

Error & Appeal.]

WEIR v. MATHIESON.

[Error & Appeal.]

Court of Chancery jurisdiction to restrain the appellants from interfering with the respondent Weir in the performance of his duties as professor.

2. Because the action of the appellants in endeavouring to remove the respondent Weir from his professorship without cause assigned or complaint proved was in violation of the duties of the trustees under the charter.

3. Because the action of the trustees was not only illegal but entered upon *malâ fide*.

4. Because the appellants as trustees of the incorporation are governed by the regulations of the charter with reference to their powers and duties and any attempted violation of such regulations, it was the province of the Court of Chancery to restrain.

5. Because the respondent Weir was as well under the charter as under the general principles of law entitled to be notified of any grounds of complaint and to be heard thereupon before removal.

6. Because the trustees had no summary power of dismissal over the professors.

7. Because the statutes that assumed to confer that power were illegal and contrary to the charter.

8. Because the respondent Weir was not in any way answerable for the alleged difficulties in the college, which was the ostensible reason for his removal.

9. Because upon all the grounds taken in the Court of Chancery the plaintiff was entitled to the decree pronounced.

Strong Q. C., M. C. Cameron, Q. C., and Maclellan, for the appellants.

The government of the College is vested in the visitor or visitors. Here the Crown grants a charter, and the endowment is by private bounty; and if no visitor were appointed, the visitatorial power would rest in the Crown. Trustees are appointed, however, with comprehensive visitatorial powers; and though not named visitors, are such in fact. *Green v. Rutherford*, 1 Ves. 472; *Attorney-General v. Locke*, 3 Atk. 164; *Philips v. Bury*, 2 T. R. 352, S. C. 1 Ld. Raym. 5; 2 Kent's Com. 274, 303; *Attorney-General v. Crook*, 1 Keen 121, 1 C. P. Cooper 33; *Ex parte Wrangham*, 2 Ves. Jr. 609; *Attorney-General v. Clarendon*, 17 Ves. 498; *Attorney-General v. Black*, 11 Ves. 191; *Queen's College, Cambridge*, Jacob, 1; *Attorney-General v. Dixie*, 18 Ves. 519; *Dartmouth v. Woodward*, 4 Wheaton, 681.

The powers of the visitor are without control, excluding the case of a misappropriation of the revenues, where they have the management of them. *Attorney-General v. Locke*; *Philips v. Bury*; *Attorney-General v. Foundling Hospital*, 2 Ves. Jr. 42; *Dr. Walker's Case*, Cases temp. Hardw. 212; *Whiston v. Rochester*, 7 Hare, 545; *Regina v. Rochester*, 17 Q. B. 1.

The Court of Chancery has erroneously assumed jurisdiction on the ground of a trust in the plaintiff's favour. This case differs from that of a schoolmaster, in whose favor or in whose benefit the income of land is appropriated, and cannot be distinguished from *Whiston v. Rochester*; *Attorney-General v. Magdalen College*, 10 Beav. 402; *Regina v. Rochester*, 17 Q. B. 1; *Regina v. Chester*, 15 Q. B. 513; *Regina v. Dartington*, 6 Q. B. 682.

The 16th clause of the charter merely directs the manner of proceeding where, upon complaint made, an inquiry is obligatory upon the trustees, but does not abridge their power to proceed without complaint in the exercise of their discretion. *Attorney-General v. Locke* (cited *supra*).

In the case of *Willis v. Child*, 13 Beav. 117; *Philips' Charity*, 9 Jur. 959; and *The Fremington School Case*, 10 Jur. 512; 11 Jur. 421, there was an obvious trust; and the case of *Daugars v. Rivaz*, 28 Beav. 233, upon which the other side mainly rely, is put by the master of the rolls expressly on the ground of a trust; but there the office of the plaintiff was of the essence of the corporation. The plaintiff's office in this case is not so. It is in the power of the trustees to abolish and revive it at pleasure, and to attach any salary to it they think proper. *Attorney-General v. Daugars*, 10 Jur. 966; *Attorney-General v. Bedford*, 2 Ves. 505; *Attorney-General v. Lubbock*, 1 C. P. Cooper, 34.

The plaintiff contends that his office is for life, but it is not shown that there is an office. The charter does not create it, and the trustees have not done so, and in fact could not do so without acting *ultra vires*. This is the case of a general hiring, as to which the law is well settled. The appointment was by resolution, without any formality, and not under seal; and to entitle to a freehold office, a deed is necessary.

It cannot be inferred or assumed that the tenure is for life, and it has not been made out in evidence. There is nothing in the nature of the office making it necessarily for life. In many of the English universities professorships are held for short periods, or during pleasure; and an act of the Imperial legislature has lately removed the intolerable grievance of irremovable professors in the University of Edinburgh.

This corporation, like others, can only act through a common seal in creating such an office. It has not so acted, and therefore this is a mere ordinary hiring. *Ventris*, 355; *Vin. Abr. Corp. G. 2 pl. 7*; *Year Books*, 13 H. 8, fol. 12. *Grant on Corporations*, 58; 2 Ld. Raym. 1345.

In the case of *Daugars v. Rivaz*, the master of the rolls did not mean to overrule the case of *Whiston v. Rochester*, but thought his decision could stand beside it; but the decree in this case and *Whiston's case* cannot stand together. *King v. Catharine Hall*, 4 T. R. 233; *King v. Ely*, 5 T. R. 475; S. C. 2 T. R. 338; *Attorney-General v. Clare Hall*, 3 Atk. 664.

The plaintiff must establish, first, a life tenure, and, second, a trust, before he can maintain his decree. He has failed in both, and the decree must be reversed.

Crooks, Q. C., Blake, Q. C., and Cattinuch, for the respondents.

The appellants must show the decree clearly wrong.

Under the charter, the trustees cannot remove at their will and pleasure. If they do so, their proceeding is *ultra vires*, and the court has jurisdiction to interfere and restrain them. Assuming the jurisdiction, the question becomes one of tenure. This is not a question of contract, but the case of an office, which it is the duty of the trustees to fill. [DRAPER, C. J.—Where do you found the office?] In the charter, and in the law of the land. [DRAPER, C. J.—The charter gives