

in a general condescence of his *damnum emergens et lucrum cessans* each of these ways ; and they having given in an answer to this bill, and both being advised on the 15th of November 1684, the LORDS ordained Andrew Fofrester to condescend in special on the quantities, species, and value of the goods taken from him by his apprentice, how many golf balls, how many clubs, staffs, musket barrels, &c. and to depone anent the same ; and refused to sustain the remanent articles of his condescence.

And the LORDS having advised his oath, extending to L. 700 Scots, modified L. 150 Scots for the damage he sustained by his apprentice. And they having given in a bill, craving he might be ordained to declare why he was more positive on twelve dozen of clubs than on a lesser or greater number, and *quæ ratio credulitatis* ; and though he said the boy had lifted money from Collington, yet that Collington declared the boy never came to him to lift his master's money ; the LORDS adhered, on the 17th January 1685, *quia juratum est*.

*Fountainhall, v. 1. p. 103.*

No 7.

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S E C T. IV.

Oath *in litem* in Spuilzies.

1573. March 20.

JARDINE against LADY MELGUM.

ROBERT JARDINE of Badderdy pursued the Lady Melgum for spoliation of certain corns from him by her, which were referred to his probation ; but in the advising, the LORDS found, That the witnesses had proved spoliation of oats only, and of no other corns, albeit there were other corns libelled, such as bear, wheat, pease ; yet notwithstanding, the LORDS found a part of the libel sufficiently proved ; being proved, to give the whole libel to the pursuer's oath ; albeit others thought that *absolutor* should have been given from the rest of the corns ; for it is sufficient if any part of the libel be proved, to give the whole libel to the pursuer's oath, as said is, and *condemnator* pronounced upon the hail libel, conform to the pursuer's oath.

*Fol. Dic. v. 2. p. 10. Colvil, MS. p. 236.*

No 8.