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defended only by a single wooden lock, and the window by a single bar of iron. Besides, had the jailor been vigilant, no such instruments could have been admitted into the prison, nor any of the operations carried on. The magistrates have adduced nothing in justification; and the onus of proving this lying on them, they must be held liable.

After hearing counsel, it was
 Ordered and adjudged that the interlocutors complained of be, and the same are hereby affirmed.

For Appellants, *Sir Samuel Romilly, Henry Erskine.*

For Respondent, *Geo. Jos. Bell, Fra. Horner.*

NOTE.—Unreported in the Court of Session.

[M. App. Part I. "College," No. 3.]

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; and Dr. JOHN ADAMSON, Professor of Civil History, in the said United College; and Dr. JOHN TROTTER, Professor of Ecclesiastical History in St. Mary's College; all in the University of St. Andrew's,

} *Appellants;*

Dr. GEORGE HILL, Principal of St. Mary's College; Mr. NICOLAS VILANT, Professor of Mathematics; Mr. JOHN COOK, Professor of Moral Philosophy; the Rev. HENRY DAVID HILL, Professor of Greek; all of the United College of St. Andrew's; the Rev. JOHN COOK, Professor of Hebrew in St. Mary's College; and Dr. JAMES and Dr. JOHN FLINT, styling themselves Joint Professors of Medicine; all in the University of St. Andrews,

} *Respondents.*

House of Lords, 26th May 1809.

COLLEGE—ELECTION OF PROFESSOR—CHANDOS FOUNDATION.—An election having been made of Dr. James and Dr. John Flint, as

Joint Chandos Professors of Medicine in the University of St. Andrew's, this was objected to as irregularly proceeded with, and as inconsistent with the terms of the foundation, and with the practice in that University, of electing Professors therein. It was answered, that, in practice, it was quite common in the other Universities of Aberdeen and Glasgow to make a joint election, and the practice was followed in the Church of Scotland of appointing an assistant and successor, which this appointment simply was. Held that the election was a good election. In the House of Lords reversed; and held the election illegal and void.

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The present question arises out of the election of the respondents, Dr. James and Dr. John Flint, as joint Chandos Professors of Medicine in the University of St. Andrew's.

Dr. James Flint, the father, had been for nearly 34 years the Chandos Professor of Medicine in the University; but, having a strong desire, it was stated, to have his son, Dr. John Flint, to succeed him, he had made several attempts to procure him appointed joint Professor along with him, which had failed. But, availing himself of an opportunity which occurred, from the absence of those electors opposed to him, he subsequently moved in the matter, by letter to the University, alleging his age and increasing infirmities as rendering this step necessary.

The Chair of Medicine was founded by the Duke of Chandos. The foundation was in these terms, "To elect and choice such ane person to be Professor of Medicine and Anatomie, as shall be provided with testimonies of *his* being adorned with the degrees of Master of Arts, and Doctor of Medicine, and shall be approven by the University, after such trial of his sufficiency as shall be by us or our successors further agreed to; and that such election shall then, and in all time thereafter, be made by the plurality of the voices of the Rector, Principal, Professors and Masters of the University for the time."—"And that he shall, after such instalment, have right to the entire produce of the above sum of £1000 Sterling as his salary, and shall have a free suffrage and vote with the other Professors in the University;" and that, "upon any emergent vacancy, they shall supply the office, within six months, with a *person* qualified as fore-said." In an after clause it provides, "That our said University shall have full power and liberty to make such further regulations as may be thought most conducive for the advancement of the foresaid profession," &c.

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April 28, 1804.

The letter of Dr. Flint was received, and, at a meeting of the University, it was moved that it should lie on the table until next meeting.

When the meeting was convened, to consider Dr. Flint's letter, Dr. Playfair rose and moved, "That, in the meantime, a committee be appointed to examine the foundation of the Chandos Professorship, the regulations relative thereto established by the University, and precedents of former elections, and to report to a meeting subsequent to 15th May next, on which day the induction of Dr. Hunter was to take place, as Professor of Rhetoric."

This motion was negatived by six of the eleven members who attended; and who, in its stead, proposed and carried the following resolutions: "That if the Professor of Medicine shall resign his office, it is competent and expedient for the University, after accepting the resignation, to elect Dr. James Flint, and Dr. John Flint, his son, joint Chandos Professors of Medicine in the University, upon the following terms: 1st. That Dr. James Flint shall have, during his incumbency, the sole right to the salary, emoluments, and perquisites of Chandos Professor of Medicine. 2d. 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. 3d. 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 the University as physician, and examining candidates for degrees in medicine. 4th. 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 retentis*, expressing their acquiescence in the three preceding articles. 5th. 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." The appellants protested against these resolutions.

Dr. James Flint thereupon resigned, and retired ; and he and his son were immediately elected joint Professors of Medicine, although the appellants objected that the meeting had not been called for an election, and moved, without success, an adjournment of the meeting.

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The appellants, conceiving this to be an incompetent election, brought a bill of suspension and interdict, praying their Lordships to suspend the *inductions* of these *joint* Professors, till the merits of the election should be finally determined.

Interim interdict was at first granted, but, after discussion, this was recalled by the Lord Ordinary, who at sametime July 3, 1804. passed " the bill to the effect of trying the question of right."

On reclaiming petition the Court adhered. Whereupon the July 11, 1804. appellants brought the action of reduction and declarator, for setting aside the right of the presentees, and declaring the right of the members of the University, in the exercise of their patronage of this professorship. This action was conjoined with the suspension.

It was contended that the whole procedure in the election was unwarrantable and irregular. It was purposely hurried on before the induction of Professor Hunter, while, for this precipitancy, there was no cause or necessity, Dr. Flint, senior, being in full vigour of health. But the question of right to make the election and nomination is of great importance, both in a general point of view, as well as respects the interest of the University. In considering this question, it is necessary to keep in view the precise situation in which the Drs. Flints, father and son, actually are. It will be seen that this election made no alteration whatever in the situation of Dr. Flint, senior. He remained the actual *incumbent*, having the sole right to the salary, emoluments, and perquisites of the office. This appeared from the minute of election. Moreover, Dr. John Flint was not to have a right, during the incumbency of his father, to sit, deliberate, or vote in any meeting of College, University, or Faculty. It was true, by the minute, that the University were to have a right to summon, when they saw cause, Dr. John Flint to reside in St. Andrew's, and to discharge the duties of Professor of Medicine ; and that, upon the father's ceasing, by death, resignation or otherwise, the son was immediately to succeed. But it was manifest that Dr. Flint, senior, was considered to be, and now is, the sole incumbent, and the son's right merely a gift as *successor*, to take effect at some after period. Such an appointment the appellants

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hold to be quite illegal, and inconsistent with the Chandos Foundation. It was further stated, that the cases referred to did not apply. In them the younger grantee enters immediately to the active discharge of the whole duties, and the former incumbent is superannuated on his salary. No cases like the present have yet appeared; but the respondents cannot deny that it would be incompetent for a liferenter, or an heir of entail possessing the right of patronage of a church, to defeat the right of the fiar, or next substitute, by appointing an assistant and successor to a parish minister. And the members of the College are in a similar situation. With regard to the practice of appointing to joint Professorships in the Universities of Edinburgh, Glasgow, and Aberdeen, these have all been of a nature different from the present. The appellants know that not one of them have been sanctioned by the decision of the Court, and they are, besides, contrary to the clearest principles of law and equity. It may therefore be doubted how far this practice of appointing joint Professorships can be sanctioned and established by mere practice; but even if it could, no such practice has hitherto occurred in any one instance in St. Andrew's, although it has subsisted for 300 years. Nay, if practice is at all to be allowed to affect the question, then as the practice in this University has, since its foundation, been the very opposite of allowing such appointments, the case on this head falls at once to the ground.

In answer, the respondents pleaded, that the University, in the exercise of those rights which are common to patrons of Professorships in Scotland, and in conformity to powers vested in them by the constitution of the Chandos Professorship, was entitled to elect Dr. John Flint, junior, assistant successor to his father. It is the imperious duty of patrons to make such elections, in all cases where the actual incumbent is either disabled, by age or infirmity, from performing the duties of his office, or where, from advanced age, it is probable that the aid of an assistant will be speedily required, and that the duties will be subject to interruptions.

At the time of the election, Dr. Flint was 70 years of age, had been 40 years in the Chair, and his request to have a colleague, was both reasonable and expedient. Were such an arrangement incompetent, then both the Professor and the University would be exposed to great hardship and

injury. For the Professor would be forced to resign, and thereby lose his salary, or be obliged to retain his office long after his usual abilities were impaired, and his bodily infirmities totally incapacitated him. In the present election every step taken, besides, was fair. There was no hurry or precipitancy in carrying it through. The arrangement had been contemplated for some years; and when at last it was carried through, every member of the University got timeous notice. The admission of Messrs. Flint is further regular, by the terms of the Chandos bond. The bond prescribing that the Professor “shall be instantly and in due form installed by the said Rector in his said office and profession of medicine and anatomy.”

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The Lord Ordinary pronounced this interlocutor in the conjoined processes:—“In the suspension, repels the reasons of suspension; and in the reduction, sustains the defences, and assoilzies the defender; finds no expenses due to either party, and decerns; and, in order that this cause, which has already been so much agitated, may receive a speedy determination, dispenses with any representation being presented against the interlocutor.” On reclaiming petition the Court adhered.*

Feb. 1, 1806.
 Jan. 21, 1807.

Against these interlocutors the present appeal was brought to the House of Lords.

* Opinions of the Judges:—

LORD PRESIDENT CAMPBELL said:—“This is a question in regard to the election of a Professor. I am of opinion there is a majority of votes for Dr. Flint; and that this would be the case, even counting those who were absent.

“A conjunct election or nomination is not uncommon, and, in particular circumstances, highly expedient. Assistants and successors are often given to ministers and professors; and the nature of these offices does not exclude such appointment as in the case of judges or officers in the army or navy.

“There was sufficient time and notice given here; and there is no objection in point of fitness stated to the party. There ought to have been no interdict, either in this or the other case.”

Petition, 11th July 1804.

“See my former notes. The interdict ought never to have been granted. We must hold the election to be good till set aside, and the admission follows of course.”

President Campbell's Session Papers, (Jan., Feb., March, 1805.)

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Pleaded by the Appellants.—The election in question was proceeded with in an irregular manner when the elective body was not full, and with an intention of preventing the exercise of the elective franchise of a Professor already appointed, whose induction was to take place in a few days, and whose sentiments were supposed to be hostile to the measure in question; and this without even the pretence of necessity for such precipitancy. Further, the election in question, though it affected to be a joint election, was in fact an election of Dr. Flint, senior, as actual *incumbent*, and of Dr. Flint, his son, to be his *successor*, or Professor *in reversion*. Such an election was incompatible with the rights of the electors in the present case, and an infringement upon the rights and privileges of their successors; and the law upon this subject has been confirmed by repeated decisions of the Courts in Scotland. It is therefore incompetent, in cases like the present, to make a joint election. Whatever practice may have obtained of joint appointments in the Church of Scotland, and in other Scotch Universities, no case of that kind has been sanctioned by any decision of the courts of that country; and the practice in the University of Saint Andrew's in all time past has been decidedly hostile to such joint appointments, the propriety of which have come repeatedly under discussion. Besides, the appointment is not only an infringement of, and contrary to the regulations of the Professorship laid down at the time of its original foundation; but also contrary to the act 20 Geo. II. c. 32, in so far as it alters the number of patrons and administrators appointed by that statute.

Pleaded for the Respondents.—The terms of the Chandos bond, which is both the foundation of the patronage, and the rule according to which it must be exercised, the University are invested with a power of making all such regulations as may be thought most conducive for the advancement of the “foresaid Profession.” The University, in the exercise of this discretion, considered that an assistant and successor was, from the advanced age of Dr. Flint, necessary for the due and uninterrupted performance of the duties of the Professor of Medicine and Anatomy, and appointed a person to that situation whose qualifications were unquestionable, and whose character was unimpeachable. By the law and invariable practice of Scotland, it is the common right of patrons to appoint assistants and successors in those cases in which it is necessary. The patronage, in this case,

vested in the University, was a public trust, which it was the right and duty of the University so to exercise that there might be no interruption in the performance of the duties of the office, which, from age and inability of the present incumbent, was daily apprehended; and the election, in the present case, was both regular, necessary, and expedient.

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After hearing counsel,

THE LORD CHANCELLOR ELDON said,

“ My Lords,

“ This appeal respects the validity of the election of Dr. James and Dr. John Flint, to be joint Chandos Professors of Medicine in the University of St. Andrew’s.

“ In 1721, the then Duke of Chandos founded this Professorship in the University of St. Andrew’s. His Grace paid the sum of £1000 to that University, for establishing a fund for this Professorship. This sum was accepted of by the University; and they thereby became bound by law to observe the rules and regulations laid down by the founder, in so far as these were not duly altered. These rules and regulations were laid down in a bond granted by the University for this purpose. The bond is in the following terms. (Here his Lordship read the Chandos bond).

“ This instrument, from beginning to end of it, unless it is to receive some construction from the common law of Scotland, or by analogy from other cases which I am not aware of, appears to provide for this Professorship being to be enjoyed by a single individual at a time. It is true that there is a clause in it, that the University should have power to make ‘ *such farther* regulations as may be ‘ thought most conducive for the advancement of the foresaid Profession.’ This clause was founded on by the respondents, and shall be afterwards further noticed.

“ In 1770, Dr. James Flint was elected to the Chandos Professorship. Both parties agreed that he has faithfully executed the duties belonging to his situation during this long period. They agree also, that for the last nine or ten years he has been very desirous of having his son, Dr. John Flint, physician at Gainsborough, in Lincolnshire, appointed joint Professor with him. The appellants state his views to have been, to have his son appointed Professor in reversion. That Dr. James Flint was to perform the duties and receive the salary, and that the son was to have a sort of undivided moiety of the Professorship, and to be called, on his father’s death or resignation, in his turn, to perform the duties, and receive the salary of this office. This project had been for so many years in the view of Dr. James Flint, and was so well known to all the members of the Uni-

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versity, that it was strongly insisted upon by the respondents as doing away with any objection from want of notice of the transaction which I am about to mention. But, if a formal notice was necessary, in regard to this matter, I think your Lordships will agree with me, that no notoriety as to the wishes of Dr. Flint, senior, would be tantamount to such legal notice.

“ We now come down to the 21st of April 1804, when Dr. Flint’s wishes were first *formally* communicated to the University. At a meeting of the University held on that day, Dr. Flint gave in a letter, stating his desire to have his son, Dr. John Flint, joined with him in his office. This letter the meeting directed to lie upon the table till the 28th of April, and a meeting was appointed for twelve o’clock of that day, ‘*to take it into consideration.*’ (His Lordship read at large the minute of this meeting of the 21st of April).

“ It was very gravely insisted upon at your Lordships’ bar, that this minute, joined to certain communications made to Dr. Hill, in letters to Dr. Playfair and Dr. Adamson, gave seven days’ notice of the election which subsequently took place on the 28th of April. The minute of the 21st says merely, That the letter was to be taken into consideration on the 28th, and I see nothing in Dr. Hill’s letter more than this, that an intimation was given, that if Dr. Flint, senior, *should resign his office*, certain proceedings might be thereupon competent. It is necessary to recollect, that Dr. Flint’s letter was to be taken into consideration by persons not in the ordinary situation of patrons of Church livings, and the like, but by those who were to act according to the directions of the Chandos bond, and who were to execute their right of election, after a trial of the sufficiency of the candidate. This supposes that the electors were to have an opportunity given them of trying the merits of any candidate, and of allowing others to become candidates.

“ You would think me ridiculous were I to state, that this direction, contained in the minute of the 21st of April, joined to the communications made by Dr. Hill, could be considered as legal notice of an election held on the 28th of April. It would be a mockery to say, that the electors were thereby enabled to look out for other candidates, or that other candidates were enabled to offer themselves upon an intimation such as this. The electors could not know, in a legal point of view, if any vacancy would actually take place or not, or that an opportunity would occur to make any election.

“ Without using any harsh language, it appears to me to be quite impossible to disguise from one’s self what the meaning of this truly was.

“ Then we come to the meeting of the 28th of April. (Here his Lordship read the minutes of the 28th of April at length).

“ It is quite impossible to say, that what is here termed an election, took place on due notice; the parties did not know, at least

ought not to have known, that any resignation would take place till they came to this meeting. Whether you consider it as a joint election, or the election of an assistant to Dr Flint, senior, it was an election of neither, in terms of the Chandos bond ; it was a mere appointment of two persons to this office, made by certain of the electors, without notice to, and contrary to, the consent of the others.

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“ I consider it to be quite unnecessary to enter into the other points of this cause ; upon the grounds already stated, I have no difficulty whatever in saying that this pretended election was illegal and void.

“ I have only one observation more to add,—upon an argument stated by the respondents, that the proceedings might be supported under that clause of the Chandos bond, which allowed the University to make such farther regulations as might be thought most conducive for the advancement of this Professorship. I never saw any proposition less tenable than this, that the transaction in question could be supported on that ground. It is quite impossible for me to represent to your Lordships that it could be so justified. I therefore move, &c.

It was ordered and adjudged, That the election of Doctors 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.

For Appellants, *Sir Samuel Romilly, Henry Erskine.*

For Respondents, *Wm. Adam, Adam Gillies, James Wedderburn.*

NOTE.—It is very inaccurately stated in M. App. Part I. “ College,” that “ 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 understood to rest altogether upon its own merits, and to proceed entirely upon the circumstances of the 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.” No such observation as that now quoted was made by the Lord Chancellor.