

1673. *July 1.* CAPTAIN CRAWFORD, Collector of the Vacant Stipends, *against* MR JOHN BEATTON, Minister at Ayton.

CAPTAIN Crawford, as collector of the vacant stipends, having charged the minister for payment of the stipend uplifted by him for the year 1667, in respect he had neither collation nor institution until the year 1668; before which time he could have no right, seeing his presentation before that time could be no title, and might have been refused by the Ordinary, or he himself might have passed from the same:—

It was ANSWEED, That he having a presentation in the year 1668, after which he did officiate immediately by the bishop's warrant, until he got collation and institution, and so did discharge the duty for which the stipend is due; and so soon as he was admitted by collation and institution, the same must be drawn back to the presentation, and give him a right to a year's stipend, for which he had served the cure.

The Lords did SUSPEND the letters, and found, that the minister having served the cure, as said is, and received collation and institution, was not in the case of a vacant stipend; and his condition was different from an actual minister, who had received a presentation to be transplanted, and retained the stipend of his own kirk until he was of new admitted.

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1673. *July 1.* ROBERT MITCHELL *against* JOHN PRINGLE of WOODHEAD.

ROBERT Mitchell, as assignee to a decret before the commissary, against John Pringle of Woodhead, having charged him to make payment of one hundred and fifty three pounds, as the price of merchant ware, sold and delivered by his father, did SUSPEND, and intent reduction, upon this reason;—That the ground of the decret being for a merchant's account, was not probable but *scripto vel juramento*, and was prescribed as to all probation by witnesses: notwithstanding whereof, witnesses were led; and, upon their depositions, decret was given.

It was ANSWERED, That the ground of the decret was founded upon the suspender's promise of payment, which he having confessed, in case the delivery of the goods should be proven, and not having adjected that quality, that it should be proven by writ, the prescription was taken off, that they might prove *prout de jure*.

The Lords did find the letters orderly proceeded, in respect of the promise confessed, without that quality, that the libel was probable by witnesses.

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1673. *July 3.* MR ALEXANDER SEATTON of PITMEDDEN *against* JOHN FORBES of CRAIGIVAR.

PITMEDDEN, as executor to his goodsire, and thereby having right to a bond