

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 positivum 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.

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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 Crawford, 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 viviers, 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, *imo*. 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*