

principal sum, but only a poiding of the ground for his annualrent. Therefore the Lords, in this circumstantiate case, repelled the defence, and decerned in the poiding.  
*Vol. I. page 545.*

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1693. *January 17.* AMBROSE COX and — JADDART *against* The EARL OF WINTON.

AMBROSE COX and Jaddart *against* the Earl of Winton. The Lords found the obligation for L.100 Sterling not penal, but due by contract, seeing he had liberty to have imported 800 veyes of salt for it, and they were damnified by not furnishing themselves, and depending on it, and so were disappointed ; but found the bond of L.500 Sterling penal, and that it could subsist for no more but allenarly for annualrent of the L.100 Sterling, and the expenses, and referred to my Lord Reporter to modify it.  
*Vol. I. page 545.*

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1693. *January 17.* DR. JAMES WEYMES *against* CAMPBELL of Calder.

DR. JAMES WEYMES *against* Campbell of Calder. The Lords repelled the 1st allegiance, of Haliburton's marrying without the consent of the friends, named by the father, both as *jus tertii*, and that being *in re antiqua* their consent was to be presumed, unless the contrary were alleged : but, as to the 2d, found the cautioner had any defences that were competent to Argyle, the principal, and that Argyle (though he had taken a special act of restitution) had also the benefit of the general rescissory act ; and that his being successor *titulo lucrativo* by his contract of marriage in a locality of the estate, was equivalent as if he had been heir, in which case the said rescissory law favoured him ; and therefore decerned for the annualrents due before Argyle's forfeiture, and due since the Revolution ; and remit the intermediate annualrents to the Commission of Parliament, conform to the express tenor of that act.  
*Vol. I. page 545.*

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1693. *January 17.* WATSON, Provost of Dundee, *against* GRAY of Innerighy and LORD CARSE.

WATSON, Provost of Dundee, *against* Gray of Innerighy, and my Lord Carse. The President, and sundry of the Lords, inclined, that the method prescribed in the contract was the rule of counting, and that the two extrinsic sums of 800 merks could not be brought in upon that fund : but the plurality found he might ascribe his intromissions as well for paying the annualrents of these two sums of 8000 merks, as of the 48,000 merks contained in the first contract ; seeing the parties, by a fitted account, had acquiesced in that method, and allowed these an-