[Heard, 14th July. — Judgment, 5th August, 1842.]

JOHN CULLEN, and Others, ordained Elders and Heritors of the Parish of Cadder, and the Reverend JAMES YOUNG, Minister of Chryston, *Appellants.*

MARK SPROT, Esq. of Garnkirk, and other Heritors and Elders of the Parish, and the Reverend JOHN PARK, assistant Minister and successor thereof, *Respondents.*

Patronage. — Held, that a deed by the patrons of a parish, the heritors and elders of which had paid to the patrons the 600 merks prescribed by the act 1690, without having received the renunciation prescribed by that act, executed subsequent to the 10th Anne, cap. 12, and conveying to the heritors and kirk-session the right of presenting a minister, conveyed the ordinary right of patronage as restored by the 10th of Anne, and did neither complete nor confer the right of popular election intended by the act 1690.

Ibid. — Held, that a right of patronage vested in the heritors and kirk-session of a parish is to be exercised by deed of presentation, not by vote at public meeting.

PRIOR to the year 1690, the patronage of the parish of Cadder was vested in the College of Glasgow.

By the statute 1690, cap. 23, patronage was abolished, and it was enacted, "to the effect the calling and entering ministers in "all time coming may be orderly and regularly performed, their "Majesties, with consent of the Estates of Parliament, do statute "and declare, That in case of the vacancy of any particular "church, and for supplying the same with a minister, the "heritors of the said paroch (being protestants,) and the elders, "are to name and propose the person to the whole congregation, "to be either approven or disapproven by them; and if they

" disapprove, that the disapprovers give in their reasons, to the " effect the affair may be cognosced upon by the Presbytery of " the bounds, at whose judgment, and by whose determination, " the calling and entry of a particular minister is to be ordered " and concluded: And it is hereby enacted, that if application " be not made by the eldership and heretors of the paroch to the " Presbytery for the call and choice of a minister within the " space of six months after the vacancy, that then the Presbytery " may proceed to provide the said paroch, and plant a minister " in the church *tanquam jure devoluto.* And in lieu and recom- " pense of the said right of presentation, hereby taken away, " their Majesties, with advice and consent foresaid, statute and " ordain the heretors and liferenters of each paroch, and the " town-councils for the burgh, to pay to the said patrons, betwixt " and Martinmas next, the sum of six hundred merks, propor- " tionally effeiring to their valued rents in the said paroch, viz. " two parts by the heretors, and a third part by the liferenters, " deducing always the patron's own part effeiring to his propor- " tion as an heretor, and that upon the said patron his granting " a sufficient and formal renunciation of the said right of pre- " sentation in favours of the saids heretors, town-council for the " burgh, and kirk-session: And it is hereby declared, that as to " the paroches to which their Majesties have right to present, " upon payment of the said six hundred merks to the clerk of " the Theasaury, their Majesties shall be fully denuded of their " right of presentation as to that paroch; and as to other patrons, " if they refuse to accept the said six hundred merks, the " same is to be consigned in the hands of a responsal person in " the paroch, upon the hazard of the consigners, not to be given " up to the patron, until he grant the said renunciation; allowing, " in the meantime, the heretors and kirk-session to call the " minister, conform to this act: And ordains letters of horning " to be direct at the instance of the patron against the heretors

" and others, who shall not make payment of the said six " hundred merks, after the said term of Martinmas next, and " likeways at the instance of the heretors and others willing to " pay, against these who are unwilling; and in case the patron " be unwilling to accept the said sum, or the heretors and others " aforesaid unwilling to pay, ordains letters of horning to be " direct at the instance of their Majesties' solicitor against either " of them."

On the 17th May, 1696, the heritors and liferenters of the parish of Cadder paid to the University of Glasgow 600 merks for the purchase of the patronage of the parish, under the terms of the act. No vacancy, however, occurred in the benefice until the year 1731.

In 1712, the 10th of Anne, cap. 12, upon a recital of the inconveniences of the mode of presentation established by the act 1690, and that it had likewise " been a great hardship upon " the patrons whose predecessors had founded and endowed " those churches, and who have not received payment and " satisfaction for their right of patronage from the aforesaid " heritors or liferenters of the respective parishes, nor have " granted renunciations of their said rights on that account," repealed the act 1690, and declared that the right of patronage should be exercised as it had been prior to the passing of that act, " provided always, that in case any patron or patrons have " accepted of and received any sum or sums of money from the " heritors or liferenters of any parish, or from the magistrates " and town-council of any burgh, in satisfaction of their right of " presentation, and have discharged or renounced the same under " their hand, that nothing herein shall be construed to restore " such patron or patrons to their right of presentation, any thing " in this present act to the contrary notwithstanding."

On the 30th of December, 1725, the Principal and Professors of the University executed a deed, which, after reciting the pro-

visions of the act 1690, continued thus:—"Lykeas the said "university being patron of the paroche of Calder, the heritors "and liferenters of the said paroche did some time ago, and "before the British act of Parliament restoring patronages, make "payment to the Principall and Professors of the said university "for the time, of the foresaid soume of 600 merks money, as "appears by the books and accompts of the university, for the "years 1695 and 1696, for granting the right underwritten, "which we are now willing to do: Therefore witt ye us, the said "Principall and Professors of the said university, patron of the "said paroch of Calder, with consent foresaid, to have renounced, "transferred, disponed and overgiven, as we do hereby, with "and under the reservation underwritten, renounce, transfer, "dispone, and overgive, to and in favours of Robert Lord "Blantyre," [here followed a great variety of names,] "and "other heritors of the said paroch of Calder, if any be, conform "to their respective interests and heritadges y^r in, and their suc-"cessors whatsoever in the saids lands; and the kirk-session of "the said paroch, now, and in all time coming, the foresaid "right of presentation of a minister to the said paroch of "Calder, with power to them, upon the first vacancy of the said "paroch, and in all time y^rafter, to present ministers thereto, "and to do every other thing y^ranent, as fully and amply in all "respects, as the said university could have done, of before, or "in time coming, if these presents had not been granted. "Whereat wee oblidge us and our successors to abide firm and "stable, but reclamation, and to warrand this right from the "facts and deeds of us and our successors only, done, or to be "done in prejudice hereof: Reserving alwise to us, notwith-"standing hereof, all right and title that formerly belonged to "us as patron, except the right of presentation of a minister to "the said paroch allenarly."

The deed of 1725 fell aside, and was not discovered until the

year 1793; from that period there had occurred only one or two vacancies in the benefice prior to the proceedings to be presently detailed.

The practice of the parish in regard to the exercise of the right of patronage vested in it by the deed of 1725, was not precisely admitted, but was said to have been to hold a meeting of the heritors and kirk-session, at which the votes were taken for the respective candidates, and afterwards to have a formal deed of presentation prepared and sent round for execution. This deed was then presented to the Presbytery, who thereupon moderated in the call. Whether the votes at the meeting, or the signatures to the deed, had been held to express the approval or disapproval of the congregation required by the act 1690 — and whether the deed was in use to be taken round to the whole heritors and liferenters, or only to a limited number — and if so, to what number — did not appear.

In the year 1834, the General Assembly separated Chryston, a part of the parish of Cadder, from the rest of the parish, and erected it *quoad sacra* into a separate parish; the churches of the two parishes being seven miles distant from each other.

Early in the year 1836, Lockerby, the minister of Cadder, agreed to resign his charge, and that steps should be taken to appoint an assistant and successor to him. Various preparatory meetings of the heritors and kirk-session were held with this view. At a general meeting on the 17th March, 1836, it was resolved that all parties claiming to vote should be required by advertisement to lodge their claims and titles in the hands of the clerk to the heritors; this was accordingly done, and thirty-five persons complied with the advertisement. At another general meeting held on the 19th May, 1836, it was resolved, "that this "meeting proceed to elect an assistant and successor to Mr "Lockerby on the 4th of August next, being the first Thursday "of that month, and that three weeks previous notice be given

" to all the patrons by edictal intimation;" and " that while the " meeting do not consider themselves at all entitled to compro- " mise the right of any patron, absent or present, to vote for " whom he pleases on the day of election," they recommended the names of seven persons as candidates. Leave was accordingly asked and obtained from the Presbytery of the church that these persons should preach in the parish church on successive Sundays. The respondent Park was one of the seven, while the appellant Young, who was, and had for some time been, minister of the adjoining parish of Chryston, was not of the number; this, Young said, arose from the circumstance that his ministry was known to, and accessible to, the parishioners.

The meeting on the 4th of August was accordingly held. The title of the minutes of the meeting bore that it had been called " for the purpose of electing an assistant and successor to the " Reverend Thomas Lockerby." After enumerating the persons present, the minutes bore, that a motion was made for the appointment of a preses and clerk, and that " before the motion " was put, William Brown protested for himself, his mandants, " and all who should adhere to him, that the entry of names in " the sederunt, and the reception of votes at this meeting, should " not infer any recognition of the title of such parties to vote in " the election."

After the names of the persons present had been read, Mr Brown again protested in these terms: — " I protest that feuars " not subject to, and not paying any of the public or parish bur- " dens, have no right to vote at the present meeting; that lease- " holders and trustees for others have no right; that liferenters " and fiars have no right to vote on the same subject; that per- " sons claiming the character of elders are not entitled to be " enrolled or to vote, unless those who have been duly admitted, " and who continue to act as elders of the proper kirk-session of " Cadder parish, and whose admission is recorded in the books

" of the kirk-session, and of which record evidence is produced ;
" that no elder is entitled to vote by proxy ; and that no man-
" datary of such elder can vote legally, — and that any vote
" given by him is null and void ; that no heritor whose title is
" not feudally completed, or who holds merely a personal right
" to vote ; and that no heritor is entitled to have more than one
" vote ; and that all persons entered on the roll who do not pos-
" sess the character of heritors or elders of the parish of Cadder,
" should be struck off the roll, and should not be allowed to
" vote at the present meeting ; and that all votes given by any of
" these persons comprehended in any of the classes of objections
" above set down, should be void and null, and not counted ;
" and farther, I protest for redress and for remedy at law, on all
" and sundry the premises."

" Mr Campbell of Bedlay now moved, that the patrons of the
" parish should elect the Rev. Mr John Park, preacher of the
" gospel in Glasgow, assistant and successor to the Rev. Mr
" Lockerby, which motion was seconded by Mr John Carss.

" The Rev. Mr Bogle now moved that the Rev. James
" Young, Master of Arts, minister of Chryston chapel, should
" be so elected assistant and successor, and the motion was
" seconded by the Rev. James Graham Campbell."

The minutes then bore that the appellant, Young, and the respondent, Park, were severally proposed as candidates, no others appearing, and that the votes having been taken and counted, there were *fifty-four* for Young, and *fifty* for Park. The minutes continued in these terms : —

" Hereupon Mr Brown protested for his constituents, and
" those who might adhere to him, that on the vote being
" declared, after deduction of the false, fictitious, and incompe-
" tent votes given for Mr Young, he was in a great minority, and
" that Mr Park was duly elected by a majority of the true and
" qualified patrons of the parish, and protested for redress and

" remedy at law, and took instruments in the clerk's hands; and " farther, protested against the validity of the whole votes given " for the said Rev. Mr Young, and again took instruments in " the clerk's hands.

" Thereafter, Mr Macdonald, on behalf of his constituents, " and all who should adhere to them, protested against all and " sundry votes given for Mr Park, and for a scrutiny of the " votes, and protested that Mr Young is duly elected by a legal " majority of votes, and took instruments in the clerk's hands. " The voters for Mr Young nominated and appointed the said " Charles Alexander King, the Reverend John Bogle, the said " James Drew, writer, Glasgow, and the said John Macdonald, " junior, writer, Glasgow, as a committee to carry Mr Young's " election into effect, with power to make and complete the pre- " sentation in his favour, and the requisite application to the " Presbytery therewith, and for his induction; any two of the " said committee to be a quorum."

" On the other hand, the voters for Mr Park appoint Mr " Campbell, Bedlay, Mr Sprot, Garnkirk, Mr Anderson for " Mr Lamont of Robroystone, Mr Thoms for Mr Stirling of " Cadder, Mr Campbell, session-clerk, and Mr Scott of Dry- " field, elder, a committee, with power to carry Mr Park's " election into effect; to procure the presentation in his favour " completed and laid before the Presbytery, and to attend to " Mr Park's induction, any three of the said committee a " quorum, and Mr Campbell convener."

After the meeting Young and Park respectively procured deeds of presentation to be prepared and carried round the parish for signature by the heritors and kirk-session. The deed in favour of Young was subscribed by *fifty-three* persons, by themselves or their agents, and that in favour of Park by *sixty-seven* persons in the same manner; seventeen of the latter persons had not been present at the meeting of 4th August. Neither deed

contained the signatures of a majority of those entitled to present, though the deed in favour of Park bore, that it was executed "by the legal majority of the heritors and members of the kirk-"session;" and both of the deeds together did not include the whole of that body, as many of them neither attended the meeting of the 4th of August, nor signed either of the deeds of presentation.

On the 7th of September, both of the deeds were lodged with the Presbytery of the district, together with an extract of the minutes of the meeting, which was produced by Young. The Presbytery delayed moderating in the call until the 5th of the following October, that the parties might have an opportunity of ascertaining the validity of the deeds in a court of law. No such proceeding having been adopted, the Presbytery, on the 5th of October, sustained the presentation in favour of Park, and moderated in a call to him, which was signed by many of the parishioners, without a dissent tendered, and ultimately the Presbytery ordained him minister of the parish. In the meanwhile Young appealed to the Synod in regard to the sustaining of Park's presentation, and ultimately to the General Assembly, which, on the 30th of May, 1837, affirmed the judgment of the Presbytery.

In the month of February, 1837, while the proceedings in the Church Courts were still in dependence, Cullen, the appellant, and other parties, styling themselves elders and heritors of the parish, brought an action against Sprot and others, which, after setting forth the proceedings which have been detailed, and specifying objections to the votes given for Park, subsumed, "Not-"withstanding of all which the defenders are illegally and un-"warrantably proceeding to carry through the ordination and "induction of the said Reverend John Park as assistant and "successor to the said Reverend Thomas Lockerby, the "minister of the said parish of Cadder, in violation of the said "election, so made by the majority of the said meeting of heri-

" tors and elders, held on the fourth of August last, and of the " corroborative deed of presentation following thereon in favour " of the said Reverend James Young, and of the rights conferred " on him by that election and presentation ;" and concluded that it should be declared, " that the right of presentation of a minister " to the said parish of Cadder became vested in the heritors of the " said parish (being Protestants) and the elders, by virtue, and from " and after the passing of said act of the first Parliament of William " and Mary, cap. 23, the heritors and liferenters of the said " parish having paid to the then patrons thereof the statutory " sum of 600 merks Scots, ordained by the said act to be, upon " the granting of a discharge and renunciation, paid to the said " patrons, in lieu and recompense of the right of patronage there- " by taken away, and the heritors of the said parish (being " Protestants) and the elders having, on all occasions, ever since " the passing of the said act, exercised the said right of presen- " tation: That in so far as regarded the election of an assistant " and successor to the said Reverend Thomas Lockerby, present " minister of that parish, the right of presentation was duly and " completely exercised by the votes given at the said meeting of " heritors and elders, held on the 4th day of August last, and " that the pursuers constituted, and were the legal and actual " majority of the individuals entitled to vote, and who voted at " the said meeting;" and that the pursuer, Young, was thereby duly elected assistant and successor to Lockerby; and that the votes given in favour of the defender, Park, by persons enumerated, were null and void, and of no avail, and that the said parties so tendering the said votes had no right or title so to vote in the said election; " That the deed of presentation exe- " cuted in favour of the said Reverend John Park, which bore " no reference to the election, made and completed at the said " meeting of heritors and elders, on the said 4th of August last, " and which was not made at any general meeting of heritors

" and elders, duly authorized, and convened in pursuance of the " said act of Parliament, or duly convened in any manner of " way, was altogether null and void; and in any event, that of " the individuals so subscribing the said deed of presentation in " favour of Mr Park, who were not present at the said election " meeting," certain persons enumerated, " were not *in titulo* " to exercise the right of patronage of the said parish, and " especially after the said election meeting, had no right or title " to vote, or take part, in any manner of way, in the election " and presentation of an assistant and successor to the said " Reverend Thomas Lockerby." And it being found that the pursuer, Young, was duly elected, the Presbytery ought to be ordained, " to receive and sustain the said minutes of election, " and corroborative deed of presentation, as a valid and effectual " election and presentation in favour of the pursuer, the said " Reverend James Young, as assistant and successor duly elected " to the said Reverend Thomas Lockerby, minister of the said " parish of Cadder, reserving to the said Presbytery their right " *quoad ultra* to proceed in the matter in terms of law, and ac- " cording to the rules of the church; or otherwise, and failing " decree in terms of the conclusions herein above written, it " ought and should be found and declared, by decree foresaid, " that the pursuers, heritors and elders aforesaid, and the whole " other heritors and elders of the said parish of Cadder, are en- " titled to hold another meeting, in all due form, according to " law, for the purpose of choosing and electing an assistant and " successor to the said Reverend Thomas Lockerby as minister " of the said parish, and to make and complete an election of " such assistant and successor accordingly."

The pleas in law by the pursuers in support of their action were: —

" 1. The right of patronage or presentation in the parish of " Cadder is to be held a right of patronage or presentation

" acquired by the heritors and elders under the act 1690, cap. 23,
" and is so to be regulated and dealt with in the present question.

" 2. According to law and usage the election of a minister
" under a right of presentation acquired by virtue of the statue-
" 1690, is to be made by the majority of voices at a meeting of
" heritors and elders duly called, and in the present case, the
" election is to be determined according to the majority of voices
" at the meeting of 4th August 1836.

" 3. The pursuer Mr Young, having the majority of legal
" and valid votes at that meeting, is the duly presented assistant
" and successor to the parish of Cadder; and the defender Mr
" Park, having the minority of legal and valid votes at this
" meeting, has no legal title to the office.

" 4. The defender Mr Park is not entitled to found on the
" deed of presentation got up on his behalf subsequently to the
" meeting of 4th August, as varying or controlling the election
" at that meeting. At any rate, even that presentation itsel
" does not afford him sufficient grounds for claiming a majority
" of legal votes.

" 5. The proceedings in the church courts taken on behalf of
" the defender Mr Park, and in opposition to the distinctly
" intimated claim of the pursuer Mr Young, cannot affect the
" pursuer's rights, at all events, cannot affect his civil rights to
" the benefice.

" 6. There is no good ground for impugning the right of
" the pursuer Mr Young on the ground of any want of qualifica-
" tion to government on the part of those presenting or vot-
" ing for him. In any event, this is a plea which it is *jus tertii*
" to the defenders to state, as, if well founded, it would not ope-
" rate to confirm their own presentation, but to create a right in
" the Crown.

" 7. In any event whatever, the presentation to Mr Park
" could not be sustained, not being subscribed by an actual

" majority of the whole persons within the parish entitled to join " in the presentation, and the pursuers would be entitled to have " another meeting appointed for election, or other means taken " for ascertaining the sense of the true majority; and at all " events, in the meanwhile, are entitled to object to the presenta- " tion, as not being a presentation by a legal quorum of the " patrons."

On the other hand, the pleas in law for the defenders were:— " 1. Assuming that the right of the heritors and elders of the " parish is to be held as acquired under, and to be regulated by, " the act 1690, cap. 23, and that the election is to be determined " according to the number of legal and qualified votes given at " the meeting of 4th August, 1836, the defender, Mr Park, " having been validly voted for by a great majority of those " legally entitled and qualified to vote thereat, is the lawfully " elected assistant and successor to the parish of Cadder, while " Mr Young, not having been validly voted for by a majority of " those entitled and qualified to vote, has no title to the office.

" 2. The right of the competing parties falls to be determined " by the presentations lodged for them respectively with the " Presbytery, and while that in favour of Mr Young is invalid " and ineffectual, proceeding from parties not entitled nor " qualified to grant the same, that in favour of Mr Park is valid " and effectual."

On the 11th of June, 1840, the Lord Ordinary (*Cockburn*) pronounced an interlocutor containing specific findings, embracing the several objections which had been taken to the votes on either side, but which it is not necessary farther to notice, because of the course which was taken on the hearing of the appeal. That interlocutor, and a note which was subjoined to it, so far as regarded the points argued at the hearing of the appeal, was in these terms: — " The Lord Ordinary having heard " parties, and considered the process, Finds, 1*st*, That the

" appointment to the office in dispute did not take place as an " election under the act 1690, chap. 23, but as a presentation " under the 10th of Queen Anne, chap. 12, and the relative " deed by the College of Glasgow, of date the 30th December, " 1726: Finds, 2*d*, That therefore it is only the names in the " two presentations that are to be taken into view in settling this " competition. Reserves consideration of all other points in the " cause, and of all questions of expenses, and appoints the cause " to be enrolled, in order that the parties may state how they " wish to proceed towards the application of these findings."

" *Note.* — *First*, The first thing to be settled is, whether the " appointment is to be viewed as an election under the act 1690, c. 23, " or as a presentation under the act of Queen Anne in 1711, restor- " ing patronage? The Lord Ordinary thinks it was a presentation. " The facts are, that while the act 1690 was in force, the parishioners " wished to buy, and the patron to sell, the patronage; and, accord- " ingly, an agreement was concluded, and the price paid. The pur- " chasers were only required by the statute to pay, 'upon the said " 'patron his granting a formal and sufficient renunciation of the said " 'right of presentation;' but in this case they did, in point of fact, " pay without obtaining any renunciation, though no doubt relying " upon it. While matters stood in this state, the act of 1711, restor- " ing patronage, passed. It declares that the way of calling ministers " under the statute of 1690 had proved publicly inconvenient, and " that there were cases where the price had neither been paid, nor " renunciations been granted. It therefore, on public grounds, re- " stores patronage to the patrons, with one single exception. This " exception is, that the act is not to take effect in any case where the " patrons have 'accepted of, and received any sum or sums of money " 'from the heritors, &c. in satisfaction of their right of patronage, " 'and have discharged and renounced the same under their hands.' " The patron here had not renounced, but having got the price, and " being aware, therefore, that it was his duty to do what he could to " make the corresponding return, he, (College of Glasgow,) in 1726,

" executed a deed narrating the transaction under 1690, the passing " of the act 1711, and then disponing 'the foresaid right of presen- " 'tation' to the heritors and kirk-session.

" It appears to the Lord Ordinary, that in these circumstances the " pursuers must be viewed as patrons. The arrangement by which " they meant to acquire the right of naming and proposing the minis- " ter to the congregation, under the act 1690, had not been carried " into full effect, when the act of 1711 restored patronage in favour " of all patrons who had not excluded themselves by having formally " renounced their rights. Their reception of the price is not made " sufficient. On the contrary, as the act 1690 was abrogated on " grounds of public expediency, its operation was made to reach the " case of all patronages not actually renounced. And this implied no " pecuniary injury to the incautious payers, because they had a right " of repetition. They did not seek repetition here, but claimed " fulfilment, in the only form then possible, of its contract from the " College, which the College honestly acceded to. But it is very " material to observe how this was done. It was not done by a mere " renunciation by the patron of his right, which is what is required " by 1690, and a consequent merging of that right in the people. " Both parties seem to have felt that after 1711 this would not do; and " accordingly the College grants, and the heritors take, a disposition " of the patronage, and in so far as this conveyance is to the kirk- " session, instead of the elders, it is not even in favour of the class " that was entitled by 1690 to acquire.

" Acting under this deed the parties are patrons, and must be dealt " with as such.

" *Second*, If this be their legal position, it is clear that it is only the " names on the presentation that are to be looked to, and not the " votes at any meeting. Brown, 9th June, 1830."

The appellants reclaimed against this interlocutor, and on the 17th November, 1840, the Court (*First Division*) altered it in these terms: — " The Lords having advised this reclaiming note, " and heard counsel for the parties; Recal, *hoc statu*, the find-

" ings of the interlocutor complained of: Find that every " vacancy in the parish is to be supplied, not by election under " the act 1690, cap. 23, but in exercise of the right of patronage " conveyed to the heritors and kirk-session by the deed of 1725, " reserving consideration of the effect of the proceedings referred " to in the record; and farther, reserving all questions of ex- " penses, and remit to the Lord Ordinary to hear parties farther, " and do as he shall see just."

On the 9th of December, 1840, the Lord Ordinary pronounced the following interlocutor, adding the subjoined note: — " The " Lord Ordinary having heard parties under the remit from the " Court, and considered the record — Sustains the defences, " assoilzies the defenders, and decerns: Finds the defenders " entitled to expenses, subject to modification; appoints an " account thereof to be given in, and when lodged, remits to the " auditor to tax, and to report."

" *Note.* — The interlocutor of the Court fixes that this is to be con- " sidered as a case of patronage, and not as an election under the act " 1690, chap. 23. The pursuers having thus lost their principal " point, maintain that it was at least agreed or understood that the " person to be presented was to be determined by the votes at the " meeting of 4th August, 1836, and that not only the minority at that " meeting, but even those who were absent, if not to be held as con- " curring in, are at least barred from objecting to, the result there " come to.

" Now, 1*st*, The Lord Ordinary thinks that this view does not arise " out of the record. It implies that the parties knew that they were " obliged to exercise a right of patronage, and that they resolved to " do so, by first collecting the general sense of the patrons. But the " averment of their condescendence (Art. 4.) is, that they held that " they were not acting as patrons, but as popular electors, under the " act 1690; and their whole pleas are constructed in reference to this " fact. There is no part of the record that suits the view now taken.

" 2*d*, The Lord Ordinary sees no evidence whatever of any such

" compact or understanding. It is plain enough that the parties who " attended thought that that meeting would ultimately decide the " dispute, and that, under this notion, they used the word elected, and " other terms, which shew that they thought that what then took " place might at last prove conclusive. But that they meant to ex- " clude themselves from proceeding according to a correct view of " their legal position, or that the minority intended to abandon any " latent right that they might have, is not only not proved, but is plainly " contrary to the fact.

" 3*d*, At any rate, this alleged understanding could only bind those " who were present. It is said that the whole body of the electors, " including even the absent, were bound by the usage of the parish. " The fact as to the usage is denied. But at any rate, it is inconsis- " tent with the pursuer's own part of the record, where the averment " is, that all the vacancies have been filled up by elections: which " excludes the idea that the parties held their rights as patrons to be " controlled by the previous resolutions of the electors. The denial " is almost warranted by the single and admitted fact, that the deed " of 1726 was only discovered in 1793, since which there have only " been one or two vacancies prior to the present one.

" Besides, even though it were to be assumed that the matter lay " solely between the two parties present at the meeting, and that " both had understood that the vote there taken was to be final, the " Lord Ordinary would not hold that, after it was discovered that " they were wrong in their idea of their situation, but the means of " correcting their error was open to each, either was prevented from " doing so. Six heritors believe that they are popular electors under " the act 1690, c. 23; they therefore meet and elect a minister by a " vote. It is then ascertained that they were not electors under that " act, but patrons under the act of 1711. On this, some of them " choose to try the experiment of presenting under the statute, while " some do not. Can it be held that the first proceeding forms a " personal bar against the adoption of the second? The case of " Rutherglen (Brown, 9th June, 1830) is the best answer to this " question. That case was, in all its circumstances, fully stronger for " the pursuer's plea than this one is. Yet the Court, disregarding all

" the alleged compacts and understandings implied in previous meet-
" ings, resolved to look at nothing but the deed of presentation.

" But really all this is superseded by what followed.

" Because the pursuers (rather inconsistently with their statement
" in the record, that they were acting under 1690) were aware that
" a deed of presentation was necessary; and the minute bears that
" they appointed a committee 'to make and complete the presentation
" 'in his (Mr Young's) favour.' Accordingly, a deed of this descrip-
" tion was lodged with the Presbytery, and it is solely by giving
" effect to this 'corroborative deed of presentation,' (as it is termed
" in the summons,) that the pursuers can succeed in this action. But
" of the fifty-three or fifty-four persons who sign this deed, not one
" had previously qualified by taking the oath to government. They
" took the oath before one justice, whereas the statute requires
" two or more, and under the express penalty of nullity. However
" indulgent Courts may have been as to the time of taking the oath,
" it is idle to talk of liberality of construction in reference to the case
" of a total failure to take them. The presentation by the defenders
" is subscribed by about sixty-seven qualified persons.

" Of these sixty-seven seventeen were not at the meeting of the
" 4th of August; and it is a possible case, that though taking a deep
" interest in this matter, they might reasonably stay away, because
" there had been seven candidates proposed and heard preach, and
" they may have been pleased with any of them. But Mr Young
" was started at that meeting for the first time; so that they, finding
" a new man proposed, might very naturally exercise their right of
" patronage, independently of that meeting altogether. The Lord
" Ordinary is quite clear that they at least are not bound by what the
" meeting did. Now, holding that those present are bound, and
" deducting the whole minority of fifty, there are still seventeen
" qualified names to the one presentation, and none to the other.

" Besides, the question cannot be considered solely as between the
" two parties of patrons. The presentee was no member of the
" meeting, and can his rights under his unreduced presentation be
" taken away by such disputes among a class of the patrons? They
" may have broken their bargains with each other, but what is this

" to him? A. holds a presentation from two of three patrons, will " he lose the benefit of it because the two promised to the other that " they would appoint B.? It is said that if it was wrong in the " minority to present, his right must fall. This is very doubtful, but " the seventeen are no part of that minority.

" It is also said, that he was a party to the arrangement that the " meeting should decide who should be presentee. This fact is no- " where properly set forth in the record. But at any rate, there is " no averment that, after what the meeting did proved abortive, " he could never accept a presentation from the only seventeen " free patrons."

On the 17th February, 1841, the Court adhered in these terms, — " The Lords having advised the reclaiming note for " John Cullen and others, pursuers, and heard counsel for the " parties; Adhere to the interlocutor reclaimed against, and " refuse the desire of the reclaiming note: Find additional ex- " penses due, and remit to the auditor to tax the account when " lodged, and to report."

The appeal was taken against these several interlocutors of the Lord Ordinary and the Court.

Mr Solicitor General, and Mr Hope, for the appellants. — Immediately on payment of the 600 merks by the heritors and elders, to the university of Glasgow, under the terms of the act 1690, the right of election vested in the heritors and elders by the statute; all that was then necessary to complete their title was the formal conveyance; accordingly the deed of 1725, executed by the University, completed the title of the heritors and elders under the act 1690. That act gave the right whether a renunciation had been executed or not. No doubt, the act of the 10th of Anne restored the right to the patrons, except where the money specified by the act 1690 had been paid in satisfaction of the right, and had been discharged under hand, and thus in terms omitted to provide for the case of the money

being paid and not discharged; yet, according to its true spirit and proper construction, the act must be intended to bring within the exception those cases where a purchase had been truly made, and the price paid, and to have specified the discharge *ex abundantia* as evidence merely of the purchase, for it can never be supposed to have intended to allow the price paid to remain in the hands of the seller, and the purchaser, nevertheless, to go without the subject of his purchase.

But at all events, the act of Anne offered no impediment to parties, who had received the price, completing the purchase by executing the necessary discharge and renunciation, if minded so to do, although it perhaps gave them the power of refusing. Accordingly the University did execute the deed of 1725, and whatever might have been the rights of the parties prior to its execution, subsequent to it, they were brought within the exception in the act of Anne. That act does not require to be read, as applicable only to the circumstances as they existed at the date of its passing, but may be read as applicable to the circumstances which now exist, or were brought about by the execution of the deed of 1725. According to these the 600 merks had been paid, and the right renounced and discharged within the literal terms of the exception in the act of Queen Anne. There was no consideration for the deed of 1725 but the payment of the 600 merks; it was no evidence of a new contract for the sale of the patronage, but a fulfilment of the previous contract.

[*Lord Campbell.* — No doubt it was the intention of the parties to fulfil that arrangement.]

In either view, then, the right of presentation was vested in the heritors and elders under the act 1690, by the payment of the 600 merks, and actual purchase, without the evidence of a formal renunciation, or by that, coupled with the subsequent execution of the deed of 1725, and fell to be exercised by them under the terms of that statute.

This view is confirmed by the practice in the parish, which

has always been, to exercise the right of presentation by vote at public meeting. The case of Campbell *v.* Stirling, 4th March, 1813, 17 *F. C.* 268, was the case of an election by meeting in this parish, and the question there tried was, whether the preses of the meeting had right to a casting vote. That question would never have been argued, and still less have been carried to appeal, if the election was not to be determined by the votes of the meeting, but the signatures to a deed of presentation.

[*Lord Cottenham.* — At the date of the deed of 1725 the call and reference to the congregation had been done away by the act of Anne. If the deed had been before that act, the act of 1690 might be the rule, but if after it, how could the act 1690 operate. The right in the congregation to object had been taken away; and the deed gives the right to be exercised as amply as the University could have exercised it if the deed had not been executed; referring to the acts of the parties, not to the statute 1690.]

We submit that the deed was to give effect to the act 1690, and that the case, by its circumstances, was excepted out of the act of Anne. The intention of that statute was, that after the purchase money paid, and deed executed, the party should be deprived of the right of patronage, but it was not necessary that the deed should have been executed, it was sufficient if executed after the date of the statute.

[*Lord Campbell.* — Is the deed in the same terms it would have been in if the act of Anne had never passed?]

We submit it is in exactly the same terms. It is not a disposition, as supposed by the Lord Ordinary; it "renounces, transfers, and dispones."

[*Lord Campbell.* — What notice is there in it of the act of 1711?]

Mere reference to its existence.

[*Lord Cottenham.* — I apprehend there was nothing in the act

of Anne to prevent the University from conveying the right necessary to be exercised in terms of the act 1690.]

Perhaps not, if nothing had been done previously, but the deed here was a completion of what had been commenced previously to the act of Anne.

[*Lord Cottenham.* — Does it appear whether the heritors and kirk-session presented to the congregation, or at once proceeded to appoint?]

The practice in the parish has been to call a public meeting of the heritors and elders. The person chosen by this meeting was presented to the congregation, who thereafter either gave him a call, or stated objections to the presbytery, to whom the minutes of the meeting had previously been reported, sometimes accompanied by a *pro forma* deed of presentation referring to the minutes, and sometimes without any deed at all. The presbytery then appointed a day for moderating in the call, and on that day the approval or disapproval of the congregation was taken.

[*Lord Cottenham.* — That would be the course under an ordinary right of presentation; but is there no evidence of a formal tender to the congregation?]

There is no distinct evidence of the practice on former occasions.

[*Lord Cottenham.* — I don't see any tender of Mr Young to the congregation. The presbytery were required to proceed on the deeds of presentation. Under the act 1690 the presentation to the congregation preceded the application to the presbytery. I pursue this with a view to see the evidence of practice.]

But if the act 1690 does not regulate, still after the arrangement between the parties, which they were competent to make, that the election should be at a meeting, it could never be competent for the respondents, having ascertained the sense of the meeting, to go behind the backs of the appellants, round the parish, and obtain signatures to a deed to supersede the vote of

the meeting. The protest of Brown objected only to the right of voting in certain parties, and treated the matter as at an end, except as regarded the effect of a scrutiny. Obtaining signatures to the deed in such circumstances was a fraud on the appellants which can never be allowed to stand.

Even as to the deed, supposing the case to be one of proper patronage, the respondents are in no better situation; it is true there are more signatures to their deed than to that of the appellants, but there is no dispute that these signatures are not of a majority of the voters. If the election is to be by meeting, duly published, it matters not what number are present, the whole voters might be present if they would. But if the election is to be by deed, neither of the parties can select what number of the voters he may choose to exercise the right, by omitting to apply to the others. The deed, therefore, to be effectual, must have the signature of a majority of the entire voters. There is no evidence that the voters, whose signatures are not attached to the deed, were ever applied to, or had any knowledge of the existence of the deed, nor of how they would have exercised their right had they been aware of its existence. Accordingly the deed of presentation by the respondents acknowledges the necessity of a majority, by professing (though falsely) to be made by a majority. To dispense with the signatures of a majority, and at the same time to hold the deed as what alone can be looked at, would be to sanction a course fraught with opportunities for fraud.

Mr Pemberton, and Mr Anderson, for the respondents. — There cannot be any right under the act 1690 unless by that act itself; it cannot be both by the statute and the deed, for the deed never once refers to the statute. The act gives the right to the heritors and elders, while the deed gives it to the heritors and kirk-session. The statute gives to the heritors and elders power to select a person, who should be presented to the heads of families, (strictly

speaking, the parishioners,) by whom the party selected was to be approven or disapproven, the matter being to be judged of by the presbytery. This was not to give a right of patronage or presentation, but, in truth, to give a right of election, dependent on the approbation of the congregation. The conveyance of this right was by the statute itself, not by the renunciation of the patron. A mere renunciation would be a nullity, but operating with the statute it completed the conveyance. The deed, on the other hand, conveys out and out the direct right of presentation to the heritors and kirk-session, without any reference to the congregation for their approval or otherwise. But conceding to the deed all the effect that is argued for it by the appellants after the passing of the statute of 1711 no act done could give the same right as existed under the act 1690. It was not possible for the parties to defeat the policy of the legislature virtually to repeal the act of 1711 as to this parish, by abolishing the right of patronage in it, and acting under the statute 1690, which the act 1711 had repealed.

[*Lord Cottenham.*—They could not have given the right to the presbytery, for instance.]

Exactly. Whatever they might do equitably to regulate their private rights, they could not restore that which the act 1711 had abolished. Taking the case not to be within the exception of the act 1711, the right of patronage was restored as it had existed previously to the act 1690, and it was no part of the object of the exception to the act 1711 to restore the mode of elections created by the act 1690. The parties who had paid the 600 merks, and obtained the renunciation directed by the act 1690, became, under the terms of the act 1711, the patrons entitled to exercise the right of patronage, not according to the mode prescribed by the act 1690, but as ordinary patrons; *Ersk.* I. 5, 19, so lays down the law.

No doubt it was the intention of the parties, by the deed of

1725, to complete the arrangement which had been begun prior to the act 1711. It is plain they intended to give some right to be exercised by some party, but both the right given, and the exercise of it, must be consistent with the law as altered by the act 1711. They could only give what by law they might give, and that was an ordinary right of presentation.

[*Lord Cottenham.* — You say only cause of exceptions in the act 1711 was to prevent the right going back to the parties who originally had it, but not to keep alive as to the case, excepted the mode of electing created by the act 1690, but done away by the act 1711.]

Exactly. And if this be correct, then the case of Brown *v.* Johnstone, 8 *S.* and *D.* 899, has fixed that where the right of presentation is in the parish, the deed of presentation is all that can be looked at, however many public meetings there may have been. The meetings are only, that the persons entitled to present being a numerous and scattered body, may come to some general understanding as to what it might be proper to do, but the execution of the formal deed is the only mode by which the right of presentation can be exercised.

As to the effect of any alleged agreement between the parties, to exercise the right of presentation by election at public meeting, and not by deed of presentation, that question cannot be raised upon the record. The summons proceeds entirely on the assumption, that the right was to be exercised by popular election, under the act 1690, and the condescendence is framed on the same view, but this is manifestly inconsistent with the notion of the agreement alleged, which would imply the existence, not of a right of popular election, but of ordinary patronage, and an arrangement merely as to the mode of its exercise.

But there is no evidence of any such agreement. The meeting was held according to the ordinary usage of the parish, merely for the purpose of ascertaining the general feeling, but not for the

exercise of the right of patronage, that being done by deed of presentation, which invariably and indisputably was always used, whether there had been previous meetings or not, and without regard to what might have passed at them.

Mr Solicitor General in reply. — In whatever way the right may be vested, and whatever appellation it may receive, that of presentation or of election, there must be a form for ascertaining the sense of the body entitled. The question, taking it upon the deed, is not between two competing deeds, whether the one has more signatures than the other, but whether the deed in favour of the respondent Park expresses the sense of a majority of those entitled; any number of signatures that he might choose to obtain, provided only it exceeds the number obtained by the appellant Young, could never conclude the other parties entitled, who might never have been applied to by either. The same course should be taken as to this parish as has been held in England in regard to parishes having the same right to exercise, where the vote of the majority at a public meeting has been held to express the sense of the majority of those entitled to elect. If so it is immaterial whether the right is to be exercised under the act 1690 or not.

The ordinary rights incident to patronage never were transferred by the act 1690, these remained with the original patron; all that was given by that act was the solitary right to present. In the cases, therefore, excepted from the repeal of that statute, the parishioners were not patrons entitled to exercise the right of patronage in the ordinary form, but were merely electors, as they had been previous to the repeal. And the only way in which the right of election, in such a case, can be exercised, is by the majority at a public meeting. In England the cases are without end in which this has been recognized, Attorney *v.* Parker, 3 *Ath*: 576; Attorney *v.* Forster, 10 *Ves.* 339;

Faulkner *v.* Elger, 4 *B.* and *Cr.* 449; Edinboro *v.* Canterbury, 2 *Russ.* 93.

[*Lord Cottenham.* — Do you concede that if the deed had been signed by a majority that would settle the question?]

I am not inclined to admit that, for I think a meeting was the proper mode to ascertain the sense, King *v.* Davie, 6 *Ad.* and *Ellis*, 374. It is not inconsistent that a deed may be necessary, and that there should be a previous meeting, especially if the deed is consistent with the vote; but if the deed is inconsistent with the vote, can you look at the deed without regard to the vote? In Brown *v.* Johnstone there was a regular disposition of the patronage, and the question raised was, whether the right was in the heritors and elders alone, or jointly with the feuars.

[*Lord Campbell.* — The Lord Ordinary discarded what took place at the meeting, and the Court adhered to his finding.

Lord Cottenham. — Brown raised the question as to the meeting and the deed in one of his pleas.]

But if that case did lay down such a rule, it can never receive the sanction of this House, and at all events, it does not appear, in that case, whether the signatures to the deeds were not of the majority, while here we have averred that they are not of the majority.

Mr Anderson, in reply to the cases cited in the reply of the Solicitor General, called the attention of the House to Grant *v.* Gordon, *Mor.* 9945, as shewing that where the right was in several patrons, if one only exercised the right, that had been held sufficient.

[*Lord Campbell.* — There the parties had the right individually, not collectively, but can you refer to any case where the right has been collective?]

I am not aware of any but Brown *v.* Johnstone.

LORD COTTENHAM. — My Lords, the first question in this case, is, whether the right of appointing a minister to the parish

of Cadder is vested in the heritors and kirk session of that parish under the act of 1st William and Mary, in the year 1690, and to be exercised according to the provisions of that act, or as ordinary patronage under the deed of 1726. It appears to me, that the latter is the real title.

The act of 1690, destroyed patronage, and established a new and totally different scheme for the appointment of ministers. The heritors and elders were to propose a person to the whole congregation, to be approved or disapproved by them. If they disapproved, they were to give the reasons, to the effect that the affair might be cognosced by the presbytery, by whose judgment and determination the calling and entry of a particular minister was to be ordered and concluded. Six hundred merks was to be paid by the parish to the patron, in consideration of the patronage so taken away, upon his granting a sufficient and formal resignation of his right of presentation in favour of the parish. But, when the patronage was in the crown, the crown was denuded of the right by the mere payment of the six hundred merks.

It appears, that the six hundred merks were duly paid to the University of Glasgow, the original patrons, but no renunciation of patronage was executed by them.

In this state of things, the act of 10 Anne chap. 12. passed, which repealed and made void the act 1690; and restored the right of patronage to every patron who had not made and subscribed a formal renunciation, provided always, that the patronage should not be restored where the patron had received the money, and discharged or renounced the right of presentation.

The provisions of this act are very positive, and very distinct. The University of Glasgow, although they had received the 600 merks, had not, as required by the act, "made and subscribed a "formal renunciation of their right of patronage;" and, therefore, by the express enactments of that act, the right of presentation to this parish was restored to them. The University, however,

having received the 600 merks, were properly desirous, as far as possible, of giving to the parish the benefit of what they had so paid for; and, accordingly, in 1726, a deed was executed, by which they renounced, transferred, disponed, and overgave to the heritors named, of the parish and their successors, and the kirk session of the parish, the right of presentation of a minister, with power to present ministers as fully as the University could have done, if that deed had not been granted.

It is evident from the terms of this deed, that the parties were well aware of the state of the law at the time. If they had considered this parish as coming under the exception of the act of Anne, and the mode of appointing ministers as regulated by the act of 1690, there would have been no patronage to be transferred to the heritors, and there could not have been any right of presentation in the heritors and kirk session, all patronage being by that act abolished, and a mode of appointing ministers substituted inconsistent with any right of presentation. But inasmuch as the University had not before the act of 10th Anne, made and subscribed a formal renunciation of their patronage, all parties seem to have been aware, that that act restored to the University the patronage, and they executed a deed which assumed that it was vested in them, and which transferred to the heritors and kirk session their right of presentation to be thereafter exercised by them.

It was contended, that this deed ought to be considered as giving to the parish just such rights as they would have been entitled to, if the act of Anne had not passed. But, in the first place, that is not the purpose of the deed, and for a very good reason, namely, that in the then state of the law, such an arrangement could not have been effected. The act of 1690 had been repealed, as to all parishes at least not within the exception of the act of Anne; and even if the parties could have established a scheme similar to that provided by the act of 1690, so far as they were themselves concerned, they could not have given the power to the

presbytery, and have imposed upon them the duties provided by the act, and which constituted a very important part of the scheme.

It seems, indeed, to have been assumed, that even in those parishes in which a renunciation had been executed before the act of Anne, the parishes now enjoy the right as patronage, and not under the act of 1690. But in the present case, it appears to me clear, that the right of presentation is vested in the heritors and kirk session under the deed of 1726, as patronage, and not to be exercised according to the scheme of the act of 1690.

If this be so, there is very little more to be considered in this case. The question of agreement, which is not raised by the summons, but which was inquired into in the Court below, is no longer open to discussion. The pursuer does not insist that, looking to the two presentations, more electors have signed that in favour of Mr Young, than have signed that in favour of Mr Park. A scrutiny was declined below, and, therefore, could not be, as in fact it was not, asked of this house. The pursuer, however, says, that those who had signed the presentation in favour of Mr Park, do not constitute a majority of the whole of the electors. That cannot be material. Those who do not chuse to interfere cannot prevent the exercise of the right by those who come forward to exercise it.

The pursuer then says, that the right can only be exercised at a public meeting, and that the decision of the public meeting was in favour of Mr Young; and the English cases, and particularly the Attorney General *v.* Parker, in 3d *Atkyns*, 576, and the Attorney General *v.* Forster, in 10th *Vesey*, 339, were referred to. In these cases, the public meeting was not for the purpose of presenting or appointing, but for the purpose of instructing the trustees, in whom the right was vested for the benefit of the parish. Those who met, could not be parties to the presentation or appointment. Whereas, in the present case, none ought to

have been present, but those who would have been proper parties to the presentation; and under those circumstances it has been decided in Scotland, in the case of Brown *v.* Johnstone, in 8th *Shaw and Dunlop*, 899, that the presentations only are to be looked at, and that what passed at any previous meeting, is not to be regarded.

Independently of that authority, it would lead to strange consequences if it were to be laid down as a rule, that where a presentation is vested in many, there must be a public meeting. To what number is the rule to apply, and what knowledge can the authority to whom the presentation is made, have of what took place at the meeting?

If, indeed, fraud and improper dealing had been alleged and proved, what passed at the meeting might have formed a material ingredient in the case. But there is no such question upon this record. The summons impeaches the qualification of some of the parties who signed the presentation in favour of Mr Park, but it does not seek to reduce the deed upon any ground of fraud or breach of agreement. It prays, that it may be declared void, merely upon the ground that it was not in conformity with the decision of the majority of the meeting, which, it insists, was conclusive, because the right was to be exercised under the scheme of the act of 1690.

I am of opinion, therefore, that the pursuer has failed in all the grounds upon which he rested his case; and therefore move your Lordships that the appeal be dismissed with costs.

Lord Campbell. — My Lords, it gives me the most sincere satisfaction, that my noble and learned friend has come to a clear conclusion in his own mind in favour of affirming this interlocutor, because I have no doubt whatever, that in this manner the merits of the case are properly disposed of. For upon the result of that meeting of the 4th of August, I have no doubt at all that Mr Park had a majority of legal votes. With respect to those

heritors of Chryston, who voted in favour of Mr Young, who are supposed to have carried the majority, it seems to me, that they clearly had no more right than the heritors of any other parish, or any other chapelry within the kingdom of Scotland.

That being so, I am very much rejoiced to think that Mr Park, who has for a considerable time been in possession of the living, will still continue to enjoy it. But I own, my Lord, that I did entertain considerable doubt upon some of the questions which were argued; first, as to whether, supposing that the transaction had been completed by renunciation as well as the payment of the 600 merks, whether in that case, the election ought not to be under the act of 1690. That seemed to me by no means clear, and I should, though not having a strong opinion, have been inclined to think that the act of 1711 did not apply to cases where the transaction had been completed before that act passed.

Then, as to the second point, whether this deed of 1726, did not place the transaction upon the same footing as if that deed had been executed before 1711, it seems to me, that there are reasons entitled to some weight for considering that that deed is to be referred to the time when the 600 merks were paid, so as to place things on the same footing as if the renunciation had taken place before the act of 1711.

Again, supposing the right of election to be in the body, there seems to me to be great difficulty in knowing how it is to be exercised, except at a public meeting; because, it is not a case where there are several patrons, however large the number may be, who of their own right exercise the patronage, but where they exercise it as members of a public body, as heritors of the parish, or as elders of the kirk session. In such a case, it seems to me that there is great difficulty in saying that the mode of proceeding in England ought not to be adopted; and that would be done in the most satisfactory manner, by, according to usage, giving notice of the meeting, and when the meeting takes place ascertaining

the majority of legal votes in the usual manner. But, however, upon these points, I by no means entertain any opinion upon which I am at all inclined to advise your lordships to act; and I again express my satisfaction that my noble and learned friend is clearly of opinion in favour of affirming the interlocutor, which is the subject of the present appeal; and I am of opinion, also, that it should be affirmed with costs.

Ordered and Adjudged, That the petition and appeal be dismissed this House, and that the interlocutor, in so far as therein complained of, be affirmed with costs.

THOMAS DEANS — W. L. DONALDSON, Agents.