

*Answered* for Mr Burnet, Whatever right the principal may claim to two votes in other cases, he cannot be heard to do it in this; where he assumed only a conclusive or casting vote as Præses, after all the rest had voted, upon an imaginary equality presupposed by him; and being *functus*, cannot recur now to claim an elective vote, which he ought to have done before any of the other professors had voted, as is usual where any Præses hath two votes.

THE LORDS found, That, in this case, the principal can have only the casting vote; reserving his claim to a double vote in other cases as accords.

*Forbes, p. 560.*

1712. February 19.

GORDON against BLACK.

MR GEORGE GORDON having been presented by K. William to be professor of the oriental languages in the college of Aberdeen; before the other masters would admit him, they procured a bond from him, renouncing 200 merks of his salary in favours of the college; and he having raised a reduction of it as extorted, and only depositate, he was put to attend that process at Edinburgh a month or two. When he returned to Aberdeen, the first thing he meets with is a program fixed on the college gates, that his place was vacant; and inviting any to come and dispute in a comparative trial for it. Then he requiring the janitor to ring the bell at the hour he used to have his lessons, and to open the common hall door, both were denied; and he was told Mr Black, the sub-principal, had discharged him; and Gordon having gone to him, he told him, you have forfeited your place by your absence above a month; he answering it was necessary, and procured by themselves, he was still debarred access to the schools for executing his function and employment. Whereupon he gave in a bill to the Lords complaining of this insolent summary way of oppressing him, and craving to be reponed. The strait occurred to the Lords was, how Mr Black could be obliged to answer on a bill? However, being appointed to be seen, he did decline to enter summarily into the trial of the affair; yet alleged, in his own defence, what he did was most warrantable, and agreeable to the statutes and Bishop Elphinston's foundation; where it is expressly provided, that the *magistri personalem facient in dicto collegio residentiam*, so that if any of them *per totum mensem se absentaverit, ipso facto ex tunc, prout ex nunc, præbenda sua privatum eum esse declaramus*; and that they cannot dispense with these rules. Mr Black cited another paragraph of their statutes, where all the masters are obliged to take an oath at admission on these terms, *recipiendus tactis sacris Dei evangeliiis juramentum præstabit corporale hæc nostra statuta et constitutiones inviolabiliter observare, singula dicti collegii privilegia defendere, ejusque commodum et utilitatem in omnibus juxta posse suum procurare*: Which oath both Mr Gordon and he having taken, he could not be so far wanting to his duty, as not to put

No 2.

No 3.

Found a professor could not be punished for a delinquency, summarily by the principal; but must be proceeded against in a collegiate manner according to law.

No 3. their laws in execution ; for the college must decay if the regents do not attend. *Answered*, The original of all this procedure is, because he was one of the voters for Mr Burnet's election, against the principal's, and other masters, their inclination to bring in Mr Simson, (*de quo supra*) ; *hinc illæ lacrymæ*. That all these statutes receive their interpretation and limitation from equity, and the nature of things. If you engage me in a law plea, and force me to reply on concussion, can you quarrel me to attend the event, to free myself from your clamant oppression ; and how unseemly is it in them to obtrude his absence occasioned by their own litigiousness ?—THE LORDS found, seeing Mr Black, the sub-principal, had proceeded to sentence and debarment by himself alone, without the judicial presence of the other masters, therefore they ordained Mr Gordon to be repossessed, and the bells and doors to be opened and rung as was in use before ; but prejudice to Mr Black and other founded masters, judges in such academical transgressions, in a collegiate meeting, to convene the said Mr Gordon, and proceed according to law.

*Fol. Dic. v. 1. p. 150. Fountainball, v. 2. p. 726.*

Power of administration in Masters of Colleges. *See* COMMUNITY.

*See* APPENDIX.