

APPENDIX.

PART I.

COLLEGE.

1770. *November 22.*

DR. WILLIAM LIECHMAN, Principal of the College of Glasgow, and Others,
against DR. ROBERT TRAIL, and Others.

THE University of Glasgow was founded in 1451 by Bishop Turnbull, under sanction of a bull from Pope Nicholas V. About the time of the Reformation it fell much into disorder and decay; but, in 1577, James VI. made a great addition to its funds; and by a royal charter, which has always been called the *nova erectio*, a set of rules concerning the government of the College, and its funds were prescribed. As this grant virtually superseded all former regulations, it has, in all the various disputes that have arisen, been appealed to as the standard, its authority having never been called in question.

The funds have since that period been considerably augmented by grants from the Crown, and by private donations; so that after paying the salaries of the professors and ordinary expenses, there has, for a number of years past, been a certain surplus, to be applied towards the advancement of learning, and for promoting the welfare of the College.

The University has for a long time consisted of a Chancellor, Rector, Dean of Faculty, Principal, and thirteen Professors; four of whom, being the first instituted, are called *regents*. The mode of chusing these officers, and the respective powers and duties incident to each, are in general prescribed in the *nova erectio*; by which also the Rector and Dean of Faculty, in conjunction with the Minister of Glasgow, are appointed *visitors*.

A difference of opinion of late years took place as to the management of the funds, particularly the surplus money. The Principal, and those who adhered

No. 1.
Constitution
of the Uni-
versity of
Glasgow.

No. 1. to him, maintained, that the ordinary administration and application was vested in the *Principal* and *Masters* in a meeting called the *Faculty* or *College-meeting*, in which the *Principal* presided. Those again who differed, maintained, that the ordinary administration of the revenue of the College was vested in a meeting called the *University-meeting*, composed of the *Rector*, *Dean of Faculty*, and other members, in which the *Rector* presided.

In order to put an end to these contentions, the pursuers brought a declarator; wherein they craved :

1mo, " That it should be found and declared, that the whole revenue and property of the College of Glasgow, excepting such mortifications for bur-sars and other uses, which are otherwise conveyed, is, by the foundation-charter granted by King James VI. in the year 1577, and by other subsequent grants and charters, and the statutes of the College, vested in the *Principal* and *Masters* of the said College; and that the sole right of administration thereof belongs to them the said *Principal* and *Masters*."

2do, " That it should be found and declared, that the *Rector* and *Dean of Faculty* of the *University of Glasgow*, and *Minister* of the town of *Glasgow*, are, by the said foundation-charter, appointed visitors of the said College; by whose advice and consent only, or a majority of them, all surplusses of the College revenue, after paying the masters salaries and other standing burdens, are to be disposed of and applied to pious and necessary uses of the College; and therefore, that in all time coming, all acts and deeds whatever of said administrators, in disposing of such surplusses, shall be held null and void, unless they bear that they were done by the express consent of said visitors, or a majority of them, according to the style authorised by the constitution."

3tio, " That it should be found and declared, that, agreeable to the said foundation-charter, the *Principal* and *Masters*, as administrators, are bound to lay the accounts of their administration of the revenue of the College before the said visitors for their examination; and that, without the approbation of the said visitors, the said accounts shall not be held valid or authentic."

4to, " That the said visitors, agreeable to the said foundation-charter, have the power of inspecting and seeing that all things be rightly administrated according to the statutes of the College."

The defenders stated a preliminary objection to the competency of this action. They maintained, that the pursuers did not here complain of any wrong that had been committed, which could give occasion to any action; and that they had no title to prosecute the rights of the *Rector* and *Dean of Faculty*, the ascertaining of which was one of the chief objects of the action. To this the pursuers answered, That every member of a corporation or community had a legal title to complain whenever the original constitution was violated by the administrators; and it was no objection that the pursuers were neither prose-

cuting any patrimonial interest, nor insisting upon any right or privilege directly belonging to themselves.

The Court had no doubt but the action was competent.

The pursuers supported the conclusions of their declarator by referring to and founding upon

1st, The style of the *nova erectio* and other conveyances; whereby the property of the whole College funds was vested in the Principal and Masters, exclusive of the Rector and Dean of Faculty. Besides the *nova erectio* in 1577, they referred to a charter by the Magistrates of Glasgow in 1572—a charter by King Charles I. in 1630—an act of Parliament in 1633—a charter by Charles II. in 1670—a deed of mortification for a library keeper in 1640—a number of tacks granted to the College down to 1756;—in all which deeds the subjects were granted to the *Principal, Regents, or Masters* of the said College.

2d, To certain express clauses in the *nova erectio*, which committed to the Principal and Regents the inspecting of the accounts of the *æconomus* or factor appointed to uplift the whole rents of the College; and which required them, as ordinary administrators alongst with their factor, to produce the College accounts four times in the year, to be audited by the Rector, Dean, and Minister of Glasgow, as visitors of the College; and that no application of the residuum should be made without their approbation.

3d, They appealed to the practice of the University from the date of the *nova erectio*, in 1577 down to the present time, as instructed, 1st, By a number of *extended deeds* relative to the funds of the College, which most commonly bore to be granted by the *Principal and Masters* alone, as proprietors, titulars, &c. and most commonly with the *advice* of the *Rector and Dean*; 2d, From the books of accounts of the *æconomus* or College factor, beginning in 1604, which shewed that the Rector and Dean exercised their functions as visitors, by auditing the same, and acting in a capacity distinct from the Principal and Masters; 3d, From a number of *minutes* of meetings relative to the affairs of the University, from 1621 down to 1730, when the first encroachments began; which pointed out that the Rector and Dean, Principal and Masters, though assembled in the same place, yet acted in different capacities, and not as a joint body; and that to all applications of the surplus revenue, the consent of the Rector and Dean of Faculty had been obtained.

4th, In support of the first article of the declarator, the pursuers appealed to the authority of statutes or regulations composed by certain commissioners for visiting the University, under royal authority, in 1727; which declared the ordinary management of the revenue to be lodged in a meeting of the Principal and Masters, as sole administrators, exclusive of the Rector and Dean of Faculty.

The defenders rested their argument upon the same materials and articles of evidence the pursuers had founded on; but, giving a different construction thereto, maintained,

No. 1.

1st, That by the *nova erectio*, the only separate administration committed to the Principal and Masters was a discretionary power of directing the *æconomus* or provisor in purchasing the daily provisions for the common table; and that, in every other respect, the administration of the revenue was committed to a joint meeting, composed of the Principal and Masters, together with the Rector, Dean of Faculty, and Minister of Glasgow. That, by this grant, it was intended the surplus revenue should be laid out and expended by the joint advice and concurrence of all those persons who were then named, *viz.* The Rector, Dean of Faculty, Minister of Glasgow, Principal and Masters of the College; and that those termed visitors were not by that deed invested with the powers ascribed to them.

2d, That when the deeds of conveyance were examined, it would appear they had been misrepresented, and were expressed in such terms as could not support the pursuers conclusions. That by the style of these, it was intended merely to secure a certain revenue to the society; and that the granters had it not in view to direct the form of the University government, or the manner in which the funds should be managed.

3d, That from the year 1577, the Chancellor, Rector, Dean of Faculty, Principal, and Masters, were in the uniform practice of assembling in one conjunct meeting, to deliberate upon all important transactions relating to the administration of the revenue of the University. That the minister of Glasgow having no interest, appeared to have seldom attended; that in the early period, the Chancellor was always considered as a constituent member; and when he was not present, the Rector presided: That the different extended deeds produced by the pursuers, from which the adhibiting of the *consent alone* of the Rector was inferred, were not uniform; and a number were accordingly referred to, which had a different tendency: That the expressions in the minutes, in which the Principal and Masters were said to have acted with the *advice* and *consent*, and sometimes with the *assent* and *consent* of the Rector and Dean, signified only that the whole members mentioned acted in joint *consultation*, but never could imply that the Rector and Dean had a *negative* upon the resolutions of the others; and that there was not in the records of the University a single instance of any of these persons termed visitors having in any meeting claimed a negative: That in place of a quarterly examination of the accounts of the *æconomus*, Principal, and Masters, it had been the practice to examine and audite the accounts of the College factor alone in an annual joint meeting of the Rector, Dean, Principal, and Professors.

4th, That the chief regulations of the commissioners of visitation in 1727 were calculated to prevent the encroachments of the Principal, and to provide against such abuses as had then occurred in the University administration. These statutes made no mention of the *Chancellor* or *Dean*; and as the only notice taken of the *Rector* was in restoring the ancient mode of election, it was to be presumed that the rights and privileges of these *three* persons were left to be regulated by former usage. The practice, accordingly, from this period

to the present time, had been uniform ; the whole management of the revenue had been carried on in a meeting usually composed of the Rector, Dean, Principle, and Masters ; nothing appeared to be established as to the power of auditing or passing the College accounts ; and from several articles in these statutes, it was clear that the Rector and Dean of Faculty were not considered as visitors with the powers contended for.

Judgment being passed from upon the fourth conclusion of the action, the following interlocutor was pronounced : “ The Lords, in terms of the three
 “ first conclusions of the libel, find and declare, 1st, That the whole revenue
 “ and property of the College of Glasgow (excepting such mortifications for
 “ bursars and other uses which are otherwise conveyed) is, by the foundation
 “ charter granted by King James VI. *anno* 1577, and by the other subsequent
 “ charters and grants, and the statutes of the College, vested in the Principal
 “ and Masters of the said College ; and that the sole right and administration
 “ thereof belongs to them the said Principal and Masters ; and consequently,
 “ that the court of the Rector and his assessors have no legal power or autho-
 “ rity whatever to meddle with or dispose of the College money or revenue of
 “ the College in all time coming : 2dly, They find and declare, that the Rector
 “ and Dean of Faculty of the University of Glasgow, and the minister of the
 “ town of Glasgow, are, by the said foundation-charter, appointed visitors of
 “ the said College ; by whose advice or consent only, or of a majority of them,
 “ all the surplusses of the College revenue, after paying the Masters’ salaries
 “ and other standing burdens, are to be disposed of and applied to pious and
 “ necessary uses of the College : and therefore, that in all time coming, all acts
 “ and deeds whatsoever of the said administrators, in disposing of such sur-
 “ plusses, shall be held to be null and void, unless they bear that they were
 “ done by the express consent of the said visitors, or the majority of them :
 “ 3dly, They find and declare, that, agreeable to the said foundation-charter,
 “ the Principal and Masters, or administrators, are bound to lay the accounts
 “ of the administration of the revenue of the College before the said visitors for
 “ examination ; and that, without the approbation of the said visitors, the
 “ said accounts shall not be held valid or authentic.”

Upon advising a petition and answers, the Lords adhered, and remitted to the Ordinary to hear parties relative to the expenses of process. Thereafter, the Lord Ordinary found, “ That the expense of the process, on the part of the
 “ pursuers, must be defrayed out of the common funds of the College of Glas-
 “ gow ; but refused to find that the defenders’ expenses ought to be defrayed
 “ out of that fund :” and to this finding the Court adhered.

Lord Ordinary, *Justice Clerk.* For Liechman, &c. *Decan, Lockhart, Sol. H. Dundas, R. Blair.*
 Clerk, *Campbell.* For Trail, *Adv. Montgomery, Macqueen, Cullen, Crosbie.*
 R. H. *Fac. Coll. No. 51. p. 143.*

* * * The papers in this case are extremely voluminous and very ably drawn. They give a constitutional history of the University : But as it was impossible.

No. 1. in a work of this kind, to do them justice, the notice now taken of the question is intended merely as an index to farther research.

R. H.

1798. December 5.

The OFFICERS of STATE and the HERITORS of the Parish of Logie, *against*
The NEW COLLEGE of ST. ANDREWS.

No. 2.

Where a College is titular of the one of two parishes united, and the Crown, in right of a bishop, is titular of the other, an augmentation must be allocated upon them in proportion to the proven rental of each.

IN the united parish of Logie and Pert the Crown, as in right of the Archbishop of St. Andrew's, is titular of the former, and the New College of St. Andrew's of the latter.

The College contended, that an augmentation of stipend obtained by the minister should be primarily allocated on the teinds of the parish of Logie, on the ground that teinds belonging to a College are liable for stipend only *ultimo loco*; 9th December 1795, Heritors of Portmoak *contra* Douglas, No. 36. p. 14823.

The Lord Ordinary "found, that in this case the teinds of Logie belonging to the Crown, ought to be allocated upon before the teinds of Pert belonging to the College."

But on advising a reclaiming petition for the Officers of State, and the Heritors of Logie, with answers, the Lords unanimously found, "That the parishes of Logie and Pert, being under different titularities, the modified stipend must be divided betwixt them proportionally, effeiring to their respective rentals, and that each titular has only right to allocate his proportion thereof within his own titularity."

Lord Ordinary, *Ankerville*.
Alt. *Ed. M'Cormick*.

For the Officers of State, &c. *Balfour*.

* * See Sir William Maxwell against Earl of Hopetoun, decided the same day, No. 39. p. 14832.

No. 3.

Election of
Conjunct
Professor.

1807. January 21. ARNOT and Others, *against* HILL and Others.

IN 1721, the Duke of Chandos instituted a professorship of Medicine and Anatomy in the University of St. Andrew's, and vested the patronage in the Rector and Masters of the University. Dr. James Flint was elected in 1770 to the chair, and continued to discharge its duties till April 1804, when he presented an application to the University, to have his son Dr. John Flint.