

that the right from Pitlever was taken blank in the assignee's name, so *non constat* if Seaforth's name was filled up therein or some others', and they behaved first to be called ere any thing could be decerned against them.

*Vol. I. page 556.*

1693. *February 22.*—In the action pursued by the Earl of Tarras against Sir John Dempster of Pitliver, mentioned 8th current, the Lords, after they had many times repelled his declinator, and given several interlocutors in the cause, they *ex proprio motu* remitted it to the Parliament, and its committee: in respect of sundry insuperable difficulties emerging, which strict law could not extricate; but a parliamentary power, not tied to precise law, might. *Vol. I. page 563.*

1693. *February 22.* PROCURATOR FISCAL of Pittenweym, *against* ROBERT MERCER, &c.

THE Procurator-fiscal of the town of Pittenweym against Mr. Robert Mercer, and sundry of the burgesses, whom they fined for opposing the entry of Mr. Patrick Couper, the Presbyterian Minister. The Lords found a rabble had gathered on both sides, and that it being a riot and unlawful convocation, it was proper for the Privy Council; and they remitted it to them.

*Vol. I. page 564.*

1693. *February 22.* JAMES MUIRHEAD *against* the MERCHANTS of DUMFRIES.

THE Lords found George Johnston's assumption being without consent, it could deduce nothing of his 12th part; and adhered to the former interlocutor, whereby he he got 6 *per cent.* for his stock since the dissolution of the society, with 3 *per cent.* more, *nomine damni*, not only for their trading with his stock during that time, but also because they had unwarrantably thrust him out of the copartnery, and abstracted and vitiated the books by which he could prove his charge: And as for the interval between the last fitted account in 1685, and the dissolution in 1687, they allowed him to prove what was the greatest profit they made; but with this quality, that if there was loss, then he must also bear his share of it, else it would be *societas leonina*: And found the L.78 Sterling due by his father, as cash-keeper to the society, must not be deduced as a debt now *ab hoc momento*, but must default of his stock *pro tanto* at the time of fitting the account.

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