

said decret was given : And, upon that assurance, some of the Lords declared, when they subscribed, that they subscribed not their own sense, but the sense of the Court : And though they were concluded, as said is, yet they were not convinced.

Page 102.

---

1675. February 5. BROWN against GILVIE.

A PERSON, being pursued for an annuity of money, did claim the benefit of retention, conform to the late Act of Parliament :

But the Lords found, That albeit retention was granted for relief of debtors of their taxation, and that the debtor was alike concerned as to the end fore-said, whether he paid the annualrent, as the *usura*, and profit of a principal sum, or as annuity due upon a personal bond ; yet the Act of Parliament mentioned only annualrents : And being, as all Acts of Parliament, *stricti juris*, specially such as are *correctoriæ juris communis*, it could not be extended beyond the letter of the law.

Nevoy, *Reporter*. Gibson, *Clerk*.

Page 116.

---

1675. February 5. DUKE of MONMOUTH against EARL of TWEEDDALE.

THERE being a transaction betwixt the Duke and Duchess of Monmouth, and the Earl of Tweeddale, whereupon a discharge was granted by the said Duke and Duchess to the said Earl, with consent of their curators ; which was also superscribed by his Majesty, taking burden for the Duke and Duchess ; with an obligation that they should ratify after majority : the said Duke and his Lady pursued a reduction of the said discharge, upon a reason of minority and lesion.

It was ALLEGED, That all parties having interest were not called ; *viz.* The officers of state for his Majesty's interest : seeing his Majesty was so much concerned, that, if any thing were evicted from the defender, his Majesty would be liable for the same.

The Lords REPELLED the defence ; without prejudice to his Majesty's advocate to appear for his interest, if he thought fit.

Stathurd, *Reporter*. Gibson, *Clerk*.

Page 117.

---

1675. June 17. COLLEGE of ABERDEEN against The TOWN of ABERDEEN.

DOCTOR Reid having, by his testament, left his books to the College of Aberdeen, to be kept by a bibliothecare : and, having left for a patrimony and salary to the bibliothecare, the sum of 6000 merks ; and having named Mr Robert Dounie, his own relation, to be bibliothecare ; and, in case of his refusal, hav-

ing appointed another to be chosen by the College. And the master of the grammar school, Mr Robert Paterson, being presented to the said office by the College, pursued a declarator, to hear and see it found and declared, that he has right to the said office and salary.

It was ALLEGED for the Town of Aberdeen, That no title was produced for the pursuer but the extract of Dr Reid's testament, bearing the said mortification; which could not be respected, seeing the said extract is out of the books of the commissaries of Aberdeen; and his testament could not be confirmed but by the commissaries of Edinburgh, he having died out of the country: and therefore the said extract could not be considered but as a copy, and the principal ought to be produced. And it appears, that there was never any principal, bearing the masters of the College to have the election of the bibliothecare; seeing the Town of Aberdeen has been in use, since the mortification, to present to the said office. And, by a contract *in anno* 1632, betwixt the said Mr Dounie and the Town, he is presented to the said office by the town; to which Dr Dun, the principal of the College, was witness; and the executors nominated, likewise witnesses.

The Lords found, There was no necessity to produce the principal; the extract being a sufficient title. And as to the pretended nullity, it was not *juris*; seeing *non constat* that Dr Reid died out of the country: And, if there were any ground upon the pretence foresaid, it were only of a reduction.

It was found also, That, by the said testament, the nomination of the bibliothecare did belong to the College; and the possession of the town, without a right, cannot found a defence *in petitorio*: and the deed and contract with Dounie, and the subscription of the principal, and of the executors of Dr Reid, as witnesses, could not prejudice the College.

The Lords, having considered the tenor of the mortification, which gives power to the College to name, in case of refusal of Dounie, found, nevertheless, That the said interest, to name and choose a bibliothecare, was not temporary and *prima vice*; seeing wills of defuncts were to be interpreted benignly; especially in favours of colleges. And there can be no reason, why the defunct should have appointed the said election to be, in manner foresaid, for the first time, and not thereafter: and if the College had not the right foresaid, it should not belong to the Town, but the defunct's heir, who doth concur with the pursuit.

Newbyth, *Reporter*. Robert Hamilton, *Clerk*.

Page 130.

1675. June 24. The COLLEGE of ABERDEEN against The TOWN of ABERDEEN.

IN the case abovementioned, of the College against the Town of Aberdeen, The Lords, having heard again a debate *in præsentia*, did adhere to what they had found formerly; and did declare *jus eligendi* of a bibliothecare to pertain to the College.

*Vide* June 17, 1675, *inter eosdem*.

Page 133.