was made up; and any books sent by the town were inconsiderable; and Doctor Reid having not only left his whole bibliotheque, but mortified a salary fit for a bibliothecary, who was to be chosen as said is, the declarator ought to be sustained; especially seeing, since that mortification, which was in the year 1632, they had been in constant use of electing and presenting a bibliothecary, and never suffered any presented by the town to enter or possess.

The Lords did sustain the declarator, and found, that there being no formal mortification by the town, that their sending of books to that bibliotheque within the college, did not make them patrons; and that the mortification made by Doctor Reid of that yearly salary to a bibliothecary, could not be inverted, but ought to be applied to those that were elected conform to the mortification; seeing this ought not to be looked upon as a benefit formerly founded, to which Doctor Reid had only granted an accession, it being only a salary mortified to an office, which required a daily attendance, and never had any before: and so determined the same, only to belong to those who were elected, conform to the mortification.

Thereafter it was ALLEGED, That Mr Alexander, who was presented by the town of Aberdeen before Mr Paterson was presented by the college, being entered to the possession of that place, should have the full benefit, at least since his presentation; he having succeeded to one formerly presented by the town; which was so homologated by the university, that he continued in exercise of that place until he died; and did constantly receive the payment from the town, as patrons, whose right was never questioned until the intenting of this declarator.

It was ANSWERED, That any payment made, or deeds of homologation, being expressly relative to the mortification, could not invert the college right, and that any possession had by Mr Alexander was but momentaneous *et vi;* the town having broken up the doors, and was immediately opposed by the college, who did present and enter Paterson to that office.

The Lords, before answer, did ordain probation of the manner and time of Mr Alexander's entry and exercise, after which they would decern at what time Mr Paterson had right; as likewise that the town might take away their books, or appoint another keeper to them.

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1675. *July* 4. KENNEDY of AUCHTERFARDELL *against* WILLIAM HAMILTON of RAPLOCH.

IN an action and improbation of a right of wadset, now standing in the person of Hamilton of Raploch, younger, coming by progress in his person from John Weir of Overcommerhead, as being infeft, by a precept of *clare constat*, in the said lands, *in anno* 1609, as heir to John Weir, his father, who held the said lands of Sir James Hamilton of Libbertoun, as superior; which wadset was redeemable by payment of 1050 merks; and was at first granted to James and William Weirs, from whom Raploch, as to the one half, derived right, and Kennedy of Auchterfardell for the other; and by virtue thereof, they and their authors have been in possession from the year 1609 to the year 1670; in which improbation there being only produced a seasine of the lands given to John

Weir, the son, who was author of the wadset, certification was craved *contra non producta;* it being without a warrant, either upon precept of *clare constat* or upon precept from the father. The title whereupon Auchterfardell did pursue, was a disposition granted to him by John Ker, as having right from John Weir, the goodsire, and father to John Weir, first granter of the wadset, for 1050 merks, as having died last vested and seased in the said lands, his son, who was the granter of the wadset, never having been infeft.

It was ALLEGED for Raploch, That no certification could be granted, because he had produced a sufficient title to the said wadset lands, in so far as he had produced, not only the extract of his author's seasine but the register itself; which, being clad with possession since the year of God 1609, was a sufficient title in law, without any other adminicle: and besides, having referred to the pursuer's oath, the having of the wadset made by the son, which was relative to a former wadset, granted by old John Weir, redeemable by payment of 400 merks, which was renounced, and the new wadset taken from the son, as heir to his father, the pursuer had confessed the having of it. Likeas the pursuer deriving right to the one half of the wadset by progress, did thereby acknowledge the truth and verity of the said right, by virtue whereof he and his authors had been in possession past the years of prescription.

It was REPLIED, That an extract of a seasine could be no valid title, a principal seasine being only the assertion of a notary; and the warrant thereof not being produced, certification could not be refused; which being granted, then the pursuer's title, flowing from the oy or heir, served and retoured to the goodsire, who was last infeft, the defender's right ought to be reduced, as flowing *a non habente potestatem;* his father being the person who died last vested and seased. And as to any acknowledgment of the right of wadset, whereby the pursuers and his authors had bruiked, it could not be respected to take away the title and benefit of this pursuit; because, finding his title not good, he was *in bona fide* to acquire a better right from the oy, who was infeft as heir to the goodsire.

The Lords, having seriously considered this case, did find, that albeit certification were granted for non-production of the warrant of the son's seasine, yet, the extract being *in anno* 1609, and possession conform, without interruption by the space of 60 years and above; the defender being but singular successor, it was not imaginable that they could forge any such precept of *clare constat;* they find, that the defender's title could not be reduced, being clad with so many years' possession: but declared, that Auchterfardell his right of wadset of the half of the lands should not be prejudged by taking any new right.

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1675. *July* 6. ALEXANDER BINNING *against* WILLIAM BROTHERSTANES.

IN an action of removing, at the instance of the said Alexander, as being infeft in a tenement of land in Edinburgh, as heir of tailyie to his deceased sister, Margaret Binning; who was spouse to the said William Brotherstanes;—It was ALLEGED, That the defender being infeft in the said tenement, upon his wife's resignation by contract of marriage, and the pursuer having only a tack, re-