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PLAYFAIR, &c. *v.* MACDONALD, &c.

The Rev. Dr. PLAYFAIR, Principal of the United College of St. Andrew's, Dr. HUNTER, Professor of Humanity, Mr. JAMES HUNTER, Professor of Rhetoric and Logic, and Dr. JOHN ADAMSON, Professor of Civil History in the said College, } *Appellants;*

The Rev. JAMES MACDONALD, Professor of Natural Philosophy, JOHN COOK, Professor of Moral Philosophy, Dr. JAMES FLINT, Professor of Medicine, and the Rev. HENRY DAVID HILL, Professor of Greek: all in said College, } *Respondents.*

House of Lords, 26th May 1809.

COLLEGE—ELECTION OF PROFESSOR — CASTING VOTE — DIGNIOR PERSONA.—In the election of a Professor for the Chair of Natural Philosophy in the Colleges of St. Salvator and St. Leonard's, of St. Andrew's, two candidates appeared, and were put in nomination. Four Professors voted for Mr. Jackson, among whom was the Principal of the College; and four voted for Mr. Macdonald, the other candidate. Whether the one or the other was elected, depended upon, Whether the Principal had both an original vote, and also a casting vote; or only a casting vote in case of equality? and, 2. Whether the vote given by Dr. Flint was a valid vote, he not having been duly admitted as a Professor? Held that the Principal was not entitled to give two votes, but only a casting vote in the case of equality; and that Mr. Macdonald was duly elected Professor to the Chair. Reversed in the House of Lords, and held that the Principal was entitled both to an original and a casting vote in the case of equality, and, therefore, that Mr. Jackson had been duly elected Professor.

This question arose out of a contested election for the Chair of Natural Philosophy in the College of St. Andrew's, vacant by the death of Dr. Rotheram. Two candidates appeared,—one Mr. Thomas Jackson, of the Ayr Academy; and the other, the Rev. Mr. Macdonald.

The election was in the Principal and Professors; and four voted for Mr. Jackson, consisting of the appellants, among whom was the Principal of the College; and four voted for Mr. Macdonald, consisting of the respondents.

There were two questions: 1. Whether Dr. Playfair, as

Principal of the College, had a right both to an original vote and also to a casting vote; or whether he had right to a casting vote only in the case of an equality of votes?

2. Whether Dr. Flint had any title to the Professorship under which he claimed the right to vote; and whether he had been duly admitted as Professor?

If Dr. Playfair had an original, and also a casting vote, Mr. Jackson was duly elected; if he had only an original vote, and if the vote of Dr. Flint be sustained, neither candidate was duly elected. But if Dr. Flint's vote was bad, and the Principal's elective vote good, then Mr. Jackson was duly elected; if both these votes were bad, in that case the election was decided by the Principal's casting vote, and Mr. Jackson was elected; and if the Principal had no casting vote, then the election was undecided.

A suspension and interdict was brought to try the first question, as to the precise nature of Dr. Playfair's right to vote. This question depended upon the original constitution and foundation of the College, from which it appeared,—That the separate Colleges are now combined by act of Parliament.

The College of St. Salvator was founded by Bishop Kennedy in 1458, consisted originally of thirteen persons, three Graduates in Divinity, (a Provost or Principal), a Licentiate, and a Bachelor), four Masters of Arts, and six Scholars. The management of the whole affairs, and the nomination of all the inferior members of the society, were lodged exclusively in the three Graduates in Divinity. The foundation charter expressly says: "Cæterorum enim qua-
"tuor artis Magistrorum et sex Scholarium assumptionem,
"electionem, impositionem et remotionem eorundem ex
"causis præfatis seu alijs quibuscunque rationabilibus ad
"præfatos Præpositum Licentiatum et Buccalaureum tan-
"tummodo volumus pertinere:" and, by a subsequent part of the same charter, it is provided that, in case any one of these three electors was absent, or disqualified from acting, his place should be supplied by the Rector of the University, or a person specially deputed by the University for that purpose. It was alleged by the appellants, that, from this constitution of the College, the Principal, or *Præpositus*, was, at the very least, vested with an *original elective voice*, in the same manner as the other two electors.

The present Professors sprung from the "*regentes in ar-*
"*tibus*," whose original situation is thus described: "Ac
"duo ad minus habiliores de præfatis artium Magistris, per
"dictos Præpositum, Licentiatum et Buccalaureum annua-

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" tim sunt eligendi, qui Logicam, Physicam, Philosophiam, " aut Metaphysicam, legere, et exercere astringantur." It thus appears by the original condition of the Professors in this College, they were to be elected annually by the Principal, Licentiate, and Bachelor.

On the suppression of Popery, and abolition of Episcopacy, and consequent dilapidation of the funds of the University, a variety of changes took place: The offices of Licentiate and Bachelor were suppressed, and the powers and privileges of the three Graduates came to centre in the Principal. At this time the Principal claimed the *sole right* of supplying any vacancies, but this being disputed by the Regents, who gradually became Professors, it was made a question in the Court of Session in 1707, on the contested election of a Professsor of Greek to St. Salvator's College, and the Court found " that the right of election of Masters " or Professors, in St. Salvator's College of St. Andrew's, " doth not belong to the Provost (Principal) alone, but to " *him in conjunction* with the Masters of that College."

Although this decision fixed the right of the other Professors to have a voice in the election beyond all dispute, it was also conceived to fix that the Principal had an original right to vote in conjunction with them.

Again, with reference to St. Leonard's College, which was founded by Hepburn, Prior of St. Andrew's, in 1512, in the " *Statuta Collegii*" containing the rules of the Foundation, it is declared by the charter, that the Principal should have the care or management of the whole College (" Curam " gerere totius Collegii.")

It had the following clause in regard to the Regents of Arts, who gradually grew up to be Professors, and their mode of appointment, " Regentes vero quatuor sint in nu- " mero, aut pauciores secundum loci facultates ferre pote- " rint, *et Magister Principalis judicaverit expedire.* Vero " ad regendi officium *instituentur ac recipientur* per Domi- " num Priorem, et Collegii pro tempore existentem Magis- " trum Principalem."

The appellant contended, on the construction of this clause, that the meaning was, that the Regents were to be appointed by the Principal; and " instituted and received " or inducted by the Prior and him jointly.

On the Reformation, the Archbishop of St. Andrew's succeeded to, or assumed those rights which formerly belonged to the Prior; and two instances were on record, in which Archbishop Sharpe had filled up two vacancies with-

out the interference of the Principal, although that was very likely owing to the arbitrary and grasping character of this Prelate.

On the abolition of Episcopacy, the right of the Archbishop devolved on the Crown, who appointed the Principal; and it is certain that the Principal must have exercised the sole right of appointing the Regents for some time, because, in 1709, this right was made the subject of dispute, on his appointing Mr. Rymer, whereupon he obtained a grant from Queen Anne confirming the appointment, and declaring the right of election in the Prior and Principal jointly. The other Professors brought a reduction of the appointment, which action, after going on for some time, terminated in an agreement, whereby it was agreed that "The trial shall be before the Principal and Regents, con- "curring as judges therein; in which judgment the Princi- "pal votes *first*, if he pleases; and, withal, the side on which "the Principal is shall preponderate, if *equal* in number to "the other side."

The act of Parliament 1747, uniting the two Colleges, declared that the University of St. Andrew's "shall be "under the management of the Principal (Magister princi- "palis) and other Masters of the said United College in all "time coming," &c. By sect. 9 it was farther enacted,— "That the four Professors of Greek and Philosophy in "the said United College shall be elected and chosen by "the *Principal* and *Professors* of the said United College, "upon a comparative trial, in the same form and manner as "the Professors of Greek and Philosophy were heretofore "usually elected, by the Principals and Professors of the "said Colleges of St. Salvator and St. Leonard's respect- "ively."

By the terms of this act, the appellant averred that the elective franchise was conferred on the Principal, and that there was nothing in the statute to countenance the supposition that he was to be restricted to a casting vote in the case of equality only. This construction, he averred, was supported by the practice of giving *first* an original vote; and, if circumstances called for it, also a casting vote; and several cases of appointment were referred to.

But, on the other hand, it was averred on the other side, that in 1781, so conscious was Principal Watson that he could not support this right, that he gave up the right to a double vote at a College meeting, stating, "that the grounds of this claim

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(*i. e.* to a double vote) were insufficient to support it, and, "therefore, his present resolution is henceforth to continue "the practice of voting first, and to rest satisfied with the cast-"ing vote." The respondents maintained that this was a formal Act of the Society or College, reducible only by the judgment of a superior court, and binding, until so reduced, on all subsequent Professors.

The Lords, upon the report of Lord Glenlee, pronounced Jan. 21, 1807. this interlocutor: "Find that the Principal of the United "College of St. Salvator and St. Leonard, of St. Andrew's, "is not entitled to give two votes, but only to give a cast-"ing vote, in case of equality; find that the Rev. James "Macdonald was duly and legally elected Professor of "Natural Philosophy in place of the deceased Dr. John Ro-"theram, and therefore suspend the letters simpliciter, "and continue the interdict in so far as regards Thomas "Jackson's admission, but recall the interdict as to James Mac-"donald's admission, and decern; and find no expenses due to "either party, and that the same are not to be stated against "the funds of the College, but defrayed by the parties "from their own private funds."*

Against this and the previous interlocutor of the Lord Ordinary the present appeal was brought.

Pleaded for the Appellants.—In the election in question, Professor Playfair had a clear right to give an original elective vote, as well as a casting vote in the case of equali-

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* Opinions of the Judges:—

LORD PRESIDENT CAMPBELL said:—"This is a question of an election of a Professor, in the United Colleges of St. Salvator and St. Leonard's, in St. Andrew's. The *persona dignior*, or presiding member, seldom has a double vote; (Vide M'Laurin's Law Points, p. 76.) In general, he has only a voice in case of equality. This is the case in the election of the Chandos Professor of Medicine in that University. Vide Arnot *v.* Hill, 3d July 1804, (previous appeal.) The presiding member is supposed to have sufficient influence in every question by his pre-eminence and dignity, and the powers of reasoning which he may exercise, without adding to his weight the mechanical power of voting as an ordinary member. Accordingly, this is only allowed where it has either been so provided by positive constitution, or by established practice. Neither of these occur here. On the contrary, Principal Watson, after making the claim, gave it up. Were the Rector to be called in as presiding officer, to give a casting vote, this would not mend the matter; for he, though still *dignior persona*

ty; and this right is clearly supported and deducible from the original foundation of the Colleges—from the acts of Parliament, and from the whole circumstances above set forth; and his vote therefore, as given for Mr. Jackson, ought to have been received and counted; and the electors interested for Mr. Macdodald did wrong in refusing to receive and reckon the vote so given by him in favour of Mr. Jackson. They further did wrong in counting the vote of Dr. James Flint, because he not having been duly elected Chandos Professor of Medicine, nor duly inducted into the United College, and his right to the office being in discussion, at the period of the election in question, in the Court of Session, the vote tendered by him for Mr. Macdonald ought not to have been received or counted. But even supposing the vote of Dr. Flint a good vote, still the casting

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at the meeting, would just be in the same state if the members, including him, should happen to be equal, (Vide Dalrymple *v.* Ker, 2d March 1762, unreported.)

"As to the second point, I think Flint's vote clearly good. The interdict against him is recalled, because his re-election was held good, till it should be reduced. The suspension is only passed to try the merits in a shorter way than by reduction, but has never gone further, and, in the meantime, he is in possession. See the acts instituting this Court, where the President is mentioned as a constituent member of the Court, and yet, being in the Chair, he can only have a casting vote, but has no ordinary vote. If the Chancellor were in the Chair, the President would then have an ordinary vote."

Lord Woodhouselee.—"In my opinion the Principal has an original vote; and, if equal, he is entitled to a casting vote; and the foundations of both the Colleges prove this. It is the same in cases of Court Martial."

Lord Hermand.—"I am of the contrary opinion. In the Commissary Court of Edinburgh there is no double vote. This is founded on the common law."

Lord Meadowbank.—"I think that Flint was entitled to vote; but it is founded on common sense that the *dignior persona* must have a preponderance, and therefore a double vote."

Lord Justice Clerk (Hope.)—"I think there is no double vote; and that nothing but statute or inveterate custom can bestow this."

Lord Armadale.—"I am of the same opinion."

Lord Craig.—"I rather think he has two votes, or he has none at all."

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

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vote given by Principal Playfair, together with his original or elective vote, decided the election in favour of Mr. Jackson, who was thus duly elected Professor of Natural Philosophy in the United Colleges of St. Andrew's.

Pleaded for the Respondents.—By the common law of Scotland, the president of every public body exercises his right to vote, in the qualified form of a casting vote, and in no case whatever has a right to a double vote, except in virtue of special constitution or positive statute. This qualification of the right of voting is a necessary consequence of the office of President, and is more than compensated by the influence belonging to that situation.

By the respective foundations of St. Salvator and St. Leonard's, the Principal, or Præpositus, is not invested with a double vote, neither is this extensive and extraordinary privilege conferred by the act of Union. By the uninterrupted and invariable practice previous to the union of these Colleges, as well as subsequent to that period, the Principal has never exercised a right to more than a single casting vote. And, by a solemn resolution or bye law, passed by the members of the College in the year 1780, it was finally settled, that the right to a double vote, now claimed by the appellants, as it was neither granted by the charters, nor sanctioned by the practice of the College, did not belong to the Principal.

After hearing counsel,

THE LORD CHANCELLOR ELDON said,—

"My Lords,

"This is the first in order of two appeals from the University of St. Andrew's in Scotland, which stand for decision before your Lordships.

"(Here his Lordship stated the names of the parties, appellants and respondents, and read the interlocutors appealed against from the printed cases).

"The cause arose out of the contested election of a Professor of Natural Philosophy in the United College of St. Andrew's. This election took place on the 1st of December 1804. There were two candidates for the vacant chair, Mr. Thomas Jackson, a gentleman who is mentioned to have taught in the University of Glasgow; and the Rev. James Macdonald, who, by the proceedings had at the election, having been declared the successful candidate, comes here as one of the respondents.

"At the election, a question arose, If Dr. James Flint, then appearing as Chandos Professor of Medicine, had been properly elected into that situation, in a recent election along with his son;

and, farther, granting that his election had been good, *whether he was truly in possession of his office, by not having been duly inducted in the same?*

"When the question was put in the election, the appellants, who were four in number, voted for Mr. Jackson. The four respondents, who claimed to vote in the election, voted for Mr. Macdonald; and Dr. Playfair, the Principal of the United College, in case the votes should be found to be equal, tendered his casting vote for Mr. Jackson. He had previously given an original vote, and, as four electors voted for Mr. Macdonald, and only three (exclusive of the Principal) for Mr. Jackson, the Principal was entitled to vote in the election.

"The action was thereupon brought, in which the interlocutors were pronounced which I have read to your Lordships. Upon these the appeal was brought here.

"In this cause, the appellants contended, 1. That Dr. Playfair had both an original and a casting vote. 2. That Dr. Flint was not duly elected; and, 3d. That he was not duly inducted. The effect of the judgment of the Court below was to find that Dr. Flint's title to vote was good, both on his original right, and on the induction; and that Dr. Playfair had no right to an original vote.

(Here his Lordship, from the second page of the appeal case, 2d paragraph for the appellant, read the different views of this election, as it would be operated on, in case of any alteration of the judgment).

"In this case, and in the other which is connected with it, I have endeavoured to scrutinize my own opinion, and get rid of every thing like prejudice upon these questions. An English lawyer, in such matters, is in some danger of misleading himself. Of the many doctrines that are stated to be clear law in cases of election in Scotland, a good many are exactly the converse of our law in this country upon similar points."

"The question here lies in a narrow compass. It was said to be reasonable that the Principal should have both an original and a casting vote. On the other side, this was denied. These positions were illustrated on the one side and on the other by arguments drawn from the practice of Church judicatories; of the Universities in Scotland; of the Court of Session; of meetings of freeholders; and of other corporations, and of elective bodies throughout Scotland.

"But, in this case, whatever may be the general law in Scotland as to the rules of proceeding in such meetings, it is impossible to apply such law by analogy to govern the present case. This case is to be regulated by an act of Parliament, passed in 1747, which I am about to state; if no facts appeared as to the modes of proceeding in election in the two Colleges before this act which united them was passed, arguments might be properly used from the general law, as evidence of the fact upon this question; but if such facts

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do actually appear, there is no room for such an application of the general law in this case.

" In the statute of 1747, the two Colleges of St. Salvator and St. Leonard were united into one, and all the lands and properties of the two ancient Colleges, embracing their rights of patronage, were declared to belong to the United College. The two Colleges had each formerly consisted of a Principal and five Professors; these were now reduced one half in number, and two Professors of the University, the Professor of Mathematics and the Professor of Medicine, were added to the United College. Thus, after the act, the United College consisted of a Principal and seven Professors.

" With regard to the election of the Professors of the United College, it is enacted in the statute, sec. 9, 'That they shall be elected 'and chosen by the Principal and Professors of the said United Col-'lege, upon a comparative trial, in the same form and manner as the 'Professors of Greek and Philosophy were *heretofore usually* '*elected* by the Principal and Professors of the said Colleges of St. 'Salvator and St. Leonard's respectively.'

" Having read this clause, I draw this from it, as matter of clear inference, that the question of this day is to be decided as if it had occurred within one month after the passing of the act; and that it cannot be ruled by any subsequent proceedings of Principal Tullidelph, Principal Watson, or others. It is also quite clear, that the statute considered the mode of election to have been the same in both Colleges before this act was passed for uniting them. If the facts given in evidence instruct that the Principals in the two Colleges had only casting votes before the date of the act of Parliament, then the transactions afterwards are important to show how this was then understood. If these Principals, before the date of the act, had both original and casting votes, it is clear that the Principal of the United College has both now.

" To see how it should have been decided in 1748, we must look at the history of the two Colleges before their union. The University consists in all of three Colleges; the two which have been already mentioned, and the College of St. Mary. The mode of election in St. Mary's College has also been the subject of discussion, but here, as already noticed, we have no room for analogy. We must look to the act of Parliament.

" The College of St. Salvator was founded in 1458. It consisted originally of thirteen persons, three Graduates in Divinity, the Provost, Licentiate, and Bachelor, four Master of Arts, and six Scholars. The mode of election by the statutes of foundation, in case of any vacancy among the Graduates in Divinity, is declared to be by the two surviving Graduates and the Rector of the University, *aut per duos eorum*. (Here his Lordship read the words, as stated in Pringle's book). Upon these words, *aut duos eorum*, I do not conceive there could be any difference of opinion between the lawyers

of Scotland and of this country. It is impossible to say, that under these words, one of the three electors could in any view be said to have had no vote at all.

" As to the appointment of the four Masters and six Scholars, the words are—(Here his Lordship read the same). There is nothing here to preclude the original vote of the Provost or Principal; it belonged to him and the other two Licentiates to elect. From the words used, it was to be inferred, that they were all upon equal footing as to the original vote.

" As to the present Professors, I agree with what is stated in the appellants' case, that they appear to have sprung from the Regents in Arts. These were to be chosen, '*per dicta Præpositum Licen-* '*tiatum et Buccalaureum*,' without calling in any third elector. If the Provost in those days had no original vote, in the absence of the others, there could have been no election.

" After the changes in this College which followed upon the Reformation, a contested election of a Professor of Greek occurred about the beginning of last century. The Principal voted for Mr. Rymer, two of the Professors for a Mr. Haldane. The third was *non liquet*. This election having been brought in question before the Court of Session, that Court, in 1707, found that the right of election did not belong to the Provost alone, ' but to him in conjunction with the ' Masters of the College.' They also found it ' proven, that the said ' Mr. James Haldane, at the time of the election, had the plurality ' of voices,' &c.

" It appears from this judgment that the Principal claimed the sole right of patronage; this the Court found he was not entitled to. On the part of the respondents, it was contended, on the subject of this judgment, that the Principal had no original vote. This they affected to collect from the words of the judgment, that the right of election did not belong *to him alone;* but to him in conjunction with the Masters of the College. This might mean, either that the Principal might vote along with them, or that he had no original vote; or that he had both an original and a casting vote. The respondents contended, that it appeared from this judgment, that the Principal had only a casting vote; but it is quite clear that the judgment, on the contrary, shows that the Principal had an original vote. It is to be recollected, that in the election then, the Principal gave his single vote for Mr. Rymer, and the other two of the Professors gave their votes for Mr. Haldane. When the Court found it proved that Mr. Haldane had the *plurality* of voices, it is quite clear that they held the Principal's original vote to be a good vote. With regard to his casting vote, there was no opportunity here to decide as to this; but there is nothing in this decision exclusive of the Principal's casting vote.

" The College of St Leonard's was founded at a later period, in 1512. The mode of appointment of the Regents in Arts, who have

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gradually grown up to be Professors, is in these words, ‘ Regentes ‘ vero,’ &c. (Here his Lordship read the same, from the third page of the appellants' case.)

“ At different periods, controversies appear to have occurred, with regard to this clause, in the statutes of foundation, but, in such controversies, the Professors do not appear to have taken any part till 1709. About this period, it appears that Principal Drew instituted, and admitted a Mr. Rymer to be one of the Professors of the College, upon his own authority alone. His right to do so having been challenged by the Professors, mutual actions were brought by those parties, to have the matter decided in the Court of Session. But the matters in dispute were settled by an agreement in 1710, which, in so far as it respects the election of Professors, is in the following words,—‘ That the trial shall be before the Principal and Regents, ‘ concurring as judges therein ; in which judgment the Principal ‘ votes first, if he pleases, and withal, the side on which the Principal ‘ is, shall *preponderate*, if *equal* in number to the other side.’

“ Principal Drew continued in his office till his death in 1738. It is stated, that an election of a Professor Young took place in 1716, in the mode pointed out by that agreement. Principal Drew was succeeded by Principal Tullidelph, and it is stated that no election occurred in his time, till the act of Parliament was passed in Scotland for uniting the Colleges.

“ It was strongly pressed on the part of the respondents, that this agreement was only to subsist as long as the parties contractors remained in their offices ; but it was not stated that any practice of a nature contrary to this agreement had obtained in this College before the act of Parliament was passed.

“ I take it therefore to stand thus: that we see that, in 1707, a judgment was pronounced by the Court of Session, recognizing an original vote in the Principal of St Salvator's College ; and that in St Leonard's College it was recognized by the agreement in 1710, that the Principal had an original vote. Then we come to the act of Parliament in 1747, which enacts, that in all time to come, the Professors shall be elected and chosen by the Principal and Professors of the United College, in the ‘ same form and manner as the ‘ Professors of Greek and Philosophy were heretofore usually elect- ‘ ed, by the Principals and Professors of the said Colleges of St. ‘ Salvator and St. Leonard's respectively.’

“ The act of Parliament thus considered the *usage* in both Colleges to be the same ; and if we see clearly, that the usage in one College was to give the Principal an original vote, and in the other, an original and preponderating vote ; how is it possible to extract from the statute any other conclusion than this, that the Principal of the United College was to have an original, and a casting, and a preponderating vote, in time to come?

“ It is proper to notice here, that the statute does not refer to the

ancient practice upon this subject, but to the form '*heretofore* '*usual*' in the two Colleges. The statute thus appears to adopt the judgment in 1707. And the agreement of 1710, as the rule to be observed in future.

" As I see your Lordships are anxious to proceed to other business, I hasten through the remainder of the cause. Whatever future arrangements parties might think proper to make, it is the statute that must be the rule in this case; at sametime, it appears that Principal Tullidelph asserted his right to the double vote.

"But the Court of Session say, that this matter was settled by a bye law in 1781, by consent of Principal Watson. I have looked into this paper, but can see nothing in it that resembles a bye-law. It was not in the power of these parties to do any thing contrary to the act of Parliament, which should bind their successors. Whatever was the opinion of Principal Watson as to what was fit or not fit for him to do, this is nothing to your Lordships. You are bound to look to the statute for the rule that is to govern.

" But I see, even in the terms of this transaction, the strongest evidence of former practice. Principal Watson says, ' that his pre- ' sent resolution is, henceforth to discontinue the practice of voting ' first, and to rest satisfied with the casting vote.'

" I will not delay the House by going through all that was stated upon the general law of Scotland in matters of election, and the particular instances that were cited to us upon this subject. The case, as I have already said, in my opinion, stands upon the usual practice before 1747, which was adopted in the statute.

" With regard to the casting vote, I had at one time some difficulty, and thought it might be expedient to have remitted this to the Court for further consideration. But, upon this point, there is no appeal, the Court has given the Principal a casting vote, and the judgment is acquiesced in. I am so satisfied also upon this subject, that I do not see it necessary to protract the litigation by any remit thereon. I therefore move as follows :—

It was ordered and adjudged that the finding in the interlocutor of the 21st of January 1807, that the Principal of the United College of St. Salvator and St. Leonard's, of St. Andrew's, is not entitled to give two votes, but only a casting vote in case of equality, and the finding that the Reverend James Macdonald was duly and legally elected Professor of Natural Philosophy in the place of the deceased Dr. John Rotheram, be reversed; and the Lords find that the said Principal is entitled to give one original vote, and also a casting vote in case of equality; and further find, that the Principal having, in this case, given an original and casting vote in favour

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of Mr. Thomas Jackson, it is unnecessary to determine whether the objections to the vote of Dr. Flint ought to be sustained. And further find, that Mr. Thomas Jackson was duly and legally elected Professor of Natural Philosophy in the place of the said Dr. John Rotheram deceased. And it is further ordered and adjudged, that the case be remitted back to review the several interlocutors complained of, having due regard to these findings, and to give effect to the same.

For Appellants, *Sir Samuel Romilly, Henry Erskine.*
For Respondents, *Wm. Adam, Ad. Gillies, James Wedderburn.*

NOTE.—Unreported in the Court of Session.

[Mor. Dict. 16824.]

WM. DANIEL ARTHUR FRANK of Deptford, only lawful Son of John Frank, who was the lawful Son of William Frank of Bughtrig, in the County of Berwick, } *Appellant;*

JAMES FRANK and WM. FRANK, . *Respondents.*

House of Lords, 10th June 1809.

REDUCTION OF DEEDS—INCAPACITY—FRAUD—PROOF—INSTRUMENTARY WITNESSES, ADMISSIBILITY OF—DISQUALIFICATION FROM INTEREST—EXECUTION OF DEED.—Circumstances in which the following points were decided, and affirmed in the House of Lords:—1. That the granter of the deed was of a sound disposing mind at the time he executed the settlement challenged. 2. That the instrumentary witnesses were competent witnesses for the pursuer; reserving all objections to their credibility. 3. That the deed fell to be sustained as regularly executed, although one of the witnesses *ex intervallo* deponed that he did not see the granter subscribe, or hear him acknowledge his subscription. 4. That the act, nor the practice under the act, did not require that the witnesses should adhibit their subscriptions in the same room with, and in the presence of the granter. 5. That a party, in whose favour a bond of annuity was at same time executed, was an incompetent witness for the defender, on the ground of interest.

Charles Frank held the estate of Bughtrig, under a deed executed by his father, containing a simple destination to a