

1692. *December 10.* HERRIS of Magbee *against* CHARTERIS, &c.

IN an action between Herris of Magbee, and Charteris, &c. the Lords found an old infeftment of annualrent, dated in 1614, of five bolls of victual, for a small principal sum, annualrent being then at ten per cent. ought now to be restricted to the current annualrent of six in the hundred; but found bygones before the quarrelling not usury, but *fructus bona fide percepti*. *Vol. I. page 530.*

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1692. *December 10.* JAMES GORDON, Parson of Banchrey, *against* CROOKSHANKS of Banchrey.

IN a spulyie of teinds, pursued by Mr. James Gordon, parson of Banchrey, against Crookshanks of Banchrey, who founded on his infeftments since 1618, bearing *cum decimis inclusis*, and so free of all stipend as long as there are any other teinds in the parish unexhausted: The Lords demurred to find thir teinds of the nature of *decimæ inclusæ*, unless the rentals of the abbacy of Arbroath, whereof they were a part, were produced, to see if they were possessed by that convent for a joint duty, both for stock and teind, or that there were feu-charters bearing *cum decimis inclusis* preceding the act of annexation of Kirklands in 1587, and that were never known to be *a solo separata*. See *Stair, 13th July 1678, Monimusk*. *Vol. I. page 530.*

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1692. *November 18, and December 13.* SIR JOHN CLERK *against* The EARL of ABERDEEN.

*November 18.*—SIR JOHN CLERK of Pennycook against the Earl of Aberdeen, for a house-rent in Edinburgh, from Whitsunday 1682, to Whitsunday 1683.

ALLEGED,—It was prescribed *quoad modum probandi*, not being pursued within three years. The Lords found, by the Act of Parliament 1579, he was only bound to depone if it was yet resting unpaid. *2do*, Alleged, He did not possess it that year, but removed in August 1682, and never took it from the pursuer, but from the Duke of Gordon; and, on his removal, Mr. Thomas Gordon entered. The Lords thought this but a momentary and precarious possession; and yet it being hard that the landlord should lose his mail, they inclined to let him cite Mr. Thomas Gordon's heirs *incidenter* in this process, as they had lately in 1690 done, in Cathcart of Carbiston's pursuit against the Lady Riccarton, wherein Saminton was called *pro interesse*. *Vol. I. page 519.*

*December 13.*—Sir John Clerk against the Earl of Aberdeen, for a house-mail. The Lords had found it prescribed *quoad modum probandi*, not being pursued within three years; as observed, *supra* 18th November last; but the Earl