

receipts were extant and seen, (they wanting writer's name and witnesses, and appearing to be holograph,) before the intimation of Alexander Lesley's assignation, made to John Elies the appriser. Which the pursuer offering to prove, they allow the same term to the defender to prove that the £480 were accordingly delivered to Thomson or Troutback, and Jerdane's bond retired in the terms of the receipt; as likewise, to prove that the 500 merks to Pennicook, and Jerdane's bond retired from him in the terms of the ticket: and remit to my Lord Pitmedden, (in respect of Nairn, the former auditor's infirmity,) to see the calcul of the balance adjusted; as also, to hear the parties upon any thing farther they have to say, not already debated and determined by former minutes.

*Vol. I. Page 208.*

1683. *January 20.* MAXWELL of NETHERYETT *against* STEWART of SHAMBELLY.

MAXWELL of Netheryett's probation against Stewart of Shambelly being advised; the Lords found Shambelly had contravened the 138th Act, Parl. 1584, in beating and invading Netheryett, during the dependance of the plea betwixt them, and so had lost the cause.

Notwithstanding it was ALLEGED for Shambelly,—That the Act of Parliament meant only invasion to the effusion of blood; which was not here, but only a dry cuff. *2do*, That it was only such hurting as might be the ground of a criminal process; which this was not. *3tio*, Though it were, yet self-defence should excuse, he being provoked; and Netheryett being the aggressor, with a false caption, which he did of purpose to provoke, knowing Shambelly's passion; and so, *ex suo dolo non debet lucrari*. *4to*, That there were several compensations already sustained, and other points decided in the cause, as to which Shambelly could not lose these but only the points standing yet undetermined.

All which the Lords repelled; and decerned against him in the whole cause, because they found the Acts of Parliament very strict. *Vol. I. Page 212.*

1682 and 1683. ANDREW CASSIE, Slater, *against* JOHN WILKIE and JAMES BROADFOOT.

1682. *February 11.*—THE Lords assoilyied Wilkie from Cassie's action of damage, (qualified thus, that, by Wilkie's building up his new land in the fore street of Edinburgh, his shops near adjacent were incommoded;) seeing he behoved to lay his rubbish and materials on the street, when he was rebuilding; and the neighbours' prejudice thereby was both casual and necessary, and no ways *in æmulationem vicini; et qui jure suo utitur alteri injuriam facere non videtur*.

*Vol. I. Page 173.*

1683. *January 20.*—The Lords,—having considered the report of the masons upon oath, to whom the consideration and visitation of the chimney was

referred,—found the damage and prejudice libelled to have been done by narrowing his chimney in rebuilding John Wilkie's land, not to be proven; and therefore assoilyied. *Vol. I. Page 212.*

1682 and 1683. CAPTAIN HOME of FOORD *against* JAMES STEWART and his MOTHER.

1682. *December 15.*—THE LORDS, on Boyn's report, found the pursuer's general service was a sufficient title to give him right to a reversion of a wadset, though his father died infest; and that this wadset was not of that nature, as, by the 62d Act of Parliament 1661, they were bound to account for the super-plus maills and rents more than paid their annualrent, and ascribe them *in sortem* from the date of the wadset, but were only countable from the date of the offer of caution and citation.

Then ALLEGED,—It cannot be from the first citation, because it was extinguished and annulled, by obtaining a protestation against it for not insisting.

The Lords found the first out of doors, and that the account behoved only to begin at the last citation in 1675. See thir parties *infra*, 23d Jan. 1683.

*Vol. I. Page 202.*

1683. *January 23.*—The Lords, upon Stewart's bill, declare the petitioner only liable to count for the excrescent duties over and above the petitioner's annualrent, from the time of Home the pursuer's offer of security for these annualrents, but not since the order of redemption, in regard the whole principal sum was not then offered.

And, on the 27th January, the Lords, on another bill, ordained the pursuer to produce in the clerk's hand the instrument of the offer of caution for the annualrents of the sums contained in the wadset; and ordain the parties to be heard thereupon, when produced, before Lord Boyn, Ordinary; and, in the mean time, stop extracting of the Act. *Vol. I. Page 212.*

1683. *January 25.* JAMES WOOD *against* MURRAY of DUNNIPACE.

MAJOR James Wood, in Edinburgh, against Murray of Dunnipace, or Spot, reported by Pitmedden. The Lords, before answer, ordain their procurators to condescend on the parties' comuners at the transaction anent the absolute disposition of the land of Spot to Murray the suspender; and ordain them, and the witnesses inserted in the disposition, to be examined what was *tractatum* between the parties, in relation to this matter. And ordain the Lord Reporter to hear the parties' procurators upon this point, anent Wood, Bishop of Caithness, filling up of the blank in the bond. As also, recommend to him and Lord Drumcairn, in the mean time, to endeavour to settle the parties. Who agreed them on a sum.

It is not to be presumed that the bishop, by his consent to the second disposition, designed to prejudge himself and his daughter of what was formerly provided to him by the former laird of Spot. *Vol. I. Page 212.*