

No. 6. 1737, June 15. GARDEN of Lawton *against* MINISTER OF BARRY.

THE Lords adhered to their former interlocutor, finding that the petitioner's lands though a feu-holding of the Cistercian order were not teind free, (the interlocutor was repelling his defence founded on the charter.) There was no reasoning on the Bench. But Arniston and I, in private conversation afterward, agreed, that if they were free before the Reformation there is nothing since to make them liable, and it is no inconsiderable argument of the then opinion, that this charter before the Reformation disposed expressly the *decimæ garbales*, though by the constitutions of Pope Innocent III. and Adrian IV. neither they themselves had any privilege as to such lands, nor could they communicate it to their feuars. But what diffculted both was, that their lands had immemorially paid ten merks of teinds. But the general point is still undetermined.

No. 7. 1737, July 27. EARL OF GALLOWAY *against* THE HERITORS OF WHITBURN.

THE Lords would not give any interlocutor, Whether in giving the prorogation annualrents should be allowed for the payments made by the Earl or not, no such interlocutor having been ever given by any of our predecessors, though the prorogations commonly exceeded such payments, and even compound interest of them. And most of us thought were that point to be determined, interest ought to be allowed (*inter quos* Arniston;) but as without counting interest the Earl would be repaid in between eight and nine years, and with interest in about 32 years, we gave him a prorogation from the expiry of the last tack to this day and for 19 years more, which was in whole about 23 years,—22d June.—July 27th Adhered.

No. 8. 1737, Dec. 7. MR ANDREW ARBOT *against* DEMPSTER.

THE Lords found the defenders lands teind free, though his charter *cum decimis inclusis*, which seemed to be the original charter, was dated only in 1558; and were of opinion that our lawyers have been in a mistake in fixing the Lateran Council as a period, *nem. con.*, only Strichen doubted,—30th June 1736.

IN this question of *decimæ incluse* where the charter was no earlier than 1558, the Lords adhered to their former interlocutor of 30th June 1736 (*quod vide*) finding the lands teind free, and thought the council had nothing to do in this question of *decimæ incluse*.—N. B. We had now with us Culloden, President, and Arniston, who were not Judges at the former interlocutor, but were clear of opinion of the interlocutor, and indeed we were all unanimous except that Drummore did not vote because he had not read his papers. *Omnino vid.* Dirleton, D. 229, 28th January 1675, (Dict. No. 101. p. 15,717.)

No. 9. 1738, June 22. SINCLAIR of Freswick *against* GROAT of Wares.

THE Lords ordered the petition to be seen as to the allegiance that the heritors uplifted from the tenants the teinds *ipsa corpora*, or a certain duty in name of teind duty, and refused as to the rest.