

No 28. was *replied*, That it is evident from the claim, that the Earl of Kilmarnock's sum was blank the time of the act of the visitors, at which time the College did acknowledge no debt to the Earl of Kilmarnock, but long since did transact with the Earl for L. 4,000, which they have caused fill up in the blank in the claim with another hand.

THE LORDS found the libel relevant, that the College might transact to their advantage, and could not resile, the matter not being entire ; but as to their probation, they found the same not sufficient and plenary, but ordained Mr John Park to give his oath in supplement, whether truly there was such an agreement and promise, which they sustained to complete the probation, in respect Mr John Young was dead, and none of the masters that then were, are now in the College.

*Fol. Dic. v. 1. p. 158. Stair, v. 2. p. 378.*

1678. *January 31.*

LORD ROSS and LAIRD of ACHLOSSIN *against* The COLLEGE of ABERDEEN.

No 29.

Commission granted by the major part of the masters of an university, was found sufficient to bind the university, unless, by the foundation, any of them were possessed of a negative.

CAPTAIN ROSS having left, in legacy, to the universities of Aberdeen and Glasgow, for entertainment of eight bursers at Aberdeen, and four at Glasgow ; Achlossin having obtained a right from Captain Ross's heir, to his whole estate, heritable and moveable, as both being heir and nearest of kin ; and his estate being scattered in Scotland and Ireland, and uncertain what it would amount to, and the greatest part being mortgaged in Ireland, which by the English law falls under executry, whereof the relict hath the half, there being no children ; both universities granted commission to treat and agree with the relict, and Achlossin, being then both at London, which took no effect ; and thereafter the university of Aberdeen gave commission to some of their number to treat and agree with Achlossin and the Lord Ross, to whom Achlossin had disposed the third part of his interest ; which commission related to instructions, whereupon there was an agreement by the said commissioners ; but the masters of the university of Aberdeen refused to subscribe this agreement ; whereupon the Lord Ross and Achlossin did pursue the masters of the university of Aberdeen, to subscribe the said agreement ; who *alleged* absolutor, *1mo*, Because by act of Parliament 1633, cap. 6. ' Inversion of donations, or legacies to kirks or colleges are ' prohibit, and the successors of the donatar are declared liable notwithstanding ;' and therefore the colleges could not transact, to alter or diminish Captain Ross's legacy ; *2do*, Several of the masters did not subscribe the commission, viz. the Bishop who is Chancellor, the rector, and some of the professors of divinity, though the mortification be in a great part to bursers of theology ; *3tio*, The agreement is null, as being unwarrantable and exorbitant, con-

trary to the instructions related in the commission, whereby L. 900 Sterling is the sum stated to be agreed for, and with securing the colleges against substitutes nominated by the Captain; whereas, by the agreement there is only 6000 merks absolutely secure, and 11,000 merks further, in case 33,000 merks be recovered, as the Lord Ross and Achlossin's share in the estate.—It was *answered* for the pursuers to the *first*, That there is nothing in the act of Parliament to hinder transactions, but introventions and transactions may be very profitable, when mortifications are not established and liquidate: To the *second*, The university being a corporation, whatsoever is done in a lawful meeting by the major part, is sufficient, unless it were alleged, that by the foundation there were negatives granted to some of the members who did not consent: To the *third*, Albeit the instructions contain special terms, yet there is subjoined a general clause in these words, 'That if the commissioners cannot screw up the parties to the special terms aforesaid, that there is some latitude allowed them, and they are ordained to agree in the best terms they can.'—It was *replied*, That better terms were offered by the relict.—It was *duplied*, That denying any such offer, the same was not made at Edinburgh, or during this commission, but before at London.

THE LORDS found, That the university might transact anent a mortification, whereof the event was uncertain and illiquid; and found, that the major part of the members of the university, in a meeting of the university, giving commission, the same was valid, unless by the foundations there were negatives to the members who consented not; and found, that the general instruction did sufficiently warrant the agreement; but declared, that in case the 33,000 merks were not recovered, that the colleges should have a proportional part, effecting to the 11,000 merks, according to what should be recovered.

*Fol. Dic. v. 1. p. 158. Stair, v. 2. p. 605.*

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SECT. V.

Complaints against Magistrates, to whom Competent.—In Diligence against a Community, who must be Cited.

1739. January 10. Competition CREDITORS of MENZIES of Lethem.

THE LORDS found an arrestment laid on in the hands of the treasurer of the Trades Maiden Hospital a proper arrestment, and preferred it to an arrestment