parish of Culross, 26th June 1751, when I was single, that I thought the two cases quite similar, but my opinion was still the same, as that was but one decision. Kilkerran and Drummore were both of my opinion in this case, and said there was an essential difference betwixt it and that of Culross, for that here there were two presentations, whereas there was but one in that of Culross, though there the town claimed the right of settling the second minister, and were so far in possession, that the second Minister first settled there was chosen by them, and since that time all the settlements were by calls without presentation, and what they insisted for was, the moderation of the call. The President thought there was a difference betwixt the two cases, but if he had been then in the Court, that I should not have been single, for that he would have been of my opinion. Upon the vote we preferred Mr Dick, the incumbent, *renit.* Milton, Minto, Justice-Clerk, and Shewalton; and for the interlocutor were Strichen, Kilkerran, Kames, Drummore, and I; and the President quoted a case of Sir Alexander Cumming, determined by the House of Peers, that he said was quite similar, where they found that Sir Alexander had the right of patronage; but in respect that the Church was settled, while there was one interlocutor of ours unaltered, finding some defect in his right, therefore they found, that the Minister settled had right to the benefice, and that on the motion of the late Duke of Argyle. 24th November, The Lords altered the last interlocutor, six to five, and the President and Justice-Clerk not here. 2d March 1753 Again altered, and adhered to the first interlocutor, six to five and Drummore in the Chair.

No. 7. 1753, July 27. URQUHART of Meldrum *against* OFFICERS OF STATE.

IN a competition for the patronage of a kirk, between Urquhart of Meldrum pursuing declarator of his right, and the Crown, this patronage had once belonged to the Bishop and Chapter of Ross, and had been conveyed to Sir Robert Innes; and in 1634 and 1637 there was a contract between Sir Robert, the Bishop of Ross, and King Charles I. whereby Sir Robert resigned that and a great many patronages in favour of the Bishop, who thereon obtained a charter and was infeft. But prelacy being soon after abolished, these patronages were in 1656 conveyed by Sir Robert to the Earl of Cromarty, then Sir George M'Kenzie, with some other subjects, but excepting the patronages from the warrandice. But after the Restoration, the Bishops came again in the possession by presenting Ministers. But after the Revolution, Cromarty presented to several of the Churches. The patronage of the kirk of Cromarty was with the estate conveyed to his son, Sir Kenneth M'Kenzie, and was afterwards sold as bankrupt, and purchased by Urquhart. The Officers of State now produced (as is observed No. 5.) the Bishop's charter, and an extract from the records upon it; and the debate thereon before the Ordinary was reported to us. Urquhart objected to the contract, that the witnesses to Sir Robert Innes's subscription (which was in 1634) are not designed; 2dly, The precept of sasine was not produced. 3dly, Objected to the sasine, that the notary does not specify the symbols delivered, but only in general bears, "*juris solemnitatibus in similibus fieri consuetis debite observatis.*" 4thly, That the extract does not bear the notary's usual sign or mark, which objection it was said was the stronger that the

was written by another hand, though in the doquet or testing clause the notary uses the word *signavi*. 5thly, That the pursuer having purchased at a judicial sale, was secured by the act 1695. As to the first, the answers made were the same as in the case of 22d November 1742, Duke of Douglas against Creditors of Littlegill, (No. 11, *voce* WRIT.) As to the objections to the sasine, they quoted sundry decisions from Durie sustaining sasines, where the symbols were not specified, and said that in 1637 it was not usual to insert the notary's note in the register; 2dly, that patronages may be conveyed without sasine, although they have been once annexed to Baronies, as in this case, if they are afterwards dissolved, which this patronage was by the King's charter; that after so long a time, it was not necessary to produce the precept of sasine where the charter was produced, and quoted the act 1594; and that the act 1695 seeured only against the deeds and debts of the bankrupt's predecessors, but not against third parties. The Lords, as in the case of Duke of Douglas against Creditors of Littlegill, sustained the objection to the contract, that the witnesses are not designed, but found it yet suppliable by a condescendence, and instructing the same. Found that Sir Robert Innes was not divested of the patronage till the Bishop was duly infeft; but repelled the objections to the sasine. Repelled also the objection that the precept of sasine was not produced, and found that the Crown's right was not barred by the judicial sale. 18th December 1753 Adhered. *Renit.* Justice-Clerk and Strichen.

PAYMENT.

No. 1. 1736, Feb. 17. YORK-BUILDINGS COMPANY'S ANNUITANTS *against* GARDEN of Troup.

THE Lords sustained the defence of *bona fide* payment, in respect the payment was made without collusion after the legal terms, though before the conventional terms. *N. B.* The Lords in the interlocutor avoided using the words "legal terms," and used the words "the term of payment."

PENALTY.

No. 1. 1743, Jan. 25. M'Leod of Genzies *against* WIGHTS.

THE Lords seemed all to be of opinion, that a contract of victual, obliging the seller to deliver, under a small penalty for every boll undelivered, without adding by and attour