

Error &amp; Appeal.]

WEIR V. MATHIESON.

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## UPPER CANADA REPORTS.

## COURT OF ERROR AND APPEAL.

On an Appeal from the Court of Chancery.

*(Reported by RICHARD GRAHAME, Esq., Barrister-at-Law.)*

## WEIR V. MATHIESON.

*University—Professorship—Tenure of office—Jurisdiction—Visitor—Trust.*

The fact of power being given to the board of trustees of a university by the charter of incorporation to dismiss professors or other officers of the college upon impropriety of conduct proved, does not take away the inherent power of the governing body, free from all interference by the ordinary courts of justice, to dismiss at pleasure where no special agreement has been entered into, it being held that the tenure of the office of a professor appointed by the board of trustees with an agreement as to tenure, is a general thing, and as such, during pleasure, and not during good behaviour.

The right to receive his stipend out of the general funds of a college in the incorporation of which no specific fund is provided for the foundation and support of his office, does not establish a trust between a professor and the governing body of the college of which the Court of Chancery can take cognizance.

The jurisdiction in all matters relating to the internal government of a college, and therein of the appointment and removal of professors and other officers, lies in the visitor of the college, and the Court of Chancery cannot interfere to restrain the governing body in respect of matters appertaining to the functions of the visitor.

[E. &amp; A., March 16, 1866.]

By royal letters patent dated the 16th day of October, 1841. Her Majesty constituted certain persons therein named, being ministers of the Presbyterian Church of Scotland, in connection with the Church of Scotland, as members of such Church to be a body corporate under the style of the Queen's College at Kingston, "and by that name to have perpetual succession as a College with the style and privileges of an University, for the education and instruction of youths and students in Arts and Faculties.

The letters patent further declared that the said Corporation should consist of 27 trustees, and amongst other powers conferred upon the trustees it was declared that they should have full power to elect and appoint to the college, a principal, and such professors, master, tutors and other officers, as to the said trustees should seem meet and that "if any complaint respecting the conduct of the principal, or any professor, master, tutor, or other officer of the said college, be at any time made to the Board of Trustees, they may institute an enquiry and in the event of any impropriety of conduct being duly proved, they shall admonish, reprove, suspend, or remove the person offending as to them seem good. Provided always, that the grounds of such admonition, reproof, suspension, or removal be recorded at length in the books of the said Board," and further that the said trustees should have power to make statutes and rules concerning amongst other things, the good government of the college, the number residence and duties of the professors, the management of the revenues and property of the college, the salaries, stipends, provision and emoluments of the professors, officers and servants thereof, and also touching and concerning any other matter or thing which to them should seem necessary for the well being and advancement of the college, provided that

such statutes and rules, should not be repugnant to the said letters patent, or to the laws and statutes of Upper Canada, and further that five of the trustees should be a quorum for the despatch of all business except for the choice or removal of the principal and professors for any of which purposes there should be a meeting of at least thirteen trustees, and further, that the said trustees should have power to meet at Kingston, or at such other place as they should fix upon their own adjournments, and likewise so often as they should be summoned by the chairman or in his absence by the senior trustee, provided that no such meeting should be called unless the chairman was notified in writing by three members of the Board to do so; and that notice of the time and place of meeting should be given in one or more of the public newspapers of the Provinces of Upper and Lower Canada, at least thirty days before such meeting, and that every member of the Board, resident within the Province, should be notified in writing of the time and place of meeting; and the principal and professors of the college were constituted the College Senate for the academical superintendence and discipline over the students and all other persons resident within the same. In the year 1852, the Rev. John Cook, D D, first principal of the college, and one of the trustees was directed by the then Board of trustees to proceed to Scotland, and seek out and recommend for appointment by the Board, professors to fill the vacancies then existing in the college, and in accordance therewith, the respondent, the Rev. Geo. Weir, who was then Rector of the Grammar School at Banff, in Scotland, was desired by Dr. Cook to accept the professorship of classical literature, being one of the professorships then vacant in the college, and in September of that year, being still in Scotland, Mr. Weir accepted the office, and on the 8th June, the Board of trustees passed a resolution confirming his appointment, since which time he continued to discharge the duties of his professorship until February, 1864, when the following resolution was passed at a meeting of the Board of Trustees:—"Resolved that from the facts which have come to the knowledge of the trustees and the alarming state of the college, the trustees deem it necessary, and in the interest of the college to remove Professor Weir from the office of professor of classics and secretary to the senatus, and in the exercise of their power to remove at discretion, they hereby do remove him from these offices accordingly forthwith; and that the treasurer do pay to him his salary in full, to the end of the present session, and six months thereafter in lieu of notice, and that the secretary be instructed to communicate this resolution to Mr. Weir."

This resolution was passed without Mr. Weir being present or having received any notice to appear before the Board, or being called upon to make any defence or explanation.

In passing this resolution the Board of trustees acted upon a code of statutes, rules, and ordinances enacted under the authority of the charter at a meeting held on the 26th day of January 1863.

The particular statutes affecting the case being the following:—