

1700. *January 17.* The MAGISTRATES of ABERDEEN *against* TURNER of TURNERHALL.

JOHN Turner, a Scotsman, having lived many years abroad in Dantzick, and acquired a great estate by merchandising, and having no children, he disposes of his estate, by leaving the greatest part of it to Robert Turner his cousin, in Aberdeenshire; and appointed fifty chalders of victual to be bought with it there; and appoints him to pay the yearly mortifications following, *viz.* 400 merks to four bursars in the Marischal College of Aberdeen,—two to be presented by the Magistrates, and the other two by his heir; and 500 merks to be yearly distributed amongst decayed burgesses and their widows, in the town's or craftsmen's hospital, or elsewhere. The lands being, according to the defunct's appointment, bought, Turnerhall his heir, and the Magistrates of Aberdeen, falling at variance about the power of executing and applying the pious mortifications, there were mutual declarators raised by both parties, Wherein it was ALLEGED for the Town,—That, *quoad* two of the four poor scholars, they were clearly founded in the testament as to the right of presentation; and, as to the legacies bequeathed to the poor in their hospital, they being undoubted patrons, that founded their right of nominating to these also; and he must pay to what persons they present, and in such quotas as they think fit to distribute the same.

ANSWERED for Turnerhall,—That though their right of presenting two bursars appears to be simple, and not clogged with craving his consent, yet, in the posterior clause, it is declared his consent is to be adhibited to all that was mortified: and though he was wholly ignorant of the Scots law, (having nominated his heir and conveyed his heritage by testament,) and had forgot the grammar propriety of his own mother tongue, yet he writes in a plain, honest, intelligible style; and that clause must run through and affect the whole, and needed not be repeated at every article.

The Lords for explicating the matter, and to render the mortification effectual, that none be discouraged to leave pious legacies, on apprehension that they are too oft misapplied, they ordained the Magistrates to give in a list yearly to Turnerhall, of their two bursars; and him to give in his objections, if he was not satisfied with the nomination,—if they passed by the mortifier's relations or the like; and, in case of discrepance betwixt them, appointed the Masters of the University to arbitrate and determine, that they might not on every occasion come to the Lords of Session. And, for the poor burgesses and widows, ordained the distribution to be twice a-year; and Turnerhall, that he be not obliged to unnecessary attendance, to get a list of the persons; and if he does not acquiesce, the same is to be determined by the Ministers of Aberdeen and kirk-session, if the parties given up in list deserve it, or others whose necessities may be more clamorous and pressing. Whereby the consent of the mortifier's heir is not wholly neglected.

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1700. *January 18.* WILLIAM WIGHTMAN *against* THOMAS JOHNSTON.

THE Lords advised the cause, William Wightman, merchant in Edinburgh,