

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 *10th February 1666, Collector of the Vacant Stipends against The Heritor of Maybole*; and *10th 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:—*1st.* That the quantities of the teind, (which had been pled to be *decimæ inclusæ*, but were not found such,) were not proven; *2d.* 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 compareance; 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 Pory 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 Pory's debt, and that he was creditor to Francis Laury, the said Marion Watson's first husband; whereas Pory 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 infestment 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