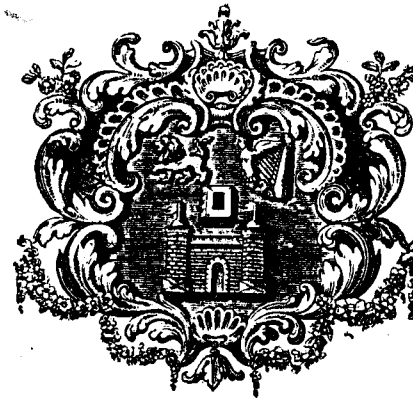


CHARTÆ ET STATUTA  
COLLEGII  
SACROSANCTÆ ET INDIVIDUÆ  
TRINITATIS  
REGINÆ ELIZABETHÆ,  
JUXTA DUBLIN.



VOL. II.  
DUBLINII:  
SUMPTIBUS ACADEMICIS  
EXCUDEBAT G. WELDRICK.  
MDCCCXCVIII.

37841524

*Instructions.*

A line is drawn through the name of each person who was elected on the first voting.

The Elector may write in words in column 4 opposite the name of any person or persons who had not been elected on the first voting the number of votes which he gives to him or them respectively.

The total number of votes to be now given must not exceed , the entire number given by the same Elector on the first voting to any person not elected, but all of them may be given to any one, or they may be distributed as the Elector thinks fit.

If more than the number of votes as above be given the voting paper will be cancelled.

This paper must be returned to the Registrar of the University on or before the day of November, 18 , or else the first voting paper will stand.

(Signed)

*Registrar.*

TRINITY COLLEGE, DUBLIN,

day of , 18 .

TRINITY COLLEGE, DUBLIN,

v.

THE ATTORNEY-GENERAL AND OTHERS.

J U D G M E N T

OF THE RIGHT HON. THE MASTER OF THE ROLLS, DECIDING THAT A BEQUEST TO "THE CORPORATION OF THE UNIVERSITY OF DUBLIN" VESTED IN TRINITY COLLEGE.

[June 2, 1888.]

THIS case comes before the Court on a motion by the plaintiffs on admissions in the pleadings. The plaintiffs are the Provost, Fellows, and Scholars, of Trinity College, Dublin, and the defendants are the Attorney-General, the Chancellor, Doctors, and Masters of the University of Dublin, and the Trustees and Executors of the will of the late Richard Tuohill Reid, Barrister-at-Law, formerly of Killarney, in the county of Kerry, and afterwards of Bombay, in the East Indies.

The will of Mr. Reid is set out *in extenso* in the plaintiff's statement of claim, except that in the will the testator describes himself as LL.D., without stating, however, of what University. The will bears date the 22nd of September, 1881. It commences by appointing the defendants, Sir George Christopher Molesworth Birdwood, Knight, M.D., of the India Office, and James Cornelius O'Dowd, Deputy Judge Advocate-General, and Barrister-at-Law,

of No. 35, Great George's-street, Westminster, his executors.

The statement of claim alleges that the testator died on the 11th day of February, 1883, at Rome, without having revoked or altered his will, which was duly proved in the Probate Division of Her Majesty's High Court of Justice in England, by the defendants, George Christopher Molesworth Birdwood and James Cornelius O'Dowd, on the 25th day of April, 1883. The testator had no assets in Ireland.

Hannah Reid, the sister of the testator in his will mentioned, died before him, on the 9th day of February, 1883; her life estate, therefore, never came into existence. The ready money and cash at the testator's bankers were sufficient for payment of his debts, funeral and testamentary expenses, and the other expenses connected with the administration of the estate.

The bequest in the will contained of all the testator's shares or stock in the Great Indian Peninsula Railway Company, and in the Bombay, Baroda, and Central India Railway Company, is, for the sake of convenience, referred to as the second bequest; and the bequest of all the testator's funds in Three per Cent. Consolidated Bank Annuities is referred to as the third bequest.

The testator was, at the time of his death, possessed of the sums of £2800 Great Indian Peninsula Railway Company Guaranteed £5 per Cent. Stock, and £1904 Bombay, Baroda, and Central India Railway Company Stock; which sums became vested in his executors as trustees of his will, for the purposes of the second bequest; and he also died possessed of the sum of £6089 13s. 4d. Consolidated £3 per Cent. Bank Annuities, transferable at the Bank of England, which became vested for the purposes of the third bequest.

As to the second bequest, the plaintiffs say that there is no such body, strictly speaking, as the Board of the University. The defendants, the Senate of the University, have been incorporated by Letters Patent, dated the 24th July, 1857, under the title of The Chancellor, Doctors, and Masters of the University of Dublin; and as such Corporation are, by the said Letters Patent, empowered to hold and acquire such property, real and personal, as may be given or bequeathed to them. Up to the present the defendants have not acquired, nor do they now hold, any property.

As to the third bequest, the plaintiffs say "that Trinity College, Dublin, is the only College in the University, and is incorporated by the Letters Patent or Charter of the 34th year of Queen Elizabeth, which was confirmed by the Letters Patent, or Charter of the 13th Charles I., under the name of the Provost, Fellows, and Scholars, of the College of the Holy and Undivided Trinity of Queen Elizabeth, near Dublin, who are the plaintiffs in this action. The Provost and senior Fellows of the said College are by the said Charter and the Statutes of the College constituted the Governing Body of the College, and are known as the Board of Trinity College, Dublin. There is no other body called or known as the Board either in the College or University." That statement must be taken as uncontradicted.

The defendants, the executors, having been informed of the facts aforesaid, were advised that they could not safely give effect to the second and third bequests without the protection of the Court, and accordingly they lodged in the Chancery Division of the High Court of Justice in England, to the following credit:—"In the matter of the trusts of the bequest by the will of the late Richard Tuohill Reid, in favour of the Corporation of the University

of Dublin, in trust to found a Professorship of Penal Legislation"—the said sum of £1904, Bombay, Baroda, and Central India Railway Company Stock; and the sum of £2300, Great Indian Peninsula Railway Company Guaranteed £5 per Cent. Stock, part of the said sum of £2800 like stock; and £339 8s. 6*d.* cash, representing the said second bequest, and the dividends that had accrued in respect thereof up to the 1st July, 1884, less by a sum of £702 16s., paid by the same defendants in respect of duty on the capital of the second bequest; and £26 2s. for duty on the income thereof, and £27 10s., being a moiety of the costs of and incident to the lodgment in Court.

The defendants, the executors, also lodged in the Chancery Division of the said High Court of Justice in England, to the following credit:—"In the matter of the trusts of the bequest by the 'Will of the late Richard Tuohill Reid, in favour of the Corporation of the University of Dublin, in trust to found in Trinity College, Dublin, additional Sizarships, Exhibitions, and for other purposes'—the sum of £5463 17s. 11*d.* Consolidated £3 per Cent. Bank Annuities, part of the said sum of £6089 13s. 4*d.*, like annuities, and £217 4s. 8*d.* cash, representing the third bequest, and the dividends that had accrued in respect thereof, up to the 5th July, 1884, less by a sum of £616 11s 6*d.*, paid by the same defendants in respect of legacy duty on the capital of the third bequest; and £16 9s. for duty on the income thereof, and £27 10s. being the remaining moiety of the costs hereinbefore mentioned.

The result of this proceeding was the payment of 10 per cent. legacy duty for both the second and third bequests, from which duty they would probably have been free if lodged in this Court, inasmuch as the law in England is different from that in this country. Here no

duty is payable on bequests for purposes merely charitable in Ireland.

The statement of claim then states that the testator, who was born in the County of Kerry, was educated in Trinity College, Dublin, where he took the degree of Master of Arts. He was afterwards called to the Irish Bar, and went to Bombay in the year 1853, after which period he never returned to Ireland.

The statement of claim then avers that all the endowments, estates, and property by which the University of Dublin is sustained, including all endowments for special purposes, are vested in the plaintiffs, and managed by the Board of Trinity College. The appointment and election of the professors in the University was also vested in the said Board up to the time when the Council was constituted by Letters Patent of the 4th day of November, 1874. By these Letters Patent the nomination to all professorships, with certain specified exceptions, is now vested in the Council, subject to the approval of the Board; and since the constitution of the Council any proposed alterations in the rules and regulations respecting any studies, lectures, or examinations (not connected with the Divinity School), and also any proposed alterations in the rules and regulations respecting the qualifications, duties, and tenure of office of any professor (not connected with the Divinity School), require the approval both of the Board and of the Council. No new professorship can now be created or founded by the Board without the consent of the Council.

The Council consists of the Provost, or in his absence the Vice-Provost, of Trinity College, and sixteen other members elected out of the members of the Senate of the University.

The Board of Trinity College elect to all the existing sizarships, after the usual examination of candidates.

The statement of claim then states that the plaintiffs are desirous that a scheme or schemes may be settled and approved by the Court for the regulation and management of the said charitable bequests respectively, and for the application of the income of the said stocks and securities, pursuant to the trusts by the said will declared with respect to the same respectively, and that the plaintiffs may be at liberty to apply in the Chancery Division in the High Court of Justice in England for the transfer to the credit of this action of the several securities and moneys standing to the credits respectively hereinbefore mentioned.

The plaintiffs claim

1. That the trusts of the will of the testator Richard Tuohill Reid, with respect to the second and third bequests respectively, may be carried into execution under the direction of the Court.
2. That the plaintiffs may be at liberty to apply in the Chancery Division of the High Court of Justice in England in the said matter, under the Trustee Relief Act, for the transfer and payment into this Court, to the credit of this action, of the several securities and moneys which now are, or shall at any time hereafter be, standing to the said credits hereinbefore mentioned.
3. That a scheme or schemes may be approved by the Court, directing the regulation and management of the said charitable bequests respectively, and the application of the income of the said stocks and securities, pursuant to the trusts of the said will, declared with respect to the same respectively.

4. That for the purposes aforesaid all necessary accounts may be taken, inquiries made, and directions given, and

Such further relief as the case may require.

The Chancellor, Doctors, and Masters of the University of Dublin have filed a statement of defence, by which they admit the making of the will as set forth in the statement of claim, and the statements of fact and the documents in the statement of claim mentioned, and submit that they are the body designated as the Corporation of the University of Dublin in the will; and that the stocks and funds which are in the statement of claim designated as the 2nd and 3rd legacy bequests respectively should be transferred and paid to them for the purposes of the will; and state that they are desirous that a scheme or schemes directing the regulation and management of the said charitable bequests respectively, and the application of the income of the same may be settled and approved of by the Court as in the statement of claim is prayed.

The Attorney-General has delivered a statement of defence, in which he states in substance that he has no knowledge of the several matters in dispute, but submits that the legacies are good charitable bequests.

The principal question for decision therefore is, What is the body which the testator designates as "the Corporation of the University of Dublin"?

Trinity College, Dublin, was founded by Queen Elizabeth, by a Charter dated A. D. 1592, in the 34th year of her reign. That Charter is of great importance in determining the constitution of Trinity College, and of the University of Dublin.

That Charter recites :—

“ Cum dilectus subditus noster Henricus Ussher Archidiaconus Dubliniensis nobis humiliter supplicavit, nomine civitatis Dubliniensis, pro eo quod nullum Collegium pro Scholaribus in bonis literis et artibus erudiendis infra regnum nostrum Hiberniæ adhuc existit; ut unum Collegium *matrem Universitatem* juxta civitatem Dubliniensem ad meliorem educationem, institutionem, et instructionem Scholarium et studentium in regno nostro prædicto erigere, fundare, et stabilire dignaremur; ” and goes on to provide :—“ quod de cætero sit, et erit, unum Collegium *mater Universitatis* in quodam loco vocato Allhallowes juxta Dublin prædictum, pro educatione, institutione, et instructione juvenum, et studentium in artibus et facultatibus, perpetuis futuris temporibus duraturum, et quod erit, et vocabitur COLLEGIUM SANCTÆ ET INDIVIDUÆ TRINITATIS JUXTA DUBLIN A SERENISSIMA REGINA ELIZABETHA FUNDATUM. Ac illud Collegium de uno Præposito, et de tribus Sociis nomine plurium, et tribus Scholaribus nomine plurium, in perpetuum continuaturum erigimus, ordinamus, creamus, fundamus, et stabilimus firmiter per præsentem.” (a)

Then, after nominating the first Provost, the Fellows, and Scholars, the Charter proceeds to incorporate them :—

“ Per nomen PRÆPOSITI, SOCIORUM, ET SCHOLARIUM COLLEGII SANCTÆ TRINITATIS ELIZABETHÆ REGINÆ JUXTA DUBLIN.” (b)

Then follow directions as to the election in future of the Provost, Fellows, and Scholars who are empowered to acquire and hold manors, lands, tenements, and hereditaments for the maintenance of the College, and to sue

(a) Coll. Stat., vol. i., p. 2.

(b) *Ibid.*, p. 3.

and be sued by their corporate name; and the Charter continues in these most important words :—

“ Et cum gradus quosdam in artibus et facultatibus constitui literis fuisse adumento compertum sit, ordinamus per præsentem, ut studiosi in hoc Collegio sanctæ et individuæ Trinitatis Elizabethæ Reginæ juxta Dublin, libertatem et facultatem habeant, gradus tum Baccalareatus, Magisterii, et Doctoratûs, juxta tempus idoneum, in omnibus artibus et facultatibus obtinendi.” (a)

The “tempus idoneum” here probably refers to the period at which the first Undergraduates would be ready to receive degrees. The Charter proceeds :—

“ Hoc semper iterum proviso, ut cum hujus Collegii Socii septem integros annos post gradum Magisterii ibi assumptum adimpleverint, tum è Sociorum numero amoveantur, ut alii in eorum locum suffecti, pro hujus Regni et Ecclesiæ beneficio, emolumentum habeant; et ut INTRA SE pro hujusmodi gradibus assequendis habeant libertatem, omnia acta, et scholastica exercitia adimplendi, quemadmodum Præposito, et majori parti Sociorum visum fuerit, ac ut omnes personas pro hujusmodi rebus melius promovendis, eligere, creare, nominare, et ordinare possint, sive sit Procancellarius, Procurator, aut Procuratores (nam Cancellarii dignitatem honoratissimo et fidelissimo Consiliario, nostro, Guilelmo Cecillio, Domino Baroni de Burghley, totius Angliæ Thesaurario, delegatam approbamus), et ut posthac idoneam hujusmodi personam, cum defuerit, pro hujus Collegii Cancellario Præpositus, et major pars Sociorum eligant, ordinamus.”

This Charter was granted in 1592, and no other Charter or Letters Patent were granted during Elizabeth's reign. In 1613 further Letters Patent were

(a) Coll. Stat., vol. i., pp. 7, 8.

granted by King James I. An interval of twenty-one years therefore had elapsed between them and the Charter of Elizabeth; and that Degrees must during that interval have been conferred on Students of the College appears to me to be beyond doubt. Therefore it must have been considered that the Charter of Elizabeth, *proprio rigore*, conferred upon the College power to grant degrees. Some body, duly authorized by the Crown, must have conferred them: since the granting of degrees is a branch of the Royal prerogative, the Crown being the fountain of honour. The Chancellor, Vice-Chancellor, and Proctors, were not incorporated; the Provost, Fellows, and Scholars were: and it follows that they must have conferred the degrees in the interval between the Charter of Elizabeth and that of James I., though, no doubt, in this the College acted through the Vice-Chancellor.

The Charter of James, after reciting the Charter of Elizabeth, proceeds:—

“CUMQUE DICTUM COLLEGIUM SIT ET HABEATUR UNIVERSITAS, AC HABEAT, GAUDEAT, ET UTATUR OMNIBUS ET SINGULIS LIBERTATIBUS, PRIVILEGIIS, ET IMMUNITATIBUS AD UNIVERSITATEM SIVE ACADEMIAM PERTINENTIBUS SIVE SPECTANTIBUS . . . ideoque operæ pretium et necessarium videtur, quod DICTUM COLLEGIUM ET UNIVERSITAS habeant plenam et absolutam potestatem duos Burgenses de seipsis eligendi, eosque mittendi ad supremam illam curiam Parliamenti, in hoc regno nostro Hiberniæ, de tempore in tempus, tenendi: in quâ quidem curiâ hujusmodi Burgenses sic electi et missi, juxta formam universitatis Oxoniensis et Cantabrigiensis in Angliâ usitatam, notum faciant verum statum dicti Collegii ac universitatis ibidem; ita ut nullum statutum aut actus generalis

dicto Collegio ac universitati privatim, sine justâ ac debitâ notitiâ et informatione in eâ parte habitâ, præjudicet aut noceat; SCIATIS quod nos, de gratiâ nostrâ speciali, . . . Voluimus et concessimus, ac per presentes pro nobis hæredibus, et successoribus nostris, voluimus et consedimus, præfatis Præposito, Sociis, et Scholaribus dicti Collegii, et successoribus suis, necnon ordinamus et stabilimus per præsentés, perpetuis futuris temporibus quod sint et erunt in dicto Collegio ac universitate juxta Dublin duo Burgenses Parliamenti nostri hæredum et successorum nostrorum.” (a)

The words just quoted, such as “Cumque dictum Collegium sit et habeatur universitas,” “et utatur omnibus et singulis libertatibus privilegiis et immunitatibus ad universitatem pertinentibus.” “Collegii et universitatis prædictæ,” “quod dictum collegium et universitas habeant”; again, the same words, “dicti Collegii ac universitatis,” “dicto Collegio ac universitate juxta Dublin,” show that the framers of the Charter considered Trinity College and the University of Dublin as so inseparably connected that their titles are used throughout as synonymous terms. To whom is the power of electing two members given? “Præfatis Præposito, Sociis et Scholaribus dicti Collegii.”

The Charter recites that Trinity College was founded by Queen Elizabeth, “ad exemplum academiæ nostrarum Oxoniensis et Cantabrigiensis.” Oxford and Cambridge are no doubt in some respect analogous Universities. But they are essentially different in this that they each contain several Colleges; and I do not think that the reference to them in this Charter indicates an intention that Trinity College and the University of Dublin should be separate bodies.

(a) Coll. Stat., vol. i., pp. 309, 310.

The next Charter is that of 13 Charles I., which bears date in 1637. (a) It recites the Charter of Elizabeth, and states that by it she granted "quod deinceps esset unum Collegium mater Universitatis, in quodam loco vocato Allhallowes juxta Dublin." It then recites the incorporation of the College; its power to acquire and hold lands for the maintenance of the College; its capacity of suing and being sued in actions, real, personal and mixed; of having a common seal; the power of the Provost and majority of the Fellows to make laws, statutes, and ordinances, for the government of the College; and that "eadem nuper regina per easdam literas suas patentes ordinaverit, ut studiosi in dicto Collegio libertatem et facultatem haberent gradus tum Baccalaureatûs, Magisterii et Doctoratûs, juxta tempus idoneum, in omnibus artibus et facultatibus obtinendi; et ut intra se, pro hujusmodi gradibus assequendis haberent libertatem omnia acta et scholastica exercitia adimplendi, quemadmodum Præposito, et majori parti Sociorum usum foret." The Charter confirms the Charter of Elizabeth in respect of its above recited provisions, and provides, with the consent of the Provost, Fellows, and Scholars, that Fellows should not be removed at the end of seven years, as provided by the Charter of Elizabeth: recalls the power of the Provost and Fellows to make statutes and ordinances, and reserves that power to the Crown; repeals those already made, and substitutes an amended code.

In further Letters Patent of the same year (13 Charles I.), I find this recital (after referring to the great advantage of schools and universities in England):—"Quod et reipsâ fecit regina Elizabetha celebris memoriæ, Collegium Sanctæ Trinitatis juxta urbem Dubliniensem

(a) Coll. Stat., vol. i., p. 10.

extruendo; quod etiam annuis reditibus dotavit et ACADEMIÆ PRIVILEGIIS ORNAVIT. (a)

The Letters Patent then proceed to establish certain laws for the government of the College. The Provost and seven senior Fellows are to form a Board. The Board are to have the government of the College, the election of the Fellows, officials, &c., and the conferring of degrees "GRADUUMQUE COLLATIONES DEFINIANT, ET CONCLUDANT." A more clear assertion that the College had the right of conferring degrees it is not easy to imagine.

The next Letters Patent which I have to refer to are those of the 34 George III. (A.D. 1794). They are addressed to the Provost and senior Fellows, and relate to the admission of Roman Catholic students to degrees, and announce: . . . "quod omnibus subditis nostris, qui religionem Pontificiam sive Romano-Catholicam profitentur, liceat et deinceps licebit in dictum Collegium admitti, atque gradus in dictâ academiâ obtinere, præstitis prius omnibus exercitiis per leges et consuetudines academiæ requisitis, aliquo statuto dicti Collegii, aut statuto, regulâ, aut consuetudine quâcunque dictæ academiæ in contrarium non obstante."

Now, pausing here, if nothing else had happened, what was the position of the University of Dublin? There was no separate incorporation of it. If there had been it must have been by Royal Charter by virtue of the prerogative of the Crown. There was no express creation of it apart from the College. The College had the power of electing the Chancellor and the other officers, and of "defining and determining" the conferring of degrees. The College was supreme; and the University was a branch or department of it, if indeed the College itself was not more accurately the University. That it was so

(a) Coll. Stat., vol. i., p. 30.



considered by the framers of the Charter of James I. appears from the expressions: "sit et habeatur universitas," "academiæ privilegiis ornavit," and from the power of the College to confer degrees "intra se." It cannot therefore admit of doubt that prior to the Letters Patent of Queen Victoria a gift to the "Corporation of the University of Dublin" would have meant a gift to Trinity College, Dublin, and could have meant nothing else.

Both phrases, Trinity College, Dublin, and University of Dublin, are used interchangeably, as well in Acts of Parliament as in the Charters and Regulations. The Fourth Article of the Act of Union of Great Britain and Ireland, 40 Geo. III. c. 38, is, "that four lords spiritual, by rotation of sessions, and twenty-eight lords temporal elected for life by the peers of Ireland shall be the number to sit and vote on the part of Ireland, in the House of Lords of the United Kingdom; and one hundred commoners (two for each county in Ireland, two for the city of Dublin, two for the city of Cork *one for the University of Trinity College*, and one for each of the most considerable cities, towns, and boroughs) be the number to sit and vote, on the part of Ireland, in the House of Commons of the Parliament of the United Kingdom. (a)

By the Reform Act of 1832, 2 & 3 Wm. IV. c. 88, section 11, it is (no doubt) enacted that "the city of Limerick, the city of Waterford, the borough of Belfast, and *the University of Dublin* shall each respectively return one member to serve in such future Parliament, in addition to the member which each of the said places is now by law entitled to return. But by sect. 70 it is provided "that in addition to the persons now qualified to vote at

(a) Coll. Stat., vol. i., p. 315.

the election of a member to serve in Parliament *for the University of Dublin*," "every person being of the age of twenty-one years, who has obtained, or hereafter shall obtain, the degree of Master of Arts, or any higher degree, &c., or a *Scholarship or Fellowship in the said University*, shall be entitled to vote for the election of a member or members to serve in any future Parliament for the said University," &c. By the University of Dublin in this context Trinity College must also be meant, since Scholarships and Fellowships belong to the College and not to the University proper.

The Act of Settlement, too, speaks of the lands of the University, meaning obviously the lands of Trinity College, Dublin. The corporation of the College was at that time the corporation of the University. There was no other corporation but that of the College which, in the words of the Letters Patent of James I., was declared, and was held to be, a University "sit et habeatur universitas."

There is nothing in this view I think opposed to the opinion of the late Mr. Blackburne, Vice-Chancellor of the University. He said:—

"It is now, for any practical purpose, not necessary to inquire whether the University was a corporate body before the late Charter. But I may observe that through the agency of the Chancellor, or the Vice-Chancellor, and other proper officers, for whose perpetual appointment the Crown made ample provision, the power to grant degrees was insured to continue for all time. So and in like manner, the succession of members of the Senate was to be for ever supplied out of the members of another body expressly incorporated." (a)

(a) Coll. Stat., vol. ii., p. 145.

Mr. Blackburne thus gives no positive opinion on the question. Nor is the view I have expressed opposed, in my opinion, to the fundamental idea of College and University. The Universities of Oxford and Cambridge are in some respects anomalous bodies, *differing* in constitution from nearly all, if not all, other ancient Universities.

—In *The Attorney-General v. Lady Downing and others* (Wilmot's Ca. and Op. 14), Lord Chief Justice Wilmot says:—

“And, indeed, I think Universities and Colleges are within the proper and genuine sense and meaning of the words ‘Schools of Learning.’<sup>(a)</sup> The places where the public exercises are performed are called the Schools. An University is a great school, incorporated to instruct, by their Professors and regular exercises, all who come to study there, and by degrees to give their students rank and credit in the republic of letters, and which are qualifications for lucrative offices and employments in life. It is a public school of divinity, physic, law, and all arts and sciences. And colleges are schools of learning, furnishing scholars for the universal school, which is a combination of all those schools; and in any other view than as schools of learning they are as useless to society as monasteries; and, therefore, I think they are not only within the equity of the Act, but within the words of it. And I consider this devise as made for the further augmenting of the University: and for that reason the University, in its corporate capacity, is very properly made a relator in this information being materially and essentially interested in the benefaction. For though the University is not a corporation of colleges, but of matriculated members, and

<sup>(a)</sup> In the Statute 43 Eliz., c. 4, s. 1.

all colleges are separate corporations, yet these colleges attract and furnish the members to be matriculated, and every new college enlarges the universal school, and by increasing the number of scholars adds weight, dignity, and strength to the University.”

Generally speaking, a University and College are one body. The Universities of Bologna and Paris are both teaching Universities, and Trinity College in this respect appears to have resembled them.

We now come to the Letters Patent of the Queen (21 Vict., July 24, 1857). In them we find the following recitals:—

“Whereas we are informed that the Senate or congregation of the University of Dublin, consisting of the Chancellor or Vice-Chancellor, Doctors in the several faculties, and Masters of Arts in the said University, has heretofore, for the last two hundred years and upwards, been governed by certain rules or statutes, entitled: ‘Regulæ seu Consuetudines Universitatis Dubliniensis pro solenniore graduum collatione.’ And whereas our right trusty and right entirely beloved Counsellor, John George, Archbishop of Armagh, Primate of all Ireland, Chancellor of the said University; our right trusty and well-beloved Counsellor, Francis Blackburne, Doctor of Laws, Vice-Chancellor of the said University; and our trusty and well-beloved the Provost and Senior Fellows of the College of the Holy and Undivided Trinity, near Dublin, have humbly represented unto us that the said rules or statutes have, by lapse of time, become in many respects obsolete and unsuited to the present state of the said University and College, and doubts have been raised as to whether the Provost and Senior Fellows of the said College have power to alter and amend the same; and the

said Chancellor, Vice-Chancellor, Provost, and Senior Fellows have therefore humbly supplicated us to remove the said doubts, and to grant unto the Provost and Senior Fellows of the said College, and also unto the Senate or Congregation of the said University, such further powers as will enable them to revise, alter, or repeal the said rules and usages relating to the conferring of degrees by the said University, and to enact other rules or regulations for the same purpose, to be binding and obligatory on all members of the University.” (a)

Then the granting part of the Letters Patent is as follows :—

“ We are graciously pleased to accede to their request. Know ye, therefore, that we, of our special grace, certain knowledge, and mere motion, by and with the advice and consent of our right trusty and well-beloved cousin and counsellor George William Frederick, Earl of Carlisle, our Lieutenant-General and General Governor of Ireland, do, by these presents, for us, our heirs and successors, enact and confirm to the Provost and Senior Fellows of the College of the Holy and Undivided Trinity aforesaid, and unto the Chancellor or Vice-Chancellor, Doctors and Masters of the said University, all such powers, rights, and privileges, as by the Charters and Statutes of our royal predecessors to the Provost, Fellows, and Scholars of the College of the Holy and Undivided Trinity aforesaid, or to the University of Dublin aforesaid, have heretofore been given, granted, or by usage and prescription possessed, without any alteration or diminution whatever as herein provided.

“ And it is our will and pleasure that the Provost and Senior Fellows of our said College of the Holy and Undi-

(a) Coll. Stat., vol. ii., pp. 135, 136.

vided Trinity shall have power, if they shall think fit, to alter, amend, and repeal all laws, rules, or bye-laws, heretofore existing, for the more solemn conferring of Degrees by the Senate of the University aforesaid, and to make, enact, and enforce, from time to time, such additional laws, rules, and bye-laws, to alter or vary the same for the like purpose as to them shall seem fit. Provided always that no such new laws, rules, or bye-laws, or emendations or alterations of such existing laws, rules, or bye-laws shall be of force or binding upon the said University until they shall have received the sanction of the Senate of the same in congregation lawfully assembled.” (a)

No law is to be proposed except by the Board. Then, the constitution, powers, and privileges of the Senate are defined and determined, and to carry out the object in view the Senate is incorporated in these words :—

“ And our will and pleasure further is, that the *Senate* of the said University shall be, and continue to be, a body corporate, and have a common seal, and shall have power under the said seal to do all such acts as may be lawful for them to do (in conformity with the laws and statutes of the realm, and with the Charter and Statutes of the College of the Holy and Undivided Trinity, and with the Statutes, Laws, and Bye-Laws made or to be made in pursuance of these our Royal Letters) under the name, style, and title of the Chancellor, Doctors, and Masters of the University of Dublin.

“ It shall be further lawful for the said Chancellor, Doctors, and Masters to apply the funds which may or shall belong to the said University Senate for the promotion of useful learning in the said University, subject to

(a) Coll. Stat., vol. ii., pp. 135-137.

such regulations as the Provost and senior Fellows of our said College shall approve of or subscribe.

“And it shall be lawful for the said Chancellor, Doctors, and Masters of the said University, in their corporate capacity as aforesaid, to have, hold, acquire, and receive such lands, manors, tenements, or other property, real or personal, as may from the date of these presents, be given or bequeathed unto them, by any person whatsoever, for the encouragement of learning in the said University. Provided also that such gift or bequest does not impose any condition or obligation inconsistent with the Statutes of the University in force at the time of such gift or bequest, or inconsistent with the Charters and Statutes of the College of the Holy and Undivided Trinity, near Dublin.”<sup>(a)</sup>

It is on these Letters Patent and the incorporation therein contained of the Chancellor, Doctors, and Masters, that the claim of the Senate, who are the defendants, depends. In my opinion, that is not the incorporation of the University of Dublin, but of its Senate merely.

By another Charter of the same reign another University, the Queen's University, has been incorporated. The second Charter of the Queen's University (I have not the first one at hand) is in these words:—

“We do will, order, . . . and found a University, which shall be one body politic and corporate by the name of the Queen's University in Ireland.” . . . “And we do further will and order that the said body politic and corporate shall consist of a Chancellor, Senators, Secretary, Professors, Graduates, and Students.”

<sup>(a)</sup> Coll. Stat., vol. ii., pp. 142-145.

Thus we find a Charter of the same reign, dated a few years after the Charter incorporating the Senate, by which a University was incorporated, consisting of a Chancellor, Senators, a Secretary, Graduates, and Students, and in it the persons precisely defined and described of which the University is to consist. This is not an accidental circumstance. The advisers of Queen Victoria knew how to incorporate a University when they meant to do so.

There is, however, another body, viz. the Council, which was established by Letters Patent of the 38 Vict.<sup>(a)</sup> (November 4, 1874), and to which it is said the will of Mr. Reid refers when he speaks of the “Board.” I need not allude in detail to its constitution: suffice it to say, it is nowhere called the Board in any official instrument. The contest here is between the College and the Senate.

There are therefore two bodies in existence, to either of which the designation of corporation of the University of Dublin may refer, and to one or other to which it must refer: not with strict accuracy in either case, perhaps, but sufficiently clearly to enable a gift to take effect in favour of whichever is in fact meant. If the gift had been to the “Senate” or to the Chancellors, Doctors, and Masters, there would have been no question, since whatever belief one might have had of the intention of the testator, the body would have been unmistakably defined.

There is of course no reported case in point: *Mostyn v. Mostyn*, 5 H. L. C. 155; *Stringer v. Gardiner*, 27 Beav. 35, 4 De Gex. & J. 468, are cases of gifts to known individuals where there is some inaccuracy in the name and the description connected with it. Nor have *Ellis v. Houstoun*, 10 Ch. Div. 236, or *Holmes v. Custance*, 12 Ves. 279, any intimate bearing upon it.

<sup>(a)</sup> Coll. Stat., vol. ii., p. 372.

*Kilvert's Trusts*, L. R. 7 Ch. 171, comes perhaps nearer to the present case than any of those which were cited. In that case a testatrix by a will made in 1868 gave a legacy to the "treasurer for the time being of the fund for the relief of the widows and orphans of the clergy of the diocese of Worcester, to be applied by him in the benefit of the charity." Two societies made a claim—one had been founded in 1777 for the relief of the widows and orphans of the clergy of the diocese, at which time the diocese comprised only the Archdeaconry of Worcester. In 1837 the Archdeaconry of Coventry was added to the diocese, and in 1848 the Worcester Society altered its title, so as to show that its operations were restricted to the Archdeaconry of Worcester. The other society had been founded in 1877 for the relief of widows and orphans of clergy in the Archdeaconry of Coventry. The father of the testatrix had been a subscriber to the Worcester Society till his death in 1817. His widow had continued the subscription till her death in 1860, and the testatrix had continued it from that time at an increased rate; but it did not appear that the testatrix or any of her family had subscribed to the Coventry Society; it was held by Vice-Chancellor Malins that the gift was to be treated as a gift to an object, not to a particular society, but must be apportioned between the two societies. But the Court of Appeal held that the gift was a gift to a particular society, with a slight inaccuracy of description, and that the Worcester Society was solely entitled. Lord Justice James said:—

"Parol evidence is admissible to show which of the two was meant. Evidence has always been admitted to show which of two societies the testator knew, and to which of them he subscribed. Such evidence is admissible

to remove an ambiguity, if there has been sufficient ground laid to raise an ambiguity, and I am assuming against the appellant that the Coventry Society have raised an ambiguity. The fund must, in my opinion, be paid to the treasurer of the Worcester Society."

LORD JUSTICE MELLISH: "I am of the same opinion. The language of the bequest shows that the testatrix had some particular society in her mind, and the question is, What Society? There is no difference between the course to be adopted here and in any other case of finding who answers the description given in a will of a legatee. If there was no society answering the description sufficiently to enable it to claim the legacy, it might be that the Court would carry the gift into effect as a gift for the relief of the widows and orphans of the clergy of the diocese. Here, however, I think it clear that the appellants come near enough to the description to be entitled to the legacy, if there was no other society to compete with them. There is a description of the society by its old name; that name has been changed, but that object is precisely the same as at first, and the old name is wholly inapplicable to it. Then, assuming another society to come near enough to the description to have ground for a claim, parol evidence is admissible to remove the ambiguity, and the evidence given is decisive."

This, in short, is a case of latent ambiguity, and in such cases the rule is (when the fact of ambiguity is shown) first to see whether the other words of the will afford grounds sufficient to enable us to decide between the two conflicting bodies, and if not, then to admit extrinsic evidence.

The extrinsic evidence in the case, or rather the extrinsic facts admitted without proof, are all the one way.

The testator had left the College and University long before the Senate was incorporated or the Council heard of. It was to Trinity College and its University of Dublin inseparably and undistinguishably blended with it, that he owed his training and his degree.

But in the words of the will itself are to be found indications which leave to my mind no doubt as to what his intention was. He uses the words University and College as loosely as the Legislature and the Crown use them. First he bequeaths all the books which he may die possessed of "to the Librarian for the time being of the University of Dublin." There is no Librarian of the University of Dublin or of the Senate of the University of Dublin. There is a Librarian of Trinity College, Dublin.

Secondly, the testator bequeaths his shares or stock in the Great Indian Peninsula Railway Co., &c., to his trustees for the purpose of paying the same to the Corporation of the University of Dublin, to endow in the said University a Professorship of Penal Legislation, provided that it shall be lawful for the Board of the University to assign any other duties which they may consider proper to be performed by said Professors so as to make the study of Penal Legislation a regular branch of instruction in the Law School of the University. And I empower the said Board to award prizes annually for proficiency in the said branch of legal science, &c. The word Board has a well-defined meaning in Trinity College. It means the Provost and Senior Fellows. It was contended by Mr. Twigg, on behalf of the defendants, that the word is synonymous with Council. In my opinion the testator did not mean to designate a body which was not constituted till long after his connexion with Trinity College ceased, and his use of the words, "Board of the University," affords a key

to what he meant by the Corporation of the University of Dublin.

Thirdly, the testator bequeaths his Three Per Cent. Consolidated Bank Annuities to the Corporation of the University of Dublin, "to found in Trinity College, Dublin, additional Sizarships, or Exhibitions in the nature of Sizarships, not to exceed five in number, open only to students of limited means, natives of the County of Kerry, who, having failed to obtain the ordinary Sizarship of the College, may be deemed to have shown sufficient merit: such Exhibitions to be held on conditions similar in all respects to those upon which ordinary Sizarships are held in the said College, and not to preclude such Exhibitioners from obtaining any other Exhibitions or Prizes to which an ordinary Sizar would be eligible; and the Board of the said University shall determine the annual stipend to be allowed to each such Exhibitioner, or the privileges in lieu of such stipend, in such a way as to place him with respect to exemption from fees, free commons, and free rooms, on a footing similar to that of ordinary Sizar. What Board? Plainly the Board of the same Body—the same Corporation to which he made the bequest, "and I empower the said Board to apply the residue of such income (if any) in such manner as they may think best calculated to encourage superior education in the said county, as, for instance, by assigning from time to time stipends, to such schoolmasters as may distinguish themselves in preparing students for the said University, such stipends to be given on condition that such master or masters shall undertake to prepare, free of expense, as day scholars a certain number of boys of limited means for the Sizarship Examinations of the University, or in such other way as to the said Board may seem most effectual and expedient for the promotion of superior education

in the said county." There are no Sizarships in the University; they are in the College. There are no such Examinations as Sizarship Examinations of the University. They are held in and by Trinity College. In my opinion, treating the question as one of intention, the testator has clearly shown on the face of the will itself that what he meant by the Corporation of the University of Dublin was the Corporation of Trinity College. I am bound to give effect to that intention unless it is encountered by some rule of law. I have already shown at, I fear, too great length, that the phrase "Corporation of the University of Dublin" has no such defined meaning as in a case like the present, excluding all inquiry as to particular intention; and I have therefore no hesitation in pronouncing a decree for the plaintiffs.

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SCHEME SETTLED BY THE COURT

*For the Regulation and Management of the Reid Professorship and Sizarship Charities, and the Funds and Property thereof.*

1. The Charity founded by the Will dated the 22nd September, 1881, of the late Richard Tuohill Reid, Esq., Barrister-at-Law, formerly of Killarney, in the county of Kerry, and afterwards of Bombay, in the East Indies, and by the said Testator, endowed with all the shares and stock belonging to him in the Great Indian Peninsula Railway Company, or in the Bombay, Baroda and Central India Railway Company, shall be called "The Reid Professorship," and the Charity founded by the same Will and by the same Testator, endowed with all funds belonging to him in the Three per Cent. Consolidated Bank annuities, shall be called "The Reid Sizarship."

2. The Provost, Fellows and Scholars of the College of the Holy and Undivided Trinity of Queen Elizabeth, near Dublin, hereinafter called "the said College," shall be the Trustees of the Endowments of the above-mentioned Charities, respectively.

3. The Endowment of the Reid Professorship shall consist of the sums of £2300, Great India Peninsula Railway Company Guaranteed £5 per Cent. Stock, and £1904 Bombay, Baroda and Central India Railway Company Stock, and £1176 13s. 5d. Government Stock, representing the dividends that have accrued on the said Railway Stocks, respectively, subject to proportion of costs of suit, together with such sums (if any) as may be received for duty paid, and shall be held by the said College when the same shall have been transferred to them, upon trust, either to continue the said sums of Stock respectively, in their present state of investment, or to sell the same or any part thereof, respectively, and invest the proceeds of such sale or sales in or upon any investment in which trust funds or cash, under the control of the Chancery Division, may, for the time being, be authorized by law to be invested with power to vary such investments from time to time.

4. The said College shall stand possessed of the said Endowment of the Reid Professorship, and of the dividends and income thereof, upon trust, to endow thereout a Professorship to be called "The Reid Professorship of Penal Legislation, Constitutional and Criminal Law, and the Law of Evidence." There shall be paid out of the yearly income of the said Endowment a salary to such Professor not exceeding £200 per annum. The College shall, after open competition and examination, appoint to such Professorship a member of the Irish Bar, who shall be a graduate in arts or in law (not honorary) of any

university. Such Professorship shall not be held for a longer period than five years by any one Professor. Every such Professor shall deliver at least twelve lectures every year, which shall be open to the general public, and shall publish, at his own risk and expense, at least six of such lectures every year. And in case any Professor shall make default in delivering twelve such lectures within the year, or in publishing at least six of such lectures within the year following, then the said Professorship shall be considered vacant and open to fresh competition.

5. It shall be lawful for the said College, upon providing such additional emoluments from Students' fees or other sources, as the said College shall deem reasonable, from time to time to increase the minimum number of lectures to be delivered or published by the said Professor, and to assign any other duties which the said College may consider proper to be performed by such Professor, so as to make the study of Penal Legislation, Constitutional and Criminal Law, and the Law of Evidence a regular branch of instruction in the Law School of the University.

6. The said College may, out of the residue of the income of the said endowment (if any) pay reasonable fees to the Examiners at the competition for said Professorship, and other expenses attending same, and award prizes annually for proficiency in the said branches of legal science, and may also award a premium at every or any competition for such Professorship to the candidate who shall stand next in merit to the successful candidate, and who would, if he had stood first in merit, have been eligible for such Professorship.

7. The endowment of the Reid Sizarship shall consist of the sum of £6189 6s. 8d., Consolidated Bank annuities, subject to proportion of costs of suit, together with such

sums (if any) as may be received for duty paid, and shall be held by the said College when same shall have been transferred and paid to them upon trust, either to continue the said Government Stock in its present state of investment, or to sell the same or any part thereof, and invest the proceeds of such sale or sales in or upon any such investment as hereinbefore authorized, with respect to the endowment of the Reid Professorship, with power to vary such investments from time to time.

8. The said College shall stand possessed of the endowment of the Reid Sizarship, and of the dividends and income thereof, upon trust, to found additional Sizarships in the said College, or Exhibitions in the nature of Sizarships, not to exceed five in number, open only to students of limited means, natives of the county of Kerry, who, having failed to obtain ordinary Sizarships, may be deemed to have shown sufficient merit. Such Exhibitions to be held on conditions similar in all respects to those upon which ordinary Sizarships are held in the said College, and not to preclude such Exhibitioners from obtaining any other exhibitions or prizes, for which an ordinary Sizar would be eligible, and the said College shall determine the annual stipend to be allowed to each such Exhibitioner, or the privileges in lieu of such stipend, in such way as to place him, with respect to exemption from fees, free commons and free rooms, on a footing similar to that of ordinary Sizars.

9. The said College may from time to time apply the residue (if any) of the income of such last-mentioned endowment, in paying the usual fees to the Examiners at the Examinations for such Sizarships, and in such manner as they may think best calculated to encourage superior education in the said County, as, for instance, by assigning from time to time stipends to such schoolmasters as may



distinguish themselves in preparing students for Trinity College, Dublin, such stipends to be given on condition that such Master or Masters shall undertake to prepare, free of expense, as Day-Scholars, a certain number of boys of limited means for the Sizarship Examination of the College, or in such other way as to the said College may seem most effectual and expedient for the promotion of superior education in the said County.

10. If any difficulty shall at any time hereafter arise in the administration of the said Charity endowments, or either of them, the said College may, at any time, apply at Chambers, on summons, for direction in respect thereof.

A. M. PORTER, M.R.

*Filed, 7th August, 1888.*

WILLIAM SULLIVAN, C.R.W.

EXTRACT FROM DECREE OF THE BOARD AND SENATE,

[June 23, 1880.]

IN par. 1, cap. iv. of the Regula Univ. to be inserted after the words "coram Senatu exponenda":—

Necnon qui ex consensu Præpositi et Sociorum Seniorum atque Senatus ad gradum promoveatur *jure dignitatis* se regi a secretis conciliis sit aut si Episcopi aut Judicis summæ curiæ adscripti munere fungatur, modo sit Baccalaureus in Artibus et tempus a suscepto Baccalaureatus gradu suscepto per leges Acadamia requisitum compleverint.

[For the par. cap. iv. above referred to, see ii. 168, note v.]