

1694. *January 10 and July 24.* MR HARY SCRYMGEOUR, Parson of Dundee, *against* DR WEYMES.

*January 10.*—ARNISTON reported Mr Hary Scrymgeour, parson of Dundee, and Dr Weymes, lately principal of St. Andrew's, competing for the stipend of the first minister of Dundee, which Mr Hary claimed, as still minister there. And the Lords thought the church not vacant, though he had desisted to preach, seeing he was neither deprived by the council, nor any church judicature: but, in regard it was alleged, that *titubavit de jure suo*, in so far as he had taken a gift of this stipend from the privy-council, as vacant, and he alleged it was only to prevent the application of others, who were seeking it, and would have put him to some trouble, the Lords ordained that act to be produced.

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*July 24.*—In the competition for the stipend of Dundee, betwixt Mr Hary Scrymgeour, late parson thereof, and Dr Wemyss, late of St. Andrew's, for crop 1692, mentioned 10th January 1694; the Lords preferred Mr Harry, because it does not appear the said church was then vacant, either by demission or deprivation; and so was not at the privy-council's disposal, by their act to Dr Wemyss.

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1694. *July 24.* LORD SINCLAIR *against* SIR JAMES COCKBURN of that ilk.

UPON a bill, given in by the Lord Sinclair, against Sir James Cockburn of that ilk, and his answers, the Lords found, the land would either set in farm or sell the better that the common debtor was removed from the house and parks, &c.; and, therefore, ordained him to remove, but gave him to Michaelmas next, because he might have his corns on the ground; but found, they could not roup it, without diminution of the present rental, but that it behoved to be kept up: And Sir James Cockburn, by a bill, craving to be continued, because he offered to find caution to make his intromission forthcoming, the Lords thought they could not force the creditors to accept of a tenant or factor against their will, though they offered caution; therefore they refused the bill.

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1694. *July 25.* JOHN KER and RACHAEL KER *against* WAUCHOP of NIDDRY.

THE Lords advised the cause pursued by John and Rachael Kers against Wauchop of Niddry, for payment of £1000, contained in his father's bond. The Lords, *ex officio*, had examined witnesses on sundry presumptions, that it was granted *ob non causam*, for a transaction and disposition in 1654, between him and Ker of Lochtour, which never took effect; and, having advised the probation now, they find it proven that it was so granted, and therefore assoil-yied. Though this be a dangerous preparative, to take away clear bonds by witnesses' depositions, yet there was so clear a chain of presumptions connected