

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

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

was not carried for applying : he has by the foundation two votes in matters of election ; which being granted him in that case, excludes any such claim in others.

REPLY 1st, The judging upon the application was committed to the General Assembly, and the judgment given by them is final ; which behoved to be, as within six months thereafter, all the present incumbents were to declare whether they desired to be comprehended or not, and choose their rates, or be concluded by the rate fixed by the act ; so that then the books were to be made up, and the trustees to know the state of the scheme, and proceed to its execution.

2^{dly}, The Principal has in all matters been accustomed to claim, and is entitled to a deliberative and casting vote : the College was founded by a Bishop, upon the plan of a Dean and Chapter, as appears by the foundation ; and if that gives expressly two votes in matters of election, it is because these were to be carried on in presence of the Rector, who, if it had not been otherwise provided, might have claimed the casting vote.

The Lords found that the College was in the same circumstances with all the other Colleges in the kingdom ; that they were entitled to the benefits conferred by the Act of Parliament, and subject to the burdens thereby imposed.

Act. R. Dundas. Alt. Burnet. Kirkpatrick, Clerk.

Vol. II. No. 41. page 38.

1749. *January 19.*

DAVID and JEAN MARTIN, Supplicants.

ON the petition of David and Jean Martin, infant children of the deceased Alexander Martin of Dalquharn, and their nearest of kin ; The Lords named a factor *loco tutoris*, whom they expressly impowered to set tacks for seven years, of the grounds whereof the defunct was in the natural possession ; in respect it was represented the stocking would be got disposed of to more advantage, if there was an opportunity of selling it to a person who had a tack for years of the grounds.

Vol. II. No. 47. page 46.

1749. *February 22.*

THE Lords Commissioners for plantation of kirks and valuation of teinds made an order that they would not receive any reclaiming bills, except within three several days of pronouncing the interlocutor reclaimed against.

Vol. II. No. 63. page 67.