

can prove prescription by forty years' possession ; though it was alleged to be imprescriptible, as a part of the King's patrimony, though unannexed.

*Vol. I. Page 405.*

1685 and 1686. The COLLEGE of PHYSICIANS of EDINBURGH *against* GEORGE STIRLING, an Apothecary.

1685. *March 25 and 26.*—DOCTOR Cranstone, as procurator-fiscal to the College of Physicians of Edinburgh, having pursued George Stirling, apothecary, before their court, for inroaching on the practice of medicine in curing a young man ; and on his not appearing, having holden him as confessed, they fined him in L.5 sterling. This being suspended, his special reasons were, *1mo*, That he had not contravened the patent, nor practised in medicine ; for all he did to the young student, son to Johnston of Grattay, was to give him a clyster, and to let blood, which are manual operations. Yet the physicians ALLEGED, the using of these was very dangerous to the people, if mistaken or wrong applied ;—so they would put a necessity on us to call them on all occasions. *2do*, That it arose from an external cause, *viz.* a strain in playing at the bullets, as the boy declared, and so this cure by their patent did not concern the physicians ; diseases arising originally from internal causes only, being made the proper and privative subject of their calling.—But it is very difficult to conjecture, from symptoms, whence the true and real cause is. *3tio*, That he was a stranger, and no burgess ; and their College should not extend to such. *4to*, That it was in a case of extraordinary necessity and haste, *et qui non patiebatur moram*. *5to*, That he got nothing for his pains ; and so acts of charity cannot be censured. *6to*, That within twenty-four hours he sent for physicians to him.

The general defences against the decret were, that it was null ; in respect it held him as confessed when he was not personally warned to the diet *pro confesso*,—though he was personally warned to a former diet. *2do*, They clandestinely took a precognition, (which is only competent to the Privy Council, as *officii nobilioris*, and that not without a warrant from his Majesty ;) and finding that did not prove, they suppressed it, and referred the libel to his oath. *3tio*, The decret bears no interlocutor finding the libel relevant, as it ought to do ;—though the referring it to oath *tacite* includes that. *4to*, They are expressly bound up by their patent not to proceed to the fining of any churgeon-apothecary of Edinburgh, unless one of the Magistrates be present with them, and without whose consent it shall not be leisome to fine them. And whereas it is pretended they warned the Magistrates to come :—*1mo*, It was at an unseasonable time, when they were attending the Circuit. *2do*, They did not call them to the first Court, whereas they ought *in omnibus actibus judicialibus assidere*, and not be called merely as ciphers to the last act of fining and sentence. *3tio*, The Magistrates refused ; because Sir Robert Sibbald, the Preses of the Physicians, declared he would not let them preside, (which is their privilege in all such Courts within

Edinburgh,) yea he would not allow them a vote, contrary to their own patent. *5to*, They had unwarrantably directed precepts of poinding on their own decret; whereas their gift of erection gives them only *notio* or *audientia*, like the *judices pedanei et episcopi* in the civil law; but ordains the Magistrates of Edinburgh, and other ordinary Judges, *impertiri suum officium, iisque comm-dare brachium suum seculare cum ab iis imploratur*, (as the Doctors call it,) by executing their decreets, and directing such precepts and executorial thereon as they do upon their own.

This cause being reported by the Lord Drumcairn; the Lords found, where the Magistrates of Edinburgh are required by the College of Physicians to concur, and refused, that then both the judicative and the executive power against the chirurgeons and chirurgeon-apothecaries belongs to the College; but in regard it appears, by the instrument produced, that the Magistrates were only required to assist and concur at the meeting of the College that same day of the instrument, the Lords turn the decret into a libel, and remit the cause to the College, with this quality, that in time coming the College give timely intimation to the Magistrates when they require their concurrence, being 48 hours at least preceding their meeting.

This seemed strange, when the physicians had committed iniquity, yet to remit it back to them, not being in an advocation, but a suspension.

*Vol. I. Page 357.*

1686. *February 2.*—The case between the Royal College of Physicians in Edinburgh, and George Stirling, chirurgeon apothecary, mentioned 26th March 1685, was debated; wherein the Town of Edinburgh compeared and claimed, *1mo*, The presidentship in the meeting; *2do*, A negative in judging the chirurgeon-apothecaries, their burgesses. It was represented against the physicians, that power was inebriating, and therefore thir gentlemen, though very worthy persons, are ready to abuse it, not being accustomed to it; and it may degenerate the sooner into oppression and tyranny, that they are concerned; therefore their power was limited: *1mo*, The Lothians were all cut off. *2do*, The Universities are reserved. *3tio*, The Town of Edinburgh; and, *4to*, The chirurgeon-apothecaries. So that their patent is like those rules whereof there are *plures exceptiones quam exempla*; and what is left them is mainly to regulate their own delinquencies. *2do*, Albeit the magistrate sits with the minister in the kirk-session, yet he takes place of the minister, although he be only his concurring assister; and the minister presides. In such a concurrence, the oldest jurisdiction, the largest and the most honourable, must have the precedence. *3tio*, The Magistrates have more dignities, *viz.* of being sheriffs, justices of peace, &c. whereas the physicians have but one; and the physicians are but *judices pedanei*, having only *notio et audientia*, and limited power, being restricted to a sum, and to call the Magistrates, and to use and implore their *brachium* for putting their decreets in execution: and this threefold cord of the Town's preference, so strongly twisted, ought not to be easily broken. *4to*, The Town are sheriffs a hundred years for every year the Doctors are a College, it being only three or four years since their erection. *5to*, The Town, in a competition betwixt them and the College of Justice, about the precedence in the electing a Regent of Humanity in the College of Edinburgh, got a letter from the King, in 1667, by Sir Andrew Ramsay then their provost's

procurement, determining their provost should have the same place and precedency within the Town precincts, that was due to the mayors of London or Dublin, and that no other provost should be called Lord Provost but he : and now the Mayor of London, when he is in the King's-bench, presides before the Chief Justice : so it does not hinder his precedency that he is not versant in the subject-matter ; for the College of Justice understood Greek and Latin, to choose a regent, better than the provost did ; and yet he presided.

The President drew it to this question, Which was the principal jurisdiction, and which the accessory ? Whether the principal was lodged in the Physicians, seeing they called the meeting, and it was anent a subject of their trade ; or in the Town, who had the first, the amplest and oldest jurisdiction, and were ordained to execute their sentences, and to direct precepts thereupon ? And the Lords having advised the debate, they found, That, by the patent granted to the College of Physicians, the Magistrates of Edinburgh have not a negative ; but that the College may proceed, albeit the Magistrates be not present, or, being present, do not concur, intimation having been made to them to be present : and this notwithstanding that clause of the patent, that it shall not be lawful for them to fine a chirurgeon-apothecary of Edinburgh, without the consent of one of the Magistrates of Edinburgh, who shall be present *et assidebit* : and found, That the right of precedency does belong to the College of Physicians, and not to the Magistrates, albeit the procedure be against chirurgeon-apothecaries, burgesses of Edinburgh.

The Lords were also thinking for redding of marches, to decide thir points : *1mo*, That, for diseases not originally internal, (as their patent distinguishes,) a chirurgeon-apothecary might, without a physician, undertake the cure thereof, where it arose from an external cause, and was not yet come to be a formed and stated disease. *2do*, Where they are bound to call a physician, if the requisition of one be sufficient, or in case he come not, if they be obliged to call another, and so go through them all. *3tio*, What they shall do in case of patients who absolutely refuse to call a physician, either through poverty or a natural aversion. *4to*, What shall be the chirurgeon-apothecary's carriage, if it be only a work of charity, or necessity ; must he stand an idle spectator till a physician come ?

The Chancellor said, baptism, in the case of necessity, might be administered by any ; and the King's Advocate seeming to despise the simile, the Chancellor took it very hot as a contempt. *Vide* 19th February 1686.

*Vol. I. Page 399.*

1686. *February* 19.—The case of the Physicians of Edinburgh, against George Stirling, mentioned 2d February current, being reported by Edmonston ; the Lords remit the cause back again to the College of Physicians ; though it was not in an advocation, but a suspension of a decret ; because the Lords thought physicians would understand to judge delinquencies in physick better than they.

*Vol. I. Page 406.*

See Edinburgh Chirurgeons against The Apothecaries, in the Index to the Decisions.