

The Lords sustained the reason of preference on the said Mr John Inglis his infestment, relevant, in so far as concerns the sum due to him, whereof he received annualrent by the discharges produced.

*Vol. II, Page 478.*

1677. *January 3.* The EXECUTORS of MR GEORGE HUTCHISON *against* The MAGISTRATES of IRWING and COLLEGE of GLASGOW.

MASTER George Hutchison, being indulged by the council to serve as minister to the kirk of Irwing *in anno* 1669, did accordingly enter and serve the whole charge. But, *in anno* 1672, there was an act of council, ordaining two indulged ministers for every indulged kirk, and declaring, that if they did not enter accordingly, the one half should be vacant, and should belong to the Colleges, according to an Act to be made in that session of Parliament. And some days after, there was an Act of Parliament made, applying the vacant stipends of all churches to the universities; yet the council, considering that few of the ministers entered in conjunction, did, by several Acts, grant the whole stipend to those who served the whole cure. The magistrates of Irwing gave bond to the College of Glasgow for the half of the stipend 1672, which was consigned; and a back-bond granted, that if the College prevailed against the minister's successors, it should be paid accordingly.

It was ALLEGED for the College, That the warrant of the council to pay the minister's executors, was *parte inaudita*; and the indulged ministers having only right by the council's warrant, and during their pleasure, therefore they might and had declared the one half vacant, and apply it to the universities.

It was ANSWERED, That the College can have no right, because the act of council relates to an Act of Parliament to be made; which Act of Parliament bears only,—That where the kirks are vacant, the stipend shall be the university's; but this stipend was not vacant *in anno* 1672. *2do.* Though the act of council had been simply to make the one half vacant, in favour of the universities, yet the council may repeal their own act, in whole or in part.

It was REPLIED, That though they may repeal, yet it can only be *ad futura*; and this half year in question was long after the year was past, *et fuit jus delatum* to the College; which thereby becoming their private right, the council could not take it from them.

It was DUPLIED, That if this reason were good, the colleges behoved to have right to the half of all the indulged kirks in Scotland, for there is *jus delatum* in all time after the Act; but it is unquestionable that a general rule, proceeding upon the free pleasure of authority, without any antecedent private right, though thereby a benefit would accrue to any private party, yet thereby the same authority is in full capacity to recal their act, either as to the future, or, if it be so expressed, *à principio*. And, though private parties be secured of what they have recovered, as *fructus bonæ fidei percepti*, yet, so soon as the Act is repealed, their interest ceases as to what is not paid.

The Lords found, that the College had no right, by the Act of Parliament, but by the act of council; and found, that the council might repeal or qualify their own act, either as to time coming, or *à principio*, if they so express it;

and that in this case, and of all the indulged ministers, they had given warrants to pay the whole to the indulged ministers, for all the years they had served alone ; which warrants were granted after the years in which they had served.

*Vol. II, Page 485.*

1677. *January 13.*

MEEK, Skipper.

MEEK, skipper being first holden as confessed before a sheriff, and after being reponed by the Lords, and a day taken to produce him ; he went to sea some days before the term ; which being circumduced, a supplication was given in on that ground, that the skipper was gone abroad before the term.

Which the Lords refused, seeing he ought to have attended the term, or have offered his oath before the term ; and, therefore, the Lords now refused to repone him in this second suspension, though he offered to depone, that he was not advertised by his advocate. And now, by supplication, he offers to refer to the charger's own oath the verity of his own libel. Which the Lords sustained, seeing " being holden as confessed " is but a presumptive probation, and therefore a positive probation of the contrary, by the oath of the pursuer, is sufficient to take off the same.

*Vol. II, Page 493.*

1677. *February 12.* JAMES NAISMITH, Younger of Posso, *against* EDWARD RUTHVEN.

JAMES Naismith, younger of Posso, having obtained a gift, from the king, of his father's single escheat, pursues the tenants of Lethem, liferented by the Lady Lethem, now spouse to Posso elder, and belonging to him *jure mariti*, and thereby falling under single escheat. Compearance was made for Edward Ruthven, who obtained a gift of the Lady Lethem's liferent-escheat from the Duke and Duchess of Hamilton, of whom the lands were holden ; the Lady having been denounced, before her marriage with Posso : so that his *jus mariti* could not reach the rent of these lands which were fallen by liferent-escheat in Duke Hamilton's hands.

It was ANSWERED, That the gift was purchased from Duke Hamilton, by the means and moyen of the Lady Lethem herself, and taken in name of the deceased Mr John Baillie, advocate, who assigned the same to Edward Ruthven, the Lady Lethem's grandchild ; and, though his assignation bears, That his name was in trust for Edward Ruthven, yet, Edward being a child, it could not be supposed to be obtained upon his own account.

The Lords ordained the Duke and Duchess of Hamilton to depone, whether they received any sums for this gift, and from whom ; and if it was granted freely ; upon whose account, and to whose behoof, it was granted.

*Vol. II, Page 519.*