

I HAVE few or no observations by the space of three Sessions and a half, viz. from June 1674 till January 1676; in regard I was at that time debarred from my employment, with many other lawyers, on the account we were unclear to serve under the strict and servile ties seemed to be imposed on us by the King's letter, discharging any to quarrel the Lords of Session their sentences of injustice, and was not restored till January, 1677; so that we shall content ourself with remarking a few things that occurred in that gap and interval.

*Advocates' MS. folio 235.*

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1674. *June.* GEORGE YOUNG *against* GEORGE COCKBOURNE.

GEORGE YOUNG, bailie to the Earl of Winton in his barony of Niddry or Winchburgh, pursues George Cockbourne, who had possessed the yards and park, for payment of the duty thereof for the years of his possession; in which the quantity of the yearly rent being controverted, I contended, the *quota* paid for the preceding years behoved to be the rule, where no particular farm (tack-duty) was pactioned and conditioned; for *consuetudo in pensionibus est servanda, L. 18, C. Locati, ibique Glossa magna Accursum*, who cites Everhardus, *in loco legali a solitis*.

See Benevenutus Straccha, *tractatu de navibus, parte 3, No. 10, pagina 306. Infra*, 8th November, 1677, Prestongrange, No. 649.

*Advocates' MS. No. 447, folio, 235.*

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1674. *June.*

ANENT USURY.

ABOUT this time I heard it queried, if it was usury to take more annualrent from the King, in advancing him money, than 6 of the 100. Sir George Lockhart was of opinion, in a contract with the King, it would fall under the compass of usury; but where it is done by way of traffic, merchandising, or bills of exchange, even *centesimæ usuræ*, which is 12 of the 100, might lawfully be taken: as both Sir William Sharp and Sir Patrick Morray had practised, when they lent some money for defraying the charges of the Commissioners to the Union in 1670; the L.30,000 Sterling imposed on the country by the Parliament for that end, not being so soon got up. Some may think, may not the King give as much annualrent as he pleases? He is not tied by these positive statutes; he is above the municipal laws; he may dispense with them in his own particular. I confess he may gift as much as he thinks fit; but to pay money, *nomine usuræ*, seems unsafe to the receiver: seeing in these acts, *rex utitur jure privati; et tanquam minor et læsus*, he may be restored. See Guibertus Costanus, *cap. 1. Quæstionum, et Titulum Cod. de fiscalibus usuris, ibique Ant. Perez in commentario.*

*Advocates' MS. No. 448, folio 235.*