

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.

physician at Gainsborough, joined with him in the office, and with this view resigned his professorship.

No. 3.

A majority of the University then proceeded to elect Dr. James Flint and Dr. John Flint, joint Chandos Professors of Medicine, under the following conditions : ‘ 1. That Dr. James Flint shall have, during his incumbency, the sole ‘ right to the salary, emoluments, and perquisites of the office of Chandos Pro- ‘ fessor of Medicine. 2. That Dr. John Flint shall not have right, during the ‘ incumbency of his father, to sit, deliberate, or vote in any meeting of College, ‘ University, or Faculty. 3. That the University shall have a right, at any ‘ time during the incumbency of Dr. James Flint, when they see cause, to ‘ summon Dr. John Flint to reside in this place, and to discharge the duties of ‘ Professor of Medicine, in attending the members of University as physician, ‘ and examining candidates for degrees in medicine. 4. That if Dr. James ‘ Flint and Dr. John Flint are elected joint Chandos Professors of Medicine, ‘ they shall be admitted at the same time, and that previously to their admission, ‘ they shall subscribe, in presence of the University, a minute to be kept *in re- ‘ tentis*, expressing their acquiescence in the three preceding articles. 5. That ‘ upon Dr. James Flint ceasing, by death, by resignation, or in any manner of ‘ way, to have right to the office, Dr. John Flint shall immediately succeed, ‘ without any new admission, to the full enjoyment of the rights, privileges and ‘ emoluments of the Chandos Professor of Medicine, and that his standing ‘ in the University shall be reckoned from the date of his admission with his ‘ father.

Dr. Robert Arnot, the Rector of the University, and the other members in the minority, presented a bill of suspension and interdict against the admission of these joint Professors. The bill was passed, to the effect of trying the question of right, but the interdict was refused, and the joint Professors were accordingly admitted. Upon this the suspenders instituted an action of reduction, to set aside the right of the presentees, which was conjoined with the suspension.

The Lord Ordinary (1st February 1806), “ Having considered the conjoined “ processes of suspension and reduction, at the instance of Dr. Robert Arnot “ and others, against Dr. Hill and others, defenders, with the printed debates “ in the bill of suspension and interdict, at the same party’s instance, produced “ and referred to ; In the suspension, repels the reasons of suspension ; and “ in the reduction, sustains the defences, and assoilzies the defenders ; finds no “ expenses due to either party, and decerns.”

Against this judgment, the suspenders presented a petition to the Court ; and,

Pleaded : It is not competent for the majority of an elective body, the members of which have only a liferent-right of patronage, to elect a successor to an office which is not vacant ; because such a mode of anticipating patronage is an

No. 3. invasion of the right of their successors; who are entitled to fill up vacancies when they occur; Lord Tarbart against Oliphant, December 15, 1693, No. 23. p. 13115; Laird of Innernytie against Nairne, 24th January 1677, No. 5. p. 9899. That the joint election of Dr. Flint and his son was only a pretence for appointing the son successor to his father, is evident from the conditions of his election, by which he is not required to reside in the University, or to perform any of the duties of a Professor;—that he is to have no vote, emolument, or privilege as such, during his father's life, but merely is to succeed to the duties and emoluments upon his father's death or resignation. Although, therefore, he bear the name of a joint Professor with his father, he is in fact merely his successor.

The practice of electing assistants and successors to offices in the Church, and in the Universities, has been to a certain degree recognised, on account of the expediency of the thing, when the existing incumbent is unable to discharge the duties of his office. But such a practice, which is only to be justified by the necessity of the measure in particular instances, does not sanction the practice of granting such offices in reversion, when the existing incumbent is able to perform all the duties, and more particularly in the present case, where it is an express condition of the election, that the successor shall not discharge any of the duties of the office, which is itself an admission that the appointment is unnecessary. If such measures were to be allowed, the interest of the university would evidently suffer; for they become bound to take the successor when the vacancy opens, though preferable candidates are on the field, while the successor is under no obligation to accept the office, unless agreeable to his views at the time. Every reason of expediency, therefore, by which alone such appointments are to be justified, is adverse to the present election.

Answered: A right of patronage is a right with which the patrons are invested for the public benefit; and the more beneficially this trust is exercised, the more effectually do they accomplish the end for which it was confided in them. The power of appointing joint Professors, or Assistants and Successors, is properly exercised when the actual incumbent is either disabled by age and infirmity from performing the duties, or when his advanced age makes it probable that he will soon require an assistant. Unless this were to be allowed, the incumbent would be reduced to the alternative of resigning the rank and privileges attached to his office, or of continuing to hold an office which he can no longer execute with his usual ability. By such appointments, the reputation of the University is kept up, to which it is essential that there should be no interruptions of public teaching; and that, when an incumbent is unable to teach, some person should be immediately found to take his place. Accordingly, such appointments have been long recognised both in the Church and in the Universities, and have been attended with such beneficial effects to both, that they have never hitherto been challenged. There is no good reason for

objecting to the exercise of this power in a case where the existing incumbent, after having so long exercised the duties of his office, is entitled to that relief which the appointment of a colleague gives him ; and as the joint Professor is bound to assume the office whenever he is summoned by the University, he cannot be regarded in the light merely of a successor.

No. 3.

The Court, by a very narrow majority, adhered to the Lord Ordinary's interlocutor.

Lord Ordinary, *Balmuto*.  
Alt. *Gillies*.

Act. *Decanus, Jeffrey, Jardine*.  
Agent, *Walter Cook, W. S.*

Agent, *Alex. Grant, W. S.*  
Clerk, *Walker*.

J.

*Fac. Coll. No. 265. p. 591.*

\* \* This case was appealed. The House of Lords (26th May 1809) pronounced the following interlocutor : ' After hearing counsel, as well on Friday the 28th day of April last, as Wednesday the 3d and Monday the 8th day of this instant May, upon the petition and appeal of Dr. Robert Arnot, Professor of Theology in St. Mary's College, and Rector of the University of St. Andrew's, Dr. James Playfair, Principal of the United College, Dr. John Hunter, Professor of Humanity, Dr. John Adamson, Professor of Civil History in said United College, and Dr. John Trotter, Professor of Ecclesiastical History in St. Mary's College, all in the University of St. Andrew's, complaining of three interlocutors of the Lord Ordinary in Scotland, of the 3d of July 1804, and 1st of February 1806, and the 19th of March 1807, and also of three interlocutors of the Lords of Session thereof, the 11th July 1804, the 21st January and 10th February 1807, and praying that the same might be reversed, varied, or altered, or that the appellant might have such other relief in the premises as to the House, in their Lordships great wisdom, shall seem meet ; as also upon the answer of the Reverend Dr. George Hill, Principal of St. Mary's College, Mr. Nicolas Vilant, Professor of Mathematics, Mr. John Cook, Professor of Moral Philosophy, the Reverend Henry David Hill, Professor of Greek, all of the United College of St. Andrew's, the Reverend John Cook, Professor of Hebrew in St. Mary's College, and Dr. James and Dr. John Flint, joint Professors of Medicine, all in the University of St. Andrew's, put into the said appeal, and due consideration had this day of what was offered on either side in this cause, The Lords Spiritual and Temporal, in Parliament assembled, Find, that the election of Dr. James and John Flint was illegal and void, and that their presentation and induction ought to be set aside and reduced ; and it is therefore ordered and adjudged, that with this finding, the cause be remitted back to the Court of Session in Scotland, to review the interlocutors complained of, and to proceed as to the said Court shall seem meet.'

\* \* The Lord Chancellor, in making the motion for a reversal of the interlocutors of the Court of Session, said, that he wished the judgment to be under-

No. 3. stood to rest altogether upon its own merits, and to proceed entirely upon the circumstances of this particular case, and therefore inapplicable to and having no bearing upon any of the others of a joint election, or of the election of an assistant Professor, which had been mentioned.

W. M. M.