

‘ so that whatsoever any three of these five met together, and all parties interested being convened, shall declare in their consciences to come nearest the true meaning of these statutes, that, and nothing but that, shall be taken for the true meaning of the same, and in all points be observed.’ The trades of Edinburgh having brought an action against the Magistrates, as administrators of that hospital, for feuing the hospital lands, as alleged contrary to the tenor of the deed of mortification, the pursuers *argued*, That as a *quorum* of these governors or interpreters of the hospital regulations did not now exist, the powers originally given them belonged to this Court as a court of equity, and vested with the same powers as the Roman Prætor and the Chancellor of England; and they therefore *contended*, That it was competent for this Court to prescribe instructions and limitations of the right of feuing exercised by the Magistrates, so as not to be prejudicial to the hospital. *Answered* for the Magistrates, *1mo* By the above clause of the will, the officers therein named have no other power than to interpret the statutes, but not to make regulations; *2do*, This Court, as in the case of the failure of tutors, could at the most only authorise the remaining nominees to act as a *quorum*; *3tio*, This Court never employs its equitable powers but in cases of necessity.—THE LORDS found they had no power of making the limitations required.

Fol. Dic. v. 3. p. 349. Fac. Coll.

* * * This case is. No 2. p. 5750. *voce* HOSPITAL.

1773. July 31.

THE MODERATOR of the Presbytery of Caithness, and MR ALEXANDER POPE, Minister of the Gospel in the Parish of Reay, in said Presbytery, *against* The HERITORS of the Parish of Reay.

THE parish of Reay is situated partly in the county of Sutherland, and partly in that of Caithness. It had no parochial school in terms of the statute 1696. Various attempts were made to obtain that establishment, all which having proved ineffectual, the minister of Reay, with concurrence of the presbytery, raised a declarator, founded on the act of Parl. 1696, c. 26. setting forth, that a citation had been given to the heritors to meet and execute the same, which they had contemned; that, thereupon, the presbytery applied to the Commissioners of Supply, but who also refused to convene, or, being convened, refused to comply with the requisite of the statute. The libel concluded, that the parish of Reay ought to have the benefit of the act 1696; and the refusal or neglect of the heritors of the parish, and Commissioners of Supply, ought not to be prejudicial thereto: And, therefore, it ought and should be found and declared, that, in consequence of such neglect or refusal, this Court hath authority, power, and jurisdiction, to execute the statute 1696; at least, that the heritors

No 170.

made. Some of the offices had been suppressed, so that there did not remain a *quorum* of the nominees. The Court refused to interfere.

No 171.

The Court interposed in a case where neither the heritors of the parish, nor the Commissioners of Supply, would execute the act 1696, cap. 26. for settling of schools.

No 171.

ought to be ordained to meet at the parish kirk of Reay, and there to provide a school-house, and settle and modify a salary.

THE LORD ORDINARY, before whom the action came, adopted the last alternative of the libel, and made a special order for a meeting of the heritors, to obtemper the statute 1696, previous to any interposition or decree of this Court. None of the heritors, however, appeared on the day appointed for the meeting, excepting Mr Innes of Sandside, one of the principal heritors of the parish, who having joined with the pursuer, the minister of the parish, they took under consideration the act and order of the Lord Ordinary, and drew up and transmitted a report thereon to the clerk to the process, *inter alia*, expressing their opinion, that no less than 200 merks Scots, the *maximum* allowed by the statute, was necessary to maintain a well qualified teacher in such a remote part of the country. And the pursuers having preferred a memorial in support of the report, and also upon the competency of the Court to interpose in this case, judgment was given in the following terms :

‘ Find, That 200 merks is a proper and necessary salary for a schoolmaster of the said parish of Reay, and that L. 20 Sterling is necessary to build a proper school-house in the said parish, to be built upon an acre of land called the *school acre*, given in donation by Mr Innes of Sandside ; and remit to the Ordinary to proceed accordingly ; and, particularly, to allocate and proportion the said yearly salary, and expense of building the school-house, upon the several heritors liable in payment, agreeable to law.’

Alt. D. Dalrymple.

Clerk, Campbell.

Fac. Col. No 84. p. 212.

No 172.

The original trustees, named in a settlement, had been removed by the act of the Court. Found, that the Court could not name new trustees ; but they appointed a factor with the ordinary powers, and also with power to bring an action for compelling the trustees to denude.

1775. December 15. MARY WOTHERSPOON and Others, Petitioners.

IN June 1769, the deceased James Wotherspoon executed a trust-disposition and settlement of his moveable estate, which was considerable, in favour of three persons unnecessary to be named. The disposition was granted for behoof of Janet and Mary Wotherspoons, the sisters of the defunct, and their children ; and the trustees are also nominated tutors and curators to the children ; and there is a clause declaring, that they shall not be liable for omissions, nor yet *in solidum*. As the three trustees were in embarrassed circumstances, to say no more, a petition and complaint, upon the statute 1696, cap. 8. was presented in December 1774, and, in consequence thereof, the Court removed the said tutors and curators as suspect, and discharged them from farther administration of the pupil's affairs.

These facts were stated in a petition now given in, in name of Mary Wotherspoon and others ; and farther, that, after obtaining this interlocutor, the petitioners applied to the trustees to account for their intromissions with the effects, requiring them to convey the bonds and other securities in their favour, or to