

to a reference anent Brown of Gorgiemiln's brewing, to Sir John Nicolson, and what excise he should pay for the same; and, that being proven, they found it sufficient to liberate them from the contravention of the warrandice of their assignation.

The words of the interlocutor are:—The Lords find it relevant to liberate the chargers from the deduction of the value of Gorgiemiln's brewing, that there was a reference anent Gorgiemiln's brewing, prior to the bargain betwixt the chargers and suspenders, and prior to the 4th of October 1671; and find the same probable by witnesses, and assign to the chargers' procurators to prove the same.

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1684. *February 6.*—William Cleghorn, brewer, his bill against Mr James Dalmahoy, and the other Tacksmen, being with the answers read and considered by the Lords; they ordained the Act to be extracted in terms of the last interlocutor; (*vide* 17th March 1683;) and allow the petitioner to raise reduction against Brown of Gorgiemiln, of his agreement and survey of brewing; and appoint him to answer summarily *et incidenter*, in this process, before my Lord Harcous, upon this head, that the decreet-arbitral is unjust and reducible as being *contra arbitrium boni viri*; and ordain Archibald Young to depone if he refused to subscribe the reference, and what was the cause of his refusing; reserving to themselves to consider what his oath shall operate. *Vide* 11th March 1684.

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1684. *March 11.*—The debate between William Cleghorn, brewer, and the other assignees of the tacksmen of the Excise, against John Brown of Gorgiemiln, (anent which *vide* 6th February 1684,) is reported by Harcus; and the Lords, before answer, ordain the survey-rolls to be produced, that they may see if thir pursuers and other tacksmen had as great an ease in the valuing their weekly brewing as Gorgiemiln has by Sir John Nicolson's decreet-arbitral, appointing him only to pay the excise of four bolls weekly, whereas he truly brewed upwards of 30 bolls; which is *læsio realis* almost *ultra decuplum*. For the Lords thought, if Cleghorn and the rest of them had as great an ease (as Gorgiemiln) effeiring to their brewing, it is unjust in them to quarrel Gorgiemiln's low valuation, seeing he was to have had an interest in the tack as well as they. But they also referred it to three of their number to settle the parties, if they could.

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1684. *March 12.* CASTLES *against* ———.

IN the case of one Castles against _____, reported by Pitmedden, The Lords found the intimation of an assignation at a man's dwelling-house, when he was out of the country, null; and that the legal and formal method in such a case was to take forth letters of supplement from the Lords, on a common bill, and to execute the intimation at the market-cross of Edinburgh, pier and shore of Leith.

And yet if he have a family, an intimation at his house may sooner come to his knowledge than that other.

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