

1699. *July 21.* WILLIAM BETON of CRAIGFORDY *against* BARCLAY of CALLERNY.

Mr William Beton of Craigfordy, advocate, gives in a bill to the Lords complaining that Barclay of Callerny was building a dovecot on the confines of their lands, though he had not ten chalders of victual within two miles of the place, the bulk of his estate lying at a greater distance; and he having pursued him before the sheriff of Fife to desist *per novi operis nuntiationem*, he had procured an advocacy of the cause to the Lords, which could not be got discussed this Session; therefore craved the Lords might stop the work *medio tempore*, *damnum infectum* being safer than *post vulneratam causam remedium quaerere*.

The Lords thought there was more ground to stop than to demolish after it is built, especially being on the marches *in emulationem vicini*; and that they had sustained a process on the act of Parliament 1617, to *Sir John Shaw of Greenock* against *Crawfurd of Carseburn*, as mentioned *supra 29th December 1698*; and President Newton observes that the like was decided *15th November 1682, Dury* against the *L. of Balmuto*; therefore, no answers being made to the bill, they granted the desire thereof. *Vol. II. Page 63.*

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1697, 1698, and 1699. LORD BARGENY *against* AGNES and DOROTHY KENNEDIES and WILLIAM FERGUSON.

1697. *July 14.*—THE Lord Bargeny pursues Agnes and Dorothy Kennedies, and William Ferguson, husband to the said Agnes, for declaring a bond of 3000 merks, granted by his father to their's, extinct and satisfied, on thir presumptions, That, though it be dated in 1674, yet it was never heard of till now, nor annualrent craved, though Kennedy of Auchinblane was a rigorous creditor; and, when he died, it was not given up in the inventory of his debts, &c. ANSWERED,—There may be a hundred reasons to move a man to forbear craving of a debt; likeas, he did not live long after the bond was granted. REPLIED,—The presumptions are mainly urged to this effect, To cause him condescend how he came by the bond, and in what third party's hand it was before; seeing my Lord Bargeny's clerk to his baron-court had the bond, and gave it up; and so it must be presumed he had it from Bargeny as his retired evident; *et instrumentum apud debitorem repertum præsimitur solutum*. DUPLIED,—It is *peissimi exempli* to force creditors to condescend how they recovered their own writs, they being now in their hands; and you can only take it from him *scripto vel juramento*; for, though he was Bargeny's clerk, he was a common notary, and served the country round about who employed him; and the getting it from him infers nothing.

The Lords ordained Kennedy and Ferguson, the defenders, to condescend, upon oath, on the way and manner how the said bond came to their hand, and from whom they got it, and if they gave any gratification for it; reserving to themselves to consider what it should import, or to open some discovery to my Lord Bargeny where he may seek for receipts or discharges to extinguish this