1697. *June* 17. JOHN JOHNSTON *against* CALLANDER of DORATOR and WILLISON.

I ALSO reported John Johnston, Keeper of the Parliament-house, against Callander of Dorator and Willison; where the question was,—If the titles of intromission founded on, though not sustained to defend against restitution, yet were sufficient to infer such a *bona fides* and probable ground as to assoilyie from repaying the annualrents from the date of the uplifting. The Lords had found Dorator not liable, neither for his neglecting exact diligence, nor to refund these annualrents, in respect of his *bona fides*. This being allowed a second hearing, it was contended, that the titles produced were all predoneous, and patched up by simulate collusion between Langlands, the tutor, and him; and, it being *ignorantia juris*, it can afford no excuse.

ANSWERED,—The testament giving up the whole estate, both heritable and moveable, erroneously, this led them all into the same error of a promiscuous intromission; like the testament mentioned in *l.* 88. *sect.* 17. *D. de Legat. II. 2do. Ignorantia juris*, in things that are *juris positivi et in apicibus juris*, always excuses; as also where one *versatur in damno vitando*, as Dorator does here: and it is enough to introduce *bona fides*, that I possess *animo dominantis*, thinking the goods mine; and, though *negotiorum gestores* and pro-tutors be liable for accurate diligence, yet Dorator is not in their case.

The Lords adhered to their former interlocutor. *Vol. I. Page* 777.

1697. *June* 18. The UNIVERSITY of ST ANDREWS *against* The MAGISTRATES.

THE Lords heard and determined the debate anent the competition for jurisdiction and privileges, between the rector and masters of the University of St Andrews, on the one part, and the Earl of Crawfurd, as Provost, and the other Magistrates of the said burgh, on the other; which mutual complaints first began before the Privy Council, but, being of the nature of a declarator of right, were remitted by their Lordships to be summarily discussed by the Session. The grounds the University insisted on were,—to be declared free from all customs, stents, or other burdens imposed by the burgh; and that their meat, drink, and other vivers, be not liable to excise. Next, that the Town have no right to cognosce upon any riot or offence committed by any members of the college, though upon burgesses; but that both cognition and punishment belongs to the University, as the only proper and competent judges thereto. And, for instructing their privileges, they produced, 1*mo*. A charter of confirmation in 1432, granted to them by King James I. bearing, ingrossed *ad longum*, the foundation and erection of the University by Henry Wardlaw, Bishop of St Andrews, in March 1411, (though Spotiswood, and others, place it in 1412,) conferring sundry privileges on them; and, particularly, as to the correction of delinquencies, he appoints the Rector of the University to apply to the aldermen and bailies of his city and regality of St Andrews; and if they, by the space of a natural day, neglect or delay to do justice, then they are to complain to him and successors, as their superiors; and then it bears, *item cognitionem et punitionem injuriarum*

vobis, et in vos, delinquentes rectori concedimus, dummodo injuria non sit atrox; upon which clause the University founded, that it gave them a privative jurisdiction to cognosce and punish all injuries, either done by them to others, which was implied in the word *vobis*, id est, *a vobis;* or by others to them, contained in the words, *in vos:* And, *2do.* Urged, This was no more than the law of nations and customs of Europe allowed to Universities, for encouragement of learning, as appears by the authentic constitution of the Emperor Frederick, *tit. Cod. ne Filius pro Patre*, &c. where students are exemed from all tributes, and that their goods cannot be put under arrest or reprisals; and that they may elect their own judge, at least only be liable to the bishop's and rector's courts; and that all their privileges shall be also extended to their *nuncii*, as their beadals, servants, and other dependents: and this very cause arose upon the Town of St Andrews fining John Balmanno, the University's post, for blooding one of the townsmen; and that St Andrews was erected upon the model and foundation of the universities of Paris, Padua, Bononia, and these famous general studies abroad, and ought to enjoy no less privilege than they do; and we all know how ample powers the curators of the academy at Leyden exercise, both civil and criminal. *3tio.* The University founded on an unprinted Act of Parliament in 1621, declaring their privileges, and seeming to subject them only to the jurisdiction of the Privy Council, Session, and Justice Court; and, by the 226th Act 1594, where students and bursars commit tumults and disorders, the magistrates of burghs are authorized to disarm them; which plainly insinuates they are not liable to their tribunal without an express act, and that no farther than the law permits.

Answered for the Magistrates,—That they oppone their declarator, and their erection into a burgh, many hundreds of years before the erection of the College, *viz.* by King David, and Malcolm IV. (called the Mayden,) his son, in 1152; after which the Bishop could not, by any new grant or concession, give away their jurisdiction to the University. And their confirmation is not sufficient, unless the charter confirmed were also produced; (but, at the Reformation, many of the college-evidents were carried away to Rome.) And the clause, "*vobis et in vos,*" can never signify the power of judging riots committed by them, but are synonimous redundant words, importing the same thing, *viz.* wrongs done to them, according to the barbarous style of these times. And, whatever privileges other Universities abroad enjoy, these are only local, and belong to none but where either law or immemorial custom and possession has established them: and it is observable, where the jurisdiction is lodged in the Masters, the students commit manifest tumults, because of their connivance. It is not the Town's design to meddle with the Master's academical discipline, nor their punishing delinquencies *intra pomœria*, within their own precinct, by one member of the University to another; nor will they quarrel any who being cited by the Rector to answer for a riot committed there or in the Town, if they voluntarily compear and submit; for then *forum sortiuntur ratione consensus;* but they deny they have any legal compulsitor to cause them appear before them. And, as to the Act of Parliament 1621, though it be statutory in some part, yet, in so far as it concerns the Town of St Andrews' privileges, it was *parte inaudita*, and so falls under the Act *salvo jure cujuslibet*, and is of no more strength than a private ratification.

Some of the Lords proposed to make trial, before answer, what possession

either party has had as to acts of jurisdiction against one another; but it being suggested, that the custom would clear little, the Lords proceeded to determine the relevancy of the points debated, without putting them to farther delay and expense; and, by several votes, found the Bishop's concession to the University could not derogate from the prior grants made in favours of the Town; and found the same proved by the charter of confirmation produced by the College, which they cannot hinder the Town to found on as probative against them as users of it; and also found, though the Act of Parliament 1621 be statutory in some parts, yet, *quoad* the Town of St Andrews' jurisdiction, it falls under the Act, *salvo jure;* and that the words "*vobis et in vos,*" signify only injuries done to members of the University, and not by them; but were ready to liberate the College from paying custom to the Town for any of their goods, if the University had insisted on that part of their declarator.

Thereafter, on a petition, the University offering to prove deeds of possession, the Lords allowed a mutual probation, before answer, to either party, to prove what acts of jurisdiction either of them has been in use to exercise.

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1697. *July* 23. THOMAS MOFFAT and MARGARET MURRAY *against* ROBERT MILNE and ANDREW PATERSON.

ARNISTON reported Thomas Moffat and Margaret Murray, his mother, against Robert Milne, mason, and Andrew Paterson, wright in Edinburgh. Moffat being heritor of a shop and tenement at the head of the West-bow, near the Weigh-house, and Mr Milne having acquired in all the adjacent lands, thereon to erect a new square, he obtains a warrant from the Dean of Guild to value and appreciate Moffat's lands among the rest, and then throws them down, and erects his fabric. Moffat now pursues for repossession of his own houses; and, in regard that is now imprestable, he pursues for the true value, refusing to stand to his sham valuation; and craves *juramentum in litem* for his damages.

ANSWERED,—What they did was *auctore prætore;* and, he being then minor, they had no other redress but to apply to the Dean of Guild. And, by the 5th Act 1663, magistrates of burghs are authorised to dispose of ruinous houses; and, by the Acts of the Town-council of Edinburgh, and the Act of the Privy Council following thereon, ratified in Parliament, the form of building in stone is prescribed; and the lesser part must yield to the major, which is declared to be, not by the number of the heritors, but by the quantity of the rent; else one pervicacious landlord might stop a whole design; and, in the building both of the Tron-church and the Parliament-house, heritors were compelled to sell their interests; and was so found in the late case between Mr William Dundas, advocate, and Thomas Wylie's children.

REPLIED,—The pursuer was not in the case of the Act of Parliament 1663; for that only took place where houses were ruinous for some time, whereas thir were actually inhabited; neither was the method prescribed by that Act followed. And, for the proclamation in 1674, that obliged only the heritors subscribing, whereof he nor his authors were none; and, under the pretence of decoration of the burgh, and of public good and utility, property must not be in-