[*7th August* 1840.]

The UNIVERSITY of GLASGOW, Appellants.[1]

(No. 18.)

[*Attorney General (Campbell) — Sir W. Follett.*]

The FACULTY of PHYSICIANS and SURGEONS, Respondents.

[*Lord Advocate (Murray) — Dr. Lushington.*]

Corporation — Penalty — Costs. — Held (affirming the judgment of the Court of Session pronounced on a remit from the House of Lords), (1.) that the Faculty of Physicians and Surgeons of Glasgow are a corporation; (2.) that the adjection of a penalty in the grant of a corporation, for contravention of corporate privileges does not preclude the corporation from the benefit of an interdict; and (3.), that costs in the House of Lords were properly awarded by the Court of Session to the respondent under an authority on remit to determine the question "of the respondents costs "relating to this appeal."

Sequel of the case in Shaw and M'Lean, vol. ii. p. 275.

2D DIVISION.

Lord Ordinary Medwyn.

Statement.

ON the 28th of August 1835 the House of Lords pronounced the following judgment: — "It is ordered "and adjudged by the Lords spiritual and temporal in "parliament assembled, that the said cause be remitted "back to the Second Division of the Court of Session "in Scotland, with directions to the Judges of that "Division to consider, and to take the opinions of the "whole Judges of the Court of Session, including the "Lords Ordinary, whether the respondents, as the

[1] 12 S., D., & B., p. 9; 15 D., B., & M., and Fac. Coll.

UNIVERSITY OF GLASGOW *v.* FACULTY OF PHYSICIANS AND SURGEONS.

7th Aug. 1840.

Statement.

" Faculty of Physicians and Surgeons of Glasgow, are " a corporation, capable in law of possessing and in " fact clothed with the rights for which they contend in " this action? As also to consider, Whether the right " of interdict is taken away by the provision of a penalty " made in the grant or letter of gift in the pleadings " mentioned? And it is further ordered, that the said " Court do determine the question of the respondents " costs relating to this appeal, and that they have power " to recall or alter the said interlocutors appealed from."

On the cause returning to the Court of Session, cases on the points remitted for consideration were ordered to be laid before the whole Judges for their opinion, and the following opinion by the consulted Judges was returned:—

Opinion of Court.

Lords President, Gillies, M'Kenzie, Corehouse, Fullerton, Moncreiff, Jeffrey, and Cockburn.—" We have con- " sidered the remit from the House of Lords, with the " cases subsequently lodged for the parties, and the " whole process, and remain of the opinion which we " formerly gave, that the respondents in the appeal are " a corporation, capable of holding the rights which " they now claim.

" Their title is a letter of gift or charter from King " James the Sixth, dated the 29th November 1599, " which was ratified by the Scotch parliament in 1672. " Their possession of the character of a corporation and " their actings in a corporate capacity for more than " two centuries are established by documentary evidence " of the fullest and most satisfactory nature, and their " title as a corporation has not only been recognized in " various judicial proceedings, but specially found and " declared by this Court in an appropriate action " brought for that purpose.

" The case of the appellants, as it appears to us, " derives its only support from the principle which they " have adopted of laying entirely out of view the law " and practice of Scotland with regard to corporations, " and substituting in its stead the law and practice of " England in that matter, not as to one point only, but " almost every point which they have had occasion to " raise. It is true that the corporation law of Scotland " has a general resemblance to that of England, as it " has to that of many other countries in Europe, for " the nature and object of these institutions are the " same in all, being originally derived from the civil " law, and afterwards modified by feudal rules to suit " the form of government and state of society and " manners when that system sprung up. But, notwith- " standing this general resemblance, the law of each " country in details and matters of form has its pecu- " liarities, and in none are they more remarkable than " in our own law as contradistinguished from that of " England.

" Before examining the grant of King James the " Sixth, the appellants suggest a doubt whether the " term charter is not improperly applied to it, because " it passed under the Privy Seal, and not under the " Great Seal. This seems to be of little moment, " because there is no question what the document is to " which both parties refer. We may remark, however, " that it forms no part of the definition of a Scotch " charter that it is a writ passing under the Great " Seal. Taking the term in its most restricted sense, " namely, a grant of land, or other heritable right, " from a superior to a vassal, nine tenths of the charters " in Scotland not only do not pass under the Great " Seal, but they pass under no seal at all. With regard

UNIVERSITY OF GLASGOW *v.* FACULTY OF PHYSICIANS AND SURGEONS.

7th Aug. 1840.

Opinion of Court.

" to the more extenisve and appropriate use of the term,
" it is employed as a synonyme for literæ patentes or
" patent letters, in contradistinction to literæ clausæ or
" close letters, under whatever seal they pass, or whether
" they are sealed or not. If King James's grant had
" been directed to Messrs. Low and Hamilton exclu-
" sively, or even to them and their brethren in suc-
" cession exclusively, the letters would have been close,
" and could not with propriety have been called a
" charter. But the letters are patent, for they are
" addressed by the King, not to those individuals, or to
" the Faculty of Physicians and Surgeons, but to all
" provosts, baillies of burghs, sheriffs, &c., within cer-
" tain bounds, 'and all and sundrie otheris our leidges
" 'and subjectis whom it effeirs, quhas knowledge thir
" 'our letteris sal cum,' that is, omnibus probis homi-
" nibus totius terræ suæ, the precise formula of a Scotch
" charter ever since the days of King David the First.
" Even letters of deaconry, by the magistrates and council
" of a burgh, or a lord of regality, by which corporations
" are often constituted, by virtue of a delegated power
" from the Crown, being letters patent, are rightly
" termed charters; accordingly, in the documents and
" pleadings, to which the parties in this case have
" referred, during a period of more than a century,
" this grant has been indiscriminately termed a gift, a
" patent, and a charter. We have alluded to this, not
" because it shows how unsafe it is to apply the law or
" forensic language of England to a Scotch case, even
" where there is a general analogy or resemblance.

" The charter is granted in favour of Mr. Low, the
" King's surgeon, and Mr. Hamilton, professor of me-
" dicine, that is, physician, 'and their successors, in-

" 'dwellers of our citie of Glasgow;' and it gives them " power to convene before them all persons professing " or using the art of surgery within certain bounds, that " is, within the burgh of Glasgow, Lanarkshire, Renfrew- " shire, Dumbartonshire, and Ayrshire; to examine them " upon their literature, knowledge, and practice; to ad- " mit and authorize them, if they are found qualified; " to debar them, if otherwise, and to fine them, if they " are contumacious, by a judgment, on which letters " of horning are directed to pass. Power is given to " Messrs. Low and Hamilton, or the visitors, with the " advice of their brethren, to make statutes for the " common weal of the subjects anent the said arts, that " is, surgery and medicine, and to punish the breakers " of them; and various duties are imposed on the " visitors, indwellers of Glasgow, professors of the said " arts, and their brethren, present and to come. " Lastly, the magistrates, sheriffs, and other ministers of " justice, to whom the letters are addressed, are or- " dained to assist and defend the visitors and their pos- " terity professors of the said arts, and to put the grant " into execution.

" The appellants maintain that there is no corpo- " ration constituted by this charter, and, therefore, that " the respondents have no persona standi in judicio, " that is, no title to sue or to be sued as a body. This " plea is rested on various grounds.

" First, It is said that a special denomination is one of " the essentialia of a corporation; that where it is erected " a name must be given to it; that the King must bap- " tize it; and that the name thus given is indispensable " to its existence. In support of this doctrine passages " from Coke, Blackstone, and Kyd are quoted, excellent " authorities, undoubtedly, as to the law of England,

UNIVERSITY OF GLASGOW *v.* FACULTY OF PHYSICIANS AND SURGEONS.

7th Aug. 1840.

Opinion of Court.

" but not one of these learned authors says that it is " also the law of Scotland. Whatever may be the " form by which a corporation is baptized in England, " nothing is requisite with us but a grant from a com- " petent authority, bestowing corporation privileges on " a set of persons in existence, and their successors of a " certain description. It will throw light on this point, " and indeed on every point which the appellants have " raised in this branch of the cause, to consider the way " in which corporations anciently came to be erected in " the royal burghs of Scotland, and the style of the " writ issued for that purpose.

" It appears to have been an early practice for the " various trades within burgh to form voluntary societies, " for regulating their business and for raising a fund by " the contribution of their members. Those societies " laid down rules respecting the trial and admission of " masters, the number and fees of apprentices, the " mode in which the trade was to be carried on, and " the like. Further, they were in use to appoint offi- " cers to collect their funds, which, before the Refor- " mation, were for the most part applied to defray the " expense of an altar dedicated to the patron saint of " the craft, and to pay the priest who officiated there. " Thus, the surgeons of Edinburgh had an altar dedi- " cated to St. Mungo; the tailors to St. Anne; the " weavers to St. Soverane; the waukers to the Saints " Mark, Philip, and Jacob, and so forth. The officer " who had the charge of the altar was called kirk-master " or deacon (an ecclesiastical term); if he collected the " contributions he was called quarter-master, because " they were paid quarterly; and visitor, if he was ap- " pointed to examine the qualifications of the tradesmen " or the goodness of their work. But as those were

" voluntary associations only, they could not enforce
" their rules, or levy the duties which they imposed, not
" only in the case of a person who had never joined the
" society, or who had abandoned it, but even in the
" case of a refractory member, because they had no
" persona standi as a body. To remedy this, it became
" the practice for the trade to present a petition to the
" magistrates and town council, the great corporation
" of the burgh, who have in every case an express or
" presumed authority delegated to them from the
" Crown, on behalf of the kirk-master, quarter-master,
" or visitor of the craft, and of some or all of the mem-
" bers, either named or described in the petition, pray-
" ing the council to interpose their authority to the
" laws, statutes, and ordinances of the craft, by a grant
" in favour of the petitioners and their successors, that
" is, all who exercised and should exercise the trade
" within the limits of the grant. If this petition was
" complied with, a writ in the form of a charter to that
" effect was issued under the burgh seal, which writ is
" technically called a seal of cause; and there is no
" point in the law of Scotland more clearly settled than
" that a seal of cause so issued erects the grantees into
" a corporation, and gives them power to sue and be
" sued, with every other privilege necessarily incident
" to a corporate body, whether expressed in the grant
" or not, such as the power of electing officers, imposing
" fines, making bye-laws, and the like.

" The same form was adopted by lords of regality
" and barons, who had power in their rights from the
" Crown to erect corporations within their burghs of
" regality and barony; and it is evident from the pre-
" sent charter that the same style, mutatis mutandis,

UNIVERSITY OF GLASGOW *v.* FACULTY OF PHYSICIANS AND SURGEONS.

7th Aug. 1840.

Opinion of Court.

" was adopted in the erection of corporations by the " Crown itself.

" When it is objected, therefore, that the faculty of " physicians and surgeons in Glasgow had no special " denomination given to them in King James's letter in " 1599, or, as it is quaintly said, that they were not " baptized, the obvious answer is, that the grant is made " to them as the members of a specified calling in a " specified place, that is, as physicians and surgeons, " being indwellers in Glasgow. They are baptized just " as the corporation of surgeons and barbers in Edin- " burgh were a century before, in their seal of cause, " dated in 1505. The petition in that case was pre- " sented by the kirk-master and brethren of the surgeons " and barbers within the burgh of Edinburgh, and the " grant is to them and their successors. Thus also, in " the case of the tailors of Edinburgh, the petition was " presented by John Steill, kirk-master, George Bell, " William Hockburn, and seven others named, 'and " 'the laif of the tailors' craft within this burgh;' and " the charter confirms the rules of the society 'to the " 'said masters and their successors of the said craft.' " Thus also, in the case of the butchers of Edinburgh, " the petition is given in by 'Richard Furde, deykin of " 'the fleshoris for the tyme, Robert Gray and others, " 'principall masters of the said fleshoris craft;' and " the council ratify the regulations exhibited to them, " without even naming the craft. Thus also the peti- " tion of the candlemakers is presented by Robert " Taffintoun, Andrew Galloway, and others, craftsmen " of the candlemakers of the burgh of Edinburgh, and " the seal of cause merely ratifies the regulations. In " the case of the weavers or websters the petition is

" presented in the name of 'the best and worthiest per-
" 'sonis of the hail craft of wobstaris within the said
" 'burgh.' And the council find the statutes exhibited
" 'lovable to God and holy kirk, honourable for all the
" 'realme, profitable and worship for the craftsmen, and
" 'therefore we admitt the samyn.'

" A multitude of other instances might be given of
" the erection of corporations, both in Edinburgh and
" in the other royal burghs of Scotland, in which the
" same style was adopted at and previous to that period,
" and it does not appear to have been changed till a
" considerable time after the union of the Crowns, when
" a more correct system of conveyancing in this depart-
" ment was gradually introduced.

" It is evident that the charter in question was framed
" on the same model with the seals of cause then in
" use. It does not, indeed, narrate a petition presented
" by Mr. Low, surgeon, and Mr. Hamilton, professor
" of medicine, and the other surgeons and physicians in
" Glasgow, probably because there was no voluntary
" association of the practitioners of those arts in Glas-
" gow, and perhaps no petition was presented by Messrs.
" Low and Hamilton; but the grant is to those indi-
" viduals designed or described by the arts which they
" practised, and their successors, indwellers of the city
" of Glasgow. No kirk-master is mentioned, because it
" was subsequent to the reformation; but Low and
" Hamilton are appointed visitors, the term which, after
" that event, was often applied to the principal officers
" of such corporations.

" The second objection taken by the appellants is,
" that there are no 'incorporating words' in King
" James's letter of gift, or words which evince any

UNIVERSITY OF GLASGOW *v.* FACULTY OF PHYSICIANS AND SURGEONS.

7th Aug. 1840.

Opinion of Court.

" intention on the part of the Crown to create a cor-
" porate body. This is another attempt to substitute
" the law of England for that of Scotland. It is quite
" sufficient, by our law, that privileges are conferred in
" the grant which can only be exercised by a corporate
" body, and there is not one privilege conferred by
" King James's charter which is not of this descrip-
" tion. Thus power is given to Low and Hamilton,
" and their successors, to summon and convene before
" them all persons professing or using the art of sur-
" gery within the bounds; to pronounce decrees against
" the contumacious, on which diligence by horning and
" caption is to follow; to make statutes for the common
" weill of the King's subjects anent the said arts, and
" using thereof faithfully, that is, the King's subjects
" dwelling within the bounds; to prosecute physicians
" practising their art, not being graduates or licensed
" by the King and Queen's physicians; and various
" privileges are granted to the visitors, indwellers
" of Glasgow, professors of the said arts, and their
" successors, present and to come, analogous to other
" corporations erected by seals of cause. That there
" is no necessity for express words of incorporation
" is evident from the seal of cause granted, 31st
" January 1775, by the town council of Edinburgh
" to the weavers' craft, in which there are no such
" words. The same is the case in the seals of cause
" granted to the hammermen, to the tailors, to the
" cordiners, to the goldsmiths, and to the surgeons and
" barbers of Edinburgh, and instances to the same
" effect may be found, it is believed, in every royal
" burgh in Scotland. It was not the style of the writ
" in and before the reign of King James VI., to declare

" the grantees to be a corporation in express terms, yet " all the trades or faculties having grants from the " sovereign or from councils of burghs during that " period exist at present as corporations, and have " always acted and been recognized as such.

" Then it is said by the appellants, that perpetual " existence by succession is the essence of a corporate " character, and that this grant does not express the " mode of electing or continuing the corporate body. " We conceive that the provision for continuing the cor- " porate body is clearly expressed, and expressed in the " usual and appropriate style of the period. The grant is " to Mr. Peter Low, surgeon, and Mr. Robert Hamilton, " physician, and their successors, indwellers in the city " of Glasgow, that is, all surgeons and physicians legally " practising those arts, and residing in that city. No " person under the exceptions in the grant was entitled " to practise surgery without a licence from the grantees " or their successors, or medicine without a licence " from a university or the royal physicians; a provision, " therefore, is made for the subsistence of the corpo- " ration as long as there are surgeons and physicians " legally qualified to practise and practising their re- " spective arts in Glasgow, and actually residing there. " When Messrs. Steill, Bell, &c., and the rest of the " master tailors of Edinburgh petitioned the magis- " trates and council to confirm the rules which they " had made for the practice of the tailor craft, there " was no provision in their rules for the election of kirk- " masters or visitors, no provision for the nomination " of future corporators; neither was the council prayed " to grant a power of making other bye-laws. On that " petition the council confirm the rules presented to

UNIVERSITY OF GLASGOW v. FACULTY OF PHYSICIANS AND SURGEONS.

7th Aug. 1840.

Opinion of Court.

" them ' in all poynts and articles to the said masters,
" ' and their successors, of the said craft, in perpetual
" ' memorial in time to come.' That was the usual
" form of a seal of cause in 1500, by which a succession
" of corporators was provided for. So in 1517, when
" Robert Taffintoun, Andrew Galloway, and the rest of
" the candlemakers presented a similar petition to have
" their rules confirmed, the prayer was granted in favour
" of the said craftsmen and their successors, without
" any farther provision as to the mode of succession.

" In the case of Wallace v. Calder [1], referred to in
" the pleadings, the same objection was taken by the
" suspender, Calder, to the ambiguity of the term
" ' successors ' in this grant. It was said, the grant
" might be construed as personal to Peter Low and
" Robert Hamilton and their families, provided the
" successors in their families were of the profession of
" the original patentees; and a great deal of discussion
" followed on that plea. But the Court, although they
" diminished the amount of the fine imposed on Calder,
" sustained the privileges of the corporation in all re-
" spects. More than seventy years have elapsed since
" it was settled by a decree of this Court in foro con-
" tentioso who the successors of the grantee are, and
" surely it is too late now to stir the question again.

" The appellants argue, that no power is conferred
" by the grant of making bye-laws to regulate the pro-
" ceedings of the body, but that a power is given, and
" unlawfully given, to make general laws for surgical
" practice. The clause is in these terms:—' That it
" ' sall be leisum to the saidis visitouris, with the advice

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[1] Post, p. 423.

" ' of thair bretheren, to make statutis for the commoun
" ' weill of our subjects anent the saidis airtis, and
" ' using thairof faithfullie; and the braikeris thairof to
" ' be punishit and unlawit be the visitouris according
" ' to their falt.' It is the common style in the old
" seals of cause to represent the rules recited in them
" for regulating corporate proceedings and the practice
" of the craft as statutes made for the glory of God, the
" honour of the realm, the worship of the town, and
" the profit of our sovereign lord's lieges; and therefore
" this power of making statutes 'for the commoun weill'
" of the subjects anent the arts in question clearly in-
" cludes a power of making bye-laws for regulating the
" corporation; and so it was construed at the time, for
" the very first acts of the faculty, as appears from the
" extracts from their minute book, consist in making a
" series of bye-laws for regulating their corporate pro-
" ceedings. This expositio contemporanea of the grant
" is certainly more authoritative than any speculation
" with regard to its meaning now. Whether it em-
" powered the faculty not only to examine and admit
" practitioners within their bounds, that is, within the
" four counties named, but also to lay down rules for
" their surgical practice after being admitted, may well
" be doubted; and we are not aware whether such a
" right was ever claimed. If it had, however unlawful
" according to English ideas, it would have been no
" novelty in the law of Scotland; for by King James
" the Sixth's charter, of the 3d of January 1586, to the
" goldsmiths of Edinburgh, the corporation is ' invested
" ' with a power to inspect, try, and regulate all golden
" ' and silvern wares, not only in Edinburgh but in
" ' all other parts of Scotland, with a right to punish

UNIVERSITY OF GLASGOW v. FACULTY OF PHYSICIANS AND SURGEONS.

7th Aug. 1840.

Opinion of Court.

" ' offenders concerned in making adulterated gold or
" ' silver.'

" It is plain, that as neither Mr. Low nor Mr. Ha-
" milton, the visitors of the corporation, were royal
" physicians, they and their brethren had no right by
" the grant to examine and admit physicians, or to grant
" licences for the practice of physic. A degree from a
" university, or a licence from the royal physicians, was
" sufficient for that purpose. But in the ratification in
" parliament in 1672, which bears to recite the grant
" of the 29th November 1599, the words quoted are:—
" ' And that it sall not be leisum to any maner of
" ' persones within the foresaidis bounds to exercise
" ' medicine without ane testimoniell of ane famous
" ' universitie wher medicine is taught, or at leist the
" ' persones above mentioned, and their successors,
" ' under the pains contained in the said gift.' Now it
" is plain that the grant is misrecited here, for nothing
" is said in it as to the grantees having a power to give
" testimonials for the exercise of medicine: that was
" reserved for the universities and the royal physicians.
" Mr. Low was only a royal surgeon. But it has been
" suggested to the House of Lords, that the Court of
" Session were not entitled to say that there is a mis-
" recital in the ratification 1672; that if the grant had
" been to A., and the parliamentary ratification had
" been in favour of B., the court had no right to say
" that the legislature meant A. and not B., and that
" this act, if it is good for any thing, gives the power
" to the persons whomsoever it names, and not to those
" whom the grant of 1599 names. The appellants have
" made this suggestion to the House of Lords appa-
" rently under a misconception, and a very natural one

" in England, of the nature of a ratification by the " parliament of Scotland; supposing it to be similar to " a private act of the British parliament, or analogous " to it. But in Scotland a parliamentary ratification " was not a proper law,—it carried no new right,—no " person was held to be a party to it,—it was carried " through periculo petentis, and was subject to reduc- " tion by the Court of Session. This was settled by " an act of the legislature as early as the reign of Queen " Mary. See statute 1567, cap. 18. and Sir George " Mackenzie's observations upon it. If any act of this " description, therefore, bears to ratify a preceding " grant, and misrecites it, to that extent the act is null; " and not only has the Court of Session a right to " notice this misrecital, but it is pars judicis to do so. " Perhaps a court of law at Westminster might hesitate " to find and declare that an English act of parliament, " even though a private act, was from the beginning, is " now, and will be in all time coming void, null, and " of no effect in judgment, or outwith the same. But " there is no doubt that the Court of Session can so " deal with a Scotch ratification. If the grant is in " favour of A., and the ratification in favour of B., A. " will take nothing by the ratification, but assuredly " neither will B.; for, except in so far as it corresponds " with the grant, it is unavailing, unless perhaps, when " followed by possession, it may be held a prescriptive " title.

" Doubts have been entertained whether the ratifi- " cation, being in favour of the surgeons, apothecaries, " and barbers alone, can be of any effect, now that the " barbers have withdrawn from the corporation; but it " never was held, in Scotland at least, that the existence

UNIVERSITY OF GLASGOW v. FACULTY OF PHYSICIANS AND SURGEONS.

7th Aug. 1840.

Opinion of Court.

" of a corporation was affected, because part of the " corporators dissolved their connexion with it. The " surgeons of Edinburgh remain a corporation though " the barbers withdrew from it in 1722; and so also " the waukers, although the bonnet-makers, who were " incorporated with them at the date of their charter, " are now a separate craft.

" Leaving the construction of the grant, we have next " to observe that few cases have occurred, if indeed any " one, in which the possession of corporation privileges " for nearly two centuries and a half has been proved " by such overwhelming evidence. It is unnecessary to " recapitulate the proof, for it is distinctly stated in the " case for the respondents. The faculty of physicians " and surgeons are found making bye-laws, and enforcing " them, as early as 1602. They appear in the course of " that century to insist in actions as a corporation, and " their title is sustained; a list is produced of more than " eighty bonds of desistance taken between 1659 and " 1701, by parties who attempted to violate their privi- " leges; and that not only where the parties practised " in the city of Glasgow, but in every other district to " which the grant extends. At least fifteen of these " bonds are from individuals practising in the county " of Ayr, to which a doubt is now expressed whether " their privileges ever did extend. Where bonds " of desistance were not granted extrajudicially, the " faculty cited the offenders before their own court, " and pronounced decrees against them, upon which " diligence by horning and caption was raised. A list " of seventeen of these decrees is produced between " 1725 and 1759, on most of which diligence appears " to have followed.

" The appellants attempt to get rid of all this evi-
" dence of possession by referring to a letter of dea-
" conry, which the surgeons and barbers obtained from
" the magistrates and town council of Glasgow in 1656,
" and they say that this proves the faculty not to have
" been a corporation before that year. It proves that they
" were not a burghal corporation, that is, they had not
" the privileges with regard to the government of the
" town and other rights which it was in the power of
" the magistrates and town council to confer. But the
" town council of Glasgow could not give the faculty a
" corporate jurisdiction over four counties, or warrant
" all the corporate acts which were performed within
" that extensive district at any period, and still less
" during a period of more than fifty years before the
" date of the letter of deaconry. It is insinuated that,
" with the exception of what appears in the minutes to
" have taken place in 1602, there is no evidence of the
" faculty acting as a corporation before the date of the
" letter of deaconry. But that is a mistake. It is
" proved that the faculty sued as a corporation in 1635,
" founding exclusively on King James's gift as their
" title, for the letter of deaconry had not then been
" granted; and in that action they obtained a decree
" against all persons within their district practising
" surgery or medicine contrary to the terms of the
" grant, and against all judges and magistrates within
" these bounds to concur in enforcing the grant; and
" upon this decree general letters of horning were
" raised at the instance of the faculty. If there was
" not another document in process, we are of opinion
" that these signet letters would be decisive with regard
" to the point of possession. But there is a great mass

UNIVERSITY OF GLASGOW *v.* FACULTY OF PHYSICIANS AND SURGEONS.

7th Aug. 1840.

Opinion of Court.

" of proof to the same effect, particularly with regard " to corporate acts performed after the letters of dea- " conry were resigned.

" In addition to the title which the respondents have " produced, and the continuous possession satisfactorily " shown to have followed upon it, the question now " under consideration has been repeatedly decided in " this Court; and that not only in cases where the " rights of the faculty were indirectly recognized, but " where the point was distinctly raised and brought " before the Court for judgment. It was tried and " decided in an action of declarator raised by the " faculty in 1691, in which the summons libels upon " the gift of James VI., and concludes that the privi- " leges granted by it shall be declared. It was again " tried and decided in the suspension at the instance of " Calder v. Wallace in 1761, in which almost all the " arguments now advanced against the title of the " faculty were resorted to. And these were not unde- " fended cases, but judgment was pronounced in foro " contentioso. A series of cases followed, in which the " rights of the faculty thus established were judicially " recognized. So clear was the point considered, that " even the appellants themselves did not venture to stir " in the Court below previous to the present appeal. " We do not think that they were in consequence pre- " cluded from recurring to it in the House of Lords, " but we are of opinion that the decisions to which we " have referred are to be held as precedents settling the " law upon the point.

" With regard to what fell from Lord Gifford, in " the case of the Writers to the Signet v. Graham[1], it is

[1] 1 W. & S. 538.

" enough to say, that his Lordship did not decide the " question, whether the writers to the signet are a cor- " poration or not. He held that he had not materials " before him for that purpose. His judgment went on " a separate ground altogether, namely, that, whether " they were a corporation or not, they had not been sued " in that character, and therefore that their action could " not be supported. Whether Mr. Erskine was wrong " in laying it down as established law in his time that " the writers to the signet are a corporation, (for that is " necessarily implied in his observations on the College " of Justice,) remains yet to be tried.

' The only other point which we are directed to con- " sider by the remit is, ' whether the right of interdict " ' is taken away by the provision of a penalty made in " ' the grant or letter of gift mentioned in the plead- " ' ings?' We are clearly of opinion, that the right " of interdict is not taken away. When a penalty is " imposed to enforce an obligation, no option is given " to the party against whom it is directed to get quit " of his obligation by paying the penalty. In the lan- " guage of the law of Scotland the penalty is by and " attour performance. It is one mode of enforcing the " obligation added to every other mode which would " otherwise have been competent This is so clearly " proved by the authorities cited in the respondents " case, that we think it unnecessary to enlarge upon " the subject."

The following addition was made by *Lord Moncreiff*:

—" Although retaining the opinion, or the doubt at " least, formerly expressed by me on the general merits " of this case, I entirely concur in this opinion on " the points embraced by it."

UNIVERSITY OF GLASGOW *v.* FACULTY OF PHYSICIANS AND SURGEONS.

7th Aug. 1840.

Judgment of Court, 7th March 1837.

On the case being advised by the Judges of the Second Division, the following unanimous interlocutor was pronounced on the 7th (signed 9th) March 1837:—

"The Lords having resumed consideration of the "cause, with the opinions of the consulted Judges, "find, that the respondents in the appeal, as the "Faculty of Physicians and Surgeons of Glasgow, are a "corporation capable in law of possessing and in fact "clothed with the rights for which they contend in this "action; and that the right of interdict is not thrown "away by the provision of or penalty made in the "grant or letter of gift in the pleadings mentioned, "and decern and declare accordingly; and adhere, and "confirm the interlocutors of Court dated 12th and "signed 15th November 1834, and 23d January 1835: "Find the Surgeons and the University conjointly liable "in the expenses incurred in the House of Lords, and "also in the expenses incurred in this Court since the "date of the remit by that House."

Against that interlocutor the University of Glasgow appealed.

Appellants Argument.

Appellants.—The opinions of the consulted judges have proceeded in some degree from a slight misconception of the nature of the question before them; and perhaps in a still greater degree from an undue and ill-founded impression, that, from the nature of the remit, this House intended to apply the principles of English law to the decision of a Scotch case, and have laid down principles of law with regard to corporations, which have been applied for the first time to the present question, and are at variance with constitutional as well

as with corporation law. There is no difference in the principle of the English and the Scotch corporation law; but the judges below have failed in the proper application of it. Words of incorporation, though usual, are not necessary, but there must be some words indicating a perpetuity. This House desired to know whether or not the King possessed the power of creating a corporation; and in answer to this question no reason, principle, or authority is given; and the learned Judges seem to have satisfied themselves with the fact, that these bodies have been created, and continued to style themselves corporations, without going into any inquiry as to the principle.

They assume that the prerogative of the Crown was sufficient to grant a corporation, and that because by the constitutional law of Scotland the King could create a corporation, and invest it with the powers claimed by the letter of 1599, they are entitled at once to arrive at the conclusion, that a corporation was created by the letter of gift of 1599, and that the parties claiming under it are vested with the privileges which they now seek to enforce. On the other hand it is maintained that no corporation was created, and that the intention of the letter of gift, however it may have been abused, was merely to bestow certain personal privileges of examination upon particular individuals, and those who might fill the situations held by them, if such privileges could legally be bestowed upon individuals in succession.

The letter of gift of 1599 specially excluded the right of the visitors, and their successors, to interfere with those individuals practising medicine who possessed the diploma or "testimonial" of a university where medicine is taught, as is proved by the narrative of the letter; which shows that the intention of King James the Sixth

UNIVERSITY OF GLASGOW v. FACULTY OF PHYSICIANS AND SURGEONS.

7th Aug. 1840.

Appellants Argument.

in granting it was to prevent "ignorant, unskillit" and uneducated persons from practising as surgeons, and negatives any intention to interfere with the rights of the universities, or to throw discredit upon the education received there, and the testimonials or degrees which they might grant. The testimonial of a university is declared to be sufficient to exclude any power of examination or interference on the part of the visitors; and the only question is, whether this exclusion is limited to the peculiar degree of doctor of physic, as separated from surgery, or whether it applies to the whole art of medicine? The Court below appear to look upon surgery as something apart and separate from medicine, and hold that the testimonial or degree of a university does not apply to it; but there is no ground for this distinction. It is quite true that physicians and surgeons turn their attention to different branches of the healing art; but they are both comprehended under the general term of medicine. The definition of surgery is thus given[1]:—"The term surgery has been usually em-
"ployed to signify that part of medicine which treats
"of the diseases of the human body which are to be
"cured or alleviated by the hand, by instruments, or
"external applications." And in the case of Steele[2] the Lord Justice Clerk treats surgery as a branch of medicine: he says, "I know that in very many parts of
"the kingdom the distinction between physicians and
"surgeons is by no means defined. Nothing is more
"common than for a person to exercise both profes-
"sions, and to practise the one is not considered an
"encroachment on the other. The distinction is much
"too fine. That accurate chemist Dr. Thomson says,

[1] Encyc. Brit., voce "Surgery."

[2] See post, p. 419.

" that physic and surgery are the two departments of " medicine. It is impossible to draw a distinction." If, therefore, surgery is to be considered a part of medicine, and omne majus continet in se minus, a party having a testimonial from a university of skill in surgery is necessarily exempted from all interference on the part of the respondents. And as the University of Glasgow possessed the power of granting testimonials in surgery, giving the privilege of practising surgery, that right cannot be abridged or destroyed by the letter of 1599.[1]

The Court of Session has found the appellants liable in the costs of the previous discussion in this House, under the erroneous impression that it was the intention of this House that these costs should be given if the point remitted was decided by them unfavourably to the appellants.[2]

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[1] 1 Kyd, Inc., pp. 13, 14; 1 Blackstone, pp. 467, 472–474; Conservators of the River Tone v. Ash, 10 Barn. & C. 349; Writers to the Signet v. Graham, on appeal, 1 Wils. & S. 538; Steele, 26th Feb. 1819, not reported; Kam. Elucid., art. 7. p. 54; Maitland's Hist. of Edin. 294; Jamieson's Dict., " Craft."

[2] Opinions of Judges of Second Division as to costs of first appeal:—

Lord Glenlee.—" I cannot see how in common justice we can refuse " the pursuers expenses, as I see it stated in the defenders case that the " question was not properly tried before us formerly. At all times " expenses are the pœna temere litigantium. This is a case of temere " litigans, and expenses should certainly be given."

Lord Meadowbank.—" I am entirely of the same opinion."

Lord Medwyn.—" When a party does not sufficiently plead a point in " the original court, but only in a court of appeal, expenses ought clearly " to be given against him, especially if he be in the wrong. We for- " merly found expenses due in this case, and we are bound to find them " anew."

Lord Justice Clerk.—" I conceive that the power with regard to the " expenses of this discussion, inserted in the remit by the House of " Lords, was inserted in order to give us the power to award the " expenses, which otherwise, under a remit under such a clause, might " have been matter of doubt. I am clear we must find expenses due."—Rep. in Fac. Coll.

UNIVERSITY OF GLASGOW v. FACULTY OF PHYSICIANS AND SURGEONS.

7th Aug. 1840.

Respondents Argument.

Respondents.—The unanimous opinion of the Court below affords a distinct explanation in regard to the peculiarities of Scottish law on the subject of corporations; and under the sanction of that opinion the respondents submit, that, even looking at the charter of 1599 by itself, and apart altogether from the explanatory possession which followed, it possesses all the necessary characteristics of a valid Scottish charter of incorporation. Whether it be drawn with that technical precision and fulness which the law of England would require, the respondents cannot say; but it sufficiently contains the requisites of a Scottish charter of incorporation; and it so contains them, that any judgment which would refuse effect to this charter would actually nullify the greater part of the charters on which corporate rights in Scotland at present subsist.

It forms no good objection to the validity of the charter, that no specific name is expressly set forth in it as that by which the corporation was to sue and be sued; for, by the law and practice of Scotland, this was not necessary, and so it is stated in the opinion of the Court below. Neither does it form any valid objection, that there are not in the charter "incorporating words," or words of technical style, declaring the body to be a corporation. By the law of Scotland it is enough, if, from the whole scope and purview of the deed, the intention to create a corporation be fairly gathered. It is enough if it appear, from the general terms and nature of the deed, of whom the corporation was intended by the founder to consist; and in the present case this was sufficiently done by the bare erection of the craft into a corporation. The provision for continuing the corporate body is clearly expressed, and

expressed in the usual and appropriate style of the period; and the very words of it point to futurity. The deeds of incorporation, on which most of the trading crafts of Scotland now rest their existence, contain nothing more than a general grant of corporate privileges, either to individuals then existing, or to the craft generally named, "and their successors of the said "craft," without any further provision for the perpetuation of the corporate body, other than what is implied in this general grant itself, from the very nature of the case.

And whilst, even considered by itself, the charter of 1599 is thus to be held a valid charter of incorporation, the respondents are further entitled to maintain that its character as such is at once proved and confirmed by the possession which followed on it, affording both a contemporaneous exposition and a subsequent ratification of more than 200 years. The possession shown to exist is traced, with a distinctness very rarely to be found, back to the year 1602; according to the consulted Judges:—"Few cases have occurred, if indeed "any one, in which the possession of corporation pri-"vileges for nearly two centuries and a half has been "proved by such overwhelming evidence."

The respondents are therefore, under the charter 1599, and the possession following thereon, a lawful corporation, possessing the privilege of examining and licensing all persons desirous of practising surgery within the bounds specified in the charter, and of excluding all persons who have not been so examined and licensed from the practice of surgery within these bounds.

It cannot be successfully maintained that the holders

UNIVERSITY OF GLASGOW *v.* FACULTY OF PHYSICIANS AND SURGEONS.

7th Aug. 1840.

Respondents Argument.

of the degree of master in surgery, instituted by Glasgow College, are exempted from the operation of the charter held by the faculty, which is of the most ample and unlimited description, requiring all who are desirous of practising surgery within the bounds therein specified to be examined and licensed by the faculty.

In opposition to the terms of the charter, the appellants maintain that an exception lies in favour of certain persons from the general rule thus laid down. It is therefore incumbent on them to make good this exception clearly and unequivocally; and this they attempt to do by endeavouring to establish for those holding the degrees of universities, and amongst others of the university of Glasgow, an inherent privilege of practising every where the art in which the degrees are granted, without the party being subjected to interruption or interference from any quarter whatsoever: and as they claim no higher regulæ for the university of Glasgow than belong to other universities, the position of the appellants must be considered to go to this, that whenever a science or art is taught in any university, and a degree in that science or art is granted by the university, the effect of that degree is to enable the holder of it to practise that science or art every where, without its being in the power of any individual or any body of individuals to interfere to prevent him. This, however, is a position submitted to be untenable.

The respondents are entitled to have their rights enforced, by obtaining an interdict against those individuals who practise surgery without being examined and licensed by the faculty. No principle in the law of Scotland is more clearly settled, — and so it has been laid down by the consulted judges,—than that the provi-

sion of a penalty for the breach of any obligation in no way extinguishes the right to apply to the courts of law for the ordinary preventive remedies against the breach of obligation, and amongst others that of interdict, which is, of all remedies, the most common and direct. There is much sound expediency in the establishment of this principle; for, however proper the penal remedy may be as a punishment for past transgressions, it seems only consistent with equity that, in a matter of civil right future transgressions should be checked by the bar of the preventive remedy. In the case of a body like the faculty, the mere exaction of a penalty like that in question would be utterly ineffective to accomplish the ends of the law.[1]

Ld. Chancellor's Speech.

The LORD CHANCELLOR.—My Lords, the question in this case was, whether persons holding a degree in the College of Glasgow,—the degree of master in surgery,—are entitled to practise within the bounds of the charter of incorporation granted to the surgeons of Glasgow, without being examined and licensed by the faculty of Glasgow.

My Lords, it appears that the University of Glasgow have recently granted degrees in surgery. They have

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[1] *Respondents Authorities.* — College of Physicians v. Levett, 1 Lord Raymond, 472; College of Physicians v. West, 10 Mod. Rep. 353; 1 Kyd, 62–69, 226–254, and 2 Kyd, 50; Surgeons of Glasgow v. Magistrates of Glasgow, 7th July 1694, 1 Fount. 633; App., p. 54, of printed papers; Surgeons of Glasgow v. Calder, 1761, ibid. p. 64; Surgeons of Glasgow v. Dunlop, 1791, ibid. p. 77; Surgeons of Glasgow v. Magistrates of Glasgow, 1791, ibid. p. 74; Magistrates of Glasgow v. Steele, 26th February 1819, ibid. p. 82; Skirring v. Smellie, 17th Jan. 1803; Fac. Coll. xiii. 170; No. 76, Mor. 10921; Fleshers of Canongate v. Wight, 11th Dec. 1835, 14 D., B., & M., p. 135; Blankley v. Winstanley, 3 T. R., p. 279; Magistrates of Dunbar v. The Heritors, 11 S., D., & B., p. 879; 1 Sh. & M'L., p. 184, reversed.

UNIVERSITY OF GLASGOW *v.* FACULTY OF PHYSICIANS AND SURGEONS.

7th Aug. 1840.

Ld. Chancellor's Speech.

been in the habit of granting degrees in physic or medicine, but till recently they have not granted degrees expressly in the science of surgery.

The title of the corporation which claims a right of licensing persons to practise surgery within certain limits, rests upon a charter or letter of gift of James the Sixth, of date the 29th of November 1599; by which he granted to two persons, described as "professors of "medicine," and their successors, indwellers of the city of Glasgow, certain powers for the purpose of regulating the practice of surgery and medicine. It turns upon the expressions used in that letter, and on what has taken place since that letter, whether the right in question belongs to this corporation. They were by that letter empowered to call before them "all persons pro- "fessing or using the art of surgery within the bounds "specified, to examine them upon their literature, "knowledge, and practice, and, if found worthy, to allow "and approve them, give them testimonials, and autho- "rize them to practise." They also were authorized to appoint visitors to inspect the bodies of those who might be hurt or murdered, and to make statutes as to the practice of the art; and by the fourth clause it was provided, that no person should exercise medicine within the bounds of the charter without the testimonial of a famous university where medicine was taught, or a licence from the King's or Queen's physician; and the visitors appointed were empowered to interdict transgressors under certain penalties.

My Lords, it was very much matter of discussion whether this authorized the corporation to exercise jurisdiction over surgery, it being contended that it was included in and formed part of the science of medicine.

It appears, however, that the distinction between the two is very carefully guarded in this letter or charter, because it makes this distinction between them: that persons shall not practise surgery without a licence from the corporation, but persons who practise medicine may practise it, provided they have a degree of a famous university where medicine is taught, or the testimonial of the king's or queen's physician.

My Lords, it does not rest upon that charter, although that is the foundation of the claim of this corporation, for it appears that by the Scotch act of 1672 that charter was confirmed. The enactment was, that it should be confirmed after the form and tenor thereof in all points, in so far as the same gift and the ratification thereof could be extended in favour of the surgeons, apothecaries, and barbers within the said burgh of Glasgow, and their successors, and no further; and his Majesty and estates of parliament declared, that the general ratification should be as valid and sufficient as if the gift were word for word engrossed, notwithstanding the same be not so done.

My Lords, it does not rest upon that ratification of that act, for in 1691, upon a question arising as to the constitution of this corporation and the extent of their rights and privileges, those rights and privileges were declared by the Court of Session by a declarator of that date[1] in these terms:—"The Lords of Council and "Session has found and hereby finds and declares the "said chirurgeons of Glasgow their privileges in terms "of the foresaid gift and ratification, and possessione of "debarring unfreemen lybelled, and particularlie that

[1] Surgeons of Glasgow v. Magistrates, 1691. See App., p. 54, printed Session Papers in this cause.

UNIVERSITY OF GLASGOW v. FACULTY OF PHYSICIANS AND SURGEONS.

7th Aug. 1840.

Ld. Chancellor's Speech.

" the visitors of the chirurgeons at the time of the said " gift, and their successors ever since and in all time " coming, had and have right to make rules and statutes " anent the dispensing of the said airt, and to ordour " the manner of the election of their successors, and also " to make rules anent the admission of fit and qualified " persons for the practice of the said airt and trade, " and to debar all others from the exercise of yrof " who are not duly admitted conform to the said rules; " and particularlie to debar all such as have not served " their apprentisship in the town of Glasgow, or have " not married the daughter of one freeman of the said " incorporation, and also tryed and found qualified; " and to fine all unfreemen exercising the same in the " soume of fortie pounds Scots toties quoties."

My Lords, I will not occupy your Lordships time in stating the various suits which since that period have been brought into the Court of Session, further than to state the names of the causes and the years in which they took place; for it does appear that there have been various instances not only of the constant and repeated exercise of the privilege which is claimed by this corporation, but several suits at different periods in the Court of Session in which the right has been acted upon and established. In 1761 there was that which is called the Calder case [1], in which the right was claimed directly; in 1791, in the case between the Faculty and Alexander Dunlop [1]; and in 1819 another case [1], which goes so directly to the point that I will state what was the interlocutor then pronounced. It was an action at the instance of Dr. John Balmanno, president of the faculty

[1] Ante, p. 423.

of physicians and surgeons of Glasgow, and Moses Gardiner, Esquire, their visitor, for themselves and in the name of the remanent members of the said faculty. There were several points found and established by that interlocutor: first, "That the titles produced by the "pursuers, as explained and confirmed by the acts of "possession condescended on by them, afford a suffi-"cient title to carry on such an action as the present. "That in virtue of the diplomas and other memorials "produced by the defenders and other persons named, "these parties are authorized without challenge to "practise medicine within the districts specified in the "royal grants founded on by the pursuers." That applies to medicine as distinguished from surgery, "that "no persons can within the said district practise sur-"gery or carry on the business of an apothecary or "druggist without such an examination as is there "described, that the defender has been properly pro-"hibited from carrying on the profession of medicine "and surgery, or that of an apothecary, as not being "sufficiently qualified; and decerns and declares ac-"cordingly."

Now, my Lords, that being the state of the decisions, the present contest arose, and when it came before the Second Division of the Court of Session the other Judges were consulted, and six of the learned Judges stated their opinion to be in favour of the rights of this corporation; they joined in the same judgment; one other Judge, Lord Medwyn, concurred in opinion, but he made a separate note, explaining the grounds on which he proceeded. There is certainly the high authority of Lord Moncreiff, who did not differ as to the title

UNIVERSITY OF GLASGOW v. FACULTY OF PHYSICIANS AND SURGEONS.

7th Aug. 1840.

Ld. Chancellor's Speech.

of the corporation; but the doubt he entertained was not as to the effect of the grant from the Crown, and not as to whether this body was a corporation or not,—but his doubt arose from the contest between what he supposed to be the right of the College of Glasgow and this corporation. He considered that the College of Glasgow, being of more ancient date and having the power to grant degrees, a grant from the Crown, though confirmed by parliament, ought not to interfere with their privileges.

My Lords, it appears that the University of Glasgow, though they have been in the constant habit of granting degrees in medicine, have not been in the habit of granting degrees in surgery, so that during the whole period that these two bodies have been acting together, one has been granting degrees in medicine, which is excepted from the grant made to this corporation, inasmuch as those who practise medicine are only called upon to obtain the licence either of the king's or queen's physician, or a degree of some famous university where medicine was taught; but with reference to surgery, there was given to that corporation by that grant the exclusive privilege, and they seem to have exercised the exclusive privilege from the period of that grant till the period when this contest arose, supported by the various decisions to which I have before referred. If, therefore, there had been any conflict of authority between these two bodies, the length of time during which the one had exercised the power and the other had abstained from exercising it would be quite sufficient to enable your Lordships to come to the conclusion as to which of the two bodies ought to be permitted to exercise the right;

and that was the opinion of the great majority of the Judges, — in short, of all the Judges except Lord Moncreiff.

My Lords, when this case came before your Lordships House in the year 1835, my noble and learned friend (Lord Brougham) was in the House, and the discussion of the case ended in a remit for the purpose of ascertaining two points, and two points only; namely, first, whether this body claiming to be a corporation was a legal corporation, and secondly, whether, as they had a power of imposing a penalty, the power to impose a penalty superseded any right they would otherwise have of applying to the Court of Session for an interdict against parties practising. My Lords, that remit being made to the Court of Session has produced, certainly, very learned opinions from the Judges to whom that question was referred. They have gone at a very great length and with very great learning into the history of this corporation, and the result is, that they have stated an unanimous opinion, that this is a legal corporation according to the law of Scotland, and that, the corporation having the power to raise a penalty of 40*l.* Scots, it did not debar them from the right of applying for the protection of their privileges by reference to the Court of Session.

My Lords, my noble and learned friend will be able to state, (for the remit from this House does not specify, and from any information we have it does not appear,) to what extent the opinion of the House was formed on the other parts of the case. One may, however, assume that the difficulty of the case was limited to those two points on which it was sent back to the Court of Session. If that is so, the opinion of the House has been formerly expressed on the other points,

UNIVERSITY OF GLASGOW v. FACULTY OF PHYSICIANS AND SURGEONS.

7th Aug. 1840.

Ld. Chancellor's Speech.

in which opinion I entirely concur; though, independently of that which raised the question, there can be no doubt that if this corporation had always exercised this right, granted originally by a charter from the Crown under terms which are open to some observation, but which was afterwards confirmed by parliament, — if the right was exercised from that time to the present, and it was declared by a declarator of the Court of Session so early as 1642 that they were entitled to the privileges which they claim,—if also the right was asserted at several different periods and always with success, your Lordships would, I think, feel no difficulty in coming to the conclusion that that evidence was quite sufficient to establish the right which they now claim. And although, my Lords, there are, no doubt, peculiarities in this corporation to the eye of an English lawyer, and observations might be made which would be very strong if we were considering an English corporation, and not a Scotch corporation, yet we have now the deliberate opinion of the learned Judges on that which is purely a question of Scotch law, and all the learned Judges agree in that opinion. They go through the objections which are made to this corporation, and they state instances in which the same objections might equally have been urged against other Scotch corporations, but which were not held to invalidate the establishment of those Scotch corporations. Your Lordships have now, therefore, the highest possible authority for the opinion that this corporation is one which is free from the objections which were suggested against it when the case was last at your Lordships bar; you have the opinion of the learned Judges that this is a corporation which is, according to the law of Scotland, entitled to the privileges which the

Crown intended to confer upon it; and all the important parts of the case being now brought under your Lordships view, I apprehend that you will have no difficulty in affirming the interlocutor which is the subject of appeal.

Lord Brougham.—My Lords, my noble and learned friend has justly stated the grounds upon which the remit was made to the Court below. The doubts which had presented themselves to my mind were shared by a noble and learned friend of mine, not now present, the highest authority upon a question of that sort, inasmuch as he is at the head of that Court which is the visitor of all corporations in this country,—I mean the Lord Chief Justice of the Court of Queen's Bench; and it is the more necessary that I should state this, because by some extraordinary omission in the report of the case, otherwise a very accurate report, in Shaw and M'Lean, I do not see any mention made of the presence of the Lord Chief Justice. By some accident that important circumstance is omitted. Now, the doubts which presented themselves to my mind were as fully shared by my noble and learned friend the Lord Chief Justice, as indeed they must have been by every person, (as my noble and learned friend has just stated,) who viewed this with the eye of an English lawyer.

My Lords, my noble and learned friend, not now present, felt another difficulty, which I think is now also removed by the statements which have been made by the learned Judges of the Court below, relating to the power of making bye laws. In that I entirely shared. Those bye laws, as they are called, do not at all answer the description of bye laws in this country.

UNIVERSITY OF GLASGOW v. FACULTY OF PHYSICIANS AND SURGEONS.

7th Aug. 1840.

Ld. Brougham's Speech.

The power of making bye laws is of a very general nature, not merely intra the corpus of the corporation, which is in the nature of bye laws, but having an effect over the whole of the subjects of the King in Scotland; this we should think the very reverse of a bye law, instead of being a bye law. However, it does appear, by the cases quoted and the precedents referred to by the learned Judges, that some such power as this has been enjoyed by other corporations; not indeed that much turns in this case upon that, for they do not appear to have exercised that power.

Another doubt entertained by the Lord Chief Justice was as to the power of the Crown to grant such an exclusive charter, but the manner in which the defect of the original charter has been cured by the statute of 1642 is to be taken into account. I have not had any opportunity of communicating with the Lord Chief Justice upon this subject; if he had an opportunity of perusing the opinions given and the precedents quoted by the learned Judges below, I have not the least doubt that his difficulty would have been got over.

Upon the whole, my Lords, I am of opinion, with my noble and learned friend, that nothing now remains for your Lordships but to affirm this decision. Some difficulty appears to have occurred below upon the questions of costs. The power exercised by the Court below of giving the costs of the appeal may be an extraordinary one, but my impression is that it was with the view, if possible, of preventing the coming here again that that power was given; but be that as it may, I do not think the Court below have at all exceeded the power conferred upon them by that part of the order.

The House of Lords ordered and adjudged, That the said petition and appeal be and is hereby dismissed this House, and that the said interlocutors therein complained of be and the same are hereby affirmed: And it is further ordered, That the appellants do pay or cause to be paid to the said respondents the costs incurred in respect of the said appeal, the amount thereof to be certified by the clerk assistant: And it is also further ordered, That unless the costs, certified as aforesaid, shall be paid to the party entitled to the same within one calendar month from the date of the certificate thereof, the cause shall be and is hereby remitted back to the Court of Session in Scotland, or to the Lord Ordinary officiating on the bills during the vacation, to issue such summary process or diligence for the recovery of such costs as shall be lawful and necessary.

RICHARDSON and CONNELL—ARCHIBALD GRAHAME, Solicitors.