

1745.

CATANACH,  
&c.

v.

GORDON, &c.

JAMES CATANACH, *et alii*, - *Appellants* ;  
 C. H. GORDON, and R. PATERSON,  
 Vice-Chancellor of the Univer- } *Respondents*.  
 sity of Aberdeen, - - }

11 April, 1745.

PROFESSOR OF LAW.—It being required by the foundation of a college, that the professors of law should be doctors of laws, or at least licentiates, *cum rigore examinationis*,—an objection that the college could no longer confer that degree legally, was not sustained against one who pretended to be so qualified.

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[Elchies, *voce* Prof. of Law, No. 1 ; Falc. I. p. 15 ; Fol. Dict. iv. 154 ; Mor. Dict. 12,253.]

A vacancy having occurred in the professorship No. 77. of Civil Law in the King's College of Aberdeen, a meeting for election was held on 8th June, 1743. By the foundation of the college, it is required that the several professors should have attained the degree of doctor in their respective sciences, “ si tales commode haberi possint ; alio-  
 “ quin, in iisdem facultatibus licentiati cum rigore  
 “ examinis, qui infra annum a die admissionis  
 “ eorum in dicto Collegio ad Doctoratus gradum  
 “ singuli in praefatis facultatibus se faciant pro-  
 “ moveri.” A majority of votes appeared in favour of James Catanach, Advocate in Aberdeen, upon whom a degree of doctor of law had been conferred by the Marischal College of Aberdeen. The remaining votes were given in favour of Charles

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Hamilton Gordon, a member of the Faculty of Advocates in Edinburgh.

Each of the parties obtained a presentation in his favour, and a competition before the Court of Session ensued, in the form of an action of multipointing, at the instance of Mr. Paterson, the Vice-Chancellor. The appellant Catanach maintained that having received the degree of doctor of law from the Marischal College of Aberdeen, he was duly qualified. That college, by its charter, confirmed in various acts of Parliament, had full powers of bestowing all academical degrees, and receiving new professors: the dean of faculty is particularly appointed to preside “in promotionibus ad quemcunque *gradum* ;” and by act of Parliament 1593, (confirmed in 1661) there were granted to the college “all freedoms, franchises, liberties, free privileges, and jurisdictions that to any free college within this realm by law and practice is known to appertain.” Gordon’s qualification cannot be admitted, for where founders have required a particular qualification, a court of law cannot substitute an equivalent for them. If, however, in this case equivalents are to be admitted, then, even holding the appellant’s diploma to have been inept, to the effect of conferring on him a degree in terms of the charter, the parties are in that respect in *pari casu*, and his plurality of votes must prevail.

The other appellants (viz. the majority of electors) likewise insisted that they were the proper and sole judges of the qualification of the candidates, and that their decision was not subject to the controul of the Court of Session.

Gordon maintained that since the Reformation,

the practice of granting degrees in civil law, had been discontinued in the Scotch universities,—that the only degree in law now in use, was that of advocate granted upon certain trials, (including a trial in the civil law) before the Faculty of Advocates, and that he, having been so admitted advocate, must be held tantamount to a doctor in the civil law, and as such, capable of being elected professor of the civil law in any university. Mr. Catanach was not duly qualified. The diploma had been conferred upon him *per saltum* and without any previous study, the night immediately preceding the election, which was plainly an evasion of the terms of the charter; but the college in question never had power to grant such a degree, having been founded after the Reformation, when the practice had ceased in all Scotch colleges; and especially having been erected only for the study of the “liberal arts,” and having no foundation for divinity, law, or physic, it never could confer degrees in these sciences.

The Court found (20 July, 1744) “that James Catanach, Advocate of Aberdeen, was not duly qualified to be elected a professor of civil law in the King’s College of Aberdeen, and that Mr. Charles Hamilton Gordon was duly qualified to be elected into the said office; and found Mr. Gordon was duly elected, and preferred him to the said office,” &c.

An appeal was brought from the interlocutors of 20 July and 4 December, 1744.

After hearing counsel, “it is ordered and adjudged, &c. that the interlocutors complained of be, and the same are, hereby reversed; and it is further adjudged that the appellant, James

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Entered,  
 Dec. 14, 1744.

Judgment,  
 April 11,  
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 CHALMERS  
 ALISON, &c.

“Catanach, was duly qualified to be elected a professor of civil law in the King’s College of Aberdeen, and was duly elected: and it is also ordered and adjudged that the appellant, James Catanach, be preferred to the said office accordingly.”

For Appellants, *A. Hume Campbell, E. Erskine.*  
 For Respondents, *R. Craigie, W. Murray.*

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CAPTAIN CHALMERS of Gadgirth, *Appellant;*  
 PORTER ALISON, *et alii*, his Vassals, *Respondents.*

9 May, 1746.

SUPERIOR AND VASSAL.—NON-ENTRY.—Found that vassals who had been in non-entry for upwards of 40 years, were not liable in the arrears of the retoured duties, it being uncertain in whom the right to the superiority of the lands was vested during that period.

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[*Elchies, voce Non-entry, No. 3. Mor. p. 15091 and 9330.*]

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No. 78. IN 1692 the estate of Chalmers of Gadgirth was adjudged by his creditors, one of whom, Sir David Cunningham, obtained a charter of adjudication, on which he was infeft in 1693. In 1695, the adjudgers by agreement, divided the estate among themselves; but no mention was then made of the superiority of the lands possessed by the respondents. Thereafter the appellant not choosing to