1694. *June* 4. WIGHTMAN *against* GEORGE SAUNDRY of ALEPPO.

RANKIELER reported the pursuit at Wightman's instance, against George Saundry of Aleppo, late coffee-man, for payment of the price of some fined wool. George ALLEGED,—That the bargain, being referred to his oath, he had deponed, with a quality, that the seller said there would be sixteen pound out of each stone of fined wool; and yet there was not ten; and so craved abatement *quanti minoris*. The Lords considered that these words, commonly spoken in sales, that it was as good as any of that kind he could find, were only *verba jactantia;* and little weight was to be laid on them; and it was not a formal upholding of the thing; therefore they rejected the quality, and decerned for the price agreed upon. The Decision in Dury, *July* 10, 1632, *Fenton*, was cited, where the Lords would not divide the qualified oath; but there it was intrinsic. *Vol. I. Page* 619.

1694. *June* 12. MONCUR *against* WILKIE.

IN a case between Moncur, vintner in Edinburgh, and Wilkie, the Lords considered that one of the things which encouraged calumnious pleas was the not modifying suitable expenses; and therefore resolved to amend it: And in this cause, the principal sum being only £36 Scots, and being calumniously suspended, the question arose, Whether the expense might be decerned so as to exceed the principal sum. And the Lords found it might; and therefore modified £40 Scots, *in pœnam temere litigantis*, as expenses of plea; though the account given in was £80, and some proposed to take their oath on the truth of it, and then decern. But the Lords thought that would augment the charge; and therefore choosed to restrict it. *Vol. I. Page* 619.

1694. *Feb.* 16 *and June* 18. MR JAMES GORDON, Parson of Banchory, and ROBERT CRUCKSHANK of BANCHORY.

February 16.—THE Lords advised the bill and answers betwixt Mr James Gordon, parson of Banchory, and Robert Cruckshank of Banchory, provost of Aberdeen, about his teinds. The last DEFENCE was,—You have no right to your stipend; because you have not qualified yourself by taking the oaths, conform to the Act of Parliament 1694. ANSWERED,—That deprivation cannot take effect till it be applied by a sentence, either of the Privy Council or some other civil judicatory, or of the Presbytery, or some other church assembly; and that *beneficium semper sequitur officium*, they having served for it. And the Lords compared this late Act with the 3d Act 1662, depriving the Presbyterian ministers:—the one inflicted it *ipso jure;* and the other *ipso facto*. And it was ALLEGED,—That such Presbyterian ministers as continued to preach by connivance, contrary to law, got their stipends; as was found in 1664, in the case of *Mr John Vietch*, minister of Westruthers.

At last the Lords fell upon this medium, That the minister should have the stipend, (the certification not being yet applied;) he finding caution to refund it, in case it should be afterwards found that he had no right thereto, or should be ordained, by any subsequent act or sentence, to repay the same. See 10*th February* 1666, *Collector of the Vacant Stipends* against *The Heritor of Maybole;* and 10*th January* 1679, *College of Aberdeen.* *Vol. I. Page* 609.

June 13.—Philiphaugh reported the bill of suspension given in by Cruikshanks of Banchory against Mr James Gordon, minister there, (mentioned 15th February 1694,) on these reasons:—1*st.* That the quantities of the teind, (which had been pled to be *decimæ inclusæ*, but were not found such,) were not proven; 2*d.* That he, not having taken the oaths appointed by the Act of Parliament 1693, he had no right to his stipend. ANSWERED,—He was often holden as confessed on it, and a commission directed, which he slighted. And, as to the *second*, there was no sentence, civil nor ecclesiastical, applying the certification of the act; and there was a great difference between the sanction of a law and the application of it. REPLIED,—The charger seemed to confess the quantity was exorbitant; seeing he alleged the provost had bought it at that rental; and that was not proven. The Lords reponed the provost, and allowed the bill to pass; and, it being moved that he should first pay the charger's expenses;—yet the Lords refused that; and only reserved it to the conclusion of the cause, if they saw ground. *Vol. I. Page* 619.

1694. *June* 13. WILLIAM GORDON and his FACTOR *against* THOMAS STEWART.

ALLEGED,—No process; because it is called and tabled on the day of compearance; and he cited Sir Thomas Hope's *Form of Process.* ANSWERED,—You passed from this, by seeing and returning the process; and the most this can amount to is to get a new sight. The Lords considering this dilator was only proponed to annul the citation, that an arrestment, laid on *pendente lite*, might fall in consequence; therefore they repelled it. *Vol. I. Page* 619.

1693 *and* 1694. FOTHERINGHAM of POURY *against* MR WILLIAM STIRLING, Writer to the Signet.

1693. *February* 16.—THE Lords found Poury could not quarrel Mr William's rights, on fraud and latency, on the Act of Parliament 1621, as being brother-in-law; seeing his debts were contracted before Poury's debt, and that he was creditor to Francis Laury, the said Marion Watson's first husband; whereas Poury was only creditor to her, and Alexander Rait, her second husband; and any faculty she had to affect her husband's lands with 10,000 merks of debt was only from John Laury, her son. And the Lords found the qualifications of trust or fraud against Mr William's infeftment were not sufficient to reduce his right, but only to restrict it; the same being proven by his oath, or otherwise. *Vol. I. Page* 560.

1694. *June* 13.—The Lords advised the case between Fotheringham of