

# APPENDIX.

NOTES OF LORD CHANCELLOR HARDWICKE,  
TAKEN OF THE ARGUMENT OF COUNSEL, &C., IN CASES FORMERLY  
REPORTED.

JAMES CATTANACH ET ALII *v.* GORDON.

*Vide* Craigie and Stewart, p. 401.

*Mr. Hume Campell for Appellant.*

1. That the appellant is duly qualified.
2. If he was not, yet respondent was not duly elected; but the utmost consequence to be drawn from it is, that the election is void.

The qualifications required are, either, 1st, A doctor; or, 2d, *Licentiatulus* "cum rigore examinis."

The first speaks of an academical degree. The second imports it: for there was no such thing as a college of advocates, or Court of Session *there*.

Sufficient to know, that if it were open at law to the Faculty of Advocates to be capable, it could not be, without making a monopoly to themselves.

1. Obj. That the appellant's degree was taken eight days before, in fraud of the statute or charter.

Ans. Frequent to take up such degrees, when they are wanted for qualification.

*This was "cum rigore examinis."*

2d Obj. That the Marischal College of Aberdeen has not power to confer degrees.

Ans. All the universities in Scotland, generally called *Colleges*, have such power.

Not disputed; but they have a power of giving a degree of Master of Arts.

There can be no difference as to the authority.

As to the respondent's qualifications.

The admission of the Faculty of Advocates, is *in order to serve as an advocate at the bar of the Court of Session.*

2d Point.

Impossible to say, that for the want of qualification in the appellant, the respondent is to be duly elected by a minority of votes.

*Extract of Procedure, &c.*

Principal's protest.

Answer.

Reply by way of protest, that *there is no Professor of Law in the College*: That their power of conferring such degrees has never been ascertained; but is still disputed and denied.

*Mr. Erskine ad idem.*

1. It is not a point in question which of the two parties is in fact duly elected.

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2. The Court of Session has proceeded regularly.

3. The electors are made judges of the point, otherwise there will be no such thing as an election.

Then the merits of this case lie in a very narrow compass.

1. What is the characteristic required?

That the professor should be either a Doctor of Laws, or Licentiate *cum rigore examinis*.

Objected—

1. That he has not a degree from a university having power to confer such a degree.

2. If he has a degree, yet he has not obtained it in a proper manner.

Power is given to them *honoris gradus Academicos conferendi*.

Limnæus de jure Publico, Vol. iii. lib. 8, c. . De Universitatibus, where “Academicus” appears—afterwards called University and Collegium very probably.

*Obj.* No Professor of Law at time of election.

*Ans.* At Cambridge no Professor of Music: Degrees in music conferred.

Limnæus “De Universitatibus.”

A man may be admitted an advocate in the Court of Session, though he knows nothing of civil law, and is examined only in the municipal law of Scotland—a writer to the Signet in like manner.

2 Parl. Chap. ii. c. 20. Act of employing vacant stipends.

The vacant stipends of Aberdeen, &c. to the Universities of Aberdeen. Skinner, 485. Phillips and Bing.

*Lord Advocate for Respondent.*

Four questions.

1. Whether respondent, by his admission as an advocate, is in a position of being elected?

2. Whether the appellant, Mr. Cattanach, is qualified?

3. Whether, in consequence, the election is void? or,

4. Mr. Hamilton Gordon duly elected?

1. Impossible, as affairs are situated in Scotland, to comply with the very words of the statute:—

*No professorship of the Civil Law in any of the universities of Scotland after the Reformation, till of very late years.*

*Now one founded in Edinburgh and Glasgow.*

The question is, What is the equivalent for it? *There has been no advocate admitted since the Union, but upon a trial in Civil Law.*

The election at Aberdeen has followed this; but,

2. As to Mr. Cattanach’s qualification, this was an apprenticeship to a procurator at Aberdeen.

About nine days before the election he obtained his Doctor’s degree.

*As to a diploma, ’tis but an honorary degree per saltum.*

The college was erected by a subject, to teach the liberal arts—philosophy, &c.—not for *Divinity, Law, or Physic.*

The conferring degrees is *in regula majore*.

The conferring it by Parliament would not make it broader than it was in itself.

As it was founded to teach the liberal arts, it may confer degrees in those arts.

*No instance of a Doctor of Civil Law in the College till 1727.*

No degree in Scotland in divinity but what are conferred by the presbytery.

3d Point. Whether election void? Where there is a *jus devolutum* this can't be, wherever an incapable person is chosen.

*In corporate elections. if a majority vote for an unqualified person, the person voted for by the minority is elected.*

*Mr. Solicitor Grant ad idem.*

Three general questions.

1. Whether the appellant qualified within the statute and intention of the founder?

2. Whether the respondent capable, according to the present circumstances, in Scotland?

3. Suppose the appellant not capable, and the respondent capable, what will be the consequence of voiding part of this election?

1. As to first—

The foundation of the Marischal College in 1494.

A preference is first given to this College; next, to the University of Aberdeen; lastly, to be of some other university.

The electors did not examine the merits or learning of either of the candidates.

The sovereign may confer power of giving degrees either in part or in whole.

The Marischal College founded by the Earl Marischal, after the Reformation, for the promotion of the liberal arts.

*Nothing, however, of their conferring a degree in the civil law in 1727.*

2. Act of 1 Parl. Chas. II., c. 4, puts the new College of Aberdeen upon the same footing with the College of Edinburgh.

2d Point. Whether respondent capable?

If there is no such degree now in Scotland as Doctor, nor beyond that of Master of Arts, then the question is, how the intention of the founder is to be complied with?

It is to be proved.

By the practice in Scotland, a minister ordained and allowed, is admitted to them (*i. e.* degrees of Doctors in Law) in the place of a Doctor in Divinity.

3d Point. Whether the respondent being capable, and the appellant incapable, the respondent is elected, though by a minority?

If the 13 had voted for different persons, the respondent would have been elected.

*If the 13 had refused to vote at all, the four would have been the majority.* } Notice.

*Suppose vote for a person not elected by a lect, or not an alderman.*  
Case of Fellows of University College.

How is a devolution?

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ROXBURGH  
v.  
JEFFRAY, &c.

*Respondent is a member of the old University of Aberdeen; appellant not a member of either, or of any other university.*

*Mr. Hume Campbell (expt.)*

*Kelso Case.—DUKE OF ROXBURGH v. JEFFRAY and Others.*

House of Lords, 18th March 1757.

Craigie and Stewart, p. 632.

*Lord Advocate for Appellant.*

No attempt by appellant to prevent the respondents from exercising their trades.

The question is, Whether they are a corporation having an exclusive right? or,

1. Whether the burgh of Kelso is a body politic or corporate?

2. Whether said several societies are also incorporations, with perpetual succession?

1. Creation of burghs of barony is in favour of the baron.

All the powers are constituted in the family of Roxburgh.

2. Suppose a burgh of barony and the burgesses are a corporation, yet it does not follow that these corporations have exclusive privileges.

The power is given to the family of Roxburgh to admit all the several kinds of tradesmen.

These societies have no seal of cause, *i. e.* patent or instrument of erection.

3. As to customs.

Have directed the Duke to account.

1. The charter 1607 cum ad usos rusticos burgi ad applicandi.

Not in the contract.

This is discharged by charter 1614 and 1634.

2. Suppose the burgh had anciently a right, it is barred by *prescription*.

Act 22 James VI. anent prescriptions. This relates to the positive prescription.

We are equally entitled to the positive prescription.

*Obj.* That part of the duties are now so applied.

*Ans.* The Duke of Roxburgh only allowed the profits of the spoon and ladle for the salary of his bailiff.

No interruption.

No document has been taken.

3. As to customs which were now vested in Learmont and Heatly.

Those were the common and petty customs.

4. *As to the island.*

The whitening of linen—there was only a tolerance.

Nothing like a servitude in law.

*The words of the charter 1647. The non obtenando, &c.*