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

Pourie and Mr William Stirling, writer, mentioned 16th February 1693; and found the qualifications of fraud condescended on by Pourie not sufficient to reduce Mr William's rights; *viz.* that it was between conjunct persons, and that he had been the agent, and the disposition was on the matter *omnium bonorum;* seeing what was not disponed to Mr William was thereafter disponed to other creditors, and that he kept up his rights, and forbore to take infeftment till Provost Rait and Mary Watson were broke: For the Lords saw Mr William instructed *scripto* the onerous causes of his right, and had deponed he had no trust of her affairs as agent then, and that there was no collusion; but the debts were just and due, and standing out unpaid; and that he was not bound to inquire into their condition, Pourie's debts being all contracted after his. But found it relevant, if Pourie would prove, by Mr William's oath, that he forbore to take infeftment, on purpose to insnare others to lend them money when he knew them to be broke; for fraud, being *actus animi,* unless qualified by very pregnant presumptions, can only be proven *scripto et juramento.* And yet it is hard such sinister designs should escape unpunished.

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1693 *and* 1694. The EARL of MELVIL *against* The EARL of PERTH.

[See the prior parts of the Report of this Case, Dictionary, page *355.*]

1693. *December* 28.—PHILLIPHAUGH reported the Earl of Melvil against the Earl of Perth. The DEFENCE was,—You have already elected your manner of probation, by the defender's oath, and he has already deponed; and therefore Melvil cannot recur now, to prove his summons by writ. The Lords, having considered the Earl of Perth's oath, they found he had not given a distinct, positive, and categoric answer to the second, third, and fourth interrogatories inserted in the commission; and therefore allowed the pursuer, *quoad* these, to prove them *scripto,* as he thought fit. *Vol. I. Page* 586.

1694. *January* 16.—The Earl of Melvil's cause against the Earl of Perth, mentioned 28th December 1693, being heard in presence, on a bill of Perth's, the Lords adhered to their former interlocutor; and found a difference between an oath taken to lie *in retentis,* and an oath taken on an act of litiscontestation: for, in the last case, it could not be considered till *avisandum* was made, and it came in, by the course of the roll of concluded causes, to be advised; but, in the first case, it might be considered *ad hunc effectum,* Whether any other probation might be received, and if it was compatible therewith. And also found, seeing the Earl of Perth had not answered the interrogatories, therefore Melvil might adduce write for proving these, but not in relation to any of the points he had answered; and would not allow him to explain himself in a reëxamination, as was sought; seeing the pursuer now passed from his oath.

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January 23.—The Lords advised the cause between the Earl of Melvil and the Earl of Perth, mentioned 16th current, and found the king's letter was a sufficient warrant for passing the act rescissory of Melvil's forfeiture, though he was then sitting commissioner; especially considering the ratification thereof,