

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.

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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.

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1694. Feb. 16 and June 13. 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.