

dittay of usury, for taking the Martinmas interest of fifty merks upon the 18th of July, in the case of Purdie, anno 1666; and the like, November 28, 1668, in the case of Hugh Roxburgh; as appears from the books of adjournal.

DUPLIED for the charger,—The two cases urged from the books of adjournal do not meet; for there annual-rent due at Martinmas was exacted in the preceding July, which could not receive a favourable construction, or be imputed to the creditor's mistake: whereas, to infer usury from such a minute escape *in calculo* as the charger's is, might pave the way for catching the most exact and honestest men.

The Lords found the charger not guilty of usury, and that there was only error *in calculo*.

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1707. *Feb. 20.* JOHN CALLENDER of Craigforth, *against* the Laird of Lundin.

JOHN CALLENDER having pursued the Earl of Melfort to pay a debt, which he referred to his oath; for taking whereof a commission was granted to the English consul at Genoa, where the Earl resided at the time, to be reported the first day of July, 1695; the Earl was forfeited on the second day of the said month of July, and in February thereafter, John Callender obtained the term to be circumducted, for not reporting the commission.

The Lords found, That the decreet of circumduction in February, 1696, holding the late Earl of Melfort as confest after he had been forfeited, cannot constitute a debt to prejudice the Laird of Lundin, donator to the forfeiture. Because a circumduction after the forfeiture could no more infer a debt against the king or his donator, than the rebel's confession, or giving bond could do.

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1707. *March 13.* JOHN IRVINE of Kincaussie, *against* ALEXANDER DEUCHARS, Writer in Edinburgh.

IN the competition of the creditors of Streichan, John Irvine of Kincaussie, having arrested in the Earl of Murray's hands, at his dwelling-houe of Dunnibirsle, July 12, 1706; and Alexander Deuchars, writer in Edinburgh, having arrested on the 20th of the said month, in the Earl's hands personally, at his house of Tarnaway: Mr. Deuchars claimed to be preferred, because his arrestment, though posterior to Kincaussie's, was executed at the Earl's principal dwelling-house of Tarnaway, where the bulk of his estate lies, and seasin by his charters is expressly ordained to be taken, and where he was residing at the time: whereas Kincaussie's arrestment was executed only at Dunnibirsle, a private seat for a summer retirement, that is ordinarily allocated to the ladies of that family for a jointure house;