

1693. *February 22.* PATRICK DUNDAS of Breastmilm *against* WEDDERBURN of Gosford.

THE Lords entered to advise that cause pursued by Patrick Dundas of Breastmilm against Wedderburn of Gosford; and in regard of the bar of a decret *absolvitor in foro*, and also that it was a dubious point, if a creditor, who has two securities, by arrestment and apprising, and debars others thereby, and gets payment by one of them, if he shall be liable to another creditor whom he debarred, where the subject becomes insolvent *medio tempore*, and he did not intimate to them to pursue them; therefore they recommended it again to be agreed.

*Vol. I. page 563.*

1693. *February 8.* The EARL of TARRAS *against* SIR JOHN DEMPSTER of Pitlever, and the EARL of SEAFORTH.

1693. *February 8.*—THE Lords advised that other great cause at the Earl of Tarras's instance against Sir John Dempster of Pitlever, and the Earls of Seaforth. The first vote was, whether presently determine, or remit it to the commission of Parliament; and determine, carried it. Then the second vote was stated, whether Pitlever's payment being in obedience to a decret against him, (though there was no charge of horning, nor caption upon it,) was a *bona fide* payment, in the terms of the act of Parliament in 1690, anent fines and forfeitures, requiring that the payment shall be upon distress. And the Lords having considered the decisions in *Dury* 1627 and 1623, and the circumstances of the time when Pitlever paid it to Seaforth, they found the decret a sufficient distress; seeing it was not easy for him then to have got it suspended. In the third place, it was stated, seeing Pitlever by his oath had declared the way he paid Seaforth the 20,000 merks, was by 7000 merks in money, and by assigning him to two rights, one upon Seaforth's own estate, and another on the Earl of Mar's; whether what he gave Seaforth, in numerate money, was *bona fide* payment in the terms of the act of Parliament. And it was found to be so, and that Pitlever ought to be assoilyied from this pursuit of Tarras's *quoad* that. And then fourthly, it being queried, whether what Pitlever gave Seaforth, on the two transactions, was also to be reputed as payment, so as to liberate Pitlever, and put Tarras to recur only against Seaforth; the Lords found, though generally, transactions had the force of payment, and was equivalent to money; as if one pay his debt by delivery of corns, cattle, or other goods; yet here Seaforth not being an accessible debtor, therefore they refused to sustain these transactions, so as to put Pitlever in the case of the exception of the said act of Parliament, and to exclude Tarras; and found him liable for that, as well as the two years and a half's annualrent given him down. But decerned Seaforth to repon him again to the rights he had conveyed and transmitted by these transactions; which being alleged to be extinct, yet the Lords, by the restitution of Tarras's forfeiture, found them now to revive. Only a difficulty occurred,