

gistrates having served inhibition, did interrupt the same, so that the obligation being null in law, could not stand valid for any years after the inhibition.

No 27.

*Gasford, MS. No 167. p. 65.*

1675. December 10. PARK against The UNIVERSITY of Glasgow.

MR JOHN PARK pursues the University of Glasgow, *alleging*, That in *anno* 1649, he being then minister of Stranraer, and the College having the bishoprick of Galloway, he came towards Edinburgh for raising summons for an augmentation against the College, his stipend being 200 merks, within the rate of the act of Parliament; but out of his respect to the College where he was educated, he offered to the masters to agree with them suitably; and they did agree for 100 merks yearly, whereupon he desisted; and now pursues for the same during his serving the cure; and for instructing of this agreement and acknowledgment of the debt, produces an act of the visitors of the College in *anno* 1664, whereby they found the College debt to be L. 34,000 and above, and therefore recommended their case to the Parliament, who gave them seven years vacant stipends; and there is produced an account of the College debts, written by umquhile Mr John Young, then one of the masters, whereby it appears, that this sum due to the pursuer was a part of the L. 34,000. It was *alleged* for the defenders, *1mo*, That the masters were but administrators, and could not bind their successors; *2do*, That a verbal agreement, having taken no effect, might be resiled from; *3tio*, That the paper under Mr John Young's hand was not subscribed by the masters, and that it did bear, That Mr John Park craved that sum; and did not acknowledge it as due; *4to*, That the sums in the account, besides Park's sum, extended to L. 34,000, so that it could be no part thereof. The pursuer *answered*, That albeit the masters be administrators, yet they may well transact to the advantage of the College, in giving 100 merks, where two would have been recovered by law; for it is notour how currently and largely augmentations proceeded in *anno* 1649. And as to the power to resile, *non est res integra*; for shortly after the commission for plantation of kirks ceased, and never revived till the pursuer was out of his charge: And as for the probation of the promise, or the acknowledgment of the debt; the claim being acknowledged by Mr John Young's hand, who was chiefly entrusted in the College affairs, and being produced by the College themselves; and quadrating exactly with the act of the visitors, there was no necessity of subscription, which is not accustomed in claims; but it proves the acknowledgement of the debt, and makes up a part of the L. 34,000 allowed by the visitors, upon which the College got the vacancies from the Parliament; and though the College gave it up but as claimed, yet the visitors did allow it; for without it the L. 34,000 cannot be made up: For, whereas the College pretends, that besides it, there is L. 34,000 made up by the Earl of Kilmarnock's sum of L. 4,000, excluding this sum; it

No 28.

Masters of a college transacting for the benefit of the college, bind their successors in office.

No 28.

was *replied*, That it is evident from the claim, that the Earl of Kilmarnock's sum was blank the time of the act of the visitors, at which time the College did acknowledge no debt to the Earl of Kilmarnock, but long since did transact with the Earl for L. 4,000, which they have caused fill up in the blank in the claim with another hand.

THE LORDS found the libel relevant, that the College might transact to their advantage, and could not resile, the matter not being entire ; but as to their probation, they found the same not sufficient and plenary, but ordained Mr John Park to give his oath in supplement, whether truly there was such an agreement and promise, which they sustained to complete the probation, in respect Mr John Young was dead, and none of the masters that then were, are now in the College.

*Fol. Dic. v. 1. p. 158. Stair, v. 2. p. 378.*

1678. *January 31.*

LORD ROSS and LAIRD of ACHLOSSIN *against* The COLLEGE of ABERDEEN.

No 29.

Commission granted by the major part of the masters of an university, was found sufficient to bind the university, unless, by the foundation, any of them were possessed of a negative.

CAPTAIN ROSS having left, in legacy, to the universities of Aberdeen and Glasgow, for entertainment of eight bursers at Aberdeen, and four at Glasgow ; Achlossin having obtained a right from Captain Ross's heir, to his whole estate, heritable and moveable, as both being heir and nearest of kin ; and his estate being scattered in Scotland and Ireland, and uncertain what it would amount to, and the greatest part being mortgaged in Ireland, which by the English law falls under executry, whereof the relict hath the half, there being no children ; both universities granted commission to treat and agree with the relict, and Achlossin, being then both at London, which took no effect ; and thereafter the university of Aberdeen gave commission to some of their number to treat and agree with Achlossin and the Lord Ross, to whom Achlossin had disposed the third part of his interest ; which commission related to instructions, whereupon there was an agreement by the said commissioners ; but the masters of the university of Aberdeen refused to subscribe this agreement ; whereupon the Lord Ross and Achlossin did pursue the masters of the university of Aberdeen, to subscribe the said agreement ; who *alleged* absolutor, *1mo*, Because by act of Parliament 1633, cap. 6. ' Inversion of donations, or legacies to kirks or colleges are ' prohibit, and the successors of the donatar are declared liable notwithstanding ;' and therefore the colleges could not transact, to alter or diminish Captain Ross's legacy ; *2do*, Several of the masters did not subscribe the commission, viz. the Bishop who is Chancellor, the rector, and some of the professors of divinity, though the mortification be in a great part to bursers of theology ; *3tio*, The agreement is null, as being unwarrantable and exorbitant, con-