

DECISIONS

OF THE

LORDS OF COUNCIL AND SESSION,

REPORTED BY

DAVID FALCONER, ADVOCATE.

1746. *July 3.* ROBERT GRANT *against* The Creditors of SUTHERLAND of Rosehaugh.

WILLIAM SUTHERLAND of Rosehaugh disposed part of his estate to Elizabeth and Henrietta, his two daughters, and to the survivor of them, with the burden of 2000 merks Scots of his debts; and this whole right having accresced to Elizabeth, she made it over to Robert Grant her husband.

A creditor of Rosehaugh's obtained decret against Robert Grant for 500 merks, which he paid, but took an assignation in the name of a trustee; and being also a creditor himself, he assigned the debt, and his assignee obtained a decret.

Other creditors having taken decreets till the 2000 merks were more than exhausted, he raised a multiplepinding; in which the Lord Ordinary, *5th* and *19th June, 1746*, "Found that the priority of dates of the decreets of constitution could give no preference in such a case; and that therefore the creditors behoved to come in *pari passu*, and proportionally, according to the extent of their debts."

PLED in a reclaiming bill, That in this case the creditors had only a personal claim, but no real right in the fund burdened with payment of their debts: and the question was, whether they had all equal right thereto, abstracting from their diligence; or, whether there was any way of attaching the subject, so as to prefer one to another. They could not have all equal right; for then, though one had recovered payment, another supervening would draw his proportion from him: and if there were a way of attaching the subject, it could be none else than a de-

creet ; which if it had not that effect, many inconveniencies would arise : other creditors might start up during the course of a multiplepointing, wherein the creditors who had obtained sentences were called, and these might obtain constitutions, which behoved to be the ground of a new multiplepointing.

A decret would give the preference in the case of an heir *cum beneficio*. And it was observable in the case of the creditors of Crichen against his executor, wherein the creditors were brought in *pari passu*, that there they had only constitutions, without any decerniture to pay ; and it was contended that it was this which gave the preference.

With respect to one of the debts, there was actual payment ; and it could not vary the case, that instead of a discharge he had taken an assignation in the name of a trustee.

The Lords adhered to the interlocutor ; but remitted to the Ordinary to hear the petitioner on the allegation of payment.

Petit. H. Home.

Vol. I. No. 128. page 154.

1749. *January 9.* The TRUSTEES for the Fund for providing Ministers' Widows *against* The KING'S COLLEGE of Aberdeen.

A SCHEME was laid before the General Assembly, and approved of by them, for providing the widows and children of ministers, by means of certain annual payments to be imposed on all beneficed ministers : and the Universities of St. Andrews, Glasgow, and Edinburgh, desired to be comprehended in it ; but the King's College of Aberdeen, at a meeting for that purpose, declined being comprehended.

Application was made to Parliament, and an act obtained, declaring, That if the University of Aberdeen, or any of the Colleges therein, should apply to the next General Assembly, they should be comprehended in like manner as the other Universities. And the Marshal College applied accordingly.

At a meeting of the members of the King's College, by means of a variation in the sederunt from the former meeting, it was resolved to apply to the Assembly ; there being eight members present, and the question carried by the Principal, claiming both a deliberative and a casting vote.

Application was made and sustained by the Assembly ; and the opposing members made their election, not to be comprehended personally, as by the act present incumbents were entitled to do.

The trustees pursued a succeeding Professor for his proportion.

ANSWERED, The College is not comprehended in the scheme ; *1st*, For that the meeting could not take under their consideration what had been determined by a former meeting.

REPLIED, The statute subsequent to the first meeting, gave them still the choice of making an application.

ANSWER *2d*, The Principal is not entitled to two voices ; and so the question