

No 24.

1680. February 11.—Abbotshall *contra* the town of Kirkcaldy, (12th December 1679.) This point being reported by the Lord Craigie, how long the inhabitants were obliged to attend for service at the mill before they took away their corns; “THE LORDS found that the explanation of the decret arbitral hath no effect; and find the clause of the said decret-arbitral, ‘in case of the ‘mill’s not being able to serve, that they may go to other mills.’ not to extend to the ordinary accidents of frost or drought, but to other extraordinary accidents; but found, that the inhabitants ought to be served with all diligence, in order as they come to the mill; and in case of the concourse of many together *sine emulatione et collusione qualicunque*, that those who came last may go to other mills, paying the astricted maltures to the said pursuer’s mill, and the small duties, knaveship &c. to the mill where they go.” See the like decided in the mills of Mauchline, *voce* THIRLAGE. Then the Magistrates of Kirkcaldy gave in a bill against this interlocutor; but the Lords ‘refused the bill and adhered.’

*Fountainhall, v. 1. p. 8. 25. 49. 68. & 84.*

1717. July 10.

CALLANDER *against* WALLACE.

No 25.

A party was required to depone specially on the way and manner in which he had paid.

JOHN CALLANDER of Craigforth pursues Hugh Wallace of Ingliston, for an account of iron-work, chimneys, &c. furnished to him in 1685, and referring the libel to his oath, he depones, he owed him nothing upon that account; and being urged to be more special, refused to say any more. Whereupon Callander gives in a bill, craving he might be re-examined, and ordained to condescend more particularly, if or not he received the goods libelled, and how he paid it; for *in generalibus latet dolus*.—THE LORDS thought there might be an error in the interrogatories; for, where the question is, are you resting owing such a debt? the special interrogatories for expiscating the matter of fact must be premised, before you come to the general, else one may be ensnared in a contradiction. But the LORDS suspected the case here was, that Ingliston got these goods furnished to him when he was cash-keeper to King Charles, and so capable to get Callander payment of what the public owed him; and that Ingliston looked upon them as freely gifted, and therefore thought he had freedom to swear he owed him nothing; and that Callander finding he can be no more serviceable to him, craves payment thereof.—THE LORDS ordained Ingliston to be re-examined, seeing parties ought not to depone upon law, but only *super factis*; not whether they think them themselves obliged in law, but whether they received such goods, or sums, and on what account, and in what terms, or how they paid, or can exoner themselves of it, as gifted, or otherwise? And the LORDS, at advising, will consider how far the qualities adjected are proper and pertinent, and prove themselves without any further yea or not.

*Fol. Dic. v. 2. p. 14. Fountainhall, v. 2. p. 380.*