

1675. June 16.

GRAY *against* COCKBURN.

No 4.

THE LORDS found, in the case betwixt the Laird of Cockburn and Mr William Gray minister at Duns, That Cockburn, being liable to pay certain bolls of victual betwixt Yule and Candlemas, might have paid the same upon Candlemas day ; and that as he might have paid the same, he might have made offer thereof ; but that in all cases of that nature, persons who are liable, and do make such offers, are not thereby liberate as to the greatest prices, unless the party be *in mora* to receive the victual, either the time of the offer, or six days thereafter.

Reporter, *Castlehill*.Clerk, *Monro*.*Fol. Dic. v. 1. p. 207. Dirleton, No 267. p. 129.*

1675. December 14.

LIEUTENANT-COLONEL MERCER *against* LADY ADIE.

No 5.

Action sustained for damages, on account of a breach of a verbal treaty of marriage.

LIEUTENANT-COLONEL MERCER pursues the Lady Adie, *alleging*, That he was invited by her to come to Scotland, in order to a match betwixt his son and her daughter, heretrix of Adie ; who, by the tailzie made by her father, is obliged to marry one of the name of Mercer ; and the pursuer being near to the family, and of the name, when he came to Scotland the Lady communed and agreed with him, that he should go to Ireland and bring over his son, and should provide security for L. 2000 Sterling, to be answered in Scotland, to be contracted, for paying off the debts and portions of the family, and did employ him to go to Ireland to that effect ; which he accordingly performed, and raised the sum that belonged to his son by his mother, and brought bills into Scotland for answering it here, and brought over his son to Scotland, leaving his employment as a merchant at Dublin, and coming in an equipage suitable to the son of Adie, and when he came, the Lady suffered him not to have access and converse with her daughter ; and therefore craving his expenses in this negotiation, in which he was employed by the Lady, and that for proving the same, several of the Lady's servants and friends should be examined *ex officio*.—The defender *alleged*, That the libel is not relevant ; *imo*, Because an invitation, motion, or proposition of a match, could be no ground to oblige the Lady to any damage, in case the match succeeded not ; for albeit the employing of an unconcerned person might infer a mandate, yet a proposition made to a father for his son, of so honourable and profitable a match, cannot be interpreted a mandate, but at most a counsel, which is not obligatory ; and even mandates are gratuitous ; but the expectation or hope of such a match, was a sufficient recompence of all the pains and charges, and so could import no more ; but that if the parties, upon conversation, were satisfied the match