

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.

*Vol. II, Page 330.*

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.

*Vol. II, Page 342.*

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

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

Herriot, in which pursuit he had formerly alleged, That the arbiters had proceeded most unjustly, because they refused to show him the claim given in against him; and he, having produced grounds of a full compensation, they rejected the same, and ordained him to pay £1000. This was found relevant to be proven by the arbiter's oath. But now he alleges, That he, being in a reduction, the defender must produce the grounds and warrants of the decret-arbitral, particularly the claim. The Lords found no necessity to produce the claims, which were not preserved nor noticed after decret; as in the case of a Judge-ordinary having a record.

*Vol. II, Page 358.*

---

1675. *November 19.* The ELEMOSYNER of the POOR of LINLITHGOW *against* KENNOWAY and COCKBURN.

THE Eleemosyner of the Poor of Linlithgow having a bond granted to him, for the poors' behoof, by Whitehead of Park, and having used horning and caption thereupon,—Piltoun and Lenie interpose, and agree with the eleemosyner that he should give an assignation to them of the bond, horning, and caption; and that they should give him a new bond, wherein they should be obliged conjunctly and severally, and that the writ should be put in the hands of Kennoway till they were interchanged. Accordingly, the assignation was subscribed by the eleemosyner, and delivered to Kennoway with the old bond, horning, and caption. Piltoun subscribes the new bond, which was also in the hand of Kennoway. Lenie promised to subscribe, but did not. Whereupon Piltoun prohibited Kennoway to deliver up his bond till Lenie subscribed: and therefore Kennoway refused to deliver up the bond to the eleemosyner; who, having pursued Kennoway to deliver, and referring to his oath that he had the said new bond in favours of the eleemosyner subscribed by Piltoun, and delivered to Kennoway for the poors' use, to be given to their eleemosyner,—Kennoway did depone, and the substance of his deposition was according to the deduction foresaid. At the advising of the oath, Piltoun appears, and alleges, That it is clear, by the oath, that the agreement was, that Piltoun and Lenie should both be bound conjunctly and severally, and that he had expressly prohibited Kennoway to deliver up his bond till Lenie had subscribed; and, if the bond should be given up, it might be made use of against him for the whole sum, without having relief of Lenie. It was answered, No respect to Piltoun's prohibition, because it was after the agreement and his subscription: so that the writ, being subscribed and delivered to Kennoway without any such prohibition, to be given up to the poor; as to Piltoun, it was a delivered evident; and it was his own fault that he subscribed before he saw Lenie subscribe with him. The Lords found, That the bond ought to be delivered up to the eleemosyner, and the assignation of the old bond to Piltoun; but declared, That Piltoun should be only liable for the one half of the sum in the new bond, as he hath only right to the one half of the old bond by the assignation to Lenie and him; and that he had no interest to stop the delivery of the bond upon Lenie's not subscribing, seeing there was no alteration as to him thereby.

*Vol. II, Page 371.*