

1675. June 16. MR WILLIAM GRAY *against* The LAIRD of COCKBURN.

THE Laird of Cockburn being debtor for 50 bolls of corn, and 50 bolls of oats, to Mr William Gray, Parson of Dunse, as a part of his stipend,—Cockburn required him, by instrument, to receive the oats upon Candlemas day: Eleven days after, the minister required a servant of Cockburn's, by instrument, to deliver the oats, and did obtain a decret before the Sheriff for the Lammas fiars. Cockburn suspends; and raises reduction on these reasons,—That he could be only liable to the Candlemas fiar, because he had made an offer *debito tempore*. The charger answered, That it was not *debito tempore*, because payment ought to have been made between Yule and Candlemas, and so not upon Candlemas day. *2do*. Though payment then might have liberated, yet an offer that day was not sufficient, because an offer necessarily implies such time as the person to whom it is made may befit himself and be in readiness. *3tio*. Albeit an offer of money obliges to a present receipt, yet an offer of victual must allow a time for having ready horse and sacks to receive it; and, though it cannot all be received and carried off in one day, it imports no failie or prejudice; but that the person to whom such a captious offer is made, is in the same case as if no offer had been made; as was in this case, in which there was a great storm the time of the offer. The suspender replied, That the offer was sufficient, and not captious; because the charger was not taken unawares, but when he was receiving his bear the same day; and, if he had accepted the offer, and begun to receive a part that day, and continued so soon as he could receive and carry off the victual, it might have imported a receipt; but having said nothing then till eleven days after, when the victual, or a great part thereof, was disposed upon, it was his own fault; and so he can only demand the Candlemas fiars, whereas the dearth raised the price of the Lammas fiars to the double. The Lords found, That payment might have been made upon Candlemas day; but that the offer being made upon that day, required some time for the receipt of so much victual; which neither being demanded nor refused, they modified the price to eight merks, being near the middle betwixt two fiars.

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1675. June 17. ROBERT PATERSON *against* The TOWN of ABERDENE.

MASTER Robert Paterson,—being elected bibliothecar for the College of Aberdene, by virtue of a mortification by Doctor Reid, whereby he left his books to the College, and mortified 600 merks yearly to a bibliothecar, accountable to the College and Town,—pursues a declarator of his right as bibliothecar, being elected by the College; and that Mr William Alexander, presented by the Town, had no right. The Town alleged, No process; because Doctor Reid's mortification, or principal testament, was not produced, but an extract out of the register of the commissariat of Aberdene, which is null, because the Doctor, having died out of the country, *animo remanendi*, the confirmation should have been at Edinburgh; and, being at Aberdene, is *a non suo iudice*, and so null. *2do*. The mortification