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 decreet 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 failyie 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 judice*, and so null. *2do*. The mortification

mentions the bibliothecar to be accountable to the Town, and them to employ the Doctor's money for purchasing this rent; which imports them to be patrons, whereof they have been in possession by presenting several bibliothecars; and, by a contract with the first bibliothecar, named by Doctor Reid, they are acknowledged as patron, wherein the principal of the College is subscribing witness. It was answered, That the confirmation being a legal sentence, it is not null, whatever may be the interest of the commissary in the quots or confirmation; and, that the mortification being without any mention of patronage, it gives the College a free election; and the subscribing of the principal, as witness, imports nothing. The Lords repelled the defences, and found, That the College had the free power of election, without any patronage.

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1675. *July* 9. SIR JOHN CHEISLIE *against* The LAIRD of WALSTOUN.

SIR John Cheislie having raised a cognition, before the Sheriff of Lanerk, against ——— Baillie of Walstoun, for clearing his right of property or commonty to a piece of marsh ground lying upon their march; Walstoun did raise another cognition before the said Sheriff, by way of re-convention. Upon both which processes an inquest of fifteen were chosen, and the parties did cast lots for the odd man, which befel to Walstoun; so he choiced eight, and Sir John Cheislie seven. There were three witnesses examined for either party, and two common witnesses. The testimonies being perused by the inquest, six voted that it was proven Sir John had commonty in the piece of ground controverted; Eight were not liquid; and the chancellor of the inquest voted not, nor returned any verdict. Whereupon Sir John Cheislie gave in a bill of advocation to the Lords, desiring that they would either declare, that, where six of the inquest voted for commonty, and eight were not liquid, that the inquest and Sheriff ought to proceed to determine commonty; or otherwise, that the Lords would advocate the cause, and determine the probation themselves. Walstoun, having desired to be heard upon this bill, he alleged, That the progress of the cognition being as aforesaid, the same was null, and there would be no further process thereupon; but he had a declarator of property of the ground in question depending, which would determine the whole matter, both as to right and possession; and in which he was content Sir John Cheislie should have a joint probation, upon which the testimonies of the witnesses taken might be renewed. *2do.* Whatever were to be done upon either process, he ought to have more witnesses. The Lords advocated the cause upon the bill; and ordained the process and testimonies taken before the inquest, to be produced, to be advised by the Lords; at the advising whereof they would hear the parties, whether there were any further witnesses to be used.

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1675. *July* 22. JOHN BROWN *against* GEORGE HERRIOT.

JOHN Brown pursues a reduction of a decreet-arbitral betwixt him and George