decreet against the tenant for 5000 merks by year, as his maill and duty; and being imprisoned for that, till the decreet were reduced, the Town behoved to be liable for that sum.

DUPLIED,—The decreet was in absence, and though the tenant could not be now had to depone on the yearly quantity of his true rent, yet they were content to admit to her probation what duty he paid, and to be liable for that; and offered to prove the whole barony (whereof he was a tenant but in a small part,) did not pay so much by year as she had taken decreet against that one tenant for.

The Lords repelled both defences, and found the town liable for the whole sum decerned against the tenant; and refused to take a probation anent his true rent.—This, as very hard, the town reclaimed against by a bill; but if it was on the account that the decreet was standing unreduced, it seems the Town, for their own liberation *pro tanto*, had interest, without the tenant's concourse, to raise a reduction of that decreet, and prove what was his true yearly rent.

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1680. *December* 1. The OWNERS of an ELEPHANT *against* ALEXANDER DEAS and the Other FARMERS of it.

THE owners of the Elephant which was brought hither from England to be shown, having charged Alexander Deas and the other farmers of it, on their contract, to pay 400 pounds sterling for the use of it several months, they presented a bill of suspension on sundry breaches and contraventions of the said contract; such as, they did not show it at the precise hours appointed, and took advantage by showing it privately, for which they have not accounted; and did not show all it might do, *viz.* its drinking, &c. But it could not drink every time it was shown. *Vol. I. Page* 119.

1680. *December* 1. RIDDEL of HAINING *against* MARY JOHNSTON.

IN Riddel of Haining's case against Mary Johnston, the Lords found that the act of grace in March 1674 was sufficient to defend one against a pursuit for deeds of usury done preceding that act, it pardoning all penal statutes and crimes, except capital ones; and *favores sunt ampliandi et latissime interpretandi.* Yet such rogues should not so easily escape. Likeas, in November 1677, the Lords found that bailies of regalities' fines were comprehended in this act, and discharged by it. *Vol. I. Page* 120.

1678, 1679, *and* 1680. BEATSON of POLGUILD *against* BEATSONS of KILRIE and SOUTHGLASSMONTH.

1678. *July* 19.—IN the action pursued by Beatson of Polguild against

Beatsons of Kilrie and Southglassmonth, the Lords assoilyied them from the qualifications enforced by the pursuer against them, to make them liable and accountable to him for omissions, as they who had acted as protutors, *viz.* that Kilrie had meddled with the charter-chest, and taken out papers, &c.: which the Lords did not find sufficient to make him protutor; for they remembered, in Scrimzier and Wedderburn of Kingennie's case, they had found a greater meddling than that no acting as tutor. See, anent deeds importing protutory, the case between Ellies of Southside and Charles Carse, decided on the 18th November 1671. *Vol. I. Page* 10.

1679. *January* 23.—At Session, a bill was given in by Mr John Ellies, advocate, and Beatson of Kilrie, against Beatson of Polguild, who had threatened Kilrie in the Session-house, that he would kill him; and said, that Mr John Ellies had betrayed General Dalziel in his causes. Though threatening does not infer tinsel of the plea by the Act of Parliament, which speaks only of beating and wounding, yet it is *crimen in suo genere*, especially in the Session-house. And therefore the Lords recommended to Newton, in order to the punishing of the parties, that he should examine both parties, and witnesses, upon the whole circumstances of the bill. See the process depending betwixt thir parties, July 19, 1678. *Vol. I. Page* 36.

1680. *December* 2.—Beatson of Polguid against Beatson of Kilrey, (as to their qualifications of tutory,) was this day decided; and the Lords modified the value of the coal intromitted with, to 1200 merks yearly. *Vol. I. Page* 120.

1680. *December* 3. GOLDIE *against* The TOWN of DUMFRIES.

The Lords having advised this case, they found it sufficiently proven that the citizens contained in the Act of Exchequer had given bond for the taxation 1633, and had paid it; and so it was not discharged by the Act of Grace in March 1674, but that it fell within the exception of that Act. And the Town urging presumptions that it was paid, the engagers being magistrates, who would not fail to obtain payment, and being in an Act before answer, the Lords allowed the Town to adduce what documents they could, to astruct the same was paid, being *in re tam antiqua*, and so presumed to be paid. And, as to the interruptions of the forty years' prescription, they found a caption without an execution was not a sufficient interruption, unless the letters of horning and execution and denunciation whereupon the caption proceeded were also produced, or extracted from the register of hornings; though a caption presupposes a charge of horning to have preceded.

Then ALLEGED,—the summons being in 1675, the term's taxation in 1636 was within the forty years. Then minority of some was offered to be proven; but it must be the minority of the executors, to whom this sum would have fallen, and not of the heir, to whom it did not belong. That the king's taxation falls not under prescription, or that the years of the surcease of justice in 1659, &c. should be deduced, I think would be repelled. *Vol. I. Page* 120.