

## C O L L E G E.

1707. July 22. HALDEN *against* RHYMER and RAMSAY.

**T**HE professor of Greek his place being vacant in the college of St Andrews by Mr Forrester's death, there is a program emitted, inviting all qualified to dispute, and undergo a comparative trial; and accordingly Mr Rhymer and Mr Halden having competed as candidates, when it came to the vote, there were Robert Ramsay and three regents, present as judges to cognosce their qualifications, whereof two gave their suffrages to Mr Halden; and the third was *non liquet*, and thought them both qualified, *vitulo tu dignus et ille*. The provost voted for Mr Rhymer, and contended he had the sole power by the articles of Bishop Kennedy's foundation, and accordingly he installed Mr Rhymer, and put him in possession. Mr Halden complaining of this, as *iniquous*, before the Privy Council, and they remitting it as a point of civil right to the Session. It was *alleged* there for Messrs Ramsay and Rhymer, that the rules and first institution of the college did center the power of chusing in the *præpositus*, *licentiatus*, and *baccalaureus*; that since the reformation the two last are sunk and extinct, and now the sole power rests and resides in the provost; for, though *l. 85. D. de v. s.* requires three to the original constitution and upmaking a *collegium*, yet it can subsist and continue in one, even as a flock of sheep can subsist when reduced to one, though a *grex* at first requires at least ten. *Answered*, To resolve the whole power of election in the *præpositus*, has no warrant by the foundation; and though these two offices of batchelor and licentiate (who were churchmen in the time of popery) be now ceased, yet it is expressly provided they may serve by proxies, as is done in the election of magistrates to burghs, and seem now to be supplied and succeeded by the regents and professors of philosophy; and we know in all societies, *multa dies variusque labore, volubilis ævi retulit in melius*; and you know provost Ramsay understood it so, for you called them and asked their votes. *Replied*, He made no further use of them but as assessors to take their advice and opinion anent the fittest, but noways to give them any decisive voice. THE LORDS could not find much light how the custom and possession had run, but observed, that, in February 1684, in Doctor Skeen's case about the teinds of the kirk of Forteviot, the LORDS found a tack null, being granted by the

**No 1.**  
It was found that the regents in a college were entitled to vote in the election of one of their number, and were not merely assessors to the principal, as was alleged. An election by him alone was found null.

**No 1.** provost without the concurrence of the major part of the masters; which proves the regents have a share in the governing and administration of the college affairs; therefore the LORDS found the provost could not elect but in conjunction with the rest, and had not the sole power, and therefore annulled Mr Rhymer's election, and preferred Halden. Some were for annulling both, and remitting them to a new election, with instructions; others were for trying the customs: but it carried *ut supra*.

*Fol. Dic. v. 1. p. 149. Fountainball, v. 2. p. 385.*

\* \* Forbes reports the same case:

UPON a comparative trial of several competitors for a vacant chair of a regent in the old college of St Andrews, before the provost and three remaining regents; two of these regents gave their opinion in favours of Mr James Halden, as the person best qualified for the post; the third was *non liquet*; and the provost declared for Mr Henry Rymer, and at his own hand admitted him. A complaint of this was made by Mr Halden to the Privy Council, and remitted to the Lords of Session; where it was *alleged* for Mr Rymer, That the regents had neither right nor possession to elect; in so far as, by the foundation, the college, consisting of a provost, a licentiate, and batchelor of divinity, four masters of arts, bursers of divinity, and six scholars of philosophy, was to be governed by the provost, licentiate, and batchelor of divinity, who were empowered to elect for the supplying of vacancies. And albeit, the offices of licentiate and batchelor of divinity are long ago extinct, the powers conferred upon the governing part of the college do accresce to the provost; because, by the common law, albeit a college cannot be constituted in one person, it may subsist if reduced to one. *2dly*, The provost *de facto* has the sole power of admitting.

*Replied* for Mr Halden, The college is now quite altered from its original institution; being at first a college of theology, whereof the provost behaved to be a divine and a preacher, and the four masters of arts were students of theology: Whereas now the provost is no longer a theologian, and the college is converted into a profession of philosophy and arts, whereof the masters are no longer *ancillantes theologiae* in that college, but designed regents or professors of philosophy, a designation which imports government; consequently the foundation-charter cannot be the rule. *2dly*, Even by the foundation, the *præpositus* had not the sole election, but was to judge in conjunction with the *licentiatus* and *baccalaureus*, whose absence was to be supplied by other two; in place of whom the regents and professors of philosophy are come since the reformation. These regents are in use to concur in all acts of administration, as the setting of tacks, &c.; and also do vote in elections; and concur, by their presence and assistance, in admissions, though the very act of admission be performed by the provost as principal of the college. *3dly*, The regents' power was plainly homologated by the provost's allowing them to vote in this election.

*Duplied* for Mr Rymér, The foundation is the true and fixed rule, except in so far as the same is altered by law: And it will not be found, That there is any legal constitution transferring the power to the *artium magistri*, or regents, who came not in place of the *licentiatus* and *baccalaureus*; for these were churchmen whose offices are extinct. *2dly*, The administration of the common stock of the college is not regulated by the foundation; and therefore custom might prevail to give them some power in that, though it could not invest them with any power contrary to the terms of the foundation. *3dly*, Suppose the provost had homologated the regents' power, by taking their votes, he could not dispense with the rules of the foundation: But the truth is, he only in courtesy asked their opinion by way of advice, which put no obligation upon him to follow it.

THE LORDS preferred Mr Halden, and declared Mr Rymer's admission void and null.

*Forbes, p. 186.*

1711. January 24.

BURNET, GORDON, &c. against SIMPSON, MIDDLETON, URQUHART, &c.

KING WILLIAM having mortified L. 300 Sterling out of the bishops' rents to the college of Aberdeen, he, by his patent, erects a new profession for teaching the oriental languages, and out of the foresaid stock mortifies 1200 merks for his salary; and Mr George Gordon being presented thereto, the masters and regents of the university scruple to receive him, in regard the L. 300 Sterling was expressly destinate for payment of their debts, and not for founding a new professor. He, to remove all scruples, enters into a communing with them, and, to facilitate his own admission, grants a bond, whereby he quits and renounces 200 merks of his salary in favours of the college, and obliges himself not to claim a vote in any of their affairs, except allenarly in the administration and management of that fund out of which his salary was payable; but, shortly after, he procured the masters to be more favourable, and prevailed with them to give him a discharge of the bond, and reponing him to his full salary of 1200 merks. But his bond being still kept from him, he raises a reduction of it, on these grounds; *imo*, That it was very unwarrantable, both in him and them, to make any such transaction, to restrict or diminish the rights and privileges of any of the members of the university, and cause them give down their salaries; these things not being alienable in their own nature, *pactis privatorum non derogatur juri publico*. *2do*, The view and occasion of his giving that bond and restriction was, that, finding some difficulty and opposition in admitting him, he granted that bond to take off all scruples, and consigned it in Doctor Urquhart's hands; and yet, it was so far from operating the effect he designed, that they still demurred to receive him, whereupon he was necessitate to apply to the commission for visitation of colleges, and got reiterated orders from them, com-

No 1.

No 2.

A college having been erected by the King, and confirmed by the Pope, named those who were to be regents. Two additional regents were afterwards appointed by the King. In a comparative trial for a regency, the principal refused to receive the votes of these two, as not being on the original foundation. Their votes were found good.