tack and disposition produced, that Pitsligo did set a tack of the lands of Torhendry and Bogend for the crop 1653, and must count therefore and since syne. And find, there being no intimation made to the heritor to set his land, by Pitsligo, he cannot crave allowance for the article of waste lands. And they modify the sum expended on the reparations to 2000 merks, to be paid out of the superplus intrusions, but not to hinder the extinguishing of the comprising within the legal. And find the rental of Boddom and Blackhouse is proven to be £392 Scots, 12 chalders 12 bolls bear, 5 chalders 12 bolls oats, and 8 wedders; and the rent of each roun of the lands of Ludquhairn, &c., conform to the report of Ludquhairn's commission and witnesses adduced by him: without respect to Pitsligo's probation, or his objections against their witnesses. So it makes the rental 8 chalders of victual above what the lands can now pay.

Conform to this interlocutor, Ludquhairn adduced witnesses for proving that old Sir William Keith was nephew to Balmuire.

The Lords allowed Pitsligo no chamberlain fees, nor regarded old Sir William Keith's possessing Bogend and Torhendry till his death, though proven and acknowledged.

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Thereafter Pitsligo gave in a petition, craving that the Lords would have respect to what he offered for freeing him of the rents of Boddom and Black-

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.

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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