

**Report of proceedings before a committee of Her Majesty's most honourable Privy Council, at Whitehall, 16th, 17, and 18th January 1861, relative to the ordinances of the Scottish Universities' Commissioners : issued on 6th August 1859, and 19th March 1860, to regulate the granting of degrees in medicine and surgery in the University of Edinburgh.**

### **Contributors**

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Royal College of Physicians of Edinburgh

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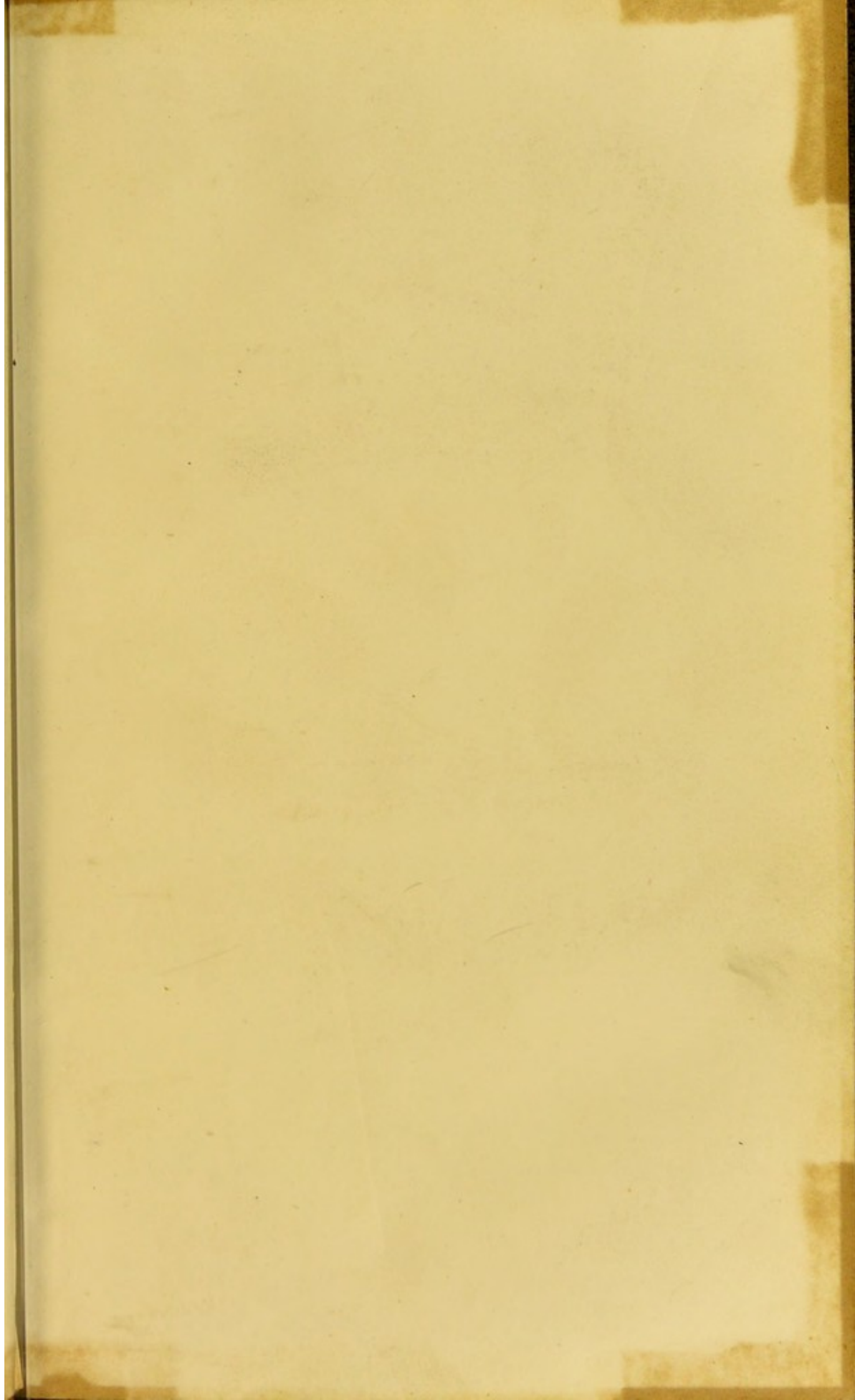
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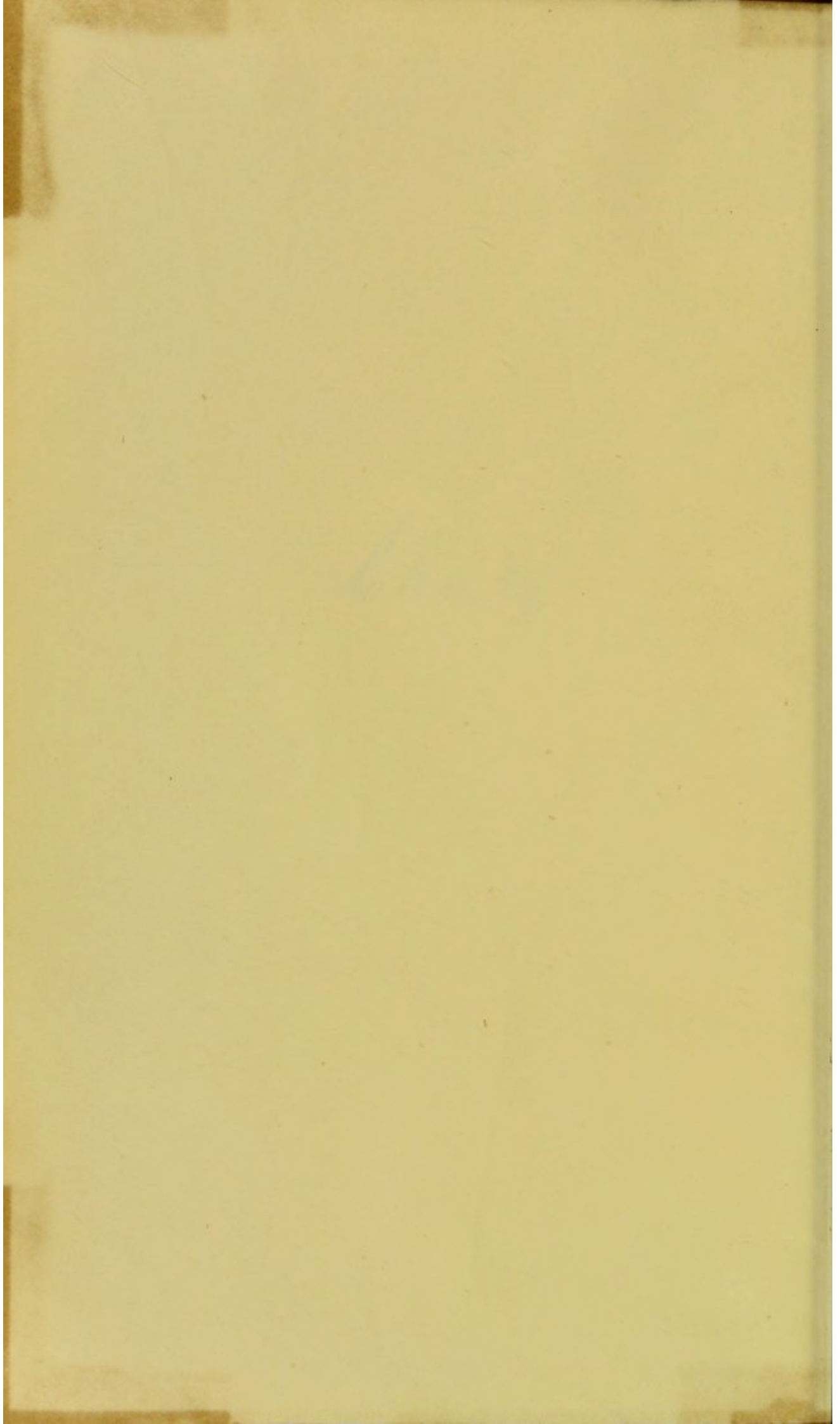
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# REPORT OF PROCEEDINGS

OF THE

COMMISSIONERS OF THE LAND OFFICE

IN CONNECTION WITH THE

LANDS BELONGING TO THE

GOVERNMENT

IN THE

ISLAND OF HAWAII

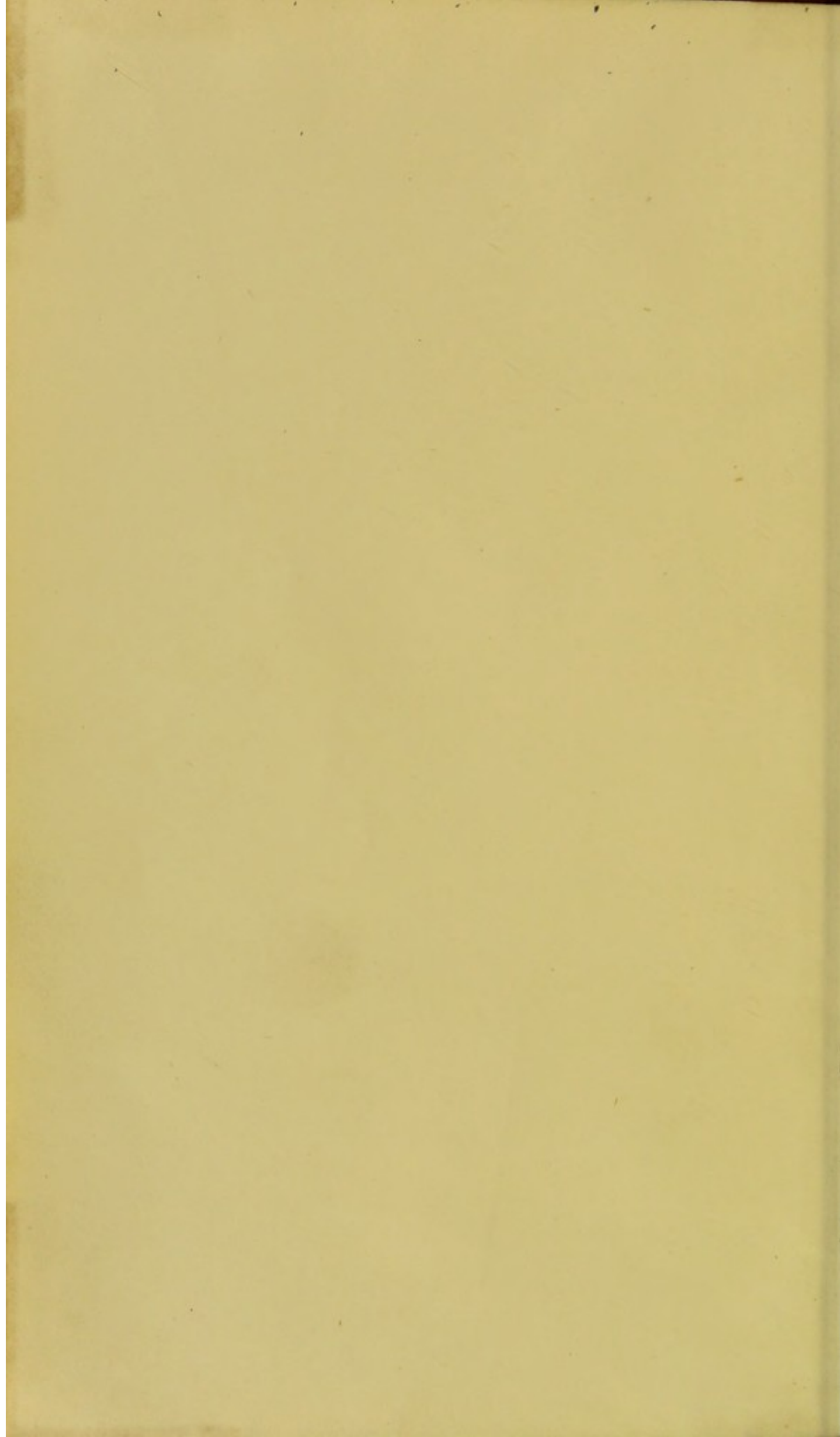
1854

BY

JOHN W. BISHOP, SECRETARY OF THE LAND OFFICE

HONOLULU

1854



# REPORT OF PROCEEDINGS

BEFORE

A COMMITTEE OF HER MAJESTY'S MOST HONOURABLE  
PRIVY COUNCIL,

AT WHITEHALL, 16TH, 17TH, AND 18TH JANUARY 1861,

RELATIVE TO

THE ORDINANCES OF THE SCOTTISH UNIVERSITIES'  
COMMISSIONERS,

ISSUED ON 6TH AUGUST 1859, AND 19TH MARCH 1860,

TO REGULATE THE GRANTING OF

DEGREES IN MEDICINE AND SURGERY

IN

THE UNIVERSITY OF EDINBURGH.

EDINBURGH :

T. & T. CLARK, 38, GEORGE STREET.

LONDON : SIMPKIN AND CO. DUBLIN : JOHN ROBERTSON.

GLASGOW : J. SMITH AND SON.

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MDCCCLXI.



REPORT OF PROCEEDINGS

OF THE

COMMISSIONERS OF THE GENERAL LAND OFFICE

IN THE

PROCEEDINGS OF THE

COMMISSIONERS OF THE GENERAL LAND OFFICE

IN THE

EDINBURGH

T. & T. CLARK, 18, GEORGE STREET,

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1862

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*Committee of Her Majesty's Most Honourable Privy Council:—*

- The Right Honourable the LORD CHANCELLOR.
- The Right Honourable the DUKE OF RICHMOND.
- The Right Honourable the EARL OF ST GERMAINS.
- The Right Honourable LORD CRANWORTH.
- The Right Honourable SIR GEORGE CORNEWALL LEWIS, Bart., M.P.
- The Right Honourable ROBERT LOWE, M.P.

*PRESENT—*

*Counsel for the Royal College of Physicians of Edinburgh, the Royal College of Surgeons of Edinburgh, and the Faculty of Physicians and Surgeons of Glasgow :—*

ROUNDELL PALMER, Esq., Q.C.

SIR HUGH CAIRNS, Q.C.

J. DOVE WILSON, Esq., Advocate.

*Agents :—*Messrs LOCH and MACLAURIN, and Messrs GRAHAME, WEEMS, GRAHAME and WARDLAW.

*Counsel for the Royal College of Surgeons of England :—*

SIR HUGH CAIRNS, Q.C.

E. J. BEVIR, Esq., of Lincoln's Inn, Barrister-at-Law.

*Agents :—*Messrs WILDE, REES, HUMPHREY and WILDE.

*Counsel for the Royal College of Surgeons of Ireland :—*

SIR HUGH CAIRNS, Q.C.

*Agents :—*Messrs WILDE, REES, HUMPHREY and WILDE.

*Counsel for the Senatus Academicus of the University of Edinburgh :—*

JOHN ROLT, Esq., Q.C.

J. C. SELWYN, Esq., Q.C.

*Agents :—*Messrs MAITLAND and GRAHAM.

# REPORT.

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## FIRST DAY,

WEDNESDAY, 16<sup>TH</sup> JANUARY 1861.

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*The Committee met at 11 o'clock.*

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*Counsel and Parties are ordered to be called in.*

*The Clerk of the Council.*—Their Lordships are met to hear petitions with respect to Ordinances passed by the Scottish Universities' Commissioners, in reference to degrees in Medicine and Surgery in the University of Edinburgh.

*Lord Chancellor.*—In the absence of the Lord President of the Council, I have to intimate to the Bar, that their Lordships will hear two counsel, and only two counsel, in support of the petitions. They all have the same prayer; and we hope that ample justice will be done, and indeed we know that ample justice will be done, by hearing two counsel only.

*Mr Rolt.*—And also two counsel for the Senatus Academicus.

*Lord Chancellor.*—Yes; two counsel for the respondents.

*Mr Roundell Palmer.*—My Lords, I have the honour to appear with my learned friend, Sir Hugh Cairns, for three petitions which have been presented to your Lordships: namely, from the College of Physicians of Edinburgh, the College of Surgeons of Edinburgh, and the Faculty of Physicians and Surgeons of Glasgow. Sir Hugh Cairns appears with me for them, and separately also for the College of Surgeons of England, and the College of Surgeons of Ireland.

My Lords, we are here, as your Lordships know, upon the question, Whether the Crown shall be advised to confirm two Ordinances, made by the Scottish Universities' Commissioners, under the particular powers given to them by the 5th clause of the 15th section of their Act of Parliament, which, in the papers numbered through in manuscript, will be found at page 110. It will be convenient at the outset to refer to the clause which gives them the powers which the Commissioners profess to have exercised. It is the 5th clause, as I stated, of the 15th section of their Act, and these are the words of it: They are to have power 'to make rules for the management and ordering of the said Universities, the manner and conditions in and under which students shall be admitted thereto, and the course of study, and manner of teaching therein, the amount and exaction of fees, the manner of examination, with the qualifications, appointment, and number of examiners, and the amount and manner of their remuneration, the granting of degrees, whether in Arts, Divinity, Law, or Medicine, and to provide that, in so far as shall be practicable, and in the opinion of the Commissioners, conducive to the well-being of the Universities and to the advancement of learning, the course of study, the manner of examination, and the conditions under which degrees are to be conferred, shall be uniform in all the Universities of Scotland.' There is another clause in the Act which I need not refer to in detail, which says, 'that in the exercise of this power, they are to have regard to the several reports made to the Crown at different periods by the Commissioners from time to time appointed to inquire into the Scottish Universities.'

Now, with respect to a main branch of the questions raised by the petitions before your Lordships, it will be very important that it should be constantly in your Lordships' mind, that the power is expressly limited, *quoad* degrees, to this, that they may make rules for the granting of degrees, whether in Arts, Divinity, Law, or Medicine; mentioning the four Faculties, as the words were commonly used, which were established and existed in each and all of these Universities, at the time when the Act was passed, namely—Arts, Divinity, Law, and Medicine.

Now, my Lords, under that power, according to the interpretation placed upon it by themselves, the Commissioners have

issued the two Ordinances, which are at pages 85 and 86 (still referring to the manuscript pages of the book, as we have it paged), which are dated the 6th of August 1859, and the 19th of March 1860. I need not, I think, my Lords, at present go into the details of that part of those Ordinances which is matter of regulation merely. I will mention, that the first of them contains regulations upon the subject of the preliminary branches of extra-professional education, which are to be given to those who are to receive degrees in Medicine, the Ordinance itself being limited to the subject of graduation in Medicine by its title, and by the body of it also. Then it also deals with the subject of preliminary examination, and, to a certain extent, regulates the course of professional study.

The second of the two Ordinances, that of the 19th of March 1860, is supplementary to, and completes the scheme of, the first. It contains, in the first place, this important provision, which will raise the first of the points to be submitted to your Lordships, that the degrees in Medicine to be hereafter granted by the University of Edinburgh shall be divided into three classes, and be designated respectively, 'Bachelor of Medicine,' 'Master in Surgery,' and 'Doctor of Medicine.'

Then the second provision is, that the regulations contained in the previous Ordinance shall be applicable to the granting the degrees of Bachelor of Medicine, and Master in Surgery,—'provided always that the degree of Master in Surgery shall not be conferred upon any person who does not also at the same time obtain the degree of Bachelor of Medicine.'

For the present, my Lords, I will stop there, because important principles will be found to be raised by those two articles of this second Ordinance; and I will postpone a reference to the details of the subsequent portion of it, as I did to those of the first Ordinance, which relate to the curriculum,—the manner of attending on the Professors, and lectures, and the exercises to be performed.

Now, my Lords, these Ordinances having been issued, petitions were presented against them by the different bodies whom we have now the honour to represent at your Lordships' bar; and the objections raised by the petitions of those several bodies, who all in substance concur, may be summed up in this way. In the first place, they submit that the Commissioners

have exceeded the law, and their own authority and jurisdiction entirely, by the invention of a new degree in a known existing Faculty, or if they please so to put it——

*Lord Chancellor.*—It is rather the adoption of a principle than an invention.

*Mr Roundell Palmer.*—If your Lordship pleases, I do not care about the expression. I am not at all sure that, as applied to this country, I shall not succeed in making out the expression which I originally used, because it is very true that two Colleges of very late years have preceded them, and so, no doubt, it is incorrect to say that they were the first discoverers of this invention; but if the thing had no legality in other Colleges, why then, in substance, it was a new thing entirely here. At all events, *quoad* Edinburgh, it is the introduction, or an attempt to introduce for the first time, an entirely new degree. We demur to the legality of it, as well as to the advisability of it, and we assert that it was beyond the scope of the authority of the Commissioners. That is the first objection which we take, and which it will be necessary for me to establish, as I trust I shall do, before your Lordships.

Then, secondly, we say that, independently of the demonstrations of that proposition, it is absolutely illegal and *ultra vires* altogether—that, even upon the supposition that it could be considered to be a matter resting in some degree of doubt, it is eminently inexpedient for the public interests, regarding it in the point of view from which, under this Act of Parliament, it ought to be regarded, that any such new degree should be introduced by the University of Edinburgh, for the purposes and with the effects which are avowed and declared in the Report of the Commissioners.

My Lords, those are the first two objections, which raise all the important questions of principle. The other objections are more objections of a practical character, and which only arise upon the supposition that those two first objections should not be valid. They are to this effect: That, upon the supposition that there was power to introduce such a degree, and that it ought to be introduced, the examination which is provided, and the qualifications which are required, are not such as ought to be provided and required—that the Board of Examiners are not fitly and properly constituted—and that the regulations, as they

stand, will restrict the attendance upon non-academical lectures in a manner extremely prejudicial to the Profession and the public interests concerned, and, at the same time, they are much more illiberal than those which existed when the Ordinances were introduced.

That is the general outline of the objections; and, my Lords, having stated that, I will now mention that, according to the course which is prescribed under the Act of Parliament—petitions having been presented by these parties, praying Her Majesty not to confirm or approve—the Ordinances were, in the first instance, referred to the consideration of the Commissioners themselves, in order that they might hear the objections argued before them by counsel, which proceeding took place. They heard the arguments, and permitted an argument upon the other side also, by the body designated the 'Senatus Academicus' of the University; and as the result, they made the Report which is in page 87 and the following pages of this book, in which they overrule the whole of the objections, and urge not only that it is desirable that their Ordinances should be carried into effect without alteration, but that it is desirable that it should be done also without delay. After that Report had been made, I believe, a petition was presented to Her Majesty by the Senatus Academicus, which, as I read it (it is at the end of the book), asks for leave to be heard in opposition to the objections. But, singularly enough, they have printed a Case, in which they assume the guise of independent objectors in a totally different point of view;—not that they have presented a petition within the terms prescribed by the Act, altogether against the Ordinances, but they ask (if I read their Case rightly) that the Ordinances shall be disallowed in so far as they are of a liberal character, and permit the introduction of any non-academical element, either in the form of Examiners, or by lectures which the pupils are permitted to attend.

It is in that stage of these proceedings, and upon those petitions, that the question now comes on before your Lordships; and, in order that I may deal satisfactorily with the great questions of principle which, in the first instance, you have to determine, I will, with your Lordships' permission, refer your Lordships to the Report of these Commissioners, at pages 87 to 90, in which they deal, in the first place, with the



objection to the introduction of this new degree of Master in Surgery.

I may mention, my Lords, incidentally, that the degree of Bachelor of Medicine is proposed to be introduced also; but that may rest upon an entirely different principle and ground. We certainly do not think it expedient that there should be any degree which has not been in use in the University before.

*Lord Chancellor.*—Is there to be a degree of Bachelor in Surgery?

*Mr Roundell Palmer.*—No, my Lord, not a degree of Bachelor in Surgery. It is not proposed to introduce that. The only degree in Surgery which it is proposed to introduce is that of Master in Surgery; but they propose to introduce the degree of Bachelor of Medicine, which has not hitherto been granted by them. And some exception is taken to that; but that will be found to rest upon grounds very different, because undoubtedly the general practice of those Universities which grant the degree of Doctor or Master, which is the higher degree, is such that it may be, perhaps, fairly inferred that there is the power in such Universities, if they choose to exercise it, also to grant the lower degree of Bachelor of the same Faculty. That has not hitherto been done in the University of Edinburgh. It is proposed now to be done, and some exception is taken to it; but I shall pass that over, and not rest upon any argument specially addressed to that subject, because the question of Master in Surgery, as a degree, is one so important in principle, that it would be very inconvenient to entangle it with any other objection which stands upon other grounds.

*Lord Cranworth.*—The degree of Master in Surgery is to follow as a consequence of their getting the Degree of Bachelor of Medicine.

*Mr Roundell Palmer.*—He cannot be the one without the other. Upon the question of expediency, any objection which is offered to the introduction of the degree of Bachelor of Medicine, of course, would be entitled to be considered; but upon the question of legality, I think we had better say nothing at present about the degree of Bachelor of Medicine. I will assume,—without, of course, binding myself to any opinion upon the subject one way or the other,—I will assume, for the sake of argument, that although the University has not hitherto granted the particular

degree of Bachelor of Medicine, yet that the power to do so is involved in the power which they have hitherto exercised, of granting the degree of Doctor of Medicine.

*Lord Chancellor.*—Is that the only degree in Medicine which the University of Edinburgh have been in the habit of granting—Doctor of Medicine?

*Mr Roundell Palmer.*—Yes, my Lord.

*Lord Chancellor.*—No other degree whatever?

*Mr Roundell Palmer.*—No other degree whatever. Then your Lordships will find their views in the Report to which I refer, of which it will be necessary to read some parts in detail, and then, as I sum them up, the Commissioners may be understood to rest their decision as to the legality or the propriety of the introduction of this new degree of Master in Surgery, upon, I think, six grounds, if I am not wrong in the calculation I make of them. First of all, they seem to adopt, although not very clearly, the proposition broadly and boldly stated by the *Senatus Academicus* of the University of Edinburgh, that the right to grant the degree of Master in Surgery may be rested upon the inherent power of the University, as a University, to grant degrees in any department in which it gives a full course of instruction. The first sentence of the Report mentions, that as a ground taken by the University, ‘The University rests its right to grant the degree of Master in Surgery on its inherent power, as a University, to grant degrees in any department in which it gives a full course of instruction.’ Well, the Commissioners seem to me to adopt that, although not, perhaps, in a very clear or unequivocal manner.

*Lord Chancellor.*—That they might grant degrees in any branch for which they are a school for academical instruction.

*Mr Roundell Palmer.*—We will assume that to be their view—and your Lordship’s observation might be followed out to show the necessity for a limit, which at once indicates some of the difficulties which are involved in this new proposition, for I believe it will be found that such a proposition was never advanced before. I think my learned friends will have very great difficulty indeed, in showing that this has ever been heard of until now. That, however, is the first proposition.

Then, the second proposition, which, of course, is one much more intelligible in point of law, if well founded, is, that

the charters of the University confer this power. Now, that I can understand as a proposition—whether it is so or not we shall have to examine.

Then, the third is, that the practice has prevailed in this University, of introducing, from time to time, new degrees, as circumstances seemed to render it expedient, and therefore, that it may be done now. That seems to be the third proposition.

Then the fourth appears to be this—that other Universities have done the same thing in and out of this country, and therefore, that the precedents and examples of other Universities show its legality and propriety.

The fifth proposition seems to be, that Surgery is in the Faculty of Medicine.

And the sixth proposition is, that it is not necessary that a degree should be given in a distinct Faculty.

Upon these propositions they rest their conclusion, which is a very strong and clear one; for they say, on any of these grounds, the right of the University to grant degrees in Surgery seems beyond question, and so on. There is a very superlative tone of language in that part of the Report; and it appears to be accepted by the *Senatus Academicus* in their present Case as so conclusive, that your Lordships will permit me just to refer you to page 211. You will see what the *Senatus* say at the end of that page, it is in the 4th page of their Case. Referring to their charters, they say—‘By virtue, not merely of these Royal Charters, and of the Act of Parliament above mentioned, but also of the power inherent in its constitution, the University has right to confer degrees in all the Faculties taught within it, and, in particular, in the Faculty of Medicine, which comprehends Surgery as one of its departments; though this right has not only been exercised, but has been always recognised.’ That is at page 60 of the manuscript paging.

In substance, the *Senatus* take the same point as the Commissioners about the power inherent in its constitution as a University. It is rather a vague passage, but that shows the ground which they take; and, in reference to the Commissioners' reasoning, they do not think it necessary to add anything to it. At page 62, they say in the last paragraph but one—‘The Report of the Commissioners relative to the two first of the matters specified,’—that is, the right of the University to grant the Degree of Master in Sur-

gery, and the expediency of the University granting that degree, supposing they had the power,—‘is perfectly satisfactory to the Senatus Academicus, by whom the interests of the University are represented,—because, not only has the right of the University to grant, and the expediency of its granting the degrees, which are the subjects of controversy, been recognised,—but the soundness of this conclusion has been demonstrated by an argument at once so comprehensive and precise, so powerful and so impartial, that it can neither be overthrown nor resisted, and no excuse has been left for a continuation of the controversy.’ I am afraid, my Lord, we are in a peculiar predicament with respect to this Report, especially, as I shall be bold enough to say, that, having regard to the eminent and distinguished names signed to this Report of the Commissioners, and to the nature of the subjects which they had to investigate, and the duty laid upon them as University Commissioners, there is a want of accurate and precise knowledge and information upon these subjects manifested in their Report, which is, to say the least of it, surprising; and there are some errors so gross and flagrant, that I think the fact of their being found upon the face of the Report, is clear evidence that this matter was too much taken for granted, and not sifted and examined with the care and anxiety which it certainly deserved.

Now, my Lords, first of all, let us endeavour to see what they say upon these heads. I mentioned to your Lordships the different heads; and we will now take this unanswerable argument and clear demonstration of the Commissioners, and examine it in some detail. First of all, I think it will be convenient, my Lords, to take together and not separately, the question of inherent power, and the question of actual grant by charter—because, of course, if the charters clearly make the grant, it will not be necessary to go into the question of inherent power; and, on the other hand, it will be found that the authorities to which I shall have occasion to refer, will be equally useful, as enabling us to understand the effect of the grant, and also to deal with the question of the supposed inherent power.

Now, the Commissioners say in page 88, ‘In the charters of the University there is an absence of that minute detail as to its powers and functions, which is to be found in the charters of the

Report, p. 2.

more ancient Universities of Scotland. In the Charter of Foundation by James the VI., in 1582, a grant is made in favour of the Magistrates of Edinburgh, authorizing the erection of sufficient buildings, "pro receptione, habitatione, et tractatione Professorum, scholarum grammaticalium, humanitatis, et linguarum, philosophiæ, Theologiæ, medicinæ et jurium, aut quarumcunque aliarum liberalium scientiarum." Now, that charter your Lordships will see printed a little more fully in our Case, I believe at page 6. It is in the notes that will be found at page 6. I need not read it. Your Lordships will observe, that that charter by itself would not have made a University at all—it was merely an authority to the Magistrates of Edinburgh to erect buildings for the reception of a number of persons of Professors or Teachers of certain schools in certain branches of knowledge, and so forth; but then the Commissioners go on to say, 'a subsequent Act of the Scottish Parliament of the year 1621, ratifying certain grants'—

*Lord Chancellor.*—Professors of certain schools would seem to assume the existence of a University.

*Mr Roundell Palmer.*—No doubt; but there was none there named. I think the observation which your Lordship has made amounts to this, that it contemplated that there would be a University. I have no doubt that is the correct view.

*Sir G. Cornewall Lewis.*—It seems to refer to the existence of schools.

*Mr Roundell Palmer.*—No doubt it contemplated that something had come into existence, which, from its nature, had the aspect of an intended University, and which afterwards became a University by means of the statute which followed, and the usage upon that statute.

*Lord Chancellor.*—It would appear from the grant of a royal charter, it was intended by that to be a University in Edinburgh.

*Mr Roundell Palmer.*—I have no doubt it was so intended; that was carried into effect by Act of Parliament, and the Act of Parliament makes it quite unnecessary to dwell upon that point. I only refer to it for the purpose of showing that these were not, so to say, the founding words. The words which give the actual privileges of the University, are the words which are contained in the Act of Parliament which followed upon that—

that was the Act of Parliament of 1621, ratifying the grant to the magistrates of Edinburgh, and bearing that ‘His Majesty als, with advyse of the saidis Estattis, hes of new agane gevin, grantit, and disponit to thame (the Magistrates of the City) and their Successores in favoures of the said Burgh of Edinburgh patrone of the said Colledge, and of the said Colledge and of the Rectors, Regentis, Bursaris and Studentis within the samen, all liberties, fredomes, immunities, and priviledges appertaining to ane free Colledge, and that in als ample forme and lairge manner as any Colledge hes or bruikes within this His Majesty’s Realme.’ Then, by reference to the charters of other Colleges, and more particularly to the charter of Aberdeen, which your Lordships will find at page 6 of our Case (the bull of Pope Alexander to the University of Old Aberdeen), I think the only two to which I need refer will be that and Glasgow. Your Lordships will see what, by reference to the charters of other Universities, was implied in this grant, of as large privileges as other Universities:—‘Statuimus et ordinamus, quod in dictâ civitate, veteri Aberdonensi, de cætero sit, et perpetuis futuris temporibus vigeat, Studium generale, et Universitas existat studii generalis tam in Theologiâ ac Jure Canonico et Civili necnon Medicinâ et Artibus liberalibus, quam quavis aliâ licitâ facultate, in quibus, sicut in prædictis et quibusvis aliis Studiis generalibus adhoc privilegiatis, ecclesiastici quicunque, qualiacunque beneficia ecclesiastica obtinentes, et laici Magistri et Doctores legant et doceant, ac studere volentes, undecunque fuerint studeant et proficiant, ac benemeriti gradus et insignia recipere, illaque eis impendi valeant, ipsorumque Studium ibidem eâdem auctoritate erigimus et instituimus.’ Then he goes on to appoint, that by certain authority it shall be competent ‘in qualibet dictarum facultatum commendalibus vitæ scholaribus, quos ad hoc Rector studii, ac Regentes, Magistri, sive Doctores facultatis in qua singuli graduari postulabunt, seu major pars eorundum, idoneos reputaverint, Baccallariatûs Licentiæque gradus conferat; ac singuli ipsius studii Magistri sive Doctores, in facultatibus in quibus ibidem rexerint, aliis cum rigore examinis licentiatis quibuscunque, Magisterii sive Doctoratus insignia, de consilio et assensu aliorum, Doctorum sive Magistrorum præfatæ facultatis, impendere et exhibere valeant,’ and so on. Your Lordships therefore see, that in this Case of Aberdeen, power is

given to establish a University for study of those mentioned Faculties—Theology, the Canon Law, Civil Law, Medicine, the Arts, ‘*quam quavis aliâ licitâ facultate*,’ any other recognised, known, lawful, permitted, established Faculty. Well, then, in each of those Faculties certain degrees may be granted. The degrees mentioned are the Bachelorship and the Licentiateship, the nature of which I will presently mention, and the degree of Master or Doctor, which are the same thing, Master and Doctor being only two different names for one and the same matter—Professor is another, the name being different, but not being a different degree,—although by usage and custom of some Universities, in some of the Faculties the title of ‘Master’ is used, and in others the title of ‘Doctor.’ What the Commissioners do is a stranger thing still; they create a new degree in what they consider to be a branch of, or part of, an existing Faculty.

*Sir G. Cornwall Lewis.*—There is a division in some Faculties. You see there are two branches of the Faculty of Law—namely, the Civil Law and the Canon Law; that is distinctly provided.

*Mr Roundell Palmer.*—They are two distinct Faculties here, as they are in several other Universities. One remarkable instance we have of that is in the University of Paris, where they desired, but never could obtain, the power to establish a Faculty in one of those laws. They have the Faculty in one; I think that one is the Faculty of the Canon Law.

*Sir G. Cornwall Lewis.*—It is expressly said that they should give degrees in both branches.

*Mr Roundell Palmer.*—Exactly so, no doubt; but the two laws are two distinct Faculties. In several Universities Canon Law is not in existence at all as a Faculty; in others it was taught, but taught as a part of Theology; but in this University of Aberdeen, it is clearly one in which they are to grant the several degrees as in a distinct Faculty. There is an express authority—‘*quam quavis aliâ licitâ facultate*;’ that would, of course, extend, and only extend, to other known established Faculties. The word ‘*licitâ*’ clearly means that which, by competent authority, has been introduced in this place, which, I suppose, would be its natural meaning. Supposing the Crown, or any other competent authority, should give power to intro-

duce any other Faculty at Aberdeen; or, if the argument were to require it, it might be assumed that it might mean any Faculty which, according to the present usage and the law of the University, is known as '*licita facultas*.'

*Sir G. Cornwall Lewis*.—The Canon Law is not a Faculty; it is a branch of a Faculty. The question is, Whether, with regard to the Faculty of Medicine, there would not be the power of creating or dividing it into branches?

*Mr Roundell Palmer*.—I must take the liberty of demurring to that; it is a 'perfectly distinct Faculty,' in the sense in which the word 'Faculty' is used in Universities. There is no doubt that the Universities, having competent authority, by taking a subject out of what seemed to be its natural place, may erect a new Faculty anywhere; there is no doubt that Her Majesty may grant a charter to any University, in which she might erect a new Faculty in any branch of knowledge in any of the established Faculties. No one will dispute that. For example, as to Surgery, any competent authority, such an authority as could found a University or found Colleges, might erect Surgery as a Faculty in that University. No one will dispute that. But what I say is, that the Commissioners could not do it; the University could not do it; the existing powers and authorities of the University do not extend to that, and it is only in ignorance of, or inadvertence to, the history and meaning of those words Degrees and Faculties, that the reason which we find in the Commissioners' Report ever could have arisen.

Then, as far as this example goes,—and we find how far it goes,—it clearly mentions specifically, that degrees are to be granted in those particular Faculties; that in each Faculty the authorities of that Faculty may grant the degrees which are the usual degrees—that is, the degree of Licentiate, which, I may mention, was a degree used in these times, though in this country it has fallen into desuetude; the degree of Bachelor is, and the degree of Doctor, which are mentioned also. Degrees may in the same way be granted '*quavis aliâ licitâ facultate*'—that is, the ruling Masters or Doctors of a particular Faculty are to grant a degree in that Faculty; that degree is to be co-extensive with the Faculty, and not in any particular branch of knowledge that might be involved or comprehended in the



Faculty. It is obvious, I think, that there are no words that would carry the right which is claimed, unless one or other of these two propositions can be supported—either that Surgery was a *licita facultas* within the meaning of that Charter, or that the power to grant degrees in any one of those faculties comprehended the power to subdivide the faculty into its subjects, and to grant several degrees in any one or more of the different subjects which were comprehended in the word 'Faculty.'

*Lord Cranworth.*—What is the degree that is granted in Law? How is it called? Is it Doctor?

*Mr Roundell Palmer.*—I believe, when the Reformation came, the Canon Law was suppressed.

*Lord Chancellor.*—There are the four great Faculties in Universities—Arts, Medicine, Theology, and Law; and Law comprehends Civil Law and Canon Law.

*Mr Roundell Palmer.*—Of course, Canon Law may be taught, and all laws may be taught, no doubt, with propriety, in any University which grants a degree in Civil Law or anything else; but the degree of Law now granted in the University is, I understand, the degree of Civil Law. The Faculty of the Canon Law was suppressed at the time of the Reformation, and there has been no degree granted, except in Civil Law, since, as far as I know, in any University in the kingdom. At Oxford the degree is in Civil Law, at Cambridge the degree is in Civil Law, and at all the Universities, I believe. My Lords, Law, as now accepted, is a modern notion, not a mediæval idea; but these terms and things of which we are speaking, being of mediæval origin, must be seen through the help of the history which belongs to them.

*Sir G. Cornwall Lewis.*—In that history the strongest argument is to be found; there is no doubt that in the Universities of the Continent there were those two branches of the Faculty of Law—the Canon Law and the Civil Law.

*Mr Roundell Palmer.*—They are treated as two distinct Faculties.

*Sir G. Cornwall Lewis.*—Can you establish that?

*Mr Roundell Palmer.*—I think so.

*Lord Chancellor.*—They might grant a degree in one or other, or in both at the same time?

*Mr Roundell Palmer.*—Of course there would be nothing to prevent them doing so if the Candidates were properly qualified.

*Sir G. Cornwall Lewis.*—What was called the quadrivium was the four great Faculties mentioned by the Lord Chancellor, as they were received in former times in the Universities.

*Mr Roundell Palmer.*—Excuse me, my Lord. Nothing can be more far from my mind than to take exception to any proposition stated by your Lordships,—to that I must bow ; but I must say, that this former term quadrivium was something totally different,—the quadrivium consisted of Arithmetic, Geometry, Astronomy, and Music.

*Sir G. Cornwall Lewis.*—Would you contend that it would be impossible to divide the Faculty of Arts, and to grant a degree in Mathematics for instance ?

*Mr Roundell Palmer.*—I should certainly contend that it would be impossible to grant a degree in the Faculty of Arts in any other manner than that in which it was in former times done. The Faculty of Arts stands upon a very different footing from the others ; it is a compound Faculty, the others being simple Faculties. With regard to the Faculty of Arts, I will very clearly show, I think, from authorities, that it is in truth the construction, or the result of what I may call the remains of the quadrivium and the trivium, together with higher sciences to which they were more or less allied, and so the best writers upon the subject have shown. It is not perhaps so accurately called a Faculty, as it might be called a *Universitas artium*. In ancient times, the different subjects of the quadrivium and trivium were each of them a distinct Faculty, as I will show, and in those a minor degree was granted in ancient times, of which one has survived to the present day,—I mean the degree of Music. Of course, in any of the old Universities in which the quadrivium and trivium had continued to exist, one would not say that there was any subdivision of the Faculty of Arts involved in their granting the old degrees which had been formerly granted in the similar branches comprehended in the trivium and quadrivium.

*Lord Chancellor.*—In the Scottish Universities the Faculty of Arts comprehends Humanity, Mathematics, and Moral Philosophy ?

*Mr Roundell Palmer.*—I should wholly deny the power to

invent degrees in Humanity and Moral Philosophy; I think that would be clear; the only proposition which might be contended for, consistently with the law and history of the case, and with some plausibility, and possibly with success, would be, that in the simple branches of Arts. A trivium or quadrivium, if the custom of granting academic degrees in the Faculties of which they consisted, has been maintained in this or other Universities, and has been shown to be of such antiquity that it may be presumed to have existed when these charters were granted, then it may be contended for as very likely, that it may not have been lost in them; and in one of those minor Faculties, the minor degree of Music, we know, is given in some Universities at present. But there is not to be found the slightest warrant in history, or law, or principle, that I am aware of, for the notion, that you can subdivide any one of the Faculties, and invent new Faculties, or give any degrees in any one of those subdivided subjects; it is a totally new idea, and for which there is not the slightest countenance in any book of law that is more than thirty years old, and certainly not in any book of history, or any book showing any knowledge or learning upon the subject.

Now, your Lordships will permit me, upon this question, just to turn to some few books which show what the real meaning of these terms is, and what is the history of the subject; and if you will allow me, I will mention, as a book which is at once accurate and popular, and to which I may therefore refer, that is, Huber's book upon the English Universities, which is referred to in one of the petitions before your Lordships, and which gives you the history of the growth of the Universities, and of the Faculties and degrees within them, in a concise and short form. Now, it appears, my Lords, that the Universities of Europe were founded in the 11th or 12th century, if not before, and they were founded about the time at which the old studies of the quadrivium and trivium, to which I have referred, began to be superseded by the advance of higher learning. Now, I may mention, with respect to the quadrivium, that it consisted of Arithmetic, Geometry, Astronomy and Astrology, and Music—they were the four Faculties probably all of them in very ancient times, certainly some, were treated (and one of them survives to the present day) as separate

and distinct Faculties. Then, the trivium is not always stated in the same manner by all writers, and probably from its greater affinity to the higher branches of knowledge, that variation of statement may arise; *trivium* is stated either as consisting of Grammar, Logic, and Rhetoric, no doubt by a certain number of authorities give as the true enumeration; as some others of them give, Poetry, Ethics, and Logic, which shows the influence very strongly of more advanced learning in the later period. The word is defined in Du Cange's Glossary, and an account is given, and various authorities, showing its different phases, are mentioned.

Now, in this book on the English Universities by Huber, the first volume, page 4—

*Lord Cranworth.*—Is not that referred to in some of these printed papers?

*Mr Roundell Palmer.*—Yes, my Lord. Your Lordships will find it referred to in the Case of the Surgeons of Edinburgh, if I am not mistaken, or the Surgeons of Glasgow, in their petition, at page 181. With reference to the terms 'University' and 'Faculty,' your Lordships will find a reference to Huber, vol. i., at page 181.

Now, my Lords, at page 4 of the first volume of Huber, he says, at the end of one division of the chapter,—'In the eleventh and twelfth centuries, however, the schools continued to rise and to extend their organization parallel to the general progress of intelligence; Speculative Theology and Philosophy were growing out of the narrow Logic and Rhetoric of the ancient trivium and quadrivium, and two new sources of knowledge, Roman Law and Græco-Arabian Natural History, were opened.' Then at page 17, he speaks of the origin of the actual Universities. There is a note there—I think it is by Mr Newman, the English translator—in which he refers to some authorities, as to the steps of development which took place at the commencement of the eleventh century, immediately preceding the formation of actual Universities. At page 20 (after dealing in the previous paragraph with the functions of the Chancellor, who originally had the sole government of those places where study was carried on), he speaks of the early growth of the University of Paris, showing how, from the authority of the Chancellor it passed to one licensed by him as a teacher—as 'Magister Regens Scholæ,' or

afterwards 'Doctor,'—and then that there was a deputation of the power of licensing those teachers, which became necessary in consequence of the multiplication of the demand; and so in that and the following pages, he traces the gradual growth of the system of Masters or Docts. At page 22, he says,—'It is not important nor possible to settle exactly when the examination fell finally and exclusively into the hands of the Universities and their Faculties, but it was in the course of the thirteenth century. It must have been equally desired by teachers and scholars.' At page 24, he says, 'While the scientific development advanced, the Faculties simultaneously received a fuller organization.' At page 26, he refers to the University of Paris, and observes, 'Soon therefore the Teachers (Magistri Doctores) monopolized all the higher functions,' and so on, and traces the gradual way in which they acquired the power. 'When, therefore, the teachers coalesced, it could not but be that they possessed collectively the powers of scholastic legislation, which they had already exercised individually; and there is no question that it lay from the beginning with the body of Masters (Magistri) and Doctors.' Then he comes to the growth and introduction of the degrees of Bachelor and Master, at pages 28 and 29,—'The mode of instruction in the higher branches, was such, as to call out the self-activity of the scholars; the more advanced propounding questions to the rest, especially in the terminal exercises. We cannot enter into the varying details, practically important as they were—but on two things we must dwell for a moment. The Bachelor's degree rose out of the separate scholastic disputations, and concerned only the internal economy of one school. It needed, therefore, no general authorization. But the Master's degree (Magistratus Doctoratus Regentia) implied the right of opening a school oneself, and was originally dependent on the Chancellor's license. It was not, then, an academical dignity, but was a mere leave to keep school, granted by an ecclesiastical officer, who, within recent memory, had been himself the schoolmaster. But when the teachers had risen into a *Universitas Literaria*, with authority practically their own (in spite of the Chancellor's theoretical rights) to confer the license, the reception of it became an honour for which many competed who had no wish to keep a school. The license was but the testimonial and attribute of the academical dignity now obtained.'

*Sir Cornewall Lewis.*—That, I suppose, refers principally to the Universities of Bologna and Paris?

*Mr Roundell Palmer.*—Huber refers, I think, to the growth of the Foreign University system—the system abroad. Paris is taken in several places, no doubt, as the most typical example, but it is quite clear he is not here referring to one University or another as a separate thing, but to the growth of the University system at large, and he illustrates the general system by reference to examples.

*Lord Chancellor.*—They got the certificate of proficiency and the license to teach first?

*Mr Roundell Palmer.*—That was no doubt so; and then afterwards it became an academical dignity, and imparted an academical status. Then he speaks of the degree of Licentiate (which your Lordships will observe mentioned in the bull of 1494, as granted to Old Aberdeen), which in truth was a degree entitling the possessor to the Mastership, and was in substance equivalent to the Master's degree,—he says, page 30, 'The Licentiate thus accepted, was, by virtue of express Papal privileges, competent to open school anywhere, but he was not yet member of any particular corporation of teachers. As a general rule, however, he would naturally gain formal admission into that under which he had been educated. He received a Hat as symbolic of his admission among the Magistri (Teachers, Masters), and so regular did this proceeding become, that 'it was soon looked upon as the legitimate consequence of attaining the license,' and so, accordingly, the Master is absorbed in the Licentiate.

Then, at page 32, he comes to the next subject connected with the history, namely, that of the separation of the Faculties. He says, 'We proceed to an important subject, the formation of the Faculties. Not to enter into minutiae concerning the form which they assumed, their substantial nature resulted directly out of the materials of knowledge then existing. The new philosophy had grown insensibly out of the old, especially out of the dialectics of the Trivium. The Quadrivium also was retained, but fell into a lower place, its four sciences becoming mere preparatory studies to the *Facultas Artium*. It is remarkable, that these positive branches of the old studies,—though neglected in comparison with the speculative ones,—coalesced with them in common opposition to the practical studies of *Juris-*

prudence and Medicine. These last were not admitted as in the circle of *Artes Liberales*. Their principal roots were long fixed beyond the scholastic pale, except in the Italian Universities; and though they afterwards were, as it were, grafted into the main stem, they still remained subordinate. The sciences auxiliary to Medicine, had indeed no small connection, both with the studies of the quadrivium and with the prevailing dialectics. Yet, a separation of Law and Medicine from Arts was unavoidable, and these formed two new Faculties. It was otherwise with Theology: as a science, it had unfolded itself entirely out of the old studies, and could not be severed from them; and had not the coming in of Canonical Law involved new materials, Theology might, perhaps, not even have constituted a separate Faculty. In other places the Jurists sought to keep possession of Canonical Law; but in Paris they were weak; and the Theologians, by seizing upon it, first separated themselves from the Students in Arts. This separation was promoted by the zeal of the mendicant orders for the rights of the Pope, against those of the Empire; but the origin of it lies much further back.' Probably, that was the reason why the Jurists of Paris, never could get the separate faculty which they desired of Canon Law; at the same time, they did not include it in their own, because the Theologians had insisted upon keeping possession of it. He goes on, 'Etymology suggests that the word "Faculty" primitively meant *ability to teach* in one branch, and then was applied to the authorized teachers of it collectively. Such bodies of teachers did rise in separate branches, by the same process as in the general stem, namely, by their co-operation to examine those who were candidates for the *Licentia*. With the progress of learning, separate schools for each branch had become necessary, and separate examinations by the special Teachers. We have, however, no documentary history of these changes. We must suppose that at first a teacher of Medicine or Law obtained from the Chancellor direct, a license to open a school: certainly no Teacher of Arts could have claimed to examine him. But when scholars had sprung from the first schools, and a body of Teachers arose, the right of examination in their own branch would naturally fall to them; and such a body is as fitly called a *Facultas*, as Teachers in Arts a *Universitas Literaria*.' My Lords, I may, in connection with that passage, just mention to your Lordships the definition of 'Fa-

cultas,' in Du Cange's Glossary, '*Collegium Doctorum ejusdem Artis in Scholis medii ævi,*' or a corporation aggregate of the teachers of one and the same art in the middle age schools. That is exactly the same account of it as is given here. The word 'Faculty' is a technical word, which is only to be understood by looking at its acceptation in the schools of the middle ages. Huber quite agrees with this; and the meaning of it is clearly, that a Faculty is a body of teachers, in that which is recognised as a distinct, and as it were, aggregate body of teachers in any place. We speak of men of the Faculty, and that is the proper meaning of the word as we retain it now. In the etymological origin of the word, it probably meant ability to teach, but it came to signify a Collegium of the authorized teachers of the several Arts or Faculties defined and recognised.

*Lord Chancellor.*—Exactly the same as the Faculty of Arts?

*Mr Roundell Palmer.*—Just so, '*Collegium Doctorum ejusdem Artis in Scholis literarum.*' Those are fortunately short passages, my Lord, from undoubted authority. Now, I will refer your Lordships to the same authorities with respect to Arts; your Lordships will see that it entirely confirms the view which I stated, as to the position of the Faculty of Arts; it is a compound Faculty, it is not like the other case of simple Faculties—this is a compound Faculty. Huber says, page 34, 'So surpassing was the pre-eminence of Arts, embracing as it did all the old sciences and the new philosophy, that it is even questionable whether the term *Facultas* is strictly applicable to the Masters of Arts, who are properly the *Universitas*. The studies of Law and Medicine grew up by the side of Arts, but never gained strength to compete with the last; nor has the principle ever been attacked, *that the University has its foundation in Arts*; yet this apparent pre-eminence concealed a real inferiority. The students in Arts always maintained (more or less successfully), that their studies were an indispensable preparation for the Faculties. What else was this, but to assign to the Arts a lower position, as being merely preliminary? The great superiority in age and in other external circumstances on the part of Students and Graduates in the Faculties, led to the same result, for some of the Graduates in Arts were mere boys,' and so on.

My Lords, I think we know enough of the historical outline of the subject, to understand now, what the Faculties



were, and what the degrees were in relation to the Faculties. The degrees were steps, as the word expresses, in the Faculty, they being in truth only two; because the Licentiate-ship was but a form, a sort of passport to the Mastership. First the Bachelorship, which was what one may call the probationary stage; and next the Mastership, Doctorship, or Professorship, which was the ultimate one; they were steps in the Faculty of Teachers—that teaching Faculty having a certain specified defined circle of action in a place known and established by law.

Now, my Lords, I stated to your Lordships that, besides those principal Faculties of which we have been speaking—that is, the compound Faculty of Arts, the Faculties of Canon Law, Civil Law, Medicine, and Divinity—there were lower Faculties, some of which have survived to the present day; which are, in truth, the minor Faculties of the ancient quadrivium and trivium. Now, degrees were anciently given in these, and I will just refer your Lordships to one or two passages in Ayliffe and in Wood, in connection with that point, and also in connection with the general questions which Huber has referred to. Your Lordships know that Ayliffe was a writer of very considerable authority in the last century, and he wrote a book upon the ancient and present state of the University of Oxford, from the first volume of which, in page 7, I propose to read a short passage. He says, ‘The liberal arts and sciences taught in Universities,’ and he is not there speaking of Oxford in particular, ‘are the general studies of Divinity, Law, and Physic’—

*Lord Chancellor.*—By Physic he means Medicine of course?

*Mr Roundell Palmer.*—Yes, my Lord, ‘and such others as are especially conducive hereunto, as Logic, Rhetoric, Grammar, Ethics, Natural Philosophy, Metaphysics,’ etc. That is an enumeration of the compound Faculty of Arts in its details; and the others, he says, are the general studies of Divinity, Law, and Physic. He goes on thus, ‘and to these three general studies or sciences, every scholar therein is of the Faculty, and under the denomination of a Student in Divinity, Law, and Physic. And the reason of this is, because now they proceed to no other degrees of honour in respect of their learning therein, as they did heretofore in Rhetoric and Poetry,’ etc., which had reference to the minor degrees of the quadrivium and trivium.

Now, it is here expressed, that every scholar must be in one or other of those three Faculties ; for he says, ‘ Because now they proceed to no other degrees of honour in respect of their learning’ in those Faculties, than the known degrees established in them.

*Sir G. Cornwall Lewis.*—Does he say, that formerly it had been the practice to grant degrees in branches of Arts ?

*Mr Roundell Palmer.*—No, my Lord ; he says, ‘ Now they proceed to no other degrees of honour in respect of their learning therein as they did heretofore in Rhetoric, Poetry,’ etc.

*Sir G. Cornwall Lewis.*—Those are branches of Arts.

*Mr Roundell Palmer.*—No, my Lord ; with deference I take the liberty of saying, that Rhetoric, you will find, was one of the branches of the trivium, which, as Huber says, were studies which were only preparatory to Arts.

*Sir G. Cornwall Lewis.*—As a distinct Faculty from Arts ?

*Mr Roundell Palmer.*—It was as a distinct Faculty from Arts, so long as degrees were granted in it, and so treated. Poetry, we know, was a part of the trivium, and probably stood for Grammar in that place. Now, I will refer to some instances of that, because they will show your Lordships that those degrees were granted as distinct Faculties, as ancient Faculties, and more ancient in fact than Arts by far—because we know that they were preparations—that the quadrivium and trivium were studies of which the Faculty of Arts was the ultimum, as Huber, whom I referred to just now, says in one of the passages, in page 32, ‘ The four sciences became mere preparatory studies to the *Facultas Artium*, it drew within its circle subjects of the trivium, although it did not in substance root out the trivium from its old *locus standi*, as far as it was practicably of benefit.’

*Sir G. Cornwall Lewis.*—At the time you speak of, the Faculty of Law at Oxford included both the Civil and Canon Law ?

*Mr Roundell Palmer.*—No, my Lord, I think not ; as far as I am aware, the Faculty of Law at Oxford never included the Canon Law ; the Faculty of Law at Oxford has always been Civil Law. I believe that Oxford gave degrees in the Canon Law till the Reformation ; by the Pope’s Bulls they had authority to do it.

*Sir G. Cornwall Lewis.*—Before the Reformation the

Faculty of Law at Oxford included the Canon Law and the Civil Law?

*Mr Roundell Palmer.*—No, my Lord; these were two Faculties, and I believe it was so everywhere. I am not aware that at any University was there a compound Faculty of Law, including the Civil and the Canon Law; but that wherever they both existed, they existed as separate Faculties. In some places—at Paris, for example—the separate Faculty of Canon Law was not allowed to exist; and where it was so, it was not as superseding or absorbing the Civil Law with it. When it fell under the theologians, the theologians taught the Canon Law as part of Theology.

*Earl of St Germans.*—Do you understand that the taking of a degree in Canon Law, implied that the candidate had taken a separate degree?

*Mr Roundell Palmer.*—Yes, my Lord.

*Sir G. Cornewall Lewis.*—That he had taken degrees in two distinct Faculties, if he were a Doctor of both?

*Mr Roundell Palmer.*—Yes, my Lord. We are in a little danger of being misled, by going back into ancient times, with respect to our own more modern notions of the Faculties of Law. The science of Civil Law, what is it? Why, it clearly is the Roman Law, and nothing else—not law in general. The Canon Law is the Law of the Church, the Ecclesiastical Law, and not law in general. The very fact of its being, as we know well, the subject of distinct degrees, is very strong evidence of the soundness of the notion of its being distinct from Jurisprudence, in the general acceptation of that term in modern times.

There is another passage, my Lords, upon the subject of degrees, to which I wish to call your Lordships' attention, in the second volume of Ayliffe, pages 193 to 195, where he says, 'In Civil Law all Professors are called Doctors, without any distinction; and every science is said to be more noble (according to the Canonists), by how much the subject itself of such science is more noble and exalted than the subject of another; as we say, in the like case, *tanto quis melior est quanto melioribus præest*. Thus, the Canonists reckon the subject of the Canon Law more noble than that of the Civil Law; because the subject of knowledge in the Canon Law is man, as he may be directed to the common good; but this subject in the Canon Law not only

leads a man to the good of the community, but also to the knowledge and glory of God, according to the Scriptures : But the Doctors of Law ought to have the precedence of Doctors of Physic and Masters of Arts (as they have in all countries), because their science is of a more elevated nature in respect of the subject. But the study of Divinity is a more noble subject than all others,' and so on. 'Under the name or title of "Masters" come all Doctors, of what Faculty soever they be ; and by use in Italy it has obtained, that such only as are promoted in law are styled "Doctors," but in other Faculties they are called "Masters ;"' and so on about the identity of Master and Doctor.

Now, about the minor degrees which I mentioned, upon the subject of the old quadrivium and trivium, your Lordships will find something upon that subject in the second volume of Wood's 'History and Antiquities of the University of Oxford,' page 717. After having given an account of several grammar schools, I think, ten in number, of which he is able to trace the history, which he states had been within the University, he says, 'Now, as concerning the grammarians, whether masters or scholars, I find many things observable of them, not fit, as I conceive, to omit ; because, from them may be seen in what great renown the Faculty of Grammar hath been among us in ancient times, and what great respect was given to it. No regent master in Grammar could by statute read anything thereof without license from the Chancellor, neither obtain such license without examination of his skill and knowledge in making verses, dictating, rehearsing, or in humane authors.' It is therefore clear that a system of organized Faculties existed in ancient times, with reference to Grammar, as it now does as to Arts. It is called throughout a Faculty, and probably was so, as much as any other Faculty, and as ancient as any other.

With reference to Music, which is the only Faculty which has survived, and which was one of the subjects of the quadrivium so recently as the Caroline statute in the University of Oxford, we have got the statutes, which I think it is useful to refer to. Your Lordships will find that the mode of granting degrees in the different Faculties is the subject of the 6th statute of the University of Oxford. I will not trouble your Lordships with that which relates to the other Faculties,

each mentioned as a distinct Faculty of Arts, and Medicine, and so on; but with regard to Music, at page 39, title 6, the third paragraph of section 3, which relates to that, it is said, *statutum est quod Baccalaureus musicæ*, is to go through such a course of practice, and so on; and throughout the statute Music is spoken of as a distinct Faculty, which was from the beginning:—‘*Statutum est quod Baccalaureus musicæ, priusquam ad incipiendum in eadem Facultate admittatur, unum canticum sex vel octo partium componat quod in schola musicæ tam vocibus quam instrumentis etiam musicis (alio quovis die, quam illo qui ordinario ad praxin musicam designatus est) publice exhibeat.*’ The Faculty of Music is treated from first to last in the statute as a distinct Faculty; therefore, as to these ancient degrees, which we call the minor degrees, of which some have fallen into desuetude, of which Music is the only one that has survived—the others, embracing several branches of knowledge belonging to different Faculties—we have distinct degrees in ancient Faculties, which had the character of Faculties from the time when the practice of granting those degrees arose.

Now, my Lords, I think I cannot do better than to ask your Lordships to look at the extract which is given in our Case from the writings of a man of most eminent learning upon many subjects, and not the least upon this—Sir William Hamilton—who, dealing with an extraordinary fallacy which appeared to him to have been for the first time advanced by Sir Charles Wetherell in his argument at this Bar in the Case of the London University, has anticipated the arguments which are contended for now, and answered a great part of them by anticipation.

*Sir G. Cornwall Lewis.*—It is clearly a mistake there, the use of the word University—it is not worth dwelling upon.

*Mr Roundell Palmer.*—Certainly not, so far as the mere use of the word ‘University’ is concerned; but your Lordships will observe that, putting aside the mere word ‘Universitas,’ about which it is perfectly clear it is a mistake, yet the argument in substance is precisely the same with that which the Senatus Academicus of the University of Edinburgh use now, namely, that taking them to be the kind of people who could now by that name claim a right to grant—

*Lord Chancellor.*—The University was anciently a University of good men—*hospitium bonorum virorum.*

*Mr Roundell Palmer.*—Yes, my Lord. Upon the meaning of the word ‘University’ I am not going to say a single word to your Lordship. The history of that word it is not necessary to go into; but Sir William Hamilton goes much beyond the mere verbal question, and he deals with the substantial point, which is really repeated in the present contention of the Senatus Academicus of Edinburgh, when they say, that by the practice, laws, and constitution of the University, independent of the granting of their charters, they have a right to grant such degrees as they contend for. They repeat in form, if not in substance, the same proposition, or the same argument, that Sir William Hamilton deals with in the passage to which I refer.

*Sir G. Cornwall Lewis.*—Do I understand that what they argue is this—that they have a certain circumscribed course of teaching in Medicine, and that it is competent to them to mould that and regulate it according as they deem right? That hardly goes the same length as the other.

*Mr Roundell Palmer.*—I think it goes to a much greater length, with great deference. To say the right of granting known degrees is inherent in the constitution of a University created by Royal Charter, taking the word ‘University’ in the accepted sense, seems to me a proposition carrying with it the idea that they have the right to break up existing Faculties, or not breaking them up, or not professing to break them up, to create new degrees——

*Sir G. Cornwall Lewis.*—They have the Faculty of Medicine.

*Mr Roundell Palmer.*—They have the Faculty of Medicine, and grant degrees in Medicine; but this is the proposition—for it goes the length of this—that, independent of that, they are to grant degrees in a subject which is admitted not to be a distinct Faculty, which is admitted not to be a Faculty at all, and never was so, but which is part of the curriculum of the science of Medicine.

*Lord Cranworth.*—You say that the power which they have of granting degrees in Medicine, no more confers upon them the right of granting degrees in Surgery, than it would in Midwifery, for instance?

*Mr Roundell Palmer.*—I say it is clear the proposition goes to this length, and it is impossible to escape from it—that they

may break up every subject into its different constituent parts, and grant degrees in Logic, and Rhetoric, and Grammar, and Ethics, and Natural Philosophy, and Metaphysics, and grant degrees in Botany, in Mineralogy, in Geology, Ancient History, and Modern History, and, in fact, in every single science into which the ingenuity of man can break up any one of their Faculties. It is a proposition which is most startling, and it appears to me that it is really advanced for the first time now; and the very fact that it was never heard of in the University before—the very fact that no kind of historical evidence can be deduced in support of it—is quite conclusive against its being right; and, at the same time, it seems to be entirely founded upon inadvertence to the history of the subject discussed, if not ignorance of the nature of a degree, and the nature of a Faculty.

But in the passage to which I wish to call your Lordships' attention, I think the subject is very nearly exhausted by Sir William Hamilton. I am not going to read a long extract. He begins by Sir Charles Wetherell's speech, quoting some words used in argument by Mr Yorke. Your Lordships will recollect what Sir Charles Wetherell's argument was. It was not a mere verbal argument as to what the word 'University' means; but, it being conceded and known that the Crown were disposed to grant an Academical Charter to the University of London in the modern accepted sense of the word 'University,' he argued that the right to grant all known degrees, at all events in all known Faculties, was necessarily incident to such a charter, so that the Crown would be doing a thing repugnant and contradictory, which would therefore be void for repugnance, if, giving a right which carried with it the power of conferring degrees to the new University, it should attempt to prevent them from granting degrees in Theology. His argument was—If you mean by 'University,' that they should be a graduating University, you give them by law, as an incident and as an inherent right belonging to their character, the power of granting degrees—that the power of granting degrees could not be restrained—at all events not be restrained so as to exclude them from granting degrees in Theology or any known degrees. But that argument did not prevail. The Crown granted a charter, and it restrained them from giving Theological degrees, and they never had the

power of granting them. But Sir William Hamilton, taking that as an example of a loose way of dealing with this subject—but of which really we have got another greater and more eminent example now, because coming from greater authority—bestowed his time upon correcting some of the fallacies which were involved in that notion, and in giving the light of his knowledge to those who desired to understand the subject; and if your Lordship will look at page 8 of our Case (between D and E), you will see what, speaking of the meaning of the word ‘*Universitas*,’ he observes, ‘We shall find no difficulty in proving that *University*, in its proper and original meaning, denotes simply the *whole members of a body* (generally incorporated body) *of persons teaching and learning one or more departments of knowledge*; and not an institution privileged to teach a determinate circle of sciences,’ and so on. Then he goes into the history of the word ‘*University*’—with which I am not going to trouble your Lordships—which occupies the rest of the page, and at the top of page 9 he says this—‘The mighty crowds drawn from every country of Europe, by an Irnerius to Bologna, or by an Abelard or a Lombardus to Paris, received at first local immunities, in order to fix the teachers and students in the towns, which well appreciated the advantages of this great resort; and the Papal and Royal privileges subsequently conceded, did not create the faculties which they then publicly protected. By this public protection, the Universities became from that moment integral parts of the Church and State, and consequently could not, of their own authority, organize new Faculties not in existence at the date of their privileges. The University of Paris, like those of Oxford and Cambridge, at first existed only in the lay Faculty of Arts. On this Faculty these great Universities are founded, as in it alone they once existed; and in the two latter, the higher Faculties never, in fact, were separated, as in the Continental schools, into independent corporations. In Paris, the Faculties of Divinity, Canon Law, and Medicine subsequently arose’ (I said they could not in Paris get the Canon Law, but I should have said the Civil Law); ‘but there was no Faculty of Civil Law when Paris received its privileges, and it consequently neither could of itself create that Faculty, nor, for certain reasons, was it able to obtain Papal authorization so to do. But Paris, though thus without a principal



Faculty,' and so on. It is obvious that Sir William Hamilton never heard of the idea of the Canon Law ever being a subdivision of a Faculty. It was a principal Faculty, and Paris was deficient in not having it.

*Sir G. Cornwall Lewis.*—You are speaking of the Civil Law?

*Mr Roundell Palmer.*—Of the Civil Law; I beg pardon.

*Sir G. Cornwall Lewis.*—There was no Faculty of Law at Paris, either Canon or Civil.

*Mr Roundell Palmer.*—There was Canon Law. I made a mistake in saying 'Canon' when I ought to have said 'Civil.' He speaks of the Civil Law as distinct from Canon Law.

*Sir G. Cornwall Lewis.*—He appears to speak here of the Canon Law, as being subordinate to Divinity; he speaks of it as a principal Faculty.

*Mr Roundell Palmer.*—I think he means one of the known great Faculties. Then he goes on:—'But Paris, though thus without a principal Faculty, was acknowledged over Europe not only as a University or general study, but the school above all others entitled to the name. Its title was, "The First School of the Church;" and so little did the term "Universitas" imply an academical encyclopedia and a full complement of Faculties, that several of the most venerable Universities possessed, while in the zenith of their European fame, only a single Faculty,—as Salerno, the single Faculty of Medicine.' Now, I beg your Lordships' attention to this passage: 'Mr Yorke is mistaken when he says, "Some old degrees the Universities (of Oxford and Cambridge) have abrogated, *some new* they have erected." The former clause of the sentence is true, in so far as these seminaries have allowed (*e.g.*, the minor degrees in Grammar and Logic) to fall into desuetude; and the degrees in Canon Law, by command of the Crown, were discontinued at the Reformation; but no new degrees have they introduced, or attempted to introduce. The precedent thus alleged in confirmation of his principle, in fact disproves it.' At all events, we have Sir William Hamilton's authority, if he is an authority on the matter, and has knowledge of the subject; and he certainly comes to the same conclusion to which we come. He says there is no example of such a thing as an attempt to create new degrees. True, indeed, it is that there were some very

ancient degrees which have fallen into desuetude, and some which the continuous changes have caused to be discontinued.

*Sir G. Cornwall Lewis.*—He is speaking of Faculties ?

*Mr Roundell Palmer.*—No, my Lord ; he is speaking of degrees. He had already spoken of Faculties, and he is now speaking of degrees.

*Sir G. Cornwall Lewis.*—That is the second paragraph ?

*Mr Roundell Palmer.*—Yes, my Lord. It is obvious that, to Sir William Hamilton, such a proposition appeared to be one utterly without historical, and utterly without legal, authority. He goes on : ‘ In like manner, in all the Universities throughout Europe which were not merely privileged, but created by bull and charter, every liberty conferred was conferred not as an *incident* through implication’ (here is the doctrine of inherent power), ‘ but by express concession. And this in two ways:—for a University was empowered either by an explicit grant of certain enumerated rights, or by bestowing on it implicitly the known privileges enjoyed by certain other pattern Universities.’ That is just what we have seen in the case of Aberdeen. ‘ These modes were frequently conjoined ; but we make bold to say, that there is not to be found throughout Europe one example of a University erected without the grant of determinate privileges,—far less of a University thus erected enjoying through this omission privileges of any, far less of every other. In particular, the right of granting degrees, and that in how many Faculties, must (in either way) be expressly conferred. The number of the Faculties themselves is extremely indeterminate; and to many Universities and Faculties the right of conferring certain special degrees has been allowed, the possessors of which did not constitute a Faculty at all. For example, the degrees in Grammar, Logic, Poetry, Music, etc.’ Now, Sir William Hamilton obviously treats these as not properly constituting a Faculty at all ; although I have shown your Lordships that in truth they were minor Faculties, and, according to the language of the statutes of the University of Oxford, as late as the Caroline statutes, framed by Archbishop Laud, they were expressly called so.

*Sir G. Cornwall Lewis.*—He says, even with regard to these minor degrees which are not Faculties, that the right must be expressly given ?

*Mr Roundell Palmer.*—Distinctly so, my Lord; there is not a doubt about it. He says there is no abstract definition of the number of Faculties: you cannot enumerate all the Faculties; and the authority which grants the charters may, at any time, add Faculties; but there must be authorization of the Faculty: it must be a *licita facultas* of the power which grants: it must have a distinct authority. Those bodies have no power of themselves to constitute new Faculties or to subdivide existing faculties. It must be by authority; it cannot be done by themselves; it is not an inherent power. They must show a grant. How do they show a grant here? The Faculties enumerated certainly do not go to this, unless you adopt the proposition, that the power to grant degrees in the Faculty of Medicine, or the Faculty of Divinity, enables you to subdivide and split up those subjects, and to grant as many different degrees in the branches of those subjects as you please,—a power which obviously never was heard of till the present time, and never existed.

Then he speaks of the foundation, at Rome and at Louvain, of Universities with two Faculties, and so on. Perhaps your Lordships will allow me to refer you to his note,—for it is Sir William Hamilton's—at the bottom of page 9, in which he says this: 'To understand the meaning of the word *Faculty*, it must be remembered, that originally in all the older Universities a degree conferred the right, nay, imposed the obligation of teaching; and a Faculty was, after Universities had become public, the body of teachers or graduates, who not only had the privilege of lecturing on a certain department of knowledge, of examining and admitting candidates for degrees into their body, but also the right of making statutes, choosing officers, employing a seal, and of doing all that pertains to a privileged corporation.'

*Sir G. Cornwall Lewis.*—What was the meaning of *Universitas*?

*Mr Roundell Palmer.*—A University is a corporation, a *communitas*. This is the same definition of a Faculty which you have had before, only more expanded.

*Sir G. Cornwall Lewis.*—The original Universities were what are now called, by abuse of language, 'Normal Schools,' schools of teachers.

*Mr Roundell Palmer.*—No; the Normal School is a school of teachers, and of nobody but teachers; the object being to

prepare them for going elsewhere, and in other places to teach those who require teachers; but there can be no doubt whatever that was not so.

*Sir G. Cornwall Lewis.*—All those who took the degree of Master were to teach.

*Mr Roundell Palmer.*—They had authority to teach, which they sometimes accepted; and the result of the system of graduation created such body or Faculty in that case,—that is to say, there was to be a body of teachers in a known ascertained department of knowledge, which the establishment of the University had divided from other departments, and the power of teaching was to be co-extensive with the entire Faculty;—it was not in this branch of the Faculty, or in that branch of the Faculty, but it was in the whole of it. A Doctor of Medicine is a Doctor of Medicine altogether; and, when we come to look at what is now attempted, the Commissioners produce this absurdity; that they are actually so ignorant or inadvertent of the principles of the subject they are dealing with, that in one breath they make a man a Bachelor of Medicine and Master in Surgery. Under the notion or pretext that Surgery is a part of Medicine, they give him the whole and part of it at the same time—they make him Master of part, and Bachelor of the whole.

*Sir G. Cornwall Lewis.*—Has not the character of the University entirely changed?

*Mr Roundell Palmer.*—The character of the University has, in many respects, undoubtedly changed; but their privileges have not been altered; their legal powers in respect to those things have not been increased; the title is the same; it rests upon the old foundations, although the use of it practically may have varied materially with the times.

My Lords, I would now refer your Lordships to the arguments which the Commissioners have used in regard to the introduction, from time to time, of new degrees at Edinburgh, and what they say as to the possibility of granting degrees in a separate branch, not a distinct Faculty elsewhere. Your Lordships will find the passages upon which I propose to comment in their Report, at page 2, first of all, and then at page 3. Now, they say, between D and G in page 2,—after stating that the University have always exercised the power of granting degrees—‘From time to time also,

the University has introduced new degrees, as circumstances seemed to render expedient. Thus, in the Faculty of Arts, while the degree of Master of Arts appears to have been conferred from the earliest date, a chronological list of Masters of Arts being in existence from the year 1587 to the present time, the degree of Bachelor of Arts was conferred, for the first time, so recently as 1843.' Now, it is quite obvious, as I said before, that no argument *ejusdem generis*, following the same principle, arises out of that—because Arts is a known Faculty—it is within, and co-extensive with, the limits of the Faculty, that the degree is granted. The degree of Bachelor is expressly, and in distinct terms, mentioned in the Aberdeen Charter; and, therefore, subject only to the question of non-user, there could be no doubt as to the question of their original right, by the terms of their charter, to grant the degree of Bachelor in all those Faculties in which they have an unquestionable right to confer the degree of Doctor under these circumstances. The only question which could arise as to their granting the degree of Bachelor of Arts for the first time, would arise, not upon their holding the right originally, but as to their not having exercised it for so many years, causing them to lose it. Probably it may be said, that there is no principle in the law of desuetude which operates as a statute of limitations applicable to such a grant; and that having the power to grant the higher degree, *à fortiori*, they might grant the lower, it being a known degree, and referred to in their charter in the same Faculty to the same extent. There is nothing, therefore, in that. Then comes:—'In this Faculty also, since the foundation, in 1845, of a Chair of Music, the University has, without any doubt as to its power of granting degrees in Music, drawn up regulations for conferring the degrees of Bachelor and Doctor of Music, although neither of these degrees has as yet been conferred.' Now, the whole of that passage certainly, whatever may be the value to be given to it, as to the degree of Music, may speak for itself; the thing has never been done, but the University has, since 1845, contemplated doing it. I perhaps ought, therefore, to apologise for saying a word about it. But, in point of fact, they show there a very imperfect knowledge of the accurate history upon the subject, when they speak of Music as, properly speaking, comprehended in the Faculty of Arts. Music is not part of the

curriculum of Arts, so far as I know, in any University; and in the University of Oxford, as you have heard, the degrees in Music have always been granted as a distinct and ancient Faculty. In truth, it was one of the four branches of the ancient quadrivium, as to which Sir William Hamilton correctly says,—not that the subjects of the quadrivium belonged properly to the Faculty of Arts, but that they were subjects introductory to the Faculty of Arts,—so that, if this can be lawfully done, it can be lawfully done upon the ground of its being an ancient known degree—it was a *licita facultas* included in the charter; but, as it has never been done, it does not appear to me that anything more need be said about it. Then, they say: ‘In the Faculty of Divinity the degree of Doctor of Divinity was first conferred in 1709, and the degree of Bachelor of Divinity in 1841.’ Well now, their charter most expressly gives them the right to grant those degrees, and, therefore, the same argument applies, as I used before, about the Bachelor of Arts.

Then the Report goes on:—‘In Law no degrees were conferred before 1695, when the degree of Doctor of Laws was first granted. In the Faculty of Medicine,—in which the first institution of a Professorship (that of Botany) occurs in 1676,—the Commissioners understand that no Record exists of degrees having been conferred before the year 1705.’ Really, these last observations, instead of helping what had gone before, confirmed very much the answer to it, that although nobody questioned their right to grant those degrees in that form, for a certain time they did not find it necessary or expedient to exercise it. Undoubtedly, the right was given them by charter and by Act of Parliament. Of course, nobody could dispute, when they did exercise it, that they exercised it by virtue of the title which they acquired under the charter and the Act of Parliament. If anything like that, or of the same sort, can be shown as to the newfangled degree of Surgery, then, of course, the argument may be entertained; otherwise, it shows a matter which is totally different, and which, by the very force of contrast, confirms and enforces the argument which we make before your Lordships.

Then I come to what they say, at the latter part of page 3,—a passage, certainly, which is very significant as to the amount of accurate investigation which this subject underwent before the Commissioners, and which is, I suppose, the passage on which they

really seek to support their decision. It is between H and K. They say:—‘That Surgery is in the Faculty of Medicine cannot be disputed. It is treated as a branch of Medical Science, and a department of the Faculty of Medicine, both by the Medical Act and by the Universities Act.’ Now, my Lords, is that accurate language, if we rightly state the result of the authorities as to the meaning of the words, ‘Faculty of Medicine?’ What is the meaning of saying that Surgery is included in the Faculty of Medicine? I apprehend the word ‘Faculty’ is used as a distinct recognised branch of knowledge, and not as a branch of knowledge which certainly never had existence in any University as a separate subject before.

They next say that ‘the objection that Surgery is a mere craft, that there is no Faculty of Surgery, and that a degree must bear the title of some Faculty, is equally groundless. The most illustrious foreign Universities, including that of Paris, on the model of which some of the Universities of Scotland were framed, confer degrees in Surgery, as in the Faculty of Medicine. In like manner, it is well known to be the practice of some foreign Universities to grant the degree of “Philosophiæ Doctor,” although the Commissioners are not aware that it was ever contended that there was a distinct Faculty of Philosophy.’ Now, if I had not read that passage in print in the Commissioners’ Report, I could not have believed it possible that the names which I find annexed to this Report could have been annexed to a passage so replete with error, as that is, in all its parts. First of all, observe the gross, patent, and extraordinary error of the last passage: ‘It is well known to be the practice of some foreign Universities to grant the degree of “Philosophiæ Doctor,” although the Commissioners are not aware that it was ever contended that there was a distinct Faculty of Philosophy.’ Why, they were ignorant that that is the *alterum nomen* of the Faculty of Arts! Now, a document stamped with such gross ignorance upon so cardinal a point, what is its value? I think there will be no doubt whatever upon the subject. No doubt, things are looked at as clear by those who do not know the subject with which they are dealing. But now, as to the argument upon this degree in Philosophy, my Lords, it must be matter of selection to show the error. Your Lordships observe, at page 9 of our Case, it is noticed upon the face of Sir William Hamil-

ton's statement as a thing which everybody knew. He says, at the bottom of the page, 'Altorf was, in 1578, erected by the Emperor, in favour of the free city of Nuremberg, into an Academy of one Faculty, that of Arts or Philosophy.'

*Sir G. Cornwall Lewis.*—There can be no doubt about that, I should think.

*Mr Roundell Palmer.*—There can be no doubt about it. There are a number of instances; there is that of the University of Paris, and others; and, therefore, such a slip as this shows that this matter has not received the consideration that it should have done, from the Commissioners; and it shows the folly of sending a matter back to a body which has already made its recommendations in the terms which I have mentioned. The consequence is, that you merely get a forensic argument in favour of the recommendations.

*Lord Chancellor.*—I presume you would not hold that there is any objection to a rehearing, with power of appeal. There is no objection to that in principle.

*Mr Roundell Palmer.*—No, my Lord; but it shows that there is not much gained by it; that is all.

*Lord Chancellor.*—In this instance.

*Mr Roundell Palmer.*—In this instance, I do not mean that such is universally the case; far from it. But although no doubt the Commission includes some persons of judicial reputation of the highest order, yet it includes many others, of course, who are not of judicial habits; and certainly it does not seem to me to be marked by the exercise of the judicial faculty, with respect to the examination of this question. Now, I will take the other part as to foreign Universities: we had better perhaps read it in connection with another passage which precedes it, in the same page, 3, between letters E and G. 'The practice of other Universities is also entirely in favour of the right of the University to grant these degrees. It is true that, so far as the Commissioners are aware, the only Universities in this country which, before the passing of the Medical Act of 1858, granted degrees or diplomas in Surgery, were the University of Glasgow, which, since the year 1816, has granted the degree of Master in Surgery, and the University of Dublin, which has of late years granted licenses in Surgery. On the Continent, however, degrees in Surgery are granted by those Universities which are



most distinguished as schools of Medicine; the title of "Doctor in Surgery" being conferred by each of the Universities of Paris, Vienna, and Berlin.' This passage must be read in connection with what I will now read, between H and K. 'The most illustrious foreign Universities, including Paris, on the model of which some of the Universities of Scotland were framed, confer degrees in Surgery as in the Faculty of Medicine.' Now, of course, to impute to those Commissioners anything like an intention to use sophistical arguments, is not possible, and, therefore, I must infer that the passage means, that at the time the Universities of Scotland were established, the University of Paris, on the model of which some of them were framed, conferred degrees in Surgery.

*Sir G. Cornwall Lewis.*—No. What I understand the argument to mean is this: that certain Universities which, at the time when the Scottish Universities were framed, served as the model of them, had in the development of themselves exercised their inherent power so to do.

*Mr Roundell Palmer.*—I quite agree with that mode of stating it; it is infinitely more accurate and better than my own; and, for my purpose, it is exactly the same thing, only much more accurate. There is no doubt that is what is meant. The want of knowledge upon the subject is, at least, as remarkable as the want of accurate knowledge upon the subject of degrees.

*Sir G. Cornwall Lewis.*—How is the fact?

*Mr Roundell Palmer.*—The fact is, my Lord, that the University of Paris never received this power; that University was dissolved at the Revolution. In 1803 there was a new constitution given; and by that new constitution, new schools were established: it has no continued existence; it is not historically the same body. The old University of Paris was dissolved and extinguished at the Revolution; and in the year 1803, a new system of schools was established, which in 1808 were formed into the University of France; and by express authorization, this degree was created by the Legislature of the time, when those schools were established. That is the error.

*Sir G. Cornwall Lewis.*—How is it as to other Universities, —Vienna and Berlin?

*Mr Roundell Palmer.*—With regard to Berlin, it is exactly the same,—that is, by express legalized authority as stated in the

documents referred to; and with regard to Vienna, I am unable to give your Lordships any information. But the Commissioners had none; it was stated to them by Counsel, but no authorities were produced in support of the statement, and therefore neither the Commissioners nor your Lordships have the means of knowing that. I am not able to tell your Lordships about the University of Vienna; but as to the Universities of Berlin and Paris, which we have investigated, it is undoubtedly stated that their present practice, and their authority of granting those degrees, rests upon the authorities upon which I say they should,—namely, upon the express and direct authority conferred upon and given to them.

*Sir G. Cornwall Lewis.*—What is the date of the power to Berlin?

*Mr Roundell Palmer.*—Your Lordships will find the constitution referred to in our Case, at page 16, note *r*.

*Sir G. Cornwall Lewis.*—What is the date?

*Mr Roundell Palmer.*—1838. The University was founded in 1811. In page 16 of our printed Case, it is stated, ‘The University of Berlin, the original constitution of which was prepared by Wilhelm von Humboldt, was founded in 1811. The constitution was revised by Government in 1838. The first article of it provides that the institution was to possess the right of conferring the degrees to be afterwards named; and in Division 7, Sections 95 and 117, it is provided that the degree to be conferred by the Medical Faculty is to be that of *Doctor Medicinæ et Chirurgiæ*.’ It does not seem to be two degrees, but one degree of Medicine and Surgery united. So much for Berlin.

Then, with regard to Paris, your Lordships will find in Barrau’s book, which is also cited at the same page, in a note, ‘Barrau upon Legislation concerning Public Instruction,’ at page 283, we have the law of the 10th of March 1803, Article 3: ‘The Doctors in Medicine and the Surgeons, received by the ancient Faculties in Medicines, the Colleges of Surgery and the Guilds of Surgeons, shall continue to possess the right of exercising the healing art as in former times.’ Article 5 is: ‘There shall be opened in each of the six special schools of Medicine, examinations for the admission of Doctors in Medicine or Surgery.’ With regard to degrees in Medicine in the University of France, we have the passage in the Ordinance founding that institution

translated at page 16. I will read from our translation: 'The degrees in the Faculties of Medicine and Law shall continue to be conferred according to the laws and regulations established for the schools.'

*Sir G. Cornewall Lewis.*—Do you show that there was no power in the University of Paris to grant a degree in Surgery?

*Mr Roundell Palmer.*—Yes, my Lord; not only that, but that there was a corporation of Surgeons in Paris, like those of Edinburgh and Glasgow, and that they were exceedingly jealous and anxious to have the denominations, and titles, and names, which were expressed by the titles of University degrees; they were constantly quarrelling with the University of Paris, and I shall show that not only the University of Paris gave no such degrees, but that there was the greatest opposition raised in the matter, of which the fifth volume of Crevier's 'History of the University' gives a history; but before I read that, I will refer your Lordships to the Statutes of the Faculty of Medicine of Paris, printed in 1660, and I there find Article 24 is this: 'Si quis inter Baccalaureos sederit, qui Chirurgiam, aut aliam artem manuariam exercuerit, ad Licentias non admittatur, nisi prius fidem suam astringat publicis Notariorum instrumentis se nunquam posthac Chirurgiam, aut aliam artem manuariam exerciturum: idque in Collegii Medici Commentarios referatur. Ordinis enim Medici dignitatem, puram integramque conservari par est.' In the fifth volume of Crevier's History, your Lordships will find a history of the disputes between the Faculty of Medicine and the Surgeons, at page 395, and following pages. There seems to have been a division of Surgeons into Barber Surgeons, and Surgeons of the Long Robe, an expression which we Barristers have regarded as belonging exclusively to us, but which seems to have been used with regard to Consulting Surgeons. It appears that the Faculty of Medicine declared itself the protectress of the Barber Surgeons, and after this, the Surgeons of the Long Robe had '*le cœur ulcéré*,' 'but the desire to partake of the Academical privileges induced them to avoid an open rupture with the Physicians, and, consequently, with the University. We have seen that in 1507 they acknowledged themselves authentically Scholars of the Faculty. Nevertheless, after the same year, their quarrels revived, and continued till 1510.'

*Lord Cranworth.*—What is the date of that?

*Mr Roundell Palmer.*—The date of the book is 1660. Nevertheless, after the same year their quarrels revived, and continued till 1510, when the Surgeons made advances towards peace, to which the Physicians seemed disposed to attend. In 1515 peace was fully established; and the Surgeons, to avoid a tax (from which the University seems to have been exempt), ‘had recourse to the Faculty of Medicine, and begged it, according to ancient agreement, to account them its scholars, and to enable them to enjoy, in that quality, the privilege of scholarship; and the Faculty consented to their demand, by an agreement on the 17th of November 1515. Being in accord with the Faculty of Medicine, the Surgeons obtained, without difficulty, a declaration equally favourable from the University on the 5th of March, in the following year.’

*Sir G. Cornwall Lewis.*—They got their immunity?

*Mr Roundell Palmer.*—For a time they got relief; but they found that that would not do, because that relief from the tax was only of limited duration: it was only during the time of their curriculum, whereas they wanted it during their lives; but in the agreement it was agreed, ‘that they were not admitted into the Company of Licentiates or Masters in Surgery, “*formant une cinquieme Faculté,*” but as scholars of the Faculty of Medicine, provided they frequented its acts’—distinctly guarding against their being treated as Licentiates or Masters in Surgery, but merely as scholars. The possible assumption of those names will explain the caution with which they were admitted even as scholars. Some time elapsed without quarrel, but with difficulties of the nature I have indicated, in consequence of the privileges of the University being intended only for unmarried persons, and for a certain time; whereas they practised the profession for all their lives. They went to the king, and obtained from him letters patent for a certain space of time; and then Crevier says: ‘It is necessary only to observe that this favour is accorded to the Surgeons, not by way of incorporation with the University, but merely by putting them upon a similar footing. These letters not only confirm the Surgeons in the possession of the desirable rights which they were aiming at; but they are still more flattering to them, containing all the titles of honour which they were so anxious to get. Their profession is there qualified (described) as an art and science.’

They are there called Professors, Bachelors, Licentiates, and Masters in the art of Surgery. Behold the titles of which they were always so ambitious! But it is important to remark, that those titles were not given and conferred upon them by the King, but only introduced into the document; and all that is proved by the introduction of them is, that the Surgeons attributed them to themselves for being of the style of letters patent obtained by the suppliants. It follows the terms of their request; consequently they could claim no right to these titles and qualities, which they took especially to the prejudice of any third person who had not had notice of it, or had heard of it.'

*Sir G. Cornwall Lewis.*—That is coming very close.

*Mr Roundell Palmer.*—That was a grant to the College of Surgeons, and had nothing whatever to do with the University. On the contrary, it was obtained, behind the backs of the University, as a grant to themselves. They got a grant of certain privileges, and in that grant, which Crevier says they themselves prepared the form of, they caused themselves to be described as Professors, Masters, and so on. That may show that the College of Surgeons of Paris was ambitious of assuming the position of a University or Faculty of Surgery, authorized to grant titles similar to those of degrees, and that they got from the Crown in France something to legalize their doing so; but there is no trace of those titles being derived from the University, or the University having power to grant such degrees; but it is clear that the University, on all occasions on which they were brought in contact with them at all, guarded itself against the recognition of any such claim, and never gave such titles or degrees. It is remarkable, that at Oxford, where the power seems to have been exercised by the Faculty of Medicine of licensing Surgeons to practise, not of giving them anything in the nature of a degree, which we know has nothing whatever to do with practice, but a license to practise Surgery, the notion of giving them a degree was never for a moment entertained. In the Caroline Statutes, title 9, section 9, article 7, I find it is enacted, 'Any Student of Surgery may be admitted' 'ad praxim per Universam Angliam admittatur, si per septem annos integros in ea arte se perité probè et honeste exercuerit duas anatomias dissecuerit et tres ad minimum curationes præstiterit; et Chirographo (vel Professoris Regii in Medicinâ et

unius alterius Doctoris in eadem Facultate; vel trium quorumcunque Doctorum in Medicinâ in Universitate residentium) approbatus fuerit; quodque hæc in forma gratiæ recenseantur hoc modo,'—and then there is a form of license to practise, 'in Chirurgia per Universum Angliæ Regnum,' which the University claimed the right to give.

*Lord Chancellor.*—The profession of Surgeon,—which now is an illustrious one,—was of low origin, because it was united with the business of a Barber. There are several statutes, as we know, respecting Barber Surgeons.

*Mr Roundell Palmer.*—Language very often assists us in tracing the history of things. The word 'Chirurgia,' meaning 'Operator,' speaks for itself—the Surgeon was a manual operator; and, dwelling upon that fact, and the ideas connected with it, will enable us to see that the whole notion is fundamentally wrong, to suppose that it could have been consistent with the principles of University teaching to give degrees in Surgery, because the degrees in the University are degrees in arts and sciences: they are not degrees in crafts, or in practice, or any matter of practice; and this term 'Chirurgia' referred to a manual operation.

*Lord Chancellor.*—To a craft?

*Sir G. Cornwall Lewis.*—Do not you conceive that a person, who took a degree in Medicine in one of those Universities, might occasionally perform Chirurgical acts?

*Mr Roundell Palmer.*—I have no reason to suppose there was any legal prohibition to his doing so.

*Sir G. Cornwall Lewis.*—You do conceive that that was the practice in those times?

*Mr Roundell Palmer.*—I should think not.

*Lord Chancellor.*—I should think that in former times the distinction between Medicine and Surgery was not distinctly defined; and we know that even now the Barber bleeds in country towns.

*Mr Roundell Palmer.*—Manual operation was the idea of Surgery; and, generally, Physicians were not manual operators. The art of Medicine was an art founded upon the practice of Esculapius and others.

*Lord Chancellor.*—Esculapius practised both branches, I fancy.

*Mr Roundell Palmer.*—My learned friend, Sir Hugh Cairns, reminds me that there seems to have been a rule amongst Physicians not to perform operations; and the bye-laws of the College of Physicians of England at present exclude any one who does so.

*Sir G. Cornwall Lewis.*—We understand that you are speaking of the time before the existence of a College. I take it, the office of the University was to teach the theory of Medicine.

*Mr Roundell Palmer.*—The truth is, that Surgery, properly so called—that is, the manual practice of Surgery—was out of the scope of the teaching of the theory of Medicine. Anatomy would be a subject comprehended within the knowledge necessary for that theory, of course. Anatomy is closely connected theoretically with the practice of Surgery. So, again, would many other subjects be which are material, and which are parts of the fundamental knowledge necessary for Surgery.

*Lord Chancellor.*—There is now a class of medical practitioners who call themselves Chiropodists.

*Mr Roundell Palmer.*—Yes, we shall have degrees in Chiropody before long, no doubt. I think the word 'Professor' is frequently used by the class of persons your Lordship refers to. The word Professor has certainly travelled so low as conjurors and persons of that class, and is applied to any description of persons operating in any way whatever. My observation is material, as showing the principle that Surgery proper consisted in that which would be out of the scope of the University system of education entirely; and that nothing would come within the scope of the science of Medicine in the University, except those things forming the scientific foundation of Surgery proper, but not Surgery proper itself. The art and practice of Surgery would not, in the original conception of the Faculty of Medicine, come within or belong to it.

Before I leave this branch of the subject, I will just refer to two or three other Universities mentioned in the Commissioners' Report. Glasgow and Dublin I may dismiss in a few words, especially as my learned friend who follows me—who is so well acquainted with Dublin—will have something to add upon that; but, with regard to that of Glasgow, your Lordships must be aware that there is nothing in the case of Glasgow which can affect this question. Glasgow attempted, previously to the year 1816, to compete with the Faculty of Physicians and Surgeons of

Glasgow, and to authorize practitioners in Surgery, by means of its Medical degree. An action was raised, in which a gentleman of the name of Steele was concerned, which is mentioned in our Case; and it was decided by the Court of Session, that the charter of the Faculty of Physicians and Surgeons of Glasgow precluded any one having a Medical degree from a University from practising Surgery within their limits. The question arose in this way: Upon the face of the charter given to the Glasgow Faculty, there is a general power to them to superintend and license practitioners in Surgery; but there is a special reservation and exception of Doctors of a University. The words of the reservation are these: 'It shall not be leisum to any manner of persons within the foresaid bounds to exercise Medicine without the testimonial of a famous University where Medicine is taught, or at the leave of our, and our dearest spouse's chief Medicinarius;' and under those words it was quite settled that Medicine, as distinguished from Surgery, might be practised within the bounds, by those having Medical degrees of any University; and the Doctors of Medicine of the University of Glasgow claimed a right to practise Surgery upon the ground that Surgery is a part of Medicine, and that the idea of Medicine includes Surgery—that, therefore, if they had a right to practise one part of Medicine, they had a right to practise the other. The Court of Session decided against them, and decided that they had no such right—that Medicine and Surgery were here, as in all public legislation upon the subject, distinguished from each other—and that Medicine did not include Surgery. Then the University changed the form of their attempt, and attempted to introduce the degree of Master of Surgery in 1816, it never having previously been granted. They renewed the attempt, thinking that, when they granted that degree, they would stand in a better position. The case came before the Court of Session, and afterwards before the House of Lords, and with the same result. Whether they had the power to grant such degrees or not—which one of the Judges, Lord Moncrieff, thought they had, he dissenting from all the other Judges and the House of Lords—whether they had the right or not, did not fall to be decided in that case, because it was held to be quite sufficient that the Faculty of Surgeons had established their right to exclude them from practice, which they did. But I will refer your Lord-



ships to what fell from Lord Brougham afterwards, in a case in 1st M'Queen—the case of the *Senatus Academicus* of Edinburgh against the Lord Provost and Magistrates and Council of Edinburgh—which did not relate to the degrees in Surgery, but in which reference was made to some opinion of Lord Glenlee, in one of the former cases, that the power of appointing the Professors gave the College the power to confer degrees. At page 511 of 1st M'Queen, Lord Brougham says,—‘Some of the Judges seemed to think, and Lord Glenlee among others, that the mere appointing of the Professors gave the College, from the fact of their appointment, the power of conferring degrees. I should doubt that; and certainly the instances of the other Scottish Universities would rather go against it, for every one of those which have been cited—St Andrews, Aberdeen, and Glasgow—has the power to confer degrees by express grant,’ and so on. The question, however, was not determined in the House of Lords, nor by a majority of the Judges who expressed their opinions. The practical question was against the University, and the theoretical question could not arise. The act of the University of Glasgow, dating from the year 1816, and introduced for the purpose I have mentioned, cannot operate to affect the question. It never has been judicially determined, that they could do it; it has been challenged, so far as any challenge was possible, by the parties who succeeded in excluding the claim they made to practise. Therefore, that cannot be considered to throw light upon the question of right or law.

With regard to Dublin, if the practice has been introduced at all, it was much more recent, and was an experiment *ejusdem generis*, with that which is now being made, and thus, can have no bearing by way of authority upon the subject.

There is another case in our printed Case, which is not cited in the Report of the Commissioners, and upon which, therefore, they probably did not think it safe to lay any stress, but which is, in truth, the only thing in any of the books like authority for the proposition, that any degree in Surgery was ever granted by any University in the world, before the foundation of the University in Paris—the present University of France, in 1803—I mean, a dictum concerning the University of Salerno, which is found in Conringius, and which your Lordships will find at page 14 of our printed Case.

*Lord Cranworth.*—He was a German writer ?

*Mr Roundell Palmer.*—Yes, my Lord. The University of Salerno was a Medical University alone, standing upon peculiar grounds, of great fame and reputation as a school of Medicine. There is a passage in this work of Conringius, in which, I think, the word ‘Magister’ has been misunderstood, being taken to refer to an academical degree, whereas it means no more than this—just what you might understand in speaking of a master tailor or a master goldsmith, a master of the practical art and business of Surgery, carrying it on, not as an academical master, but as a master in the trade or craft. This may or may not be the correct interpretation of the passage ; but it seems to me that the passage is susceptible of this interpretation ; and if it is not the right one, we shall succeed in showing that Conringius has fallen into error upon the subject. The passage is at page 100 of his book upon Academical Antiquities, and he says there, ‘Paulo post conditæ sunt a Friderico II. Cæsare præclaræ illæ leges de re Medica Universa’ (on Medicine in general), ‘quæ liquido ostendunt, præter reliquas Medicinæ partes etiam illam quæ manu medetur Salerni Magistros suos accepisse, nec rem Anatomicam fuisse neglectam. Artem vero omnem ex Hipocaticis usque fontibus petitam esse.’

*Sir G. C. Lewis.*—The obvious construction of that is, that the Faculty of Medicine of Salerno, the earliest Medical University, included teaching in Anatomy and Surgery.

*Mr Roundell Palmer.*—I think that is a very natural interpretation of it. There were taught and practised at Salerno both Anatomy and Surgery.

*Sir G. C. Lewis.*—All the ancient Physicians included those branches as part of their attainments.

*Mr Roundell Palmer.*—No doubt, the theory would be, that both would be necessary to a general knowledge of the healing art ; but at the same time it was not so much the theory of Surgery, as the theory of that knowledge upon which it hangs. There were persons, therefore, according to this, at Salerno, who gave lectures or instruction in Surgery. That, I think, is the meaning of the word, looking at the context, ‘nec rem anatomicam.’ No one would say that there were Masters in Anatomy.

*Lord Chancellor.*—The students were taught to perform operations.

*Mr Roundell Palmer.*—Just so, ‘*Artem vero omnem ex Hipocraticis usque fontibus petitam esse,*’ which shows still more plainly what it means. Some words follow which have been clearly misunderstood, I think, if they were supposed to refer to Masters in Surgery, in the sense we are dealing with—‘*Quatuor Magistrorum in Chirurgia Salernitanorum libros Oxoniæ reperiri memorant bibliothecarum scriptores.*’ That is, ‘The writers concerning libraries say, there are books at Oxford, in the Library, of four Salernian masters’—‘*Magistrorum in Chirurgia,*’ being understood to mean persons having the degree of Masters in Surgery. I believe that, to mean what it meant in the other passages—that is, Salernian persons, skilled in Surgery, and Masters of the Art, not persons who had received a degree at Salerno or elsewhere, in *Chirurgia*. But it turns out that we have the book itself, and we there find that it is so, and that there is not the least pretence for supposing that they were Masters in Surgery, in the sense we are talking of. It appears that the Regents of the University of Salerno were four in number, who were usually styled the four Masters of Salerno. But the book itself, from the library of Oxford, is printed in De Renzi: *Collectio Salernitana*, and this is the title of it, ‘*Glosulæ quatuor Magistrorum super Chirurgiam Rogerii et Rolandi.*’

*Sir G. C. Lewis.*—The word, ‘*Magister,*’ in *Conringius*, would probably be rendered ‘*Teacher.*’

*Mr Roundell Palmer.*—I should think so. ‘*Incipit liber primus Cyrurgie Rogerii et Rolandi cum glosulis quatuor Magistrorum, Compendiose magis per alios divisa libros et per partes singulas melius ordinata de vulneribus a capite usque ad pedes accidentibus. et continet partes X.*’ So, to say there were Masters in Surgery at Salerno was clearly a mistake; and this subject seems to have been examined by learned writers in Germany, particularly by *Ackermann*, a reference to whose essay in *Pyl’s Repertorium* is given at page 14 of our Case. He wrote at length upon the school of Salerno, and was upon this matter a perfectly unprejudiced authority; and he comments upon the passage as one referring only to Doctors of Physic. There seems to be nothing whatever in that; and the result is, that no single authority can be produced of any University in the world which ever granted this degree, till, by competent legal authority, it was

created at Paris in 1803 ; which example was imitated in 1811 at Berlin ; and if the thing is done at Vienna, no doubt it will appear to be done in the same way ; and it was done for a purpose sufficiently transparent, and which explains itself, in Glasgow, in 1816.

Now, my Lords, I think I have said as much as, at all events, I can usefully say, knowing that I shall have the able assistance of my learned friend, Sir Hugh Cairns, upon this part of the subject.

*Lord Cranworth.*—Were all these matters which you have pressed upon us, brought before the Commissioners ?

*Mr Roundell Palmer.*—My learned friend has seen a note of the argument. I think they were not so fully gone into. There was this disadvantage, that the petitioners were heard first, and they were not in possession of the mind of the Commissioners upon the subject, nor did they know how far this matter had undergone the consideration of the Commissioners. My learned friend has seen a note of the argument ; and I collect from his representation to me, that much which I have suggested to your Lordships to-day was not brought before the Commissioners.

I have one other remark to make upon another point which relates to a matter which your Lordships will see quite sufficiently noticed in note (g) at page 15, which refers to authorities which quite bear out the statement:—‘ A University degree is not a mere private testimonial of proficiency, but is a public title, conferring public status, to be recognised in all courts of law, and elsewhere, as a legal designation, and as giving legal precedence, just as much as a Knighthood or a Baronetcy. The Popes sometimes conferred degrees of their own accord. The Emperors did the same. Many Bishops and others had delegated authority to make graduates ; and within recent years the power has been exercised by the Archbishop of Canterbury. When the power was given to a University, it was occasionally limited to certain grades, and in certain Faculties ; it is not given to be exercised at its own pleasure, or for its own benefit. It is bound to confer the degree upon, or at least to take upon trial, every candidate. And if a University deprive a graduate of his degrees, a court of law will inquire into the causes ; and if the proceedings have been unlawful, restore him to his status.’ That is a very useful illustration of the nature of a degree.

And there was a recent case at Oxford, in which a gentleman, having published a book which was thought to be inconsistent with a *bona fide* subscription to the articles of religion, was deprived of his degrees; that would tend to show that it was a *status*.

*Lord Chancellor.*—A *status* attended with civil privileges.

*Mr Roundell Palmer.*—Quite so. There is in the same page a citation from Itterus 'de gradibus academicis,' page 72: 'Nam et jus conferendi academicos gradus ad regalia pertinere non tantum dubitat nemo vel Fendistarum, vel civilis prudentiæ doctorum, sed et iis quæ regalia majora (distinctione non necessaria quidem nec tamen penitus inutili) vocant, annumerandum multi censent.'

*Sir G. Cornwall Lewis.*—The power must be proved to be granted either expressly or impliedly by the Crown.

*Mr Roundell Palmer.*—Precisely.

*Lord Chancellor.*—We know that the title of barrister at law is called a degree.

*Mr Roundell Palmer.*—No doubt.

*Lord Cranworth.*—I see, in the first volume of 'Blackstone's Commentaries,' a table of precedence, and I see among them Doctors.

*Mr Roundell Palmer.*—Yes; the higher Faculties taking precedence of the lower.

*Sir Hugh Cairns.*—There is a general precedence in the three Faculties.

*Lord Chancellor.*—There are professional privileges by the recent Act of Parliament.

*Mr Roundell Palmer.*—Yes; to which I shall refer by and by. Of course, it is a remark which must strike your Lordship as obvious, that even if any doubt were left upon your Lordships' minds, after a full consideration of the arguments which you will hear as to the legality of this degree, if it appeared to be of doubtful legality, it would be a strong reason against its not being expedient.

*Lord Chancellor.*—If it were expedient, unless the illegality were clearly shown, I should be inclined to support it.

*Mr Roundell Palmer.*—It might be so; but I should submit, as an element in the question, that serious doubt as to the legality is not to be disregarded.

*Lord Chancellor.*—If the degree is conferred, the legality could not be questioned in a court of justice.

*Mr Roundell Palmer.*—No ; but the legality of the exercise of any privileges founded on the assumption of it, might, of course. I am not sure, speaking with deference, but I doubt whether an action of declarator might not have been maintained, by which the legality of the degree itself might have been called in question.

*Sir G. Cornwall Lewis.*—How is the argument of expediency relevant ?

*Mr Roundell Palmer.*—Your Lordships will see that the Act of Parliament must have contemplated that the objections would rest upon other than grounds of strict legality, because the Act gives the opportunity to any one who thinks the changes are such as the Crown ought not to sanction, to call them in question. The bodies for whom I appear, are bodies as to whom it is not too much to say, that they represent not only the interests of the professions in Scotland, but the interests of the public as connected with those professions, and have no personal interest in the matter. The Colleges, that of Edinburgh more particularly, have been conducted on the most open and enlarged principles ; every farthing they have received from fees has been expended on public purposes. The constitution is such as to open them to the whole of the profession ; and they are in effect corporations, which may be said to represent all the profession. I believe it is quite unnecessary for their advocates to say anything, as to the satisfaction which has been felt with the way in which they have discharged their duties. There are many passages in the Petitions and our Case, showing that, which I will not dwell upon. They, and all the other Medical bodies, including the Medical Council, *bona fide* think, that this is a change very undesirable to introduce, if even the power exists in point of law. Now, the Commissioners were directed by the Act of Parliament to have regard, in the exercise of their power, to Reports made by the former Commissioners. There is no doubt about this, if your Lordships will turn to the Act of Parliament.

*Lord Chancellor.*—They are not to be bound by them.

*Mr Roundell Palmer.*—No, it is a thing which it is their duty to consider ; but I suppose some presumption may fairly be inferred from that direction of the Legislature, in favour of the

principle of those recommendations, unless solid objections can be made to them. With respect to this particular matter, the Commissioners of 1830 reported against any change; they particularly considered the question of this Surgical degree, and they reported that it was not desirable to introduce it upon the assumption of its legality, after the example of Glasgow. I need not read the passage in the Report, but it is alluded to by the Commissioners themselves; and the Commissioners say they were themselves at first disposed to adhere to that view of the case, and the grounds on which they departed from it appear to be of a somewhat important character. The grounds your Lordships will find at page 4 of their Report; they say, 'Before their attention had been specially directed to the provisions of the Medical Act, and to the altered state of circumstances which had in consequence arisen, the Commissioners were not impressed with the necessity of a departure from the system which has hitherto prevailed in the University, of conferring only one degree, that of Doctor of Medicine, as indicating a competent and thorough knowledge of the several branches of medical science, including Surgery, as well as Medicine in the more restricted sense of the word. The Royal Commissioners of 1830, in view of the prominent position and great importance which have been assigned to the department of Medicine in the University of Edinburgh, have collected and recorded a large mass of valuable evidence bearing on instruction and graduation in that Faculty. Among other matters brought specially under their notice appears to have been the question as to granting degrees in Surgery.' Then they refer to Professor Ballingall's evidence, who advocated the institution of the double degree now under consideration, 'Medicinæ Baccalaureus et Chirurgiæ Magister' as a good licensing degree, leaving the higher degree of Doctor of Medicine to be subsequently conferred as a mark of distinction.' 'But,' they say, 'the conclusion of the Commissioners was that it was not then desirable to alter the existing system of having only one degree, that of Doctor of Medicine.' 'If a separate Chair of Surgery be instituted,' the Commissioners of 1830 say, 'there seems no reason why degrees in Surgery may not be granted by the University, but there should be only one Medical degree.' Then they say, 'The present Commissioners were at first disposed to coincide in the opinion so ex-

pressed, and, probably, had circumstances continued unchanged, they would have seen no reason to depart from it. Except, it may be, within the bounds of the charters of the Glasgow Faculty and of the Edinburgh College of Surgeons, the degree of the University gave a title to general practice throughout Scotland; and as the distinction between Medicine, or Physic proper, and Surgery, is in ordinary practice never attended to, and indeed is somewhat difficult to define, it was calculated to prevent embarrassment to continue the system of having only one degree indicating in the holders of it the possession of a competent knowledge of all branches of the Medical profession, sufficient to entitle them to practise generally in Medicine, in the largest sense of that term, including Surgery. Since 1858, however, through the operation of the Medical Act, passed in that year, a total change of circumstances has been induced, a full consideration of which has satisfied the Commissioners that it would be highly inexpedient, and indeed most unjust to the University, that it should not now be allowed to grant degrees in Surgery as well as in Medicine.' Then they refer to the Act, and particularly to section 15, which provides for the registration of those who might have the qualifications prescribed in Schedule A, which are, *inter alia*, those of Doctor, or Bachelor, or Licentiate, of Medicine, or Master in Surgery, of any University of the United Kingdom. They refer, also, to the establishment by that Act of a General Council of Medical Education and Registration of the United Kingdom, and to the 31st section, which provides, 'that every person registered under the Act shall be entitled, according to his Qualification or Qualifications, to practise Medicine or Surgery, or Medicine and Surgery, as the case may be, in any part of Her Majesty's dominions.' And then there is a provision for the recovery, by such persons, of their reasonable charges. Then they say, 'In interpreting the Act some difficulty has been created by the words "Medicine" and "Medical," being used sometimes in their more restricted sense, as applied to Physic in contradistinction to Surgery; and sometimes in their more ordinary and general sense, as including all departments of Medicine.' Then they quote some instances of the use of the word 'Medical,' and they say, 'A doubt has arisen which appears to have been much encouraged by the Medical corporations in Scotland, whether the possession of the



degree of Doctor or Bachelor of Medicine from a University, as, for example, from the University of Edinburgh, was intended to be taken as indicating in its holder a competent knowledge of the principles and practice of Surgery, as well as of the principles and practice of Physic. This doubt appears to have occurred to some of the Government Boards.' Then they refer to some examples, and then they say at the bottom of page 6, 'With a doubt thus existing and fostered as to whether the degree in Medicine of the University of Edinburgh was to be regarded as evidence that the persons to whom it was granted had attained a competent knowledge of Surgery as well as of Medicine, the Commissioners have become convinced that, notwithstanding the representations to the contrary made by the Medical corporations, the view pressed on them from the outset by the *Senatus Academicus* of the University is correct, that the altered state of circumstances renders it expedient, and indeed necessary for the preservation of the Medical School of the University, that it should put in force its undoubted right—a right exercised by the University of Glasgow, and by the Universities of the Continent most distinguished as Medical Schools—of granting degrees in Surgery. They have been further convinced, having regard to the practice which prevails in the English Universities, of conferring first the degree of Bachelor of Medicine, and afterwards that of Doctor of Medicine, that, now that the whole of the United Kingdom is comprehended in one system of Registration by the Medical Act, it is desirable, with a view to uniformity, to alter the system existing in Scotland, of conferring the degree of Doctor of Medicine as the degree of the University, qualifying for ordinary practice, and to institute the intermediate degree of Bachelor of Medicine for that purpose. Consistently with this conviction, however, it seemed to them not impossible to provide also in substance, that the views expressed by the Royal Commissioners in 1830, and shared in by the present Commissioners, should be carried out, that the University degree or degrees should denote a competent knowledge both of Medicine and Surgery, and that the University should not confer any degree on one who was not sufficiently instructed in both. This object, the Commissioners were of opinion, could be best attained, and in a manner to do justice to the University under the provisions of the Medical Act, by providing that it should confer the degrees

of Bachelor of Medicine and Master in Surgery simultaneously, after a sufficient course of education and examinations in both of these departments, but should not confer the degree of Master in Surgery without that of Bachelor of Medicine. It seemed to them that the degree of Bachelor of Medicine should virtually take the position which the degree of Doctor of Medicine now holds, conferring on its possessor the right to practise as a general practitioner ; and that if, for any purpose, a candidate should be desirous that the University should confer on him a certificate of competency in Surgery as well as in Medicine, he should receive also the degree of Master in Surgery, to which his education and acquirements fully entitled him.' Then they say, they thought it inexpedient to require any additional examination in Medicine. Then they refer, at the bottom of page 7, to the argument which was founded upon the 19th section of the Medical Act ; and they quote from the Petition of the College of Surgeons of Edinburgh, a paragraph which is in these terms : ' That the legitimate method of conferring a double qualification in Medicine and Surgery is specially provided for in the Medical Act, clause 19 of which enacts, " That any two or more of the Colleges and bodies in the United Kingdom, mentioned in Schedule A to this Act, may, with the sanction and under the directions of the General Council, unite or co-operate in conducting the examinations required for qualifications to be registered under this Act." That in accordance with this provision, with a view to the convenience of candidates for a double qualification in Medicine and Surgery, the Royal College of Surgeons offered to the Royal College of Physicians, and also to the University, to form a joint examination with each of these bodies, the principle of which should be, that of a joint examination on subjects common both to Medicine and Surgery, while the examination in Medicine and Surgery respectively should be conducted exclusively by the body legally authorized so to do ; while each body, at the same time, remained at liberty to give its own diploma or degree separately, by its own regulations. That the Royal College of Physicians accepted the arrangement, but that the University rejected it, and now seeks to assume the function of licensing in Surgery as well as in Medicine, so as, of itself and alone, to endeavour to confer a double qualification as equivalent to that conferred by the co-operation of two

separate bodies.' Then they go on to say, they do not interpret the Act as meaning that that is necessary, and, on the contrary, they find in the arrangement between the College of Physicians and the College of Surgeons an additional reason for doing what they propose to do. They say, between H and I, on page 9, 'The Commissioners, therefore, in view of the formidable competition thus established at the gates of the University, do not hesitate to express the opinion, that to prevent the University from granting the degree of Master in Surgery would be to inflict a most serious injury on its interests as a Medical School.' The substance of that reasoning seems to be this, that whereas, before the Medical Act was passed, the Medical degree of the University of Edinburgh gave a title to general practice throughout Scotland, excepting within the bounds of the charters of the Glasgow Faculty and of the Edinburgh College of Surgeons; now a distinction is taken, upon the language of that Act, between the qualification for Surgery and the qualification for Medicine, and it is urged that it will expose the University of Edinburgh to disadvantage, in the competition of its Medical School with the extra-academical Schools, if they are not by some means or other enabled to give a Surgical degree. Now, in the first place, the Medical Act, in recognising certain University degrees as sufficient tests to authorize persons to practise, did not mean to turn the Universities into bodies who were to have the particular function of licensing for practice. The Legislature took the degree as an academical degree of known value, and supposed it would continue to be conferred upon academical principles, and with the advantage of those academical attainments, which gave it the character to which the Legislature attributed its value. It never was the intention of the Legislature, to be collected from that Act, that a University was to enter upon the new function of a licensing body, and to enter into competition as such with the Medical and Surgical bodies.

*Lord Chancellor.*—You are now upon the question of expediency.

*Mr Roundell Palmer.*—Yes, my Lord. The Medical Act simply proceeded upon the recognition of the academical degree, as a thing having a certain value, and which the Legislature thought fit to make a door to practice. The Legislature

did not mean to introduce a totally new set of considerations into the academical question, and to legalize the introduction of all such regulations, as to degrees and otherwise, into the re-constitution of the University, as should facilitate the University assuming a new position, namely, that of a Medical Licensing Corporation. I apprehend, that that was very far from the intention of those who passed the Statute. And, on the other hand, it is perfectly clear that no intention of the kind can be discovered in the Act appointing these Commissioners for the Universities. They are to be remodelled as Universities; the Academical consideration is to govern the question, and not the Medical; and they are not Medical Commissioners who are to create, in the University, a system of licensing practitioners,—which is the idea which obviously is preponderating in their minds. It was to an educational institution, and with a view to the reform of the institution as an educational institution, and not as a licensing body of mere practitioners, that their attention was directed. They seem here to have gone far to encroach upon the policy of both the one Act and the other. The Medical Act meant, I should think, that the existing degrees, of which the value had been tested by experience, and of which the nature was supposed to be known, or such other degrees as by lawful authority should be introduced, should be the qualification; but it was never meant to alter the character of the University, or the character of the University degree.

*Lord Chancellor.*—It might be that a new degree might be introduced owing to the changed circumstances of the case, and that that might be done without injury to anybody, and for the public advantage.

*Mr Roundell Palmer.*—That cannot be disputed; but I submit that it is not within the scope of Universities, or the Commissioners of Universities, so much to throw overboard academical considerations, and to deal with this question on the principle of having two competing schools of medical practitioners. They have lost sight of the proper function of the University, and have regarded the University as entitled to assume the position of a body interested in competing with the Colleges of Surgeons and Physicians, in attracting candidates for the mere purpose of practice. That seems to be foreign to the purpose of both Acts of Parliament, and, in its result, to have a ten-

dency to injure and destroy that very value which existed before, of the academical Medical degree ; and, at the same time, to operate injuriously, and to the general disadvantage of the country and the profession, upon those who have the other qualifications given by the Medical Colleges, and have not the academical degree.

P. 10. This view of this part of the subject seems to be forcibly presented in the Petition of the College of Physicians ; and I will refer your Lordships to one or two passages in that Petition. At page 418, between F and G, they say, they are of opinion 'That the said Commissioners have too readily embraced the idea of those Medical Professors by whom the proposed statutes were drawn up, and who avowedly framed them on an assumption, condemned by all impartial Medical authorities, past and present, by the University Commissioners of 1830, and by several of the Professors,' viz. : that University degrees should not be regarded as indicating a higher standard of general and professional education than the mere licenses to practise, but should be a qualification, 'not for the peculiar position of the physician, but for the general service of the country, whether civil or military.' And then they go on to show, that the University diploma practically carries everywhere with it the impression of an academical as well as of a professional character ; and that what the Commissioners have done, has been to introduce regulations, which, in all their parts, are meant merely to enable and encourage the University to license upon exactly the same terms as to qualification, preparation, and in every other respect as the Medical corporations do, so that they send into the world Graduates in Medicine or Surgery with no qualification whatever, in addition to that which is required as a necessary preliminary qualification by all licensing bodies ; but when they get into the world with the University degree, they carry with them the prestige of that degree, and carry it with them falsely in those circumstances. At page 419, the Petitioners submit their views upon the subject in these terms. They think the adoption of such a system wrong, 'First, because it prevents the requirements for the degree from being raised above that point at which it may be easily accessible to all.'

*Sir G. Cornwall Lewis.*—Is not that an objection to conferring Medical degrees at all by a University ?

*Mr Roundell Palmer.*—No, because it is granted for scientific

attainments, and always to those who have passed through the general preliminary course which is necessary as an introduction to the higher Faculties; and, for that reason, it is, that the Medical degrees of Universities have enjoyed the estimation which they have. Why is a Physician of the University preferred? Simply because his degree has been accepted as a certificate of superior qualifications. I do not mean mere professional qualifications, but superior general qualifications, superior qualifications as to general attainments and education; a knowledge of Greek and Latin, and other subjects taught in the ordinary University curriculum. And it is not only a technical but a practical objection of a serious character, that, by this proposition, you retain the reputation which the University degree gives, you retain the prestige which is attached to it, while you take away the substance which gave it that prestige. You reduce the standard of qualification to the level, or lower than the level, of the common standard upon which the Medical corporations have throughout proceeded in granting their degree, and yet the man goes into the country with the passport of the University, and with the reputation of higher attainments.

*Sir G. Cornwall Lewis.*—Do you mean that persons taking the University degree at present, enjoy the benefit of the general education of the University, and that a Master in Surgery would not enjoy that?

*Mr Roundell Palmer.*—No. I thank your Lordship for putting that to me, because I will endeavour to make myself clearer. This goes not only to the inexpediency of introducing this new degree, but also, no doubt, extends to some of the other objections afterwards taken, particularly that which specifies the terms on which the degree should be obtained. It is simply a degree by accumulation, it is a fiction altogether, because there is no separate examination, no separate standard; but any one who takes the degree of Bachelor of Medicine, the qualifications for which have been reduced to a minimum something lower than the qualifications required by the Medical corporations, is to be entitled to this Surgical degree, as of course. The object avowed, is to enable the man to practise as a Surgeon, in addition to the qualification which the Medical degree would carry with it by itself. That being so, the effect of it is to create a system as a whole, with regulations as to courses of lectures and exami-

nations; the effect of the whole system being avowedly, as the Commissioners themselves say, to enable the Universities to compete with the Medical corporations as licensing bodies to license practitioners. The effect is, that to enable them to do so, the Commissioners have introduced a system, of which this is part, which destroys everything like the distinctive value of the academical degree as such, and sends persons into the world with the prestige and reputation of an academical degree, but with qualifications rather inferior than otherwise, to those which the Medical corporations require.

*Lord Chancellor.*—It does not follow that those qualifications would be inferior. Their object seems to be, to give a degree for professional knowledge, plus other attainments.

*Mr Roundell Palmer.*—As to professional knowledge, there is no difference in the subjects; there is some difference as to the time for study, and that is not unimportant; the time required for attendance at the lectures is less than that which the Medical corporations require.

*Lord Chancellor.*—If they grant this degree without the proper training, that would be a reason for altering the regulations respecting the curriculum of education?

*Mr Roundell Palmer.*—Our objections go to those regulations also; but my reason for going into this here is, that it is apparent from the passage I have read from the Report, that the Commissioners would not themselves have differed from the Commissioners of 1830, and would not have thought it expedient to introduce the new degree of Master in Surgery but as part of a scheme for enabling the University of Edinburgh to compete, as they consider on equal terms in the granting of licenses, with the Medical corporations. Therefore we must look at the scheme as a whole, and as coherent in all its parts. They create this cumulative degree of Master in Surgery for that purpose and no other. For the same purpose and no other, they reduce the standard of preliminary education to a level somewhat lower than that of the Medical corporations, and they make the curriculum of professional education certainly not higher in any respect, and in point of duration lower. Therefore if anything, they reduce the standard lower; certainly they do not put it above an equality with the standard of the ordinary licensing corporations. They say they should not

have adopted the new degree but for the effect of the Medical Act, and for the competition to which they think the University will be exposed, if this power, in some way or other, were not given. I cannot see that in that reasoning there is anything satisfactory; for see what it comes to? What is the position of the College of Physicians? They cannot grant a Surgical degree. What hardship is there upon the University to be in a position not different from that in which the College of Physicians is? They might be exposed to the same principle of competition; but the College of Physicians and the College of Surgeons have thought fit to co-operate, and by means of that co-operation, any degree of improper competition is excluded. The same opportunity was open to the University: the University had the opportunity of being put in the same position as the College of Physicians; and the argument of the Commissioners, if good for anything, is this, that the effect of the Medical Act would be to expose the University to exactly the same competition as a licensing body, as it would expose the College of Physicians to; and in order to give it an advantage greater than the Legislature has given the College of Physicians, and to put them in a superior position, the University is to set aside academical considerations, and to introduce this new degree with a lower standard generally, in order to give it an advantage in its competition with the Medical bodies. The very fact that their position without this would be the same as that of the College of Physicians, is the strongest proof, that the Commissioners have not been following out the intentions of the Legislature, in their attempt to give the University a superior position as a competing, I had almost said, a trading body.

*Lord Cranworth.*—The object of the Commissioners ought to be confined to some expedient for the advancement of ‘religion and learning?’

*Mr Roundell Palmer.*—Yes; and when they recommend the creation of a system putting the University in a better position than they otherwise would be, to compete as a body licensing practitioners, they have travelled into considerations appropriate to the Legislature, when they passed the Medical Act, but not appropriate to the office they had to discharge under this Act of Parliament. It is not for the sake of learning: upon their own showing they have lowered the interests of learning, for the



sake of enabling the University better to compete as a body, licensing general practitioners. I say it is most unreasonable that it should be made an argument for doing this, that the University would be in a situation exactly the same with the College of Physicians—bearing in mind that before the Medical Act passed, their degree gave no more right to practise Surgery in any part of the world, than any document which anybody present in this room might have signed. That is a most extraordinary proposition of the Commissioners, and can have no legal effect whatever. It was inconsistent with law, that those who held their degree in Medicine should practise Surgery within the bounds of the Colleges of Glasgow and Edinburgh, as their Medical degree did not include the qualification to practise Surgery. As to practising elsewhere, anybody was at liberty to do it; the law imposed no test, and therefore a man with a degree, would be in the same situation as a person who had taken no such degree would have been in. The man would have the advantage that was derivable from the certificate of proficiency in learning involved in a University degree, but that did not give in one place more than another, the qualification to practise. Therefore they would be in a better position, and not worse, by the Medical Act, because it gives a legal *locus standi* for practice, according to its terms; but it was not meant by the Medical Act, that you should fabricate new degrees in order to introduce the qualification, which it gives upon the supposition that the degrees are to be conferred by the bodies in the way in which they have been accustomed to confer them.

*Sir G. Cornwall Lewis.*—Does the Medical Act prohibit a Doctor of Medicine of Edinburgh from practising Surgery beyond these limits?

*Mr Roundell Palmer.*—The Act enables him to practise in every part of the United Kingdom, and therefore it abolished the exclusive privileges of the formerly privileged corporations. The terms are, practise ‘according to the registered qualifications.’

*Sir G. Cornwall Lewis.*—Then an Edinburgh Doctor would be in a worse position than before the Act, if he be not a Surgeon?

*Mr Roundell Palmer.*—He may be so according to that interpretation; but in order to obviate that, the Legislature have enabled any two or more of the bodies to co-operate in order to frame regulations for the mutual granting of degrees. The

College of Surgeons of Edinburgh and the College of Physicians have co-operated in that way ; and any Physician belonging to the College of Physicians of Edinburgh, being examined in the manner agreed upon, will receive from the College of Surgeons a diploma. In like manner, a Surgeon being examined by the College of Physicians, will receive a diploma. Why the Commissioners should go out of the way to put the University (which has deliberately refused to avail itself of that power which the College of Physicians have availed themselves of) in a better position than the Legislature put the College of Physicians at Edinburgh, I cannot understand.

*Sir G. Cornwall Lewis.*—Before the Act there was no prohibition as to practice without the limits ?

*Mr Roundell Palmer.*—No.

*Sir G. Cornwall Lewis.*—Then a Doctor in Medicine could practise Surgery without the bounds, and since the passing of the Act he cannot ?

*Mr Roundell Palmer.*—No ; upon one construction of the clause ; that is quite an unsettled question.

*Sir G. Cornwall Lewis.*—Then the effect of an Edinburgh Doctor of Medicine taking the degree of Master in Surgery would be to enable him to practise Surgery everywhere.

*Mr Roundell Palmer.*—That is the intention of the Commissioners ; but whatever be the true construction of the Act, this is clear, that the Medical degree without the Surgical degree, would have stood in a position quite as favourable as the diploma of the College of Physicians without the diploma of the College of Surgeons. It is clear that they could not give a Surgical diploma, and the Commissioners are availing themselves of the University Act to confer upon the University, by this side wind, an advantage over the College of Physicians, which the Act does not show that it was the intention of the Legislature to give. Allow me to refer your Lordships to the eighth paragraph of the Petition of the College of Surgeons of Edinburgh, in which they say, ‘ That the intention is to make the one degree merely a part of the other is evident from the views of the original proposers of the Surgical degree, the Medical Professors of the University, as expressed in a printed document of date 18th July 1859, addressed to the Commissioners, and communicated by them to your Petitioners ; in which they say, ‘ it is

necessary that the supplementary title of Master in Surgery be given along with the degree of M.B.?

*Sir G. Cornwall Lewis.*—‘M.B.’ means Bachelor of Medicine.

*Mr Roundell Palmer.*—Yes. ‘Not as implying any additional or peculiar education or examinations, but simply as a testimonial what the education and examinations actually are—viz., such as amply qualify both for Surgical and Medical practice.’ Then, if your Lordships look at page 36 of the manuscript paging, there is something which is added to that from the same document, and which is most important; the same passage is quoted, and it proceeds thus:—‘The University of Glasgow has, for many years, given the degree of Master in Surgery, and in the Medical Act this title is set forth as affording a qualification for Surgical practice.’ It is, in truth, dividing one degree into two, for the purpose of accomplishing indirectly an object which, it is assumed, could not have been accomplished otherwise. That is in the statement of the Medical Professors of the University.

Coll. of  
Surgeons  
of England  
Case, p. 2.

*Lord Chancellor.*—No doubt the question of prejudice to the public would be an important one to consider.

*Mr Roundell Palmer.*—The reasons given in the Petition why it would be prejudicial, I think are very forcible,—that everywhere, in public boards and throughout the world, the status of a University degree has hitherto carried with it a certain value, which has not been understood as affording a mere passport to a particular profession, but as evidence of attainments, learning, and science, which have raised the possessor of it to a higher platform than could be attained by the result of a mere general education.

*Sir G. Cornwall Lewis.*—Your argument assumes that learning is merely for a theoretical purpose.

*Mr Roundell Palmer.*—My argument does not assume the use of learning as theoretical; but ‘learning,’ as I use it here, means the acquisition of learning by study and instruction, having no reference to the ulterior practical application of it, for purposes extrinsic to the University. The fact, that the University degree will continue to carry with it a prestige, is the strongest argument against allowing it to be made use of, for a purpose which will, in truth, falsify the reputation upon which

it depends. Your Lordships will find that the 'General Medical Council' have expressed their views on this subject in a manner which cannot be supposed to be due to anything, but their sense of the way in which this question affects the public interest. I refer your Lordships to page 26 of the manuscript paging, page 24 of our Case, the 43d paragraph, between C and D: 'If the function and meaning of University honours be what the Petitioners maintain, it is evident that, both in justice to other Universities and to the public, the University of Edinburgh cannot be too soon made to adopt the proper principle on which to confer degrees.' Then they say, 'The Commissioners, in defence of the delay they recommend, refer to an opinion, given in August 1859, by the General Medical Council, that they are impressed with the conviction, that it would be prudent to beware of proceeding too suddenly towards the remedy of a widespread and long-existing evil.' This opinion was delivered in reference to the state of preliminary education for the Medical profession in general; but, at the same time, the Medical Council proceeded immediately to require a preliminary examination to be passed by all candidates for Medical and Surgical licenses. Specimens of the literary qualifications, one of which must be possessed by every candidate for a Medical or Surgical license, are annexed. The Council then resolved to postpone, until the following year, the consideration of the question of what ought to be the standard of preliminary examination for University degrees. Upon this question the General Medical Council has now pronounced a decided opinion. That Council, by the statute constituting it, is not entitled directly to interpose, unless they consider the examination for degrees not to be such 'as to secure the possession, by persons obtaining such qualifications, of the requisite knowledge and skill for the efficient practice of their profession;' but it has recorded its opinion, that a University degree ought to imply something much more extensive. On the 23d of June 1860, the General Council came to the resolution, '*That it is not desirable that any University of the United Kingdom should confer any degree in Medicine, whether that of Bachelor or Doctor, upon candidates who have not graduated in Arts, or passed all the examinations required for the Bachelorship in Arts, or the examinations equivalent to those required for a degree in Arts.*' Well, my Lords, that,

we know, is the present state of things. In the Universities of Oxford and Cambridge, no one can take a Medical degree of any sort without taking a Bachelor's degree in Arts; and I rather think it is the same at Dublin.

*Mr Selwyn.*—No, that is not so.

*Mr Roundell Palmer.*—However, that expresses the view of the General Council of Medical Education as to what is desirable for the interests of the profession generally, and obviously so, for the reason mentioned—namely, that a degree in Medicine will carry with it the reputation of attainments which are not possessed where this rule, or some equivalent rule, is not adopted. I therefore submit, my Lords, that it is not fit to attempt this, even supposing that the power exists.

Now, my Lords, with regard to the other points, I should desire to touch them as briefly as I can; and one of them I have, to a very considerable extent, anticipated in the arguments which I have already addressed to you—I mean the point with regard to the qualifications for the degrees. I, therefore, do not mean to go into that in any great detail; but your Lordships will find the facts and the reasoning applicable to it at pages 23 to 28 of the manuscript paging (pages 21 to 26 of our Case), and the substance of it, my Lords, is this, that the Commissioners, in the Ordinances to which we object, in this respect have required nothing new to entitle the candidate to the degree of Bachelor of Medicine, except the qualifications which your Lordships will find in the long note to page 22 of our Case. English, Latin, Arithmetic, the elements of Mathematics, the elements of Mechanics, and any two of the following—Greek, French, German, higher Mathematics, Natural Philosophy, Logic, and Moral Philosophy. These are the preliminary attainments—the non-professional attainments, if I may so call them; so that, if any person knows the five subjects first mentioned—English, Latin, Arithmetic, the elements of Mathematics, and the elements of Mechanics—and adds to them a knowledge of two modern languages—say French and German, or, it may be, French and Logic—that person will be sufficiently qualified, excepting as to the mere professional attainments. That is not in any degree whatever higher than the minimum standard, which ought not to be the standard required for University honours. It is not in any degree higher than the minimum standard which,

having regard to the exigencies of the public service, is required for ordinary practitioners by the Colleges of Physicians and Surgeons of Edinburgh, and the Faculty of Surgeons at Glasgow, which your Lordships will find in the middle column of the corresponding note in page 23. You will see that, in substance, they are not very different. If anything, the Philosophical part is more stringent and higher in the Colleges and Faculty.

With regard to the professional part of the education, the fact is this, that the length of attendance required by the Commissioners' regulations is less than that which is required for the ordinary standard of the Medical Colleges. Your Lordships will find this subject dealt with at page 27 of the manuscript paging, paragraph 46 of our Case, in which the facts are thus stated:—'The regulations for the double qualification conferred by the College of Physicians and the College of Surgeons, and by the College of Physicians and the Glasgow Faculty, require that a candidate shall have studied Medicine during four winter sessions of six months each, and three summer sessions of three months each. The regulations for the University are such, that only four winter sessions, and at most one summer session, are required. Students preparing for diplomas from the Colleges must, therefore, attend Medical classes 33 months in all; those wishing the distinction of the University degree require only 27 months.' My Lords, I cannot help thinking that, in addition to these facts—which, of course, by themselves tend to show that a lower standard, on the whole, than that of the Medical Colleges, is proposed to be fixed by the Commissioners—it is very material to bear in mind the great difference between the examination which is conducted for the purpose of the Surgical degree, and the examination, even in the same subjects, which is conducted for the purpose of the degree of Bachelor of Medicine. The examination for the degree of Bachelor of Medicine will, of course, have no special regard to Surgical practice and qualification, though it may be in the same subjects. If you have both bodies, the Physicians conducting the examination in Medicine, and the Surgeons conducting the examination in Surgery, though the curriculum may have been the same, and though the subjects may have been the same, I think it is obvious that you have securities for *bona fide* efficiency in

each branch, which are entirely wanting where you have an examination in those subjects, for the degree of Bachelor of Medicine only, which is to serve as a passport *de jure*, to a degree in Surgery also.

Then, my Lords, the next point, which is dealt with at page 26 of our Case, is the constitution of the Examining Boards. The working of the system of education depends, in a very great degree, upon the efficiency of the examinations; and it becomes, therefore, of great importance to the interest of the public, as regards the profession of Medicine, to see upon what principle those examinations are to be conducted. The examinations are entrusted by the Commissioners to a Board, consisting of the Professors of Medical subjects in the University, who are permanent Examiners, always examining their own pupils and their own students, subject to no change, and not removable; and three others, who will be a very small minority, and who are to be introduced by the University themselves, either from some one of the Medical corporations or from any other quarter, elected by the Court of the University. In substance, therefore, the great preponderance of authority will be in those Professors whose interest it is to increase the number of pupils that they attract, who will examine their own pupils, and who will be permanent Examiners. That system, we think, will have a necessary tendency to deteriorate the standard, because, of course, the number of pupils will be greater in proportion to the facilities with which they accomplish the object of getting a license; and we submit that a very much larger independent element of Examiners ought to be introduced, in order to prevent the University, already encouraged to compete on very favourable terms with the Medical Schools, from taking a scale by which students can obtain a diploma on lower terms than elsewhere, so as to cause a considerable tendency to lower the standard. And we think that the argument is very imperfectly met, by saying that, under the new Medical Act, the General Council of Medical Education has power to fix the minimum of education, because we know well how little the fixing a minimum standard will tend to prevent the deterioration of the standard in the practical application of that particular part of education.

My Lords, the remaining point is with regard to the

very limited extent to which the extra-mural Schools of Medicine, as they are called, are proposed to be recognised. This applies more to students at Edinburgh than to those elsewhere. The Commissioners' regulations, I think, require of persons who do not study at Edinburgh, and who come in upon certain terms, that one year must be spent at Edinburgh, one year must be spent at any other University, and one year at the Hospitals, and so on; but if they are Edinburgh students, they are required to attend the lectures of the Edinburgh University Professors to the extent, I think, of 12 of 16 branches of Medical study, so as to leave only four branches open for the Teachers at other schools; and those schools are not without restriction, because I think that private schools and private teaching are excluded, and they must be schools of a certain defined public character. That, we think, will have by no means a tendency to promote the advantage of Medical Science.

*Lord Chancellor.*—You mean on the individual; the result may be favourable to the public. I suppose the Edinburgh school is by far the best school of Medicine in Scotland.

*Mr Roundell Palmer.*—Yes, my Lord; but the Professors in the University are not better than the others. I do not know how it may be with regard to the rest of Scotland, but there are other schools at Edinburgh of very great excellence, the value of which the late Governors of the University—the Municipality of Edinburgh—felt so strongly, that they thought it necessary to introduce regulations to allow attendance upon extra-mural Schools. It was the subject of a litigation which was decided against the *Senatus Academicus* in the House of Lords. Those regulations allowed, I think, one-third instead of one-fourth to be attended out of doors.

*Lord Cranworth.*—Two-thirds, I think, if I remember rightly the case in the House of Lords.

*Mr Roundell Palmer.*—It is printed at the bottom of page 29 of our Case. I read it thus—‘Attendance on the lectures of Teachers of Medicine in the Hospital Schools of London, or schools of the College of Surgeons in Dublin, or of Teachers of Medicine in Edinburgh, recognised as such by the Royal Colleges of Physicians and Surgeons of Edinburgh (in accordance with regulations to be adopted by these Colleges jointly; and approved



of by the Patrons of the University), shall, to the extent of one-third of the whole departments required by section 2d, clause 1, to be studied by candidates, be held equivalent to attendance under Professors in this or in some other University, as already defined.' The Commissioners propose to reduce it to one-fourth, which we think a step very much in the wrong direction, inasmuch as extra-mural schools have been found, by experience, to be of very great value and use. Of course, competition, so far as it sometimes gives the students liberty to go where they can get the best instruction, has a tendency to raise the standard of instruction elsewhere.

I do not wish, my Lords, to dwell upon these details at greater length than is necessary; but I hope your Lordships will agree on general principles with us.

*Lord Chancellor.*—The result of your last argument would be, that, if their Lordships were, upon consideration, of opinion that your view of the case is a correct one, you would advise some improvement in the Examining Board, or the admission of the schools.

*Mr Roundell Palmer.*—The course would be to advise Her Majesty not to confirm the Ordinances, because your Lordships know it was considered upon a former occasion, in the case of the University of Aberdeen, that the Act does not enable Ordinances to be amended by Her Majesty in Council. Her Majesty may disallow or allow the whole or any part of them, if that part is capable of being defined and separated from the rest.

*Lord Chancellor.*—There is nothing that forbids an indication of opinion.

*Mr Roundell Palmer.*—Of course not, my Lord.

*Sir Hugh Cairns.*—Your Lordships having intimated your pleasure upon this Case, that that which is not unusual should be done, namely, that only two Counsel should be heard for the various Petitioners, I should desire in the first place merely to state those for whom I have the honour of attending your Lordships' Council.

In the first place, my Lords, I appear with my learned friend Mr Roundell Palmer for those whom he has represented, namely, the Royal College of Surgeons and the Royal College of

Physicians in Edinburgh, and the Faculty of Physicians and Surgeons in Glasgow. I appear also on behalf of the Royal College of Surgeons of England. I further appear for the College of Surgeons of Ireland,—all of which different bodies take substantially the same view in the observations which I have to submit to your Lordships. My Lords, I may say with regard to the College of Surgeons of Ireland, that if there were a question of hearing separate Counsel, I believe, in point of form, their Petition was not presented in proper time. It therefore becomes unnecessary to consider it; but it is sufficient to say, that they have intimated their opinion upon the point, and have justified the late presentation of their Petition by this very sufficient reason, that they never heard of the Ordinances in question—the *Edinburgh Gazette* not being read much in Dublin—until some day in the present month.

*Mr Rolt.*—I was not aware that they petitioned at all.

*Sir Hugh Cairns.*—My Lords, before I proceed further, I am anxious to state to your Lordships what is precisely the position of the Royal College of Surgeons, who have filled, up to the passing of the Medical Act, the position which they now fill.

*Sir G. Cornwall Lewis.*—You mean the London College of Surgeons?

*Sir Hugh Cairns.*—Yes, my Lord, the London College of Surgeons. In the general paging your Lordships will find the details mentioned, which I will shortly state, in pages 37 and 43. But without troubling your Lordships to read the details, I think I may sum them up in this way:—Under the charter of Charles the First, the College of Surgeons had from the King the exclusive privilege of licensing for the practice of Surgery within London, and within a certain ambit round London. Of course, so long as that depended upon the Royal Charter, it would not have been effectual for the purpose of preventing others practising; but it was afterwards confirmed by Act of Parliament—the Act, I think, of George the Second. My Lord, on a subsequent occasion, the President of the College having died, I think between the time of his election and the time of his acting, there became a question whether the corporation had not been suspended as to its powers; and that doubt was cleared up by a fresh charter directed to that point: and the London College continued in possession of this charter

and their parliamentary power,—this power being limited as I have mentioned.

*Sir G. Cornwall Lewis.*—Not exclusive.

*Sir Hugh Cairns.*—Exclusive with regard to London and a certain ambit round it; but not exclusive with regard to the rest of the country, but with the power of licensing with regard to the rest of the country.

Now, my Lords, I think it will be convenient here to consider what, at the time of the passing of the Medical Act of 1858, appears to have been the precise position of the various Medical bodies in England and in Scotland. With regard to England, the case, as I understand it, stood thus:—The Royal College of Physicians in England had the power—which was an exclusive power—of licensing with regard to a certain district, but with an exception in favour of those who had degrees from the Colleges of Oxford and Cambridge. The College of Surgeons of England had a power of licensing which was exclusive of any other person practising within London and a certain distance from London, and in which there was no exception in favour of the Colleges of Oxford and Cambridge. That was the position with regard to England—an exclusive jurisdiction, if I may so call it, both as to Physic and Surgery.

*Sir G. Cornwall Lewis.*—Oxford and Cambridge could grant no degrees in Surgery; so that there was no exception in favour of them.

*Sir Hugh Cairns.*—No; and probably for that reason there was no exception in their favour. As my learned friend reminds me, your Lordship's observation is addressed to what we apprehend to be the sound view of the law, and certainly not the view of those to whom we are opposed; for their view would be, that these Universities could grant degrees in Surgery. But these exclusive powers of the Colleges of Physicians and Surgeons only extended to a certain district; beyond that, I believe, the Medical Act shows that any person might practise in England,—subject, of course, to the legal consequence if he practised carelessly, or without due Medical skill.

With regard to Scotland, matters stood thus:—For Glasgow, and a certain district round Glasgow, the Faculty of Physicians and Surgeons had an exclusive jurisdiction of this kind—exclusive as to Surgery—against every one—

*Lord Chancellor.*—How was that created?

*Sir Hugh Cairns.*—By charter, my Lord, confirmed by one of the statutes of the realm of Scotland before the Union. As to Physic, the jurisdiction was exclusive as to every one, except those who had University degrees; and as to Surgery, it was exclusive as against every one. That was the power of the Glasgow Faculty with regard to Glasgow, and a certain district round Glasgow.

Then as to Edinburgh:—The College of Physicians had the exclusive jurisdiction with regard to Edinburgh, and the district immediately round Edinburgh; and as to Surgery, the College of Surgeons had a similar jurisdiction with regard to Edinburgh, and certain counties round. As to the rest of Scotland, no license at all was needed. There was no exception, therefore, with regard to any degree which the Edinburgh or Glasgow Colleges might give, and no privilege was conferred upon a degree granted by these Colleges as to the rest of Scotland; where any person might practise, subject to the civil responsibility if he practised without proper skill and care.

My Lords, that being the case, the purpose for which I have mentioned these details is to consider what the effect of the Medical Act was. Let us consider what the Medical Act did upon that state of things. The Medical Act was introduced after a great many fruitless attempts at legislation, which, I have no doubt, your Lordships will recollect.

*Lord Chancellor.*—The war raged for many years.

*Sir Hugh Cairns.*—Yes, my Lord; it was a very much debated question in Parliament for many years; and, in the year in which it was passed, no less than three Bills were introduced. The first two Bills were hotly contested, and the third, which afterwards became law, was introduced as a compromise. The principle of it was this: It was intended to effect three things—first, to introduce a title to practise, which should be received and recognised all over the kingdom.

*Lord Chancellor.*—That was the great object.

*Sir Hugh Cairns.*—Yes, my Lord; that was the great object. The second was, to introduce some test of fitness for that practice; and, in the third place, to promote regulations which should make the test of fitness as nearly uniform as could be

devised. These, I believe, were substantially the three purposes of that Act of Parliament. But the Act having originated in, and being intended to carry out, a compromise, it is important to remember what were the rights which the different parties to the compromise were giving up. The various bodies whom I represent were giving up various important and valuable rights for the sake of the public good, and in order to obtain those ends which I have mentioned. But, of course, they proceeded upon that which was the state of things at the time; and, of course, that which is a surprise to them, and the result of which they greatly deprecate, is, that there should be now introduced a state of things, not then existing and not then contemplated, the legality of which, of course, we must consider—and as to which, if legal, our mouths must be closed—but which is a state of things entirely out of the contemplation of those who were connected with the legislation of 1858,—namely, the introduction of a qualification for a license, in the shape of this new degree of Master in Surgery, which at that time was not in contemplation at all, except so far as it may have been considered and known with regard to the University of Glasgow; and the extent to which it was considered with regard to the University of Glasgow, will show that Glasgow was an exception which rather disproved than established the rule.

With this introduction, let me ask your Lordships to bear in mind this, which I think will be found very important in testing the effect and the legality of these Ordinances. These Ordinances profess to be Ordinances in the Faculty of Medicine in the University of Edinburgh; they do not profess to be Ordinances in any new Faculty; they do not profess to be Ordinances in Surgery as a separate Faculty;—but they profess, upon the face of them, to be Ordinances which are to be governing rules for a particular, well known, already established Faculty in the University—the Faculty of Medicine; and, in truth, from the wording of the Ordinances, it was not introduced accidentally or without very good advice, because the Commissioners knew perfectly well what the extent of their powers was, and they knew well that, under the Act of Parliament, they had no power whatever with regard to degrees, except to make arrangements for degrees in four particular Faculties—Theology, Law, Medicine, and the Arts. If they, therefore, had pro-

posed to create a new Faculty, or to make rules for degrees in a new Faculty, they would have done that which, whatever might be the charter of that particular College, was clearly *ultra vires* of the Commissioners. Whatever may be the charters of the different Colleges in Scotland, or the inherent or conferred power in those Colleges or Universities, I think will be found almost unnecessary to consider, because the power of the Commissioners is clear and beyond doubt. It is a power conferred by the 15th section, and it extends to this, and this only—'to make rules for,' among other things, 'the granting of degrees, whether in Arts, Divinity, Law, or Medicine.' Therefore, I say it was with good consideration, and with due regard to the Universities Act, that the Commissioners framed the Ordinances, professing them to be Ordinances for the regulation of granting degrees in Medicine.

With this introduction, the first proposition which I will submit to your Lordships, and which, I think, can be perfectly established, as clearly as any legal proposition ever was, is, that the degree of Master in Surgery, which the Commissioners proposed to introduce, was *ultra vires* the Commissioners, and that it is an invalid Ordinance which they have framed.

I think it will be desirable, in approaching this subject, to consider for a moment what in this country, and in every other country, the precise nature of degrees is. No doubt, in considering the Crown as the fountain of honour, we are accustomed generally to look to those much larger and much more conspicuous honours which flow directly from the Crown; but, although literary degrees are an inferior kind of honour, they certainly, beyond all doubt, are degrees of honour of which the Crown is the source and the fountain. It does not require to be adverted to, that the Crown, of course, could not, in practice, confer literary degrees in the same way that the degrees of honour are conferred—that is to say, honours flowing immediately from the Crown. The Crown would not have materials by which it could conduct the investigation which must always precede the granting of a grade of literary merit; and, therefore, with regard to these degrees, there is this clear difference between them and other marks of honour from the Crown, that the Crown is obliged to delegate to other persons the granting of

this kind of honour, because the Crown could not itself conveniently conduct the investigations which ought to precede the grant. Therefore, the habit of the Crown has been to delegate to certain learned bodies in the kingdom—which it generally makes a corporation for the purpose—to delegate, I say, to them, this power, which, as is well said in one of the authorities quoted to you to-day, is really one of the regalia.

*Lord Chancellor.*—The power of conferring knighthood is delegated to the Lord-Lieutenant of Ireland, and was recently delegated to His Royal Highness the Prince of Wales.

*Sir Hugh Cairns.*—We have not many instances of delegating by the Crown the power of conferring honours. We have some, as your Lordship has mentioned, more conspicuous examples. As to degrees, the Crown, professing to be unable to enter into the necessary details, delegates to public literary bodies the right to grant these particular marks of honour. But, as was observed, I think, by one of your Lordships, those marks of honour are not only marks of honour, but they confer certain rights along with them. They not only confer civil rights, but they confer that which is always looked to when any case of grants by the Crown arises—namely, a certain fixed and known precedence, which directly flows from their being a part of the regalia of the Crown. The different degrees have a certain precedence among themselves, and the professions to which they are granted have also a certain precedence, which is well known, and pointed out, as having been affixed to them by custom, in the books which treat of such matters.

*Lord Cranworth.*—Suppose a Doctor is indicted, and not described in the indictment as a Doctor, he might object to it.

*Lord Chancellor.*—He could plead in abatement.

*Sir Hugh Cairns.*—If the rule were so strict as it formerly was, I apprehend there could be no proper description of the person holding a degree, except the degree he has taken. Perhaps a Doctor described as of one Faculty, when he was of another Faculty, would have a right to object to being hung upon that particular ground. I do not mean to contend that the Crown would not have the full and complete power to create any new titles of honour of a literary character, which the Crown thought fit to create. No doubt it might create new degrees,

however capricious the name to be assigned to them might be. But the argument, which I submit to your Lordships with confidence, is this—That it not being a question of what the Crown now can do, but it being a question of what those to whom a part of the rights of the Crown has been delegated can do, the legal consequence is clear and indubitable, that those who have had certain powers delegated to them, must strictly pursue the power which is delegated—must find the extent of that authority, the ambit of that authority, in the instrument creating the delegation of power; and they must show that they are pursuing that power strictly, and they are not to exceed that power, or go beyond that which is the strict meaning and construction. It will, I apprehend, be no answer to say—Well, but after all, this really, in substance, comes to very much the same thing: it is only a slight departure from the authority conferred upon them. That is a matter for the consideration of the Crown. The Crown may be appealed to, to say, upon an argument of this kind—Here is a case in which it would be very desirable to create some new mark of honour, or enlarge some power of giving honours beyond that which has been hitherto possessed. That might be a very fit and proper argument to address to the Crown in a different capacity; but, addressing your Lordships here in point of law, all that we have to ask your Lordships to observe is, What is the proper and accurate extent of the power which has been given to the learned body in question? I have to inquire whether they have exceeded, or have proposed to exceed, the power granted to them; and, if they do exceed it, and exceed it according to its literal construction, they exceed their power; and that which they propose to do is, I apprehend, *ultra vires*.

We are here met at the threshold of the case with an argument which is certainly addressed, broadly and boldly, by the *Senatus Academicus*, and has been accepted, to a certain extent, by the Commissioners, which, if it were well founded, would be fatal to the contest which I have to urge, namely, that every University incorporated for literary purposes of this kind, by virtue of its incorporation, without looking at the terms of the delegation to it, the terms on which the right of creating honours is given to it, has got the power of granting degrees in such a way and in such branches of science as it thinks fit. If that argument is a sound one,—I do not believe it is,—we need not go beyond it into any



criticism of the terms in which the grant is made. If that is right, they may create degrees *ad infinitum*—they may create subjects of study, and multiply those subjects coming under the general description of Art, and they may create new kinds of honour and grades in those different studies.

*Lord Cranworth.*—Is that so? Because, whatever power the Universities may have, the Commissioners can only make Ordinances as to granting degrees in Medicine.

*Sir Hugh Cairns.*—Of course. My argument would be this, that that argument cannot prevail so far as relates to creating other departments of study; but it might prevail in this way:—if they could prove that there was any such inherent power, the argument of the Commissioners here would be, that they have a right to regulate the granting of degrees in Medicine, and that as there is an inherent power in the College of granting any degrees of any kind in Medicine, though they must confine themselves to Medicine, they may grant any degrees in it that they think fit. If this argument is good, it will go both to the creation of new kinds of study, provided that they come within the general term of art and learning, and also to granting any number and kind of degrees.

In the first place, I say, what would be almost fatal to an argument of this kind, that no authority whatever has been adduced for that principle; and I do not believe that any authority, in any law book that we possess, can be adduced for it. We have seen instances in which there has been the greatest anxiety to maintain and support that principle, but on those occasions no authority has been adduced. I refer to the argument of Sir Charles Wetherell with regard to the London University: no authority was produced except the argument of Counsel in a former case, which, I need hardly say, was of no authority at all. I say no authority has been produced by the Commissioners, and I shall wait to know whether my learned friends will be more successful than others before them.

*Sir G. Cornwall Lewis.*—May it not be contended, that the words in the Act under consideration are general enough to enable the Commissioners to confer upon the University the power of granting this new degree, although at present they may not possess it,—is it quite clear that the words of the 15th section do not admit of that?

*Lord Cranworth.*—I think it is a branch of Medicine.

*Sir G. Cornwall Lewis.*—Will you have the goodness just to read the words.

*Sir Hugh Cairns.*—The words are, to make rules for ‘the granting of degrees, whether in Arts’——

*Sir G. Cornwall Lewis.*—The words are very general: ‘For the management and ordering of the said Universities, the manner and conditions in, and under, which students are admitted thereto; the course of study and manner of teaching therein; the amount and exaction of fees; the manner of examination, with the qualifications, appointment, and number of Examiners, and the amount and manner of their remuneration; the granting of degrees, whether in Arts, Divinity, Law, or Medicine.’

*Sir Hugh Cairns.*—What I want to say is, that you must reject all the preceding part of the clause.

*Sir G. Cornwall Lewis.*—It is the generality of the words that I refer to.

*Sir Hugh Cairns.*—All generality upon the subject of degrees is limited and excluded by the express words which relate to the granting of degrees; and, upon all sound principles of construction, we shall be obliged to assign all earlier clauses in the Act to the other matters to which they properly relate, and take the words relative to granting degrees as the only clause bearing upon the present controversy. They are allowed to make rules for ‘the granting of degrees, whether in Arts, Divinity, Law, or Medicine.’

*Sir G. Cornwall Lewis.*—Subject to be disallowed by the Crown.

*Sir Hugh Cairns.*—Yes, subject to be disallowed by the Crown; but, of course, the power of the Crown to disallow that which they do, will not be conferring upon them any power to do that which the Crown might do. It allows them to grant degrees in those four Faculties; and I admit that, whatever the College can do in those four Faculties, the Commissioners can do in making the rules, because the power which is given to the Commissioners is a right to supersede the Colleges, and, just as in Oxford and Cambridge, to act to the extent to which the Colleges without the Crown might have acted, had there been no Commissioners.

*Sir G. Cornwall Lewis.*—Your argument is, that this Act merely vests in the Commissioners for the time, the existing powers of the University.

*Sir Hugh Cairns.*—Yes; and your Lordship will find that clear in the 19th section, which provides that, 'During the subsistence and exercise of the powers of the Commissioners, the powers hereinbefore conferred on the University Courts shall be exercised in subordination to, and so as not to conflict with, the powers of the Commissioners. But any of the rules, statutes, and ordinances to be framed and passed by the Commissioners, as hereinbefore provided, may, at any time after the expiration of the powers herein conferred on the Commissioners, be altered or revoked by the University Court,' and so on; and, therefore, the Commissioners are treated as a body who are exercising the University or College power for the time being; and they must not be interfered with in that exercise. When their jurisdiction is out, the Universities resume their power, and they may deal with the Ordinances made by the Commissioners, just as they might have done had no Commissioners been appointed; and that this is the view taken by the Commissioners themselves, is clear from their Report. Your Lordships will find in their Report, at page 3, in the paragraph at the bottom of the page (it will be in page 89 of the consecutive paging, in the last paragraph in that page):—'The Ordinances do not profess to confer that right under the Universities Act' (that is, the right of creating a degree, such as the degree in question), 'as some expressions in the Petitions would seem to imply. The University having, in the opinion of the Commissioners, the undoubted right to grant the degree of Master in Surgery, as well as those of Bachelor of Medicine and Doctor of Medicine, the Ordinances recognising that right propose to make such regulations as the Commissioners conceive to be expedient and conducive to the public interest.' The Commissioners, in that respect, I apprehend, have construed rightly their powers. They are a body sent into the University for a certain limited time, for the purpose of exercising for the public good—without any of those prejudices which have been supposed to prevent Universities from doing that which was best for themselves and the public—those powers which the University might have exercised, supposing they were ac-

tuated by those which were the governing principles in the Act of Parliament.

I have mentioned that, with regard to the doctrine of inherent power in the University for this purpose, there was no authority adduced. In the next place, my Lords, I think I am entitled to say that all the practice of the Crown, from the earliest age of which we have any record, has been directly opposed to it; because it was said most accurately by Sir William Hamilton, that there is not a University of which we have any record as deriving its incorporation from the Crown, which has not had conferred upon it a certain definite and distinct power of granting degrees, or one that may be supported by reference to some other University or College, of which the model was well known, and by which it can be made certain what is the extent of the power conferred. It would, therefore, had it ever been the true view of the law that the creation of a College or University carried with it by implication a power to grant degrees, have been a useless thing, with regard to the University to which that power has been granted, to have provided expressly, as we find the Crown has done, that there should be the power of granting degrees.

But, in the next place, my Lords, we must observe the extent to which the doctrine would go; because you cannot stop with a doctrine of this kind in a University. If there be such a power inherent in the creation of a corporation for the purpose of teaching learning, every College in a University must have the same power; every College, both in Oxford and Cambridge, must have the same power.

*Lord Chancellor.*—There has always been a distinction between a College and a University: a College, as a College, has no right to grant degrees.

*Sir Hugh Cairns.*—That is precisely the case. But it is merely that a College never receives that right from the Crown; but if it is inherent in the constitution of any body of this kind——

*Lord Chancellor.*—It is inherent in a body constituted as a University, but not in a body constituted as a College. A University was a term well known. There were certain powers belonging to a University, which were inherent from the feudal right.

*Sir Hugh Cairns.*—But, in truth, the term 'University' is never used in any of the early grants. The term used in the earlier grants is '*studium generale*,' and very far on, down to modern times; therefore it cannot be in the word used that the inherent right is supposed to repose. I can quite understand, if there be an express power of conferring degrees, that constitutes a distinction between the body which receives that power, and an ordinary College—

*Earl St Germans.*—What is the case as to Trinity College, Dublin?

*Sir Hugh Cairns.*—It is a College,—the College of the Undivided Trinity,—and it has the power of conferring degrees.

*Lord Chancellor.*—In common conversation there is no distinction between College and University.

*Sir Hugh Cairns.*—But I am speaking now of the charter of Queen Elizabeth, and that charter always styles it throughout the Dublin College. It is nowhere called a University; but it has the power of granting degrees which is granted to a University, and the power of license, as at any other University. But my observation is, that of course it is the purest argument in a circle to say, that where you have an express power of granting degrees, that makes the body which receives it a University, and that if you have got a University, without the express power of granting degrees, that body will have the power of granting degrees. Of course, if the power of granting degrees is one of the main ingredients which constitute a University, it cannot be contended that, without that express power being given, there is any inherent power of the kind in the body. In the next place, I would ask, if it were so, what is to be the limit of the power, and in what departments are they to grant degrees? If they have the inherent power, are they, in everything which can be considered as described by the general terms Arts and Sciences—which is generally the purpose for which a University is instituted—are they, in everything which can come under these general terms, irrespective of what has been the practice in the Universities, to be entitled to grant degrees? They might go into painting and other things which might be enumerated, in which there never has been a degree granted.

*Sir G. Cornewall Lewis.*—It was not necessary, in this case, to argue that a University had an inherent right of granting

degrees. All that was necessary was, that, out of the Faculty of Medicine they could carve a degree in Surgery; that is the position which they are bound to maintain.

*Sir Hugh Cairns.*—I agree that, when we come to the more limited argument, that will be an argument; but the Commissioners start with this, which would prove the whole case.

*Sir G. Cornwall Lewis.*—They maintain more than is necessary.

*Sir Hugh Cairns.*—I agree, my Lord; but I observe, however, that the Commissioners, at the same time that they use this argument, seem not to place very much reliance upon it themselves, because they begin by qualifying it. They say, there is the right of granting degrees in any department in which the University gives a full course of instruction. I always think that much qualification shows the weakness of the proposition itself. Who is to judge whether they give a full course of instruction or not? They themselves will be the only judges. Is it meant to be said that the validity of a degree, granted by a University or College, is to be raised upon an argument which is to be held of this kind, that you, before you have got a degree, must have studied in a University which has afforded a full course of instruction? Of course that shows the infirmity of the proposition, which is utterly untenable in any point of view.

But, my Lords, the Commissioners say that this doctrine of inherent right has been frequently recognised, with regard to the University of Edinburgh, in the Courts of Law of Scotland, and in the House of Lords; and, of course, that is a proposition which is a very striking one, and leads one at first sight to think that the authority which I said was wanting has been found. Now, it is very remarkable to consider how that stands. As to the recognition of that doctrine in the Courts of Law of Scotland, I state to your Lordships with confidence, that the passages from the judgments in which this doctrine is said to have been recognised in Scotland, are judgments in cases where the decisions of the Court have been overruled by the House of Lords. And the record referred to is printed in our Case, at page 12. I will read first what the learned Lords in Scotland said upon the subject, and then what was said in the House of Lords. Your Lordships will find at page 12, in the note (*y*), on the case of the Magistrates of Edinburgh against the Professors in

King James College in 1828, that Lord Glenlee said, 'I was inclined at first to think that there was something in the argument for the Defenders, as to the power of conferring degrees, that the College had a right to fix the course of study to be required from the candidates, and that this was not a matter of regulation for the Patrons, but that it belonged to the College; because the power of conferring degrees is not conferred on the University either by the Town Council or the Crown, but is inherent in it from its constitution as a College, and emerges necessarily from its character as a University. The right of conferring degrees is not derived from the Town Council, but belongs to the College as a necessary effect of its character as a University. It is the right of conferring a certain status, as that of M.D., which is recognised over all the world. The erection of a College is, for instance, in this respect, something similar to the creation of a Peer. The King may create any man a Peer; but, having done so, the privileges of the peerage do not depend upon the Royal grant, but are inherent in, and necessarily emerge from, the status which has been created.' Your Lordships will observe that no authority whatever is cited for the proposition, that there is such inherent power, but that it is Lord Glenlee's observation; made in a case of this kind,—not a case which raised the point at all,—where the only point in discussion was, whether the Magistrates of Edinburgh, as the Patrons of the University at that time, had the right of prescribing the course of study in the University. Lord Alloway, in the following note (*x*), gives his opinion: 'No doubt, as a University, they may have had right to confer degrees—as a University they were entitled to do so—and they were a University to the fullest extent; but were not the powers derived from the persons to whom the Crown had delegated its powers? And although, as a University, they may have power to confer degrees, yet that does not affect the right of the Patrons to say what course of study may be necessary before these degrees can be conferred.' Therefore, Lord Alloway did not at all go with Lord Glenlee as to there being any inherent right. He said that they had the power of granting degrees generally (which, of course, they had), but that that power was limited by charter. The Lord Justice-Clerk (Boyle) said, in the next note but one, 'I agree in the opinion expressed by Lord Pitmilley, that there is no such thing

as a general constitution applying to all the Universities in Scotland. There is nothing more different than those constitutions. If the learned Professors will look into the constitutions of other Colleges, they will find that they are in every respect different, and contain many different powers from the present. The express object of all the grants in the charters was to enable the Magistrates to found a College.' I may add to that, that Lord Moncreiff, in the same case, or rather in a similar case, had expressed an opinion similar to that expressed by Lord Glenlee, as to the doctrine of inherent power, and had applied it to Surgery. Perhaps I had better read a sentence from it: he says in page 13, note (c), 'I can entertain no doubt that the Pursuers constitute a University in the amplest sense of that term, with the fullest powers of conferring degrees in all the departments of Arts and Sciences in which it is competent for any other University to grant degrees. Considering this to be clear, I am further of opinion that the University of Glasgow have power to grant degrees in every department of the science of Medicine, and that the degrees which they have power to grant, do, according to the law of Scotland, constitute a valid license generally to practise the Art, according to the terms of the diploma granted. I do not doubt that there may be special exclusive privileges constituted in favour of other bodies, which will be sufficient to prevent the exercise of such rights in particular places or circumstances. I speak at present of the effect of the degrees generally. It further appears to me to admit of no reasonable question, that the art of Surgery is a branch of the general science of Medicine, which it is perfectly competent for any Royal University to teach, and in which, upon due examination, they may grant degrees which will be equally effectual as licenses for practice generally, as any other Medical degree which it is in their power to grant.' That was Lord Moncreiff's opinion; but he was in a minority of one in favour of the University in the Court in which he delivered it. He thought the University of Glasgow had not only the power to grant the degree of Master of Surgery, but that the degree, when granted, would over-ride any exclusive privilege possessed by the Faculty of Surgeons in Glasgow as to practising, except within the limits. Lord Moncreiff, however, was overruled by all the other members of the Court in that respect.



Now, my Lords, these being the only opinions that had fallen from any learned Judges in Scotland, the case came before the House of Lords. Their Lordships expressed their opinions—Lord Brougham expressed his opinion, and my Lord Cranworth. Lord Brougham's opinion was read by my learned friend Mr Roundell Palmer—it is reported in the 1st Macqueen, page 111. Lord Brougham's opinion was to this effect (I think it is printed in our Case: your Lordships will find it at page 14 of the general paging, where Lord Brougham says:—) 'It must, however, be observed, that some of the Judges seemed to think, and Lord Glenlee among the others, that the mere appointing of the Professors gave the College, from the fact of their appointment, the power of conferring degrees. I should doubt that; and, certainly, the instances of the other Scotch Universities would rather go against it. For every one of those which have been cited—St Andrews, Aberdeen, and Glasgow—has the power to confer degrees by express grant,—by the grant of the Pope in the case of St Andrews and Glasgow, and by grant of the Estates of Parliament in the much later case, at the end of the sixteenth century, that of Marischal College, Aberdeen, founded by the Earl Marischal. It is, however,' Lord Brougham added, 'quite unnecessary to enter upon that here, for this case is perfectly independent of all question as to the power of granting degrees.' And the observation made by Lord Cranworth is printed in the following page. His Lordship said (at the letter [e]), 'It is said that the power to regulate studies, and to fix proper tests for degrees, is a power inherent in every University, *quâ* University. In my opinion that is not so. Here the rights of the College (University, if it differs, is a mere assumption of name) depend entirely on the charter [of 1585], and the statute [of 1621]. The question is not one of an abstract nature, what the term University generally means, but what are the powers given by the charters to this body, call it College, or call it University? The question is, what right do these instruments confer?'

*Lord Cranworth.*—I either must have been inaccurately reported, or I did not state that which was correct. The question was as to fixing the proper tests; it was not a question as to granting degrees.

*Mr Roundell Palmer.*—The Town Council of Edinburgh

had laid down rules as to granting degrees, and it was argued that they had no power.

*Lord Cranworth.*—I dare say it might have been so; my opinion, and that of all the Lords that were present, although I believe there was nobody but Lord Brougham with me, was, that that particular case depended upon a particular Act.

*Sir Hugh Cairns.*—Quite so; only, my Lord, it rests thus—Lord Glenlee's opinion is certainly not confirmed, and Lord Moncreiff's is overruled by the Court in which he delivered it. The opinion of the noble Lords who took part in the discussion in the House of Lords, appears certainly to have been, that the terms of the charter, in every case, must be that to which they are to look for the power, and that there is no absolutely inherent power. Although, after that, I think I should not require to adduce any other authority, I may mention that the disquisition of Sir William Hamilton, which has been already read, depending upon the various authorities he collects, goes to show that there is no foundation, not merely in this country, but in any country in which this matter was considered in the middle ages, for the idea that there was a power of this kind, unless it could be found in a grant to the particular College or particular University.

I will, therefore, assume in the remainder of my argument, that the power must be an express power, and the only power in this case which can be appealed to is the power to grant degrees in Medicine. That is the power which, as I said before, the Commissioners profess to have exercised—therefore we come up at once to this question: given the express power to grant degrees in the Faculty of Medicine, will that be an authority for granting a degree in Surgery? That, my Lords, I apprehend, is as fair and distinct a way of stating the question as the Commissioners themselves could desire it to be stated.

*Sir G. Cornewall Lewis.*—That assumes all the merits, that no additional powers are granted by the Act. You assume that the Commissioners are in precisely the same position as the University.

*Sir Hugh Cairns.*—Yes, my Lord; and there, I say, I have the Commissioners with me. I say that that is the proper construction of the Act of Parliament. I pass, therefore, from that, and bring the question to this point: there being only an

express power, to which reference can be made, to grant degrees in Medicine, will that justify the granting of a degree in Surgery? That is the argument of the Commissioners; and assuming that there could be no doubt that Medicine includes Surgery, therefore they say, we may give a degree in Surgery.

*Sir G. Cornwall Lewis.*—We, of course, are not bound by the arguments of the Commissioners.

*Sir Hugh Cairns.*—Of course not, my Lord; but at the same time, in appealing from the Commissioners, I can only deal at present with the reasons which the Commissioners have given, and it will be proper for me to address myself to them. I will not, at present, go back to the construction of the Act of Parliament; and I will assume, for this purpose, without staying to inquire whether it is entirely accurate, that the Commissioners are right in saying that Surgery is included within the Faculty of Medicine. I am anxious to narrow the difference between us as much as possible. But, assuming that for the purpose of argument, I deny that, even supposing, in the first place (we must take it by steps), the Faculty of Medicine does include Surgery, and supposing that the only degree which they granted was a degree in Surgery—I say that I deny that that would be a valid degree. Of course, as I say, we must take this by steps, because there will be different points to consider. First, suppose they grant a new degree; and suppose, secondly, that they grant a degree in Surgery, or some other degree in the same Faculty; or suppose, lastly, that they grant a degree in the whole Faculty, and at the same time grant a degree in Surgery besides. Let us first see whether they could grant a degree in Surgery alone, as part of the Faculty of Medicine, under the powers which are conferred upon them by the Act. That, I say, depends upon this: is it not of the essence of a degree in a particular Faculty, that it should be in the whole Faculty at the same time? Is not that the essence of the meaning of a degree in a particular Faculty?

*Lord Chancellor.*—It may or may not; there is nothing absurd in either supposition.

*Sir Hugh Cairns.*—But we should have to consider, what does the Faculty mean? A Faculty is a particular circle of science complete in itself; and with regard to any particular Faculty, if the object of the University is to test the progress of

a learner in that Faculty, the object must be to test his progress in that Faculty as a whole. You are not to cut it up bit by bit, and say—Here is a person who has made progress in Latin, but he has not in Greek; here is another who has made progress in Greek, but he has not made progress in Latin: one has made progress in Moral Philosophy, but not in Natural Philosophy; and another has made progress in Logic, but not in any other branch of the Faculty of Arts; and thus cutting up the whole in detail to institute a number of honours, which are not honours in the Faculty as a whole Faculty. Their power is to grant honours in the Faculty as a whole Faculty.

*Lord Chancellor.*—Of course the Crown might say, that they would grant one degree in Latin and another in Mathematics; there is no absurdity in that.

*Sir Hugh Cairns.*—There is nothing whatever absurd in that, for the Crown may say what it pleases; but the question is this: the Crown having said, We authorize you to give a degree in the Faculty of Medicine or the Faculty of Arts, does that authorize the person who is executing the power (for that is all that the University is doing) to say, No: we will not give a degree in the Faculty of Arts or Medicine as a whole, but we will cut up these Faculties into all their component parts? But they might go further, and say this—We will cut up Mathematics into Trigonometry, Conic Sections, and the other divisions which might be made. If you say this, and if you have degrees in every one of those departments—I say, if you admit this, you at once put an end to that which those degrees are, namely, marks of honour from the Crown, conferring certain known and well-established positions, and conferring a certain well-established status both as to precedence and otherwise; because I should ask this question: We know what a Master of Arts is; we know what a Doctor of Divinity is; we know what a Doctor of Medicine is; and we know what their precedence is: when one is presented to the Crown, the Crown knows exactly how to recognise the person who holds that degree, as the person upon whom the degree has been conferred by those who have the power to confer the degree; but does the Crown know what a Doctor in Logic, or a Doctor in Mathematics, or a Doctor in Latin, or a Doctor in Greek, means? What is their status? What their position or precedence? How does a

Doctor of Latin stand with regard to a Master of Arts? How does a Doctor of Greek stand with regard to a Doctor of Medicine? And how does a Doctor in Law stand as to a Doctor in Mathematics? These are fanciful degrees, not merely not ever heard of, but I say they annihilate the known and established system of things which has been recognised by the Crown, and the authority to deal with which has been conferred by the Crown on a College or University.

Let us take an instance of this kind. In the first place, assume that only one degree is granted, there being a power to grant degrees in a certain Faculty, and that those who exercise the power say, We will not grant a degree in the whole Faculty, but we will grant a degree in a particular part of it. I say that that is not an execution of the power: the power is to grant a degree in the whole Faculty; and if they do not grant a degree in the whole Faculty, they do not exercise the power. Take the next case. Suppose that there is a degree granted in the whole of a Faculty (which would be right), and at the same time, *uno flatu*, with the same examination, and with the degree granted in the whole Faculty, they grant the same degree in any part of the Faculty. For instance, a man is made a Bachelor of Arts, and at the same time he is made a Bachelor of Logic, or a Bachelor of Humanity, or a Bachelor of Greek, or a Bachelor of Moral Philosophy; is that a proper execution of the power by one and the same act upon one and the same examination? Those who have a right to confer a degree in Arts, confer a degree in the whole circle of Arts, in the whole Faculty, and also confer a degree upon a separate part of the same Faculty, say in Latin or any other subject. I say that that is void, for this simple reason, that the power is exhausted by conferring the whole degree in the whole Faculty. Of course I assume that the second degree is of the same order of dignity as the first, and I say that the second degree is *ipso facto* void; it is repugnant, it is an impossibility, that a man can have the status of a Bachelor, or of a Master of Arts, and at the same time, as a separate dignity, have the status of Bachelor and Master in one particular part of the curriculum of Arts. It does not require argument: the enunciation of the proposition, I apprehend, is sufficient to show that the power, when once completely exercised, cannot be exercised anew as one and the same act with

regard to a part of that which is intended in the exercise of the whole power.

Let us go a step further, and then we arrive at what the Commissioners have here done.

*Sir G. Cornwall Lewis.*—There being certain legal consequences attached to those degrees, would a Graduate in Medicine have the legal privileges of a Graduate in Surgery, under these Ordinances?

*Sir Hugh Cairns.*—That shows the entire fallacy of the reasoning of the Commissioners. They are either right or wrong in saying that Surgery is within Medicine. If they are right in saying it is, then the degree in Medicine covers it, and a man is, to all intents and purposes, both a Bachelor of Medicine and a Master in Surgery. If they are wrong, they have done that which was in excess of their power, because the supposition is, that they have a right to deal solely with Medicine. And this puts them in this dilemma. They are either right or wrong in saying, that Surgery is included in Medicine; and if they are right, their degree in Medicine is a degree in Surgery; but if they are wrong, their degree in Surgery is a degree in a Faculty with which they have no right to deal.

*Sir G. Cornwall Lewis.*—They seem to derive the title from the old University acceptance of the term Medicine; but as to the consequences of the degree, these are to be measured by the statute law, distinguishing between Medicine and Surgery.

*Sir Hugh Cairns.*—That argument will be contended for by those who believe that Medicine ought to have a certain signification to include Surgery; but I say, if they are right about that, the Courts of Law should decide it, and not the Commissioners; whereas, if they are wrong, they have no authority.

But, my Lords, I was coming to test what they have done, by this simple question. Supposing that they have a power to grant a degree in a certain Faculty, and that those who are exercising the power of granting the degree in a particular Faculty, at the same time, *uno flatu*, grant a higher degree in a part of the same Faculty (and that is what the Commissioners have done): is that competent? Every one knows that the degree of Magister or Master is a higher degree than that of Bachelor. It is tantamount to that of Doctor or of Professor; and, therefore, what the Commissioners do is this: They say, We

mean to confer substantially one and the same degree at one and the same time; and then they confer the degree of Bachelor according to their own construction in the whole Faculty of Medicine, including Surgery, and then, upon any one who wishes to ask for it, they confer, in a separate department, a part of the Faculty as they say, in Surgery, the higher degree of Master.

*Lord Chancellor.*—It is possible that a person might be qualified in the whole in an inferior degree, and have a higher qualification in a part. He could be made a Bachelor, but not a Doctor of Medicine; but, at the same time, he might have made sufficient proficiency in Surgery to be made a Master in Surgery.

*Sir Hugh Cairns.*—To that, my Lord, I apprehend there would be two answers. In the first place, it is not suggested here, that he has got the higher qualification which entitles him in Surgery to the degree of Master. On the contrary, they say they merely mean this Mastership in Surgery to be a degree which is to explain the meaning of the Bachelorship of Medicine. We do not mean, they say, to represent that the man knows anything more of Surgery than a person who has not got the degree; but because there is a doubt as to what the meaning of Bachelors of Medicine may be, they will call any Bachelor of Medicine who likes to become one, a Master in Surgery, merely for the sake of the name, and not because in that particular department he possesses higher attainments or qualifications than those who only get the degree of Bachelor, but merely for the purpose of putting a construction upon the name. They say here: In the whole Faculty, you are a Bachelor; you are not better in any part of the Faculty, you do not show any singular pre-eminence in Surgery, but, if you like it, we will give you a degree in Surgery, a part of the Faculty, which is higher than your degree in the whole. I want to know, what is to be the precedence of an unfortunate man blessed with these degrees? Is he a Master, or a Doctor, or a Bachelor, or does he take the precedence of a Master of Arts, or does he take the precedence of a Bachelor of Arts, or does he rank as a Bachelor at all? I confess myself entirely at a loss to know what the status of a man who has received this double degree is to be: yet, if his status is uncertain, it shows that the degree in question is one which cannot be supported.

*Sir G. Cornwall Lewis.*—There is a practical object, and that, obviously, a governing one.

*Sir Hugh Cairns.*—There is no doubt what the object is; but the end will not justify the means, unless the means are lawful.

*Sir G. Cornwall Lewis.*—They had the advantage before.

*Sir Hugh Cairns.*—We will consider that when we come to the question of expediency. I am not quite sure that it will be found that they had the advantage before; but supposing that they had, the question at this part of the argument at all events is, are the means lawful?

Of course it is only multiplying illustrations, but in Arts could you have this? could you have a Master of Arts created at the same time a Doctor of Logic? We all know that in Law, Conveyancing is one department: could you have a Bachelor in Law made a Doctor in Conveyancing? The argument must go to this. It may appear that there would be very little object in giving those degrees, but in testing the illegality of the proceedings of the Commissioners we are entitled to put it in these different forms; and if they are right, the argument would go to everything that I am suggesting.

*Sir G. Cornwall Lewis.*—Supposing a person, called to the Bar, was prohibited from practising Conveyancing, then the Benchers might say, We will make you a Barrister-at-Law, and we will also make you a Doctor in Conveyancing; then he would be able to go on conveyancing?

*Sir Hugh Cairns.*—The question, of course, would come back to this, What is the power of the Benchers to grant degrees? But, my Lord, the case would not be a parallel case unless you would be good enough to suppose this, that the Benchers are authorized by statute or charter to grant the degree of Barrister-at-Law. That is a parallel case.

*Lord Chancellor.*—Surgery has long been known to be a branch, and a very important branch, of Medicine.

*Sir Hugh Cairns.*—We will assume that for the purpose of argument. So is Conveyancing, as one of your Lordships has supposed, a very important branch of Law; but the question still remains—Granted the power to give a degree in Medicine, or the power to confer the degree of Barrister-at-Law, can you construe that power to enable you to give a different degree—a degree in Surgery, or a degree in Conveyancing? If it is



urgently required by those who deserve it, of course the Crown can authorize it.

*Lord Chancellor.*—In the University of Paris, the Healing Art is made surely one of the most important branches.

*Sir Hugh Cairns.*—That is an argument for the Crown. The University of France, acting with Imperial power, chooses to say, The degree which we institute is a double degree, a degree in Medicine and Surgery; it is not an alternative degree. That is what the Sovereign power in France for the time being says; and if the Sovereign of this country were to say, We choose that there should be degrees in Physic and degrees in Surgery, the Sovereign power undoubtedly has a right to do that.

*Lord Chancellor.*—Perhaps it would be convenient that we should adjourn to to-morrow.

*Adjourned to to-morrow at half-past ten o'clock.*

## SECOND DAY.

THURSDAY, 17<sup>TH</sup> JANUARY 1861.

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*The Committee met at half-past ten o'clock.*

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*Sir Hugh Cairns.*—My Lords, I was addressing your Lordships yesterday upon the part of the Case which concerns the validity of the Ordinances which the Commissioners have made, as distinguished from the expediency of those Ordinances. And, in resuming this part of the Case, I am anxious to carry with me your Lordships' judgment upon this point—that in testing the validity or invalidity of the Ordinances, any question as to the desirability of the object they had in view is altogether out of the case. If the Ordinances are valid in themselves, or if there exists a power to make them, with reference to that of which we complain, it is quite immaterial what the object is in this part of the argument.

*Lord Chancellor.*—But it will be convenient to keep the Ordinances separate.

*Sir Hugh Cairns.*—My Lords, I am following a course at present which I think will be convenient, and which my learned friend Mr Palmer adopted, viz., of addressing the first observations to the degree of Master in Surgery. That is the main point as to the second Ordinance; and, therefore, your Lordships will be good enough to understand that my observations upon the validity of that Ordinance relate to that degree, and to that only—

*Lord Chancellor.*—Without looking to the combination of Bachelor in Medicine with Master in Surgery.

*Sir Hugh Cairns.*—My Lord, it is impossible to do otherwise than to look at the degree with all the adjuncts.

*Lord Chancellor.*—Pardon me. We are called upon to say, whether these Ordinances are such as we should recommend Her Majesty not to assent to; and we must give our opinion upon each, or upon part, and therefore we must consider the first by itself. We might hold that the Queen should give her assent to the first, and not give her assent to the whole of the second. The Commissioners might have the power of allowing the University of Edinburgh to grant the degree of Master in Surgery; and yet still the Queen might withhold her assent from the Ordinance combining it with the degree of Bachelor in Medicine.

*Sir Hugh Cairns.*—I entirely bow to that observation, my Lord, and my argument will address itself to both the suggestions of your Lordships, viz., whether the degree of Master in Surgery is a valid degree; and, secondly, whether it is a valid degree, having regard to all the adjuncts.

*Lord Chancellor.*—Not simply whether it is valid, but whether the conjunction ought to be supported or not.

*Sir Hugh Cairns.*—Quite so, my Lord.

*Lord Chancellor.*—We cannot take from the Commissioners the power of allowing the University of Edinburgh to grant the degree of Master in Surgery, if it can be done under any shape.

*Sir Hugh Cairns.*—Certainly. No doubt. And then, if such a conclusion should be arrived at, as, that in the abstract the degree of Master in Surgery was valid, all the other observations would go to the question of the terms upon which, in this particular case, that degree is to be granted.

*Lord Chancellor.*—Their Lordships will consider the question, whether this degree of Master in Surgery may lawfully be granted by the University of Edinburgh.

*Sir Hugh Cairns.*—Yes, my Lord. I will now repeat what I was anxious to start with, that the object which was had in view, is altogether out of the case; for, if the power exists to grant the degree in question, it will not cease to exist, because it may be subject to the caprices or whims of those who exercise it. On the other hand, if the power to create the degree does not exist, it will not be made valid, because the object is the very best object in the world—

*Lord Chancellor.*—*Cadit quæstio.*

*Sir Hugh Cairns.*—It may be, that if there is a desirable object to be gained, that may be a reason for addressing the

Crown in another shape, for the purpose of obtaining the power ; but, for testing the question whether the power exists, it is wholly irrelevant. Now, I ask your Lordships to consider, in three forms, which I think will meet your Lordships' observation, the extent of a power of this kind, viz., a power existing to grant degrees in a particular Faculty, say in the Faculty of Medicine, or in the Faculty of Arts, what is the extent of that power ? I say that the extent of that power is this, that those who exercise it can only grant a degree in that whole Faculty, and for this reason : Suppose that in a Faculty—the Faculty of Arts, for example—a person says, 'I have made immense progress in Logic, and I consider myself competent to undergo any examination in Logic that you please ; I ask you to examine me in the strictest possible way, and thereupon to give me, if I show myself competent, a degree in Logic.' Now, what is the answer which the University must return ? The University must return this answer,—'It is true that we have got permission from the Crown to afford to you a certain honour in Arts. That honour is to be an honour in the Faculty of Arts. Allow that you are the greatest proficient in Logic, the Queen has not thought proper to allow to a proficient in Logic a certain honour, or a certain step, or certain precedence. The authority which the Crown has given to us, is an authority to stamp with this mark of honour him who is proficient in the whole circle of the Faculty of Arts, and not him who is proficient in Logic.' Or suppose that a person comes forward and says : 'I desire to be a Teacher, a Doctor, a Magister, a Professor,—I desire to be a teacher in Moral Philosophy ; there is no examination in Moral Philosophy which you may please to assign to me which I am not ready to undergo,—I am anxious to open a class, and to teach the science of Moral Philosophy ; examine me as you please, but allow me to become a Teacher.' The answer of the University must be this, that that has not been in the wisdom of the Crown a proper step to allow. The Crown has thought fit to say—There shall be Teachers in Arts, but we conceive it to be proper that a person who is to teach any part of Arts, should not be a person confining his attention to that one department of Arts, and that he should not undertake to teach Moral Philosophy unless he has acquired a certain knowledge of Logic. At all events, that has been the view of the

Crown. Of course, if the Crown should think otherwise, then the Crown may grant honours in Logic, or allow Universities to do so; but at present the Crown has said, or the Imperial power, whatever that may be, has said, that he who is a Teacher of Arts shall be qualified to teach in every Department of Arts. And, therefore, I say, taking the first step, which answers your Lordship's first observation, viz., the capacity to grant a degree in Surgery, as one in a part of the Faculty of Medicine, I think that these considerations will show that, not only in the letter, and technically, but in substance and in reality, it is not the intention of the Crown to confer the power, and that it is not the fact that power is conferred to award honours of this kind, except in the whole Faculty. I know not where you would stop, or where you can draw the line, if subdivision is allowed.

*Lord Chancellor.*—The Legislature may have given you an intelligible hint, and have pointed out what may be done. The Legislature seems to suppose that there might be such a thing as the degree of Master in Surgery, because, by Schedule A, that is one of the matters—

*Sir Hugh Cairns.*—Yes, my Lord; and it will be part of my argument to satisfy you of the effect of that reference in the Schedule to those particular words, 'Master in Surgery of any University.' At present, I say, that, unless there is some power to subdivide given expressly, you cannot draw any line for subdivision,—you cannot say that it shall be subdivided to a certain extent, and not any further; that the substance of the power is this—a power to grant a degree in the whole Faculty or not at all; and I shall not forget those words of your Lordships, in a subsequent part of my argument.

*Sir G. Cornwall Lewis.*—Are there any words in the Scotch Universities Act which expressly limit the power of the Commissioners?

*Sir Hugh Cairns.*—It is not necessary that there should be any words to limit; they must have the power given to them. There must be enabling powers.

*Sir G. Cornwall Lewis.*—In the Oxford Act, there are powers which limit the Commissioners to the powers which the Legislature has given to Colleges to alter their statutes. It says that, if those powers are not exercised by the governing body, the Commissioners may exercise them; but it is expressly

declared in the Act, that the powers of the Commissioners shall not be in excess of the powers of any College.

*Sir Hugh Cairns.*—Pardon me, the Oxford Act is essentially different, and proceeds upon quite another principle; it has not the slightest analogy to the present. By that Oxford Act, powers are given to the College to reverse entirely everything relating to the College. The most exceeding and transcendent powers are given to reverse everything relating to the College; and, therefore, when those powers are, in the event of their not being exercised by the College, transferred to the Commissioners, the powers transferred to the Commissioners in the Oxford case are unlimited powers.

*Sir G. Cornwall Lewis.*—They are defined as given to the College: they are given to the College for certain purposes; and it is expressly declared that the powers of the Commissioners are not to be greater than the defined powers of the College.

*Sir Hugh Cairns.*—Pardon me; there are no such words as those, and for this reason, that the powers could not be greater than they are. The powers of the College are without limit; they are not reserved. When they are transferred to the Commissioners, it is said that the Commissioners then shall have those powers; and nothing more is said. There is no limit, as I remember, in the Oxford Act, whatever to the powers. But observe the difference here: Here you must get your enabling powers, and these are to make rules as to the granting of degrees. And could it be said that, if a particular executive body had got power to make rules for admission to offices, could it be said that that was a power to create new offices? Of course, every College has power to make rules for granting degrees. That is right—the College having power to grant a degree; and if it has that power, it has the power to make rules as to granting degrees, and every expression of those powers shows you that they are nothing more than the old College powers. Those powers are transferred to the Commissioners, who could not have them unless they were given to them—they are given to them, and the extent of the power given must be found in the words by which it is given. I will refer to three phases of this case, in which I am anxious that your Lordships should look at it. The first is, the attempt made by those who have got the power to confer a degree in a

Faculty, to confer a degree in a part of the Faculty. That I have answered ; and I then come to the second phase, which is this : Suppose that those who have got the power to confer a degree in a Faculty, confer the degree in the Faculty, and, at the same time, attempt or profess to confer the same degree in a part of the Faculty. I say that that of itself is repugnant and nugatory, because the degree being once conferred in the whole Faculty, you cannot have anything more ; you cannot, at the same time, make a man a Bachelor in the whole Faculty of Medicine, and make him also a mere Bachelor in part of the Faculty of Medicine. The thing is absurd on the face of it ; the power is exhausted and gone. Now, the third phase which I ask your Lordships to consider is this : Suppose that that which the delegates of the power attempt to do is this : to confer a degree in the whole Faculty, and to confer a higher degree in a part of the Faculty. That would be still worse ; but that is the phase which the Commissioners have adopted. And I say that that is worse than attempting to confer a degree in part ; for here you have got one degree in the whole, and a higher degree in a part, and that violates the two principles on which degrees ought to be granted. The one is that you cannot have a partial degree, and the other is that you cannot assign to a man, who professes to be a proficient in a Faculty, a higher proficiency in part of the Faculty than he has in the whole. And, of course, although one will not suppose that things which are very whimsical or very capricious will be done in practice, still, in testing the validity of an act done, we are entitled to consider the various forms in which it might be done. I put cases yesterday to your Lordships, which might be multiplied *ad infinitum*. Could such a thing be tolerated, that in the Faculty of Arts you should create a man at the same time, and by the same examination, Master of Arts and Doctor of Logic ; that, at the same time and by the same examination, you should create a man a Bachelor of Law and Doctor of Conveyancing ; and that, at the same time and by the same examination, you should create a man a Bachelor of Medicine and Doctor of Chemistry ? Nevertheless, if the principles upon which the Commissioners here have proceeded are true ones, every one of these things might be done.

Lord Chancellor.—I would suggest the possibility that

Medicine there may not be generic, so as to comprehend, when the degree of Doctor in Medicine is granted, Surgery. I take the distinction between Medicine and Surgery.

*Sir Hugh Cairns.*—I assume, my Lord, for the purpose of the argument throughout, that it is not generic, and that it does not include Surgery.

*Lord Chancellor.*—It may in some instances. The language in which these Acts are framed is not precise, grammatical, or logical, and a word may sometimes be used in one sense and sometimes in another.

*Sir Hugh Cairns.*—The dilemma, my Lord, is this,—and from which I see no escape: the dilemma is perfect,—it either includes Surgery or it does not. If it includes Surgery, then my arguments arise—there is a power to confer a degree in the whole Faculty, and you cannot subdivide it; but if Medicine does not include Surgery, where is the power to confer a degree in Surgery at all.

*Sir G. Cornwall Lewis.*—These are the words I before referred to—the power of the Oxford Commissioners is made co-extensive with the power of the College.

*Sir Hugh Cairns.*—I think you will find that there are no negative words.

*Sir G. Cornwall Lewis.*—No; but there are limiting words: ‘That if the powers herein-before granted to Colleges shall, in the case of any College, not be exercised, and no Ordinance or Regulation for effecting the objects of such powers shall be submitted by such College to the Commissioners, and approved of by them before the first day of Michaelmas Term 1855, it shall be lawful for the Commissioners to frame such Ordinances and Regulations as shall appear to them to be necessary or expedient for the purpose of effecting or promoting the objects which the College is herein-before empowered to effect or promote.’ Those words expressly limit the powers of the Commissioners.

*Sir Hugh Cairns.*—Yes, and the argument now becomes exactly parallel to the present case. The power given in the Oxford case is a power to be exercised for the purposes specified in the 28th section, and here the power given is for the purposes specified in the 15th section. And, therefore, as in the Oxford case, the powers would be limited to the purposes



specified in the 28th section, which are to make Fellowships on account of personal merit and fitness; so here the powers granted to the Commissioners are for the purposes mentioned in the 15th section only, one of which purposes is the granting of degrees in Law, Medicine, Theology, and Arts. These are the powers which the Commissioners have, which brings back the argument to that which I have assumed, namely, that we are dealing here with Commissioners who have powers to make rules for the granting of degrees in the Faculty of Medicine. That is the utmost power they can profess, and they have professed to have no greater powers themselves.

*Sir G. Cornwall Lewis.*—Are there any words in the Scotch Act which say, that the powers of the Commissioners shall be co-extensive with the powers of the University, and only co-extensive with those powers.

*Sir Hugh Cairns.*—If you ask me whether these are the words, I say that these are not; but the only words are words about which there can be no doubt, viz., that they may make rules for granting degrees in certain Faculties,—and I defy the ingenuity of man to say, that this is more than giving the Commissioners power to grant degrees in those Faculties; and a power to make rules with regard to granting those degrees cannot be higher than the power to grant the degrees in those four Faculties. But I will assume that the Commissioners have power to grant degrees in four Faculties; and if they have got that power, they have exceeded it. That is my argument.

Now, I come,—still being upon the invalidity of that which I proposed to consider,—to the first justification which the Commissioners give. They offer a number of justifications in detail, as to the exercise of their power. In the first place, they justify, under the words of the charter of the College; and now let us look for a moment at those words, in order to show that they do not advance the argument in the slightest degree. At page 8 of the consecutive paging, we have the Bull of the Old Aberdeen College, which the Commissioners say is the largest authority they can find. If the words in that Bull went further than the Act of Parliament, I apprehend that the words in the Act of Parliament would be the limit of the Commissioners' power, and not the words in the Bull; but the words in the Bull do not go further, because they do nothing more than this—they

confer upon the Aberdeen College and the Edinburgh College, which is supposed to be upon the same model, the power of granting degrees, as well in Theology, the Canon and Civil Law, in Medicine and the Arts, as in any other Faculty, *quavis aliâ licitâ facultate*. Now, let us see the effect of these words. I say, that for the purpose of the present argument, they are simply to give a power to confer a degree in Medicine; because the hypothesis is, that Medicine includes Surgery, and if Medicine includes Surgery, it cannot be *quavis alia licita facultas*,—it is the Faculty of Medicine. If you contend that Surgery is to be taken inside of the Faculty of Medicine, which I assume, then these words, ‘any other lawful Faculty,’ may be struck out of the case, for that must mean some Faculty other than that of Medicine; and therefore the Bull comes to this, that it is a power given to the College of Aberdeen, and to the College of Edinburgh, to grant degrees in Medicine. I assume that there is that power, and that Medicine may be taken as including Surgery; therefore, if there were a power to erect some hitherto unknown Faculty, but which I deny, it would be of no avail here, for no one contends that Surgery, if it could be a Faculty at all, is one different from that of Medicine.

Then the Commissioners refer to the practice of other Colleges, and justify upon the practice of other Colleges; and I am anxious to say a word or two upon the detail and upon the different examples they have given. I will take first the case of Glasgow, as they state exactly how the question as to Glasgow depends. Glasgow is a College which, in some respects, differs in its foundation from both Edinburgh and Aberdeen. The original foundation of Glasgow did not give any express powers to confer degrees in Medicine at all; it gave a power to confer degrees in Theology and Arts, and any other lawful Faculty: of course, that would imply Medicine, and, so far, I concede that Glasgow had that power. In the year 1816, the University of Glasgow found that it would be very convenient if they could devise a plan, by which they could license practitioners to practise within the prohibited districts of Glasgow, and a certain ambit round about it; and they first tried it in this way: they tried whether those who had a degree in Medicine from Glasgow, could practise within this district. That was brought, by way of an action of Declarator, into the Court of Session, and

there they failed ; for the Court of Session decided, by a case referred to in our printed Case, that a simple degree in Medicine would not authorize the person who held it, belonging to the University of Glasgow, to practise in Surgery within the prohibited district of Glasgow, and the region round about. The next step was this : They took upon themselves to invent a new degree of Master in Surgery ; and they did that for this purpose, and this only, for the purpose of trying whether a Master in Surgery, with that degree, could practise within the prohibited district. The degree was invented for that one purpose only—to see whether their Master in Surgery could practise within this prohibited district. That, again, became the subject of legal proceedings ; and the Courts in Scotland, in the first place, and ultimately the House of Lords, decided, that notwithstanding that degree, the person who held it could not practise within the prohibited district ; and, of course, that having been decided, there was no object at the time in any person desiring to go farther. There could be no farther question raised. The only persons interested in raising it, as to the effect of the degree, were the Faculty of Physicians and Surgeons of Glasgow ; and there is no question that they had all that they had raised decided in their favour. In the year 1840 that litigation terminated, which proved that practically that degree was worth nothing ; and I may say, up to the year 1840, we find that the right of Glasgow was challenged—the right of Glasgow to grant this degree for any practical purpose.

*Lord Chancellor.*—For that purpose ?

*Sir Hugh Cairns.*—Yes, my Lord. There was no other purpose for which it could be useful. Those who were interested in trying the question, succeeded in showing that the degree was not available for the particular purpose ; and in 1840, the purpose for which it was instituted came to an end. I want to know whether it has not been shown to your Lordships, what the University of Glasgow have done since 1840. I apprehend it will be found that they have conferred next to no degrees in Surgery ; for, as soon as it was decided, no person would pay for that which would not be of the least value. Moreover, it was perfectly well known, even at the time when this degree was conferred by the College, that it was not conferred as part of the general degree of Bachelor of Medicine ; but it was conferred

upon an entirely separate examination, devoted to the particular study of Surgery.

*Sir G. Cornewall Lewis.*—Was that degree in Surgery created by the College of Glasgow itself?

*Sir Hugh Cairns.*—Yes.

*Lord Chancellor.*—It was granted, was it, without any new powers being conferred upon them?

*Sir Hugh Cairns.*—Yes, my Lord. They took it upon themselves to grant the degree; and it is important to remember, that their right to grant the degree was challenged by the Faculty of Physicians and Surgeons of Glasgow, and the Faculty of Physicians and Surgeons succeeded. Of course they could not oblige the House of Lords to decide upon both points of the case, but the House of Lords decided in their favour all that they were then interested in; and the House of Lords did not take upon themselves, having decided upon one ground, to go into the other ground at all. It is sufficient, my Lords, for me to say, that the right was challenged, and was never submitted to. The advantage which they thought they would gain, they failed in gaining; and therefore it cannot be appealed to as an acquiesced in right of theirs, which they had exercised and enjoyed from 1816 to the present time. I say that it was challenged, and it proved to be an abortive act of theirs. And, on inquiry, it will be found, that as soon as the litigation was terminated in the year 1840, the number of degrees afterwards conferred had been so small as to be practically of no importance.

*Mr Rolt.*—You contend, then, that no University in Scotland had any power to grant the degree of Master in Surgery?

*Sir Hugh Cairns.*—None.

*Lord Chancellor.*—The decision is not, that the grant was void, but it had not the effect intended.

*Sir Hugh Cairns.*—In that particular instance, the House of Lords decided the case on the one ground, without touching upon the other. And of course it was unnecessary, in order to decide the case, to proceed upon that ground. It is sufficient for me to say, that the right was challenged; and therefore it has been exercised under protest, and cannot be appealed to as affording any proof that it has been exercised peaceably, or that there has been an authorized exercise of the power. Therefore I say, that the Glasgow case—the only case in which, *de facto*,

such a thing has been done as granting a degree in Surgery, either in Scotland, or in England, or in Ireland—the Glasgow case is the case of an attempt to exercise the power, but an attempt made under challenge and protest—not acquiesced in—and, above all, not conveying to the holder of the degree any practical advantage in the world; for the advantage that was sought to be obtained by it was, on another ground, defeated. There was, in the Court of Session in Scotland, on the part of some of the learned Judges, who were the alumni of those Colleges, a very natural desire to maintain the just rights of those Colleges; but the Court of Session say, ‘We think it unnecessary to inquire whether the University of Glasgow has power to grant degrees or testimonials of skill in Surgery. Admitting that the University possesses that power, and supposing it had been exercised from the date of the erection in 1450, we are of opinion, on the grounds above stated, that such degrees or testimonials would be of no avail in a question with the Faculty.’ They are careful to say, ‘We do not say that you have the power to grant it; but suppose, for argument’s sake, that you have the power, it does not do you the benefit that you expect from it. We will not, however, give any countenance to the doctrine, either that you have or have not the power, but we leave that in suspense.’ It is, therefore, my Lords, a challenged power, a power not proved to exist, and from the exercise of which no benefit has ever been derived.

Now, I will take the next case, the case of Dublin, and I do regret that the Commissioners——

*Sir G. Cornwall Lewis.*—Under the present law, that is, the Medical Act, would a person who received this degree of Master in Surgery at Glasgow, be entitled to practise as a Surgeon? In other words, would he have the benefit of the Medical Act?

*Sir Hugh Cairns.*—Not unless it can be proved that the University has the power to grant it. We deny the power of the University to grant it.

*Lord Chancellor.*—Still, the Act of Parliament says, that he who has got this degree from any University in the United Kingdom shall be registered.

*Sir Hugh Cairns.*—Yes, my Lord, I will come to that; but the argument must be dealt with as a separate head. I come

now to the case of Dublin; I was about to express my regret that the Commissioners had contented themselves with the production of some Almanac or Directory, and that they had assumed from that, that it was in the power, and had been the habit of Dublin College, to grant the degree of Master in Surgery, in place of referring to documents which are open to every one, and which would have exactly shown them what it is that Dublin College has done, and failed to do. First of all, that which has been done by Dublin College, has been done since the year 1852 only; and it might be said, that it was so recent a case, that no precedent could be drawn from it. And further, that what they had done, had been done under challenge and controversy, which is not yet concluded between the College of Dublin and the College of Surgeons in Dublin. It is disputed, whether the thing they had done there, is that which they had the power to do; and your Lordships, I have no doubt, will be surprised to hear that Dublin College never has claimed to confer, and never has conferred a degree in Surgery at all. It is a pure mistake and fallacy of the Commissioners, and of those who have advanced the argument. In their evidence before the Commissioners appointed to inquire into the Dublin University, they say, in page 35, that the degrees in Medicine granted by the University are those of Bachelor and Doctor, and that these are the only degrees, either in Medicine or in any branch of Medicine, granted by the Dublin University. But the University in 1852 did this: they said, 'If a student attends our classes in Surgery, or our Lectures in Surgery, and he wishes to have a testimonium that he has attended our Lectures in Surgery, we think it desirable that we should be enabled to give him one, which we will call a diploma. It is not a degree at all; we will not treat him as a Graduate, but we will treat him as a person who comes and asks us to be good enough to give him a certificate.' They also said, 'We find that Oxford and Cambridge do so,—that they claim the right, and have exercised it, to give a testimonium to any one who has attended their Lectures in Surgery or in Medicine, if he has attended them; and we think it desirable that Dublin should do the same thing.' They took legal advice as to whether they could do it, and it is remarkable to see the view which they presented to those whom they asked to advise them.

*Lord Chancellor.*—They might do it *valeat quantum*.

*Sir Hugh Cairns.*—No doubt, my Lord. It is a statement of fact. One might as well say that there was any doubt as to whether a University could testify that a person had resided there for 13 or 14 Terms; but they ask counsel this—‘The Professors having been thus admitted into the University, must not the University have the power to appoint a curriculum, and an examination for the purpose of testing the qualifications of students devoting themselves to the study of Anatomy and Surgery, and to give a diploma or testimonium, certifying that a student has passed that examination, and is (in the judgment of the Medical and Surgical Faculty of the University) qualified to practise Surgery? Counsel is also requested to consider the enclosed extracts from the statutes of the Universities of Oxford and Cambridge, from which it appears that the English Universities have given a diploma in Surgery exactly similar to that which the Provost and Senior Fellows have now resolved to establish in this University.’ Now, the Universities of Oxford and Cambridge, I need not tell your Lordships, never have, at any time, affected to give a degree in Surgery; but they have given this, and this only, a testimonial in Surgery. And here we have got Dublin College saying, ‘What we desire to do, is that which Oxford and Cambridge do.’ And then they say, ‘The diploma in Surgery thus obtained may be regarded as a step to the degrees of Bachelor and Doctor of Medicine, and will, of course, be recognised in conferring such degrees,—that is to say, an element in conferring such degrees. It would be a part of the qualification for a degree, and, if it be competent to the University to confer such degrees, is it not also within their power to prescribe a curriculum, or course of education, and to give certificates or diplomas, preparatory and qualifying for admission to degrees? And what they have affected to do, is not to grant a diploma, but a testimonial, which they desire may be regarded as upon the same footing as that of Oxford and Cambridge.’ I therefore say, that we have now gone through the only two instances given in this empire—Glasgow, a disputed case, which, practically, has not succeeded for the purpose for which it was intended; and Dublin, a case as to which there is no analogy between it and that which is now proposed to be done in Edinburgh.

Now, let me take the Continental Universities; and the first

case is that of Paris. And, of course, what the Commissioners are bound to find in the case with regard to the University of Paris is this—They must prove that, under some imperial power given to grant a degree in Medicine, the University of Paris granted a degree in Surgery, as a branch of Medicine; and unless they prove that, they prove nothing. Your Lordships were informed yesterday how the case stands as to the University of Paris—that it is wholly extinct. No doubt, anything that it did during its existence would be a very fair analogy with regard to the Scotch Universities, which we know were founded on the model of the Continental Universities; but that which is now called the University of France, has no more relation to the old University of Paris, than the family of the reigning sovereign is related to the family of the Bourbons. The University of Paris, so long as it did exist, I think, your Lordships will be satisfied by the authorities that were produced yesterday, not only never conferred a degree in Surgery, but they had the idea that a degree in Surgery would have been abhorrent to the minds of every one in that University, and to the whole constitution and nature of the University. In fact, the authorities which were cited yesterday, I think, are very remarkable, as showing, in the case of the University of Paris, how, in the middle ages, this question of Surgery was looked upon; and it is a remarkable fact, if we go back to the earlier ages, those antecedent to the middle ages, there is no doubt that the practice of Surgery was looked upon with great respect; and those who were the stars in the Medical profession in olden times—such as *Æsculapius*, *Hippocrates*, and *Galen*—we all know, were more eminent for their Surgical than for their Medical skill. But, after the invasion of the empire by the barbarian hordes, when all art was destroyed—after that, the science of Surgery seems to have been blotted out; and when there was some attempt, in the middle of the dark ages, to revive the science, ecclesiastical bodies seem to have seized, as their own domain, upon the science of Medicine, and to have undervalued, at that time, the science of Surgery, as many of the old books will tell you. It is said that there was an edict of the Council of Tours, in the eleventh or twelfth century, which prohibited, in the strongest terms, all ecclesiastics from letting blood; and, therefore, desiring to seize the science of Medicine as their domain, and being prohibited



from letting blood, they disassociated any idea of Surgery from their own skill, continued to practise Medicine, and affected to despise Surgery, and left that to the barbers. And, during all the middle ages, when these Universities, like that of Paris in all its glorious splendour, sprang up, they were under ecclesiastical control, and excluded actually the notion of Surgery from their studies and from their practice. The particular order in which different persons were called in was most remarkable; and there is a very singular decree of the Church, which strictly prescribed to every Medical man attending a patient on his death-bed, that, on peril of his own salvation, he was not to prescribe for the body of the patient, until he had sent for an ecclesiastic to prescribe for his soul, and, therefore, the poor man might die until the ecclesiastic was summoned to be present. However, to come more closely to the case, the University of Paris, which had got these powers, while it existed as a University, not only never did give a degree in Surgery, but, on the contrary, took an oath from every one who came as a licentiate, that he would not practise Surgery; and, therefore, the argument which the Commissioners attempt to draw from it falls to the ground. That which now exists in France is neither the University of Paris, nor the least like it; for what is called the University of France is, in fact, the National Board of Education of France—it is a central system of education for the whole kingdom. It is called the University, but it is not what we style a University, for it is immediately under the control of the Minister of Public Instruction, and it has affiliated to it every school and every College, in every part of the provinces; and the whole is regulated by the decrees of the Republic, which were read yesterday to your Lordships. And those decrees have thought fit to say, that the University of France is to confer a particular degree; or that the particular degree is to be conferred in Medicine. It is not the University of France that confers the degree at all now in Medicine; but the person who does that is the Minister of State, under the seal of State, like our Secretary for the Home Department.

*Lord Chancellor.*—It is like a Lambeth decree.

*Sir Hugh Cairns.*—I do not know, my Lord, whether that was a decree of State; but in this case, it is as if the Secretary for the Home Department were now the person to confer the

degree of Doctor in Medicine. The Minister of State for Public Instruction confers degrees in Medicine, under the official seal of State, upon the certificate of the College in which the individual has studied, that he is qualified to receive the degree. Therefore, there is an end to the analogy upon which the Commissioners rest, so far as Paris is concerned. They seem to have forgotten that the University of Paris, and that which is now the University of France, were upon a different footing.

Then I come to the case of Berlin, and your Lordships yesterday had decrees which, with regard to Berlin, removed it out of the scope of this controversy; for in 1811 the Imperial power, which regulated the University there, thought fit to say, as it might say here,—The degree in Medicine shall be that of Doctor in Medicine and Surgery. And, if the Crown thought fit so to say, there would be an end of the controversy; but the case of Berlin cannot be referred to as an authority for saying, that, under the power to confer a degree in Medicine, you may confer a separate degree in Surgery. With regard to Vienna, we have no information. I believe that the whole of the information which the Commissioners have, was derived from the argument of Counsel in the hearing at Edinburgh, for that seems to have been transferred into their Report. I find in the argument of Mr Macfarlane, in page 50, that the learned Counsel said this:—‘I may say here, in support of those authorities which I have referred to, that I believe inquiry will satisfy the Commissioners, that the practice of granting these subordinate degrees—degrees in Surgery—as distinguished from the degree in Medicine, exists in the best and most celebrated of the Continental Universities. It exists in the University of Paris, of Berlin, of Vienna, and we can furnish the Commissioners with evidence which will probably be held perfectly sufficient in support of that proposition. I believe there cannot be any doubt whatever about the matter, that such degrees in Surgery are, and have been, constantly in the practice of being given by those Universities.’ ‘But here is a work which I believe is recognised as an authority—the “Code Médicale,” published in 1859, where you will find that the right of parties to ask, and the right of the University of Paris to grant, the degree of Docteur en Medicine, or Docteur en Chirurgie, is recognised and regulated very dis-

tinctly. You find that in the first article of that code, and you will find it again recognised as distinctly and clearly in Art. 219, on page 113 of that work, and the Faculty you will find also throughout spoken of as the Faculty of Medicine.' Then Mr Macfarlane refers to Berlin University and the statutes, and there he stops, referring to no authority upon the University of Vienna.

*Sir G. Cornwall Lewis.*—With regard to the mere language, I see in Schedule A to the Medical Act, that the Faculty at Glasgow is called the Faculty of Physicians and Surgeons.

*Sir Hugh Cairns.*—That is their corporate name. I have the honour to appear for them, and their corporate name is the Faculty of Physicians and Surgeons.

*Sir G. Cornwall Lewis.*—This is the Faculty of the University?

*Sir Hugh Cairns.*—No; it is not a University at all.

*Sir G. Cornwall Lewis.*—Then it is perhaps what we call the College of Surgeons here?

*Sir Hugh Cairns.*—Yes; a licensing body.

*Lord Chancellor.*—It is not academical?

*Sir Hugh Cairns.*—Not at all. Now, my Lords, the other analogy to which the Commissioners resorted—and you will see the importance of dealing with these analogies—I believe that the last to which the Commissioners resorted was this: They said,—You contend, or it has been contended, that there cannot be a degree in part of a Faculty; but they say, it is well known that Continental Universities have been in the habit of granting degrees in Philosophy, which is part of the Faculty of Arts. And this, they say, is an example of a degree being conferred in part of a Faculty. My learned friend, Mr Palmer, referred to that yesterday; and I wish to say in addition only this, that you cannot take up a single book upon the subject of the great University of Paris, in its original glorious splendour, without finding in every line of it, where the Faculty of Arts is spoken of, that it is always called *Facultas Artium sive Philosophiæ*, and so it was always another name for the Faculty of Arts, and not a degree in part of the Faculty of Arts. Now, the importance of removing these analogies out of the case is this, that when I look at the Commissioners' Report, it is quite evident that they have founded their conclusion very much upon these

supposed analogies; and if your Lordships will do me the favour to turn to page 88 in the consecutive Report, or the second page in their Report, between letter H and letter I, you will see that this is how they desired to put it: 'Under these circumstances, the Commissioners think it cannot be doubted that the University of Edinburgh possesses the right of granting degrees in all departments of knowledge in which it gives full instruction; or, at all events, in all departments of knowledge in which it may be shown to be the practice of other Universities to grant degrees.' Therefore they desire to recede from and to abandon the more broad proposition, that they had got, either by charter or by inherent powers, the right to grant a degree in Surgery; and they desire to limit their proposition and their view to this: At all events, if we can show that it has been the practice of other Universities in this country to grant a degree, then we have a right to do it. And therefore, my Lords, I say that is important to go through these analogies; and I think that if the Commissioners could have been apprised that these were the examples upon which they were founding, and if they could have obtained good information upon the point, they would have thought very differently as to their powers, for, upon their own showing, unless other Universities had been in the habit of granting this degree, they would have felt that they had not the power to authorize the conferring of the degree.

*Sir G. Cornwall Lewis.*—Does not a diploma in Surgery, granted by Trinity College, Dublin, involve a degree?

*Sir Hugh Cairns.*—No. I read at considerable length to your Lordships, a passage in which the University of Dublin pointed out what they desired to do; and it was this: to grant a certificate of attendance at the Lectures. The word diploma has no effectual meaning in itself, or nothing in the shape of a degree.

*Lord Chancellor.*—It does not assume the shape of a degree?

*Sir Hugh Cairns.*—No, my Lord. What they say is, that it is to be introductory to a degree afterwards to be obtained.

*Lord Chancellor.*—Each Professor used to give a testimonial.

*Sir Hugh Cairns.*—Quite so, my Lord. And I cannot help thinking that, in a question of this kind, where so much depends upon the usage, as explanatory of the right, that it is an argument which, if not altogether irresistible, is at least as

strong as any argument upon the subject well can be,—that, during the whole history of Universities, whether upon the Continent or in this country, we cannot find a single instance of the undisputed exercise of a right of this kind, or even of its only being claimed—namely, to split up a Faculty, and to give degrees in parts of the Faculty. It cannot be that it would not sometimes have been thought convenient or desirable to do it, and that it would not have been for the interest of Universities, if they had had the power, sometimes to multiply degrees of this kind; and yet, I say, that the fact is, that never on the Continent, nor in this country in any place but one, and in that one instance not without dispute or without challenge—namely, the case of Glasgow—has it been thought that a Faculty could be treated as a divisible matter, and that, under a power to grant a degree in a whole Faculty, a degree might be granted in a part of it.

*Lord Chancellor.*—It does not appear academically to have been subdivided, but practically they were divided into Physicians and Surgeons; and that division has been recognised over and over again in legislation.

*Sir Hugh Cairns.*—No doubt, my Lord; just in the same way that in law, practically and by well-known limits, lawyers are divided into various classes, such as the Special Pleader, the Conveyancer, and so on. As the convenience of mankind has led to that division, so it has led, as is perfectly well known, to divisions in Medicine; but just as, in the Faculty of Law, the circumstance that there are divisions for the purpose of the convenience of mankind introduced, would not justify you in having separate degrees in that Faculty—so the circumstance that there are well-known divisions in Medicine would not justify you in having separate degrees in the Faculty of Medicine. Suppose that a University had erected in it two Faculties, one of Canon Law, and one of Civil Law; then the degree not only may be, but must be, a degree separate in each Faculty; but if the Faculty is a united one of Canon Law and Civil Law, the degree must be granted in that united Faculty; and the circumstance that one University pursues one course and another University pursues a different course, is a circumstance that explains the different degrees in Law which we find in the different Universities. For example, in

Oxford, I believe, the degree is a degree of Civil Law only, while in Cambridge it is not so,—the difference, I suppose, arising from differences in the foundation of the two Universities, and the Faculties which have been there from time to time erected. Now, I stated that the circumstance, that these divided degrees never had been known in practice, would be a strong argument; and to that I now add this: I apprehend that this is a question of the gravest possible importance on the present occasion, because, although we are here concerned only on the subject of the University of Edinburgh, this is a question which goes beyond the case of the University of Edinburgh. In the first place, if this practice is to prevail and to be authorized in Edinburgh, it is quite clear that it must be also authorized in every other Scotch University; and the principle of the Scotch Universities Commissioners is, that there is to be uniformity in the different Colleges in Scotland. But it will not stop there: for, of course, if this is a degree which is found to be desirable in the Scotch Colleges, and the right to grant which is recognised there, it must follow also in England; and already, my Lords, the bodies whom I represent have received notice from the University of Durham that they intend to claim the right, if it is exercised in Scotland. They intend to claim the right to confer a degree of this kind; and if they do, so will every other University in England—the Universities of Cambridge and Oxford, the Durham University, and also the Queen's University in Ireland.

*Sir G. Cornwall Lewis.*—With regard to the Dublin University, does the Act of 1860 not annex the right of practising to a degree?

*Sir Hugh Cairns.*—All that their Act says is this: 'After the passing of this Act, the diploma or license in Surgery, granted by any University in Ireland legally authorized to grant the same, shall be considered a sufficient qualification to practise under the first recited Act' (that is, the Medical Act); 'and every person to whom such diploma or license in Surgery has been granted, shall be entitled to be registered under the provisions of the said first recited Act, in the like manner and with the like effect, and subject to the like provisions as are prescribed by the said first recited Act in respect of the Registration of any Master in Surgery of any University of the

23 Vict., c.  
7, *An Act to  
amend the  
Medical  
Acts.*

United Kingdom.' It appears to be a privilege given to the Universities of Ireland. My Lords, I was going to say—although this is not the time or place to comment upon it—that I apprehend this Act may be found not quite so effectual as it has been supposed; for all that it says is, as to a diploma or license granted by any University, *legally authorized to grant the same*, that it shall be of a certain effect. I must say, for Dublin College, that they never have claimed to be legally authorized to grant a license; and I think that the framer of this Act has overlooked the difference between a diploma and a license.

*Sir G. Cornwall Lewis.*—Trinity College certainly took a great interest in the passing of that Act.

*Sir Hugh Cairns.*—Yes; I have heard something about that. The diploma being a testimonial, they may have been legally authorized to grant that.

*Lord Chancellor.*—Diploma, I think, is there used for degree.

*Sir Hugh Cairns.*—My Lord, I do not find anything here on the subject of a degree; but I do not think that this Act can affect the present argument. I am now going upon broader principles than anything arising out of a private Act of Parliament.

*Lord Chancellor.*—The framers of the General Medical Act, I think, must have had a strong notion that there might be such a degree.

*Sir Hugh Cairns.*—I will come to that, my Lord.

*Sir G. Cornwall Lewis.*—Does not that Act seem to make it a valid degree, by referring to the Mastership in Surgery?

*Sir Hugh Cairns.*—No; but I will deal with that presently.

*Earl St Germans.*—I think you stated just now, that the right assumed by the Dublin College is still a matter of controversy.

*Sir Hugh Cairns.*—Yes, my Lord; the College of Surgeons challenges it, and objects to it; but, whether it was challenged or not, I should be quite satisfied with this, with regard to the Dublin University, which puts both the case of Dublin and the applicability of that Act entirely out of the question,—that Dublin does not profess to grant a degree. They say,

This diploma is not a degree, and we do not profess to have any authority to grant a degree.

*Sir G. Cornwall Lewis.*—But they grant a testimonial, the legal effect of which is to enable a person to practise.

*Sir Hugh Cairns.*—The effect of which, as given by a particular Act of Parliament, is to enable them to practise; and I say, let other Universities get it as best they can. I do not dispute the right of the University of Dublin to give any testimonial which they may think fit; but I say, let any other University come and obtain an Act of Parliament, giving it that kind of Parliamentary consequence, and our mouths will be closed. But the case of Dublin is not applicable, unless Edinburgh does what Dublin has done. My Lords, the importance of these points is this, that, upon your Lordships' determination in this case, the practice, not merely of the Edinburgh University, but all the Scottish Universities, and all the English Universities, and all the Irish Universities, will depend; because the Irish Universities will not rest upon, and be content with, a testimonium, if they can give the degree of Master in Surgery. They will do what other Universities do. One College must follow in the wake of another, if it can, and so will every University in Scotland; so will Durham, and the Queen's University in Ireland; and therefore, my Lords, it is of importance that you should see and be satisfied of the legality of that which is now going to be authorized for the whole of the kingdom.

I come now, as the last point which arises upon the question of validity, to deal with that which I said I had not forgotten. The reference which has been made to the Schedule of the Act of Parliament is not matter for grave argument. The Act says, in the 15th section: 'Every person now possessed, and (subject to the provisions hereinafter contained) every person hereafter becoming possessed, of any one or more of the qualifications described in the Schedule (A) to this Act, shall, on payment of a fee not exceeding L.2, in respect of qualifications obtained before the first day of January 1859, and not exceeding L.5 in respect of qualifications obtained on or after that day, be entitled to be registered.' Then, in section 31, it says: 'Every person registered under this Act shall be entitled, according to his qualification or qualifications, to practise Medicine or Surgery, or Medicine and Surgery, as the case may be, in



any part of Her Majesty's dominions.' Therefore your Lordships perceive that the body of the Act, in the 15th section, says, that those who have the qualifications described in the Schedule may be registered; and the 31st section says this, that those who are registered shall be entitled, according to their qualifications, to practise.

*Lord Chancellor.*—That is, as far as their qualifications justify it.

*Sir Hugh Cairns.*—Yes, my Lord, according to his qualification or qualifications.

*Lord Chancellor.*—Qualification does not mean their proficiency.

*Sir Hugh Cairns.*—Certainly not, my Lord. The qualification is that on which they are registered. Now, Schedule A gives a detail of those who are to be registered; and first, we have the College of Physicians, then the Edinburgh College of Physicians, then the Irish College of Physicians, then the College of Surgeons of England, the College of Surgeons of Edinburgh, the Physicians and Surgeons of Glasgow, and so on. And then the 10th head is, 'Doctor, or Bachelor, or Licentiate of Medicine, or Master in Surgery of any University of the United Kingdom, or Doctor of Medicine, by doctorate granted prior to the passing of this Act by the Archbishop of Canterbury.' Now, as to the way in which these words, 'Master in Surgery,' would come to be introduced, I think that there is no doubt that the way is this, that these various bodies—all the bodies in the kingdom—who have an interest in the question, are operating together in regard to the passing of this Act; and one body says:—'*de facto*, we grant now the degree of Master in Surgery: if it is wrong, we do not want any legal validity to be given to it; but if it is right, it ought to be recognised.' That is the course it perhaps would take. 'Well, put it into the schedule, if, *de facto*, there is such a thing as a degree of Master in Surgery in any College, and let it be considered afterwards whether the right exists or not.'

*Lord Chancellor.*—That is not hypothetical, it is positive. The degree of Master in Surgery is treated as an existing and valid degree, as Doctor and Bachelor in Medicine are.

*Sir Hugh Cairns.*—Yes, my Lord; but the practice and the way in which Parliament must deal with this question is not to

examine or to legislate upon the validity or the invalidity of the degree at that time. There is nothing whatever that can prevent the possibility of the degree of Master in Surgery being conferred, if there is a proper power to confer it; and, therefore, finding that there is *de facto* a claim to have such a degree, they do not adjudicate upon whether there is power to confer it or not; but they place it in the schedule, the right to confer it being left to be inquired into afterwards. Now, as to the effect of the words, I apprehend that it is this, that it leaves entirely unaffected and untouched the right to confer a degree; and if you hold it to have any further effect, the argument must go to this, if it is worth anything, that it was meant by the Legislature to confer upon every University in the kingdom—irrespective of whatever might be the terms of its charter or of its powers—the right to grant the degree of Master in Surgery. Of course such an argument—

*Lord Chancellor.*—It shows that there was some University in the United Kingdom that had the right.

*Sir Hugh Cairns.*—It either assumes that there was, or that there might be. Of course, the Queen might allow any University in the kingdom hereafter to grant the degree of Master in Surgery. And it assumes that *de facto* there was a University in the kingdom that claimed the right to grant such a degree. But I submit that it would be a departure from the very first principle, with regard to the construction of Acts of Parliament, to say that, although it assumes *de facto* that there was a University claiming such a right, this Act of Parliament meant to give legal validity to that disputed right; and much less was it meant to give to other Universities, who never claimed the right before, the right, *de novo*, of issuing such a degree. I have here the opinion of the Commissioners in my favour, and it is that the Medical Act did not affect the question. The Commissioners say: ‘The Medical Act of 1858, which (section 15) entitles to be registered as a Medical Practitioner, every person who was then possessed, or who, subject to its provisions, should thereafter become possessed of, among other qualifications described in Schedule (A) thereto, that of Master in Surgery of any University of the United Kingdom, does not, of course, affect either favourably or unfavourably the right of the University to grant the degree.’ I apprehend that this is a sound proposition

of law which cannot be disputed, that the Schedule of the Act of Parliament leaves the case exactly as it was. I apprehend that this was a sound view; and to suppose that the Act of Parliament, by introducing these words—which were correct words, assuming the power to grant the title claimed, although it was disputed—meant to give validity to the act of that University or any other, would be to use this Schedule for a purpose for which it cannot be used.

Now, my Lords, there I leave the question of the power to grant the degree, which, I apprehend, is a power which does not exist; and I now come to the second part of the argument, namely, the question of the expediency of granting the degree; and upon that point I submit to your Lordships—

*Lord Chancellor.*—With regard to the conjunction, I suppose, that is involved in it?

*Sir Hugh Cairns.*—Yes, my Lord; but that is not the main question as to the expediency—I mean the expediency as described by the Commissioners—the expediency of those grounds upon which they tell us they have proceeded.

*Lord Chancellor.*—You are now upon the expediency of granting this degree of Master in Surgery.

*Sir Hugh Cairns.*—Yes. And here I should like, in the first place, to deal with an observation which fell yesterday from one of your Lordships, and which, I think, was a mistake. He seemed to be under the impression that the Medical Act, in some way, placed the Graduates of a University, like Edinburgh, in a worse position than they were before the Act was passed. That, I apprehend, to be a misapprehension. The position of the Medical Graduates of Edinburgh University before the Medical Act was passed was this,—that in the prohibited districts they could not practise Surgery, but beyond the prohibited districts they had liberty to practise in common with all the rest of the world,—they could not practise in Edinburgh and in the counties round about, nor in Glasgow and within a certain ambit round Glasgow, without the permission of the Surgical licensing bodies in those two districts. But in Caithness, for example, they might have practised, and so could I have practised; and, therefore, they had no privilege whatever—none in the world before the Act of Parliament passed—but they lay simply under a disability as to a particular district. They had

no license in England, and no power to practise even Medicine in England, except as any individual might practise without any authority, and they were therefore simply under the disability which all the rest of the world lay under,—that of not being able to practise in the prohibited districts without a license; and I cannot conceive what they can have lost by the passing of the Medical Act, beyond what all the rest of the world lost. So far from losing anything, they gain much; they have gained, in respect of their degree in Medicine, admission into that privileged body specified in the Schedule to the Medical Act, obtaining thereby a right to practise over any part of the three kingdoms. The impression seemed to be, that they were put in a worse position by the Medical Act; and I was anxious to show your Lordships, that they were put in no worse position, but that with them the change that was made was a change for the better.

*Sir G. Cornwall Lewis.*—Did not the Medical Act subject a Doctor in Medicine to prohibition?

*Sir Hugh Cairns.*—There is no prohibition at all in the Medical Act in regard to practice. The way in which it operates is this, that you cannot recover the fees. The Medical Act does not prohibit any one from practising—all that it says is this: You must not do two things; you must not represent, in the first place, to the world, that you fill a particular character, if you do not fill it, and you must not say that you are registered as a Licentiate—

*Sir G. Cornwall Lewis.*—Section 31 appears to be according to a Medical or Surgical qualification respectively, and none other. Then, an Edinburgh Doctor of Medicine, residing in a Scotch county before the Act was passed, was upon the same footing as all the rest of the world as to the practice of Surgery: there was no prohibition whatever. It seems to be the obvious construction of this Act, that he is placed under some disadvantage as compared with a person having a Surgical qualification.

*Sir Hugh Cairns.*—He suffered not the slightest disadvantage beyond all the rest of the world. He has lost no liberty that he had before. I quite agree, that if that is the construction,—which is a moot point, and one which I say must be determined by judicial authority and by no other; but assuming that a person whose qualification is that of holding a degree in Me-

dicine only, he cannot practise in Surgery,—then I say, it is possible that he may contend he is under a disadvantage. But I say that he has lost no more than every other person has lost. I agree, in that case, that in common with the Apothecaries and Physicians, and all the rest of the world, he is not in the position he was before the Act.

*Mr Rolt.*—Mr Palmer said, that exactly the same thing which has been attempted to be done by the Commissioners for the benefit of the University of Edinburgh, ought to be done by every other body for the benefit of other persons.

*Sir Hugh Cairns.*—Quite so; and that is an argument which I shall be very glad to hear an answer to; for if that is to be allowed as an excuse for stretching powers, why may not the College of Physicians say:—‘We may stretch our powers,—we also must have the right, in order to come up to these qualifications which are mentioned in the Schedule to the Act of Parliament,—we may, therefore, stretch our powers for the purpose of granting some new license which we never thought of before, simply to meet the words of the Medical Act.’ Now, my Lords, the ground upon which I contend that it is inexpedient that the Commissioners should be allowed to do what they propose to do is this:—their argument being, that before the Medical Act was passed the degree in Medicine was a degree under which one might practise both Medicine and Surgery everywhere, I say, that is not quite accurate; because it was not under the degree that the holder practised everywhere; but he practised, like the rest of the world, at his own risk and responsibility. Then they say, since the Medical Act was passed, we find that some people are raising doubts whether, under the terms of that Act, a degree in Medicine will be a qualification for the practice of Surgery. Now, say the Commissioners, our opinion is, that it ought to be so; that is our notion, because Surgery is involved in Medicine; that is a matter of rule and regulation, and the degree in Medicine ought to be a qualification in Surgery, whatever the Act has said upon the subject. But as people have raised doubts as to whether, under the Act of Parliament, the degree in Medicine is a qualification to practise in Surgery, we desire to solve that doubt. That is our purpose and our object; and not only is that our purpose and object, but so exclusively is that our object, that if it had not been for this, we should have

entertained the opinion that was entertained by the Commissioners of 1830, that a separate degree in Surgery was unadvisable and improper. Our first notion was, that a degree in Surgery separate, was a bad thing; and we should retain that opinion still, and say so, if it had not been for the passing of this Medical Act. But because this Act has been passed, and because some people have suggested that there are doubts, whether a qualification arising from a degree in Medicine will enable any one to practise in Surgery; and because we think it would be a bad thing if it did not, therefore we will, if we can, make the thing sure: we will not leave it to be doubted under the Act of Parliament at all; we will make clear, by an act of our own, that which we think the Act ought to have said; we shall be the judicial interpreters of the Act of the Legislature, and we will give a degree which will come up to the words of the Act of Parliament. Now, that is the confessed purpose which the Commissioners have in view; and not only is that the purpose which they have in view, but they say that they found that upon the representations which have been made to them by the Professors of the University. Now, we fortunately have got the representations which the Professors of the University made to them, and which they have accepted, and which they say they act upon. In page 36 of the consecutive paging, there is printed a statement which the Medical Faculty of the University of Edinburgh made to the Commissioners, and they say, in the last paragraph: 'In compliance with the spirit of the Medical Act, it is in these circumstances not only a privilege which the University is entitled to exercise, but likewise a duty to its students which it is called on to discharge, that it shall confer upon its Graduates the most ample qualification which it has in its power to bestow. And as the same provisions of the University Charter, under which the degree of M.D. has hitherto been conferred, will entitle the University to confer any other title which Universities are generally wont to bestow, it is necessary that the supplemental title of Master in Surgery be given along with the degree of M.B., not as implying any additional or peculiar education or examinations, but simply as a testimonial what the educations and examinations actually are, viz., such as amply qualify both for Surgical and Medical practice. The University of Glasgow has, for many years, given the degree of Master

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in Surgery; and, in the Medical Act, this title is set forth as affording a qualification for Surgical practice. Upon these grounds, the University of Edinburgh, together with the Universities of Glasgow and Aberdeen, proposes to bestow the Master-ship of Surgery, not at the superfluous expense of further time, money, or study, but simply in addition to the Bachelorship in Medicine.' Well, the Commissioners say, That representation has changed our opinion: but for that we should have thought that this was a bad thing, as a degree; but because you tell us that there is a doubt as to the effect of the degree in Medicine under the construction of the Act of Parliament, we will not leave it to the Courts of Law to decide it, but will decide it now. And observe the consequence—suppose that those doubts are well founded, and suppose that the intention of Parliament was, that a degree in Medicine should not qualify for practising in Surgery—observe what a grave injury is done to those who are entitled to insist upon the doubt, because the Commissioners have virtually defeated the intention of Parliament; but suppose the doubts not well founded, that the construction suggested is not the construction of the Act of Parliament, and that the degree in Medicine should give a qualification to practise in Surgery, then what is the utility of having a separate degree? On the contrary, observe the mischief of having it, if these doubts are not properly founded. The Commissioners are the persons who create them; and hereafter it will be said, here is a sanction given to the theory that Medicine does not include Surgery. But take either view, take it that the doubts are well founded, or that they are ill founded; in either case, I say that the Commissioners do that which is inexpedient. They are either injuring somebody, if they decide against the doubts, or they are creating doubt and confusion which ought not to be allowed to exist. I say, that the construction of this Act of Parliament ought to be left to be determined by a Court of Law; and if the proper construction is, that a qualification for the degree in Medicine does not qualify a person to practise in Surgery; let it be so, but do not endeavour, by a side-wind, to affix a construction upon the Act of Parliament which may not be the true one.

Now, I will ask your Lordships to consider this point, with reference to the expediency of granting these degrees.

Have not the Commissioners altogether mistaken the basis upon which they should proceed to regulate the University degrees? I submit to your Lordships, that the basis upon which the Commissioners ought to have proceeded in the regulation of the University degrees, should have been upon academic views only, and that they should not have proceeded upon any views as to what the effect of their degrees would be in a competition with regard to licenses to practise. The preamble of their Act of Parliament is clear and distinct as to what is their duty, and it is this: 'Whereas it is expedient for the advancement of religion and learning, to make provision for the better government and discipline of the Universities in Scotland, viz., the Universities of St Andrews, Glasgow, Aberdeen, and Edinburgh, and for improving and regulating the course of study therein, Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows.' The duty of the Commissioners is to consider this: whether it will be an improvement in learning, and what will be an improvement in the course of study in the University. Their duty is not to consider this: Can we, by inventing a particular degree, give to the University certain privileges, to enable it to compete with the licensing bodies? I apprehend that this is an entire departure from the work which is assigned to those Commissioners; and I think that I cannot better express my argument upon that point than by reading to your Lordships some observations of Sir William Hamilton on this point, who has addressed himself, with the force and weight of his authority and experience in such matters, to the circumstances of this case. In page 40 of the consecutive paging your Lordships will find his observations.

*Sir G. Cornwall Lewis.*—The Schedule to the Medical Act declares that any Doctor, or Bachelor, or Licentiate of Medicine, or Master in Surgery, in any University of the United Kingdom, shall have certain rights of practising. It seems but reasonable that the governing body of a University, or the Commissioners having to regulate a University, should look to the practices and the consequences of any degrees granted by the University. Suppose the case were, as it is in some countries,

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that the power of admitting to the Bar was granted to a University, would it be unnecessary for the governing body to consider the practice and consequences of a degree in Civil Law? Anything more important can hardly be conceived. I think it might be said that they would neglect their duty if they did not consider that.

*Sir Hugh Cairns.*—I would say this, that the motives by which the Commissioners should be governed in prescribing rules to regulate the conduct of the University, should be motives looking to academic objects and academic views, and not to views of competition with other licensing bodies; and I apprehend that that is founded on this principle—the Medical Act that was passed in the same year with the Scotch University Act, no doubt, has said—

*Lord Chancellor.*—The two Bills received the Royal assent the same day.

*Sir Hugh Cairns.*—Yes, my Lord. The Act of Parliament to which I refer was passed in the same year as the Scotch University Act; and the Medical Act thinks fit to say, that it will, among the favoured body whom it is to license, include Graduates of Universities; and that is done on this ground—that those who regulate the University will be so actuated and impressed with the true and genuine academic spirit, that, in regulating and in declaring what shall be the curricula of qualification for academic degrees, they will look to that which is the standard in the preamble to the Scotch Universities Act—the advancement of learning—and to that alone; so that the Legislature may rest upon that being the view of those who make the Ordinances, as a security that, whatever may be the true standard, it will be observed in prescribing the terms for granting a degree. Now, observe how different it is with regard to a University, and with regard to bodies like the Colleges of Physicians and Surgeons. Parliament knew well that, for the purpose of sustaining their prestige and the character of the profession, these bodies may be trusted to prepare a standard for a license high enough to give Parliament confidence that the person holding the license of these bodies may be admitted to practise. But there is no such professional spirit, as I may call it, in the University; and therefore the only security which Parliament can have that the standard will be pitched high enough, in

granting the University degree, is the security which is derived from the belief that those who regulate the University will be guided by true University academic principles. But, my Lords, I think we must look above that, and see what Parliament conceived to be its security, when it gave to these different bodies the power of saying who shall practise; and I would say, as to bodies like those of the Colleges of Surgeons and the Colleges of Physicians, the security that they were the heads of the profession was a sufficient security; but I say again, that, as to a College or a University, there is no such professional spirit existing; and there Parliament must have acted under the belief, that the Commissioners would attend to the preamble of the Scotch University Act, and seek the advancement of learning, and that only.

*Sir G. Cornwall Lewis.*—That is the question, and that only.

*Sir Hugh Cairns.*—Yes; and for the Commissioners to descend from that high platform, where only academic considerations should be entertained, and descend into that common arena in which there is to be a struggle as to who should confer the greatest number of licenses to practise, is to suppose that Parliament overlooked the constitution of the different bodies.

*Mr Low.*—Do you contend that the value of a University degree in Arts is not an important element in the advancement of learning in this country—for example, its value in giving a man a ground for going to a Bishop to be ordained? Does not it attract persons to a University, and does not a University become a more efficient instrument for the promotion of learning in proportion as it attracts students?

*Sir Hugh Cairns.*—I should apprehend that that is not the kind of advancement of learning spoken of in the Act of Parliament,—namely, the promise of a bonus in order to obtain a frequenting of a University by a greater number of persons. The Act of Parliament clearly shows what it means: it means the advancement of learning of this kind—it is for improving the course of study. It is not the advancement of such low learning as may be given upon a very low standard,—pitching your standard low, so as to attract to your University a greater number of persons who will take the benefit of that low standard

of learning. That is not what is contemplated by the Universities Act.

Now, my Lords, I say next, that it is inexpedient to institute this degree of Master in Surgery, and, for this reason, that it is a deception upon the public. I say that this degree of Master in Surgery, granted, as the Commissioners propose to grant it, is a pure and simple deception upon the public. I am now upon the question of expediency of granting it, as the Commissioners propose to grant it.

*Lord Chancellor.*—That is as to the second Ordinance?

*Sir Hugh Cairns.*—It is, my Lord, as to the second head of expediency.

*Lord Chancellor.*—That comes in opposition against the second Ordinance?

*Sir Hugh Cairns.*—Yes, my Lord. And I say that that Ordinance, with regard to the terms on which this degree is to be granted, is a deception upon the public; for the public will believe, with regard to a degree of this kind—they must believe—that, if a person comes into the world with degrees from the University of Edinburgh, of Bachelor of Medicine and Master in Surgery, the degree of Master in Surgery implies something more than the degree of Bachelor in Medicine. Be it remembered, that every person who has the degree of Master in Surgery is also to have the degree of Bachelor in Medicine; and what can the public believe but that the degree in Surgery is a degree which is intended to carry with it the assumption that the person holding it has gone through some course of study, and has proved himself to be possessed of some certain proficiency higher than that which, in his capacity of Bachelor in Medicine, he has attained? Every one of the public knows, that, in order to obtain a degree in Medicine, you must know some Surgery. Every person knows that. And, therefore, if to the degree of Bachelor in Medicine you subjoin, at the same examination and with the same breath, the degree of Master in Surgery, I say that it is a broad and bold statement, that the man who holds those two degrees will not be regarded as something more than a Bachelor in Medicine—that is, as having studied more Surgery than an ordinary Bachelor in Medicine is supposed to do. And, therefore, says the College, Be it known that this man, with those four letters to his name, in respect to the last two letters to his name, is a better Surgeon,

and more qualified to practise, than the man with only the two first letters to his name. My Lords, I say that it is—I will not call it a gross deception—but I say that it is a grave and large deception upon the public, to let a man go into the world with two separate degrees of this kind, conferred at the same time and upon the same examination. And next, in addition to its being a deception upon the public, it is, in legal phraseology, a fraud upon the Act of Parliament. It is that which the Act of Parliament never intended, for Parliament never could have intended it. When the Act speaks of separate qualifications, it must mean separate and distinct qualifications. It is impossible that the Act of Parliament could have meant, that in order to acquire all the powers which are given by the Act of Parliament as to practice, any licensing body was to create licenses of such a kind, that, by one and the same act, upon one and the same examination, a person was to accumulate in himself all the different qualifications which are mentioned in the Act of Parliament. If it be the true construction of the Act, that there is something different between Surgery and Medicine, then it must be true that the intention of the Legislature was, that a person who comes forward with a qualification for Surgery, should have obtained that qualification by some process different from that process by which some other person obtained his qualification in Medicine; and I say that, if any one of those bodies mentioned in Schedule A resorts to a device by which, upon the same substantial and identical qualification, they contrive the appearance of a double and cumulative qualification,—I say that they commit purely and simply a direct fraud upon the Act of Parliament. And I submit that, if your Lordships sanction the Ordinance of the Commissioners as it stands, you will have assisted and aided in defeating the Act of Parliament; because I affirm, without hesitation and without dispute, that, just as the public would believe, if there were no Act of Parliament, that any one who was a Master in Surgery and Bachelor in Medicine was a better man for practising than a mere Bachelor in Medicine, so I say, that the intention of this Act of Parliament was, that any man who was to be both Bachelor in Medicine and Master in Surgery, should have attained that degree by some higher qualification.

*Mr Rolt.*—The Ordinance says that you shall not grant the

degree of Master in Surgery, unless, at the same time, the person has attained the degree of Bachelor in Medicine.

*Sir Hugh Cairns.*—The way in which it is introduced is this, and it is perfectly plain and conclusive:—The Ordinance states, at the beginning of the *secundo*, that the regulations contained in the said Ordinance of the 6th of August 1859, shall be applicable to the granting of the degrees of Bachelor in Medicine and Master in Surgery; and therefore the qualifications for those degrees are to be in the first Ordinance; but that first Ordinance has only one qualification, and therefore fulfilling the first Ordinance, you have your title to either degree. And, moreover, the second Ordinance says the degree of Master in Surgery shall not be conferred upon any person who does not also, at the same time, obtain the degree of Bachelor in Medicine.

*Sir G. Cornwall Lewis.*—Suppose that the Faculty had been called the Faculty of Medicine and Surgery—much turns upon the ambiguity of the term Medicine—but supposing the degree given was that of Bachelor in Medicine and Surgery, how would your objection arise? The qualifications required are both Medical and Surgical; and it appears to be assumed by the curriculum, that the person who is examined for the degree of Bachelor in Medicine is qualified in Surgery. Then it is also said that he may take the degree of Master in Surgery. But, suppose he was called Bachelor of Medicine and Surgery, how would your objection arise?

*Sir Hugh Cairns.*—In this way. My present observations would apply in this way, as to the deception upon the public of which I before spoke. If the University issues, as its first Medical degree, the degree of Bachelor in Medicine and Surgery, there can be no deception in the case, if every one who takes a degree at all must take the degree of Bachelor in Medicine and Surgery. The public then are not misled. Your Lordships will observe, that that is what they have at Berlin and at Paris. The Imperial power has thought fit to say, We will not let any doubt exist; but we will prescribe that all Medical degrees shall run in this way: 'Doctors of Medicine and Surgery,'—the public will not be misled,—every one is to be on the same footing. But if you let a College issue into the world a double qualification of this kind,—that is to say, that one man may have half, and

another the whole of it—the public, who know that the one half implies a knowledge of Surgery, must understand that the person who has got that, plus the other, is a better man than the other.

*Sir G. Cornwall Lewis.*—That is supposing always that every Bachelor of Medicine has not taken the other title.

*Sir Hugh Cairns.*—Yes; they are not obliged to accept it; they may choose not to take it for any reason; it is simply optional with them; and as an option we must deal with it. If your Lordships should think that a compulsion to take the two is proper, I say that that is not this Ordinance; but of course, if it were compulsory to take the two, although this particular argument might apply to all the rest of the argument—

*Sir G. Cornwall Lewis.*—Your argument would be very forcible, if the education was strictly Medical, to the exclusion of Surgery, and that then, after the degree of Medicine was taken, a person should have a right to take out his qualification in Surgery. That does not seem to be the system contemplated by this Ordinance.

*Sir Hugh Cairns.*—I think it is worse, because the education is to be the same—it is to include Surgery—and because the public, as I said before, not only know that, in order to obtain a Medical degree, a knowledge of Surgery is required—

*Sir G. Cornwall Lewis.*—The public would not be deceived, they would have a better thing than they had; for, when they send for a Surgeon, they can never employ a person who has received only a purely Medical education.

*Sir Hugh Cairns.*—My observation upon that is this, that by allowing the Bachelor in Medicine, at his option, to superadd upon the same examination, and at the same time, the title of Master in Surgery, they lead the public to suppose that that man has acquired some peculiar qualification in Surgery, over the man who is merely a Bachelor in Medicine.

*Sir G. Cornwall Lewis.*—Does it mislead the public to suppose that he has had a Medical education, when he has not had a Medical education?

*Sir Hugh Cairns.*—If your Lordship means that a man who has got four letters to his name will not, in point of fact, be a more skilful man than if he had only two, I agree with that; but that is not my argument. It is not what the qualification of the man will be, but what the public will think it will be. I

understand that the same test will be applied to all persons ; and I say that the deception upon the public is in this way : by the public being misled in the comparison to be made between the different men whom they will have to employ.

*Sir G. Cornwall Lewis.*—But, although misled, they will not suffer.

*Sir Hugh Cairns.*—If your Lordship means to say that the public do not suffer when they are misled, I can only express my humble amazement at the proposition, and my entire dissent.

*Earl St Germans.*—You say that the public will be led to suppose that a man has made greater advancement in Surgery than he has done in reality.

*Sir Hugh Cairns.*—Yes, my Lord ; and, of course, the deception is still larger and greater when you look at the fact, that the two degrees are of a different rank ; because, if you make a man a Bachelor in Medicine and Master in Surgery, that is a statement to the public that a man knows more in Surgery than he does in Medicine ; or, in other words, that he stands higher in Surgery than in the Medical branch ; and it is a violation of one of the first principles upon which degrees are granted—which is this, that there should be some attention paid to uniformity of rank in the different steps that are taken ; and it is a statement to the public that there has been in one department a higher rank obtained than in the other. Now, in order to test the effect that this might have upon the Act of Parliament, I will suppose this : Suppose that the Act had said, We will give certain privileges to a Bachelor in Medicine, and certain other privileges to a Doctor, so that, in order to enjoy an accumulation of privileges, the two degrees will be necessary. In that view of things, could a College properly discharge its duty which said, We will institute an examination for the degree of Bachelor in Medicine, and that shall be the whole examination required for the Bachelor ; but, in order to secure those benefits which are given by the Act of Parliament, we will allow any one to take out at the same time the degree of Doctor in Medicine, not for an academic purpose, not because he has shown any superiority over those who only take out the degree of Bachelor, but to secure for himself the different advantages given by the Act of Parliament. I apprehend that this would be a violation of the duty of any University or of any

Commissioners, and therefore could not be sustained. I will, therefore, leave here the branch of the argument which relates to the expediency of granting these degrees; and as to the power of granting the degree of Master in Surgery, I submit that the Commissioners have not got the power, and that all their arguments to show that they have, have every one of them failed and fallen to the ground. But even if I assume—which I deny—that they have the power, I say that it is inexpedient to grant this degree in Surgery, and doubly inexpedient to grant it in the shape and form in which it is proposed to be granted.

I now come to the objections to the other parts of the Ordinances, which, although they may in one sense be described as objections as to details, are nevertheless objections which I desire to present to your Lordships as objections to which we attach very great importance and weight.

*Lord Chancellor.*—They are very material.

*Sir Hugh Cairns.*—If your Lordships should arrive at the same conclusion at which we have arrived, as to the invalidity of this degree of Master in Surgery, it will be still necessary to consider those other objections; and I think your Lordships would desire to send back the Ordinance, with all the observations which your Lordships may think of weight and importance, because otherwise it might come back rectified on one point, and be open to other objections on other points. The first of these separate matters which I will take for the purpose of submitting our view to your Lordships is this—the question of the standard of examination prescribed; and I know very well, that if any remarks upon that were remarks merely meddling with the selection of one book in the place of another, or anything which would be a mere trifling objection to the standard prescribed, I should not expect to succeed in persuading your Lordships to differ from the Commissioners; but my objections relate to questions of principle, which can be put very shortly, and I think will be so substantial as to meet with your Lordships' assent.

The objections divide themselves into two: first, as to the literary examination; and, secondly, as to the professional examination. With regard to the literary examination, the case, I think, is to be judged out of the mouths of the Commissioners themselves. The Commissioners of 1830, as I will show your



Lordships, considered the question of University education in Scotland, and thought that the literary standard for degrees in Medicine should be higher than it was, and, amongst other things, especially that it should include some knowledge of Greek. The Commissioners, thirty years ago, thought that. The present Commissioners say, We are of the same opinion now—we think it ought to include Greek. Moreover, we think it must include Greek at no distant period; but because we should not like to make any sudden change, we will not make the change: we will not introduce into the examination the element of Greek, but we will leave that to chance, to some future time and to some future authority. And I must admit, that I should rather blush to say, that of all the Universities in the world,—in England, in Ireland, and on the Continent,—the only Universities which do not require, as part of the literary education preparatory to the examination for obtaining a degree in Medicine, a knowledge of Greek, are the Scotch Universities. In England, in Ireland, and on the Continent, they all require a knowledge of Greek; but the Scotch Universities and their Commissioners say, No: we are aware that we ought to require it; thirty years ago, the Commissioners thought so, and we, the present Commissioners, think so; we are sure it must be done at no distant period, but we will not take it upon ourselves now to make the change. And, my Lords, the observations of the Commissioners upon that point, I must say, are very striking: they say, at page 12 of their Report, and at page 98 of the consecutive paging, between the letters C and D, ‘This is especially the case with regard to the preliminary education, the requirements in which have been hitherto of a very limited nature; all that the University now requires from its candidates for the degree of Doctor of Medicine being, that they show “a competent knowledge of the Latin language.” Some advance in this respect is imperatively required. But it is obvious that a gradual, and not a sudden change, is the most desirable course. On this subject, the Commissioners cannot do better than quote the opinion expressed in the Report of the Education Committee of the General Medical Council, issued in August last, that “They are impressed with the conviction that it would be prudent to beware of proceeding too suddenly, or of attempting too much towards the remedy of a wide-spread and long-existing evil.” The Ordi-

nances, therefore, while the requirements which they introduce are considerably in advance of those now in force in the University, do not propose at once to exact so high a degree of preliminary education as the Commissioners think desirable, and as it will be proper ultimately to reach. Thus, while it is proposed to make a knowledge of Greek essential only to the degree of Doctor of Medicine, the Commissioners think that hereafter an examination in Greek should be passed by all candidates for Medical degrees in the University; and they do not doubt that ere long this will be accomplished.' Now, I say if that is all, they ought to say——

*Lord Chancellor.*—They might have said, after the year 1861 or 1862.

*Sir Hugh Cairns.*—Yes, my Lord, they might have said so; for it would not be a very serious task to impose an examination in the four Gospels, at the end, say of a couple of years. If that is the view of the Commissioners, now is the time to do it. It is vain to expect the University to make these changes by its own individual power. Now is the time to do it; the Commissioners say it is proper to do it, and it was thought proper to do it thirty years ago. They say, that the General Council of Medical Education think that the change ought not to be too rapid, according to their Report of 1859; but I will read to your Lordships what that same Council of Education said in 1860, to be found at page 26 of the consecutive paging, at letter F. They say that they have come to this resolution, 'That it is not desirable that any University of the United Kingdom should confer any degree in Medicine, whether that of Bachelor or Doctor, upon candidates who have not graduated in Arts, or passed all the examinations required for a Bachelorship in Arts, or examinations equivalent to those required for a degree in Arts.

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*Sir G. Cornwall Lewis.*—Do you think that on the Continent any Graduates in Medicine are required to understand Greek?

*Sir Hugh Cairns.*—Yes. And therefore we get to this, that the former Commissioners were of my opinion, and the present Commissioners are so also; but the Council of Education, the Commissioners seem to have thought, would object to a sudden change, but they are of the same opinion.

Now let us see, first, as to other degrees in the United Kingdom. If your Lordships will be good enough to turn to page 24

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of the consecutive paging, you will find what are the requirements of other Universities in the United Kingdom; we have there Oxford, Cambridge, and London, the Dublin University, and the Queen's University in Ireland, and in every one of them Greek is required. At Oxford there is the degree in Arts, which comprehends Greek; but Cambridge does not require a degree in Arts, if there have been five years' Medical study, but it requires a knowledge of one of the four Gospels in Greek. The London University, one Greek author; Dublin University, classics generally, or a degree in Arts. In the Queen's Colleges in Ireland, the matriculation examination comprehends any two of four Greek authors. The University of Edinburgh makes five items imperative; but then, as to the second division, it gives a license as to taking any two of the following, Greek, French, German, etc., rendering it optional whether Greek shall be known or not. Now, before I pass from the United Kingdom, let me just say a word about the licensing bodies; and really one's surprise is, that they should take upon themselves to discharge the duty of examining in literary proficiency at all. In place of being surprised that the standard is low, one is surprised that they have had any at all; and the observation which one may make, that some of these bodies—for instance, the Colleges of Physicians and Surgeons in Edinburgh, and the Faculty in Glasgow—do not require Greek absolutely, but only as giving an option about it, I think does not bear upon this question, because this is purely a University question, and not a question of licensing bodies. I do not expect to hear that the omission of Greek from the Scotch University curriculum, as compared with the curricula of Universities in England and Ireland, and on the Continent, is to be justified on this ground, that they wish to compete with the licensing bodies, and to attract from the licensing bodies, candidates to come to the University. Therefore I say that this is a University question strictly, and we are only to compare the case of Edinburgh with the case of other Universities.

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With regard to modern foreign Universities, I think your Lordships will find the question summed up in pages 24 and 25 of the consecutive paging, under the 41st head, where it is said: 'It would be vain to search among the Universities of the Continent for Medical degrees conferred on persons possessing so

little preliminary education as that which it is proposed to require in the University of Edinburgh. Choosing for examples the systems of three countries,—France, Prussia, and Belgium, certainly not the least worthy of imitation in such matters,—it will be found that in these countries it is not thought that Medical graduates of Universities can dispense with literary and scientific qualifications of a high class. In France and Prussia, the only Medical degree conferred by the Universities is that of Doctor. The example of France is peculiarly instructive; for it happens that, in 1852, a prevalence of mistaken utilitarian degrees led to a considerable lowering of the preliminary standard, more especially in the department of Literature. This reduction of the standard was accomplished in spite of the strongest opposition on the part of the Medical profession. The most distinguished members of that profession, however, persisted in their opposition, and they had the earnest support of the whole body. At their instigation, the Minister of Public Instruction referred the question, Whether the standard should be again raised, to the three Medical Faculties of the University of France. The two most celebrated of these, Paris and Montpellier, reported that it should. To decide the question still more authoritatively, it was referred to a Commission, composed of the most distinguished Physicians and the most eminent members of the University. The Commission gave the same advice. The question was carried before the Imperial Council of Public Instruction, and the same result followed. Lastly (so important was the matter considered), the question came, by the order of the Emperor, before the Council of State; and the most illustrious members of the present Government of France could come to no other conclusion than that which had been arrived at by the other bodies whose opinion had been previously called for. In accordance with these recommendations, the higher standard was restored in 1858, after six years' experience of the lower. By the present regulations, a student, before he can enter the Faculty of Medicine, must take the degree of Bachelor of Letters. For this, an examination in the following subjects is required:—Latin, Composition and Translation, Greek, French, History, and Geography, and the Elements of Experimental Natural Philosophy. After entering the Faculty of Medicine, the student is allowed six months "*pour reprendre*

*haleine*," as the French Report expresses it, before he is called upon to pass his examination in Science. He must then pass a trial in Pure and Applied Mathematics, Natural Philosophy, Chemistry, Botany, Mineralogy, and Zoology. The Prussian system is equally adapted to securing that future Physicians are to be men of education. Before a student can enter the Medical Faculty, he must pass an examination much higher than that of Edinburgh University. He is required to be examined (1) in German, in Latin Composition and Translation, Greek, and French; and (2) on Religion, History and Geography, Mathematics, Natural Philosophy, and the Elements of Mental Philosophy. Before the student can graduate in Medicine, he must pass the Philosophical examination, the subjects for which are—Logic, Psychology, Experimental Natural Philosophy, Chemistry, Botany, Mineralogy, and Zoology. In Belgium there are two Medical degrees, that of "Candidate" and that of "Doctor," but the whole examination in preliminary education must be passed before the lower degree can be taken. The standard is slightly lower than the French or Prussian, but is higher than that of Edinburgh. The examination comprises Latin Composition and Translation, Greek, either French, Flemish, or German, the Principles of Rhetoric, and the Elements of Algebra and Geometry; and students must produce a certificate of having attended a course of Psychology. Therefore we have, I think, shown clearly that if this is to be the rule, the Scotch Universities will have the somewhat inglorious distinction, as being the only Universities which are exempt from this, which, after all, in the present day, is not a very strict requirement—namely, a knowledge of the Greek language.

I may observe here, that I do not well know how to reconcile the view of the Commissioners on this point, with some of the general observations which they make, and which are shortly stated in page 93 of the consecutive paging, or page 7 of the Report, where they speak of the importance of uniformity over the whole kingdom. They say, 'They have been further convinced, having regard to the practice which prevails in the English Universities, of conferring first the degree of Bachelor of Medicine, and afterwards that of Doctor of Medicine, that, now that the whole of the United Kingdom is comprehended in

one system of registration by the Medical Act, it is desirable, with a view to uniformity, to alter the system existing in Scotland, of conferring the degree of Doctor of Medicine, as the degree of the University qualifying for ordinary practice.' That may be a very good argument for introducing the degree of Bachelor in Medicine; but if it is, it is also an argument for altering it to that which is the standard in the preliminary examinations in Universities in other parts of the kingdom; and I submit that, as to the preliminary examination, the case is as conclusively proved for one definite alteration as anything can be. It may be desirable, and your Lordships will decide whether it should be done in this way, that, after 1861 or 1862, a knowledge of Greek should be required; but that it should now be provided for, is, I apprehend, clear.

Now, the second part of the standard is, as to the professional education; and that will turn also, not upon a question of elaborate detail, but upon one definite point; and it is put so concisely in page 25 of our Case, that I think it will save time if I request your Lordships' attention for a moment to the way in which it is represented there. It is the 46th section, and we say there, 'The Regulations for the double qualification conferred by the College of Physicians and the College of Surgeons, and by the College of Physicians and the Glasgow Faculty, require that a candidate shall have studied Medicine during four winter sessions of six months each, and three summer sessions of three months each. The Regulations for the University are such, that only four winter sessions, with, at most, one summer session, are required. Students preparing for diplomas from the Colleges must therefore attend Medical Classes thirty-three months in all; those wishing the distinction of the University degree require only twenty-seven months.' Now, do not let it be supposed that a difference in time is unimportant; for it will be all-important to persons to find out how they can get a degree with the least possible trouble and expense, and a matter of six months will be a matter of great consequence. 'It is stated by the Commissioners, that the inferiority of the University curriculum consists mainly in its not requiring double attendance upon some of the classes.' The Commissioners thought it necessary to afford to your Lordships information upon this point, to justify what they had done; and if I find that their justification

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rests upon a pure mistake, there is an end, of course, to their case. Their justification is this: As to the measure of time, we only require twenty-seven months, whereas the licensing bodies require thirty-three; and the reason of that is this: the licensing bodies require that the students should duplicate their attendance on some classes,—that is to say, in very important subjects, such as Anatomy and Surgery, as to which a person would not acquire sufficient information by one course of Lectures,—and he would have to attend a second course of Lectures in the same department of learning; and therefore, say the Commissioners, that must be the explanation of these licensing bodies requiring six months more than we do,—that their students are required to attend a double course of Lectures in some particular departments, whereas we do not require any one to attend a double course of Lectures. But this is a pure mistake; the difference between them is the time of summer attendances—namely, the attendances during two summer sessions. Then we go on: ‘But, in point of fact, the double attendance applies to classes which can be attended during the winter sessions only. The question here at issue really is, whether the student is to study nine months during the year, or only six. By the Regulations in the Ordinances, the student may, except in one of the years, during the whole of his curriculum, remain half the year not engaged in Medical study. This practice of allowing students to be unoccupied for half of the year is not sanctioned by the example of other Universities, either British or Continental. For instance, in the Universities of France and Prussia, the students must study four winter and four summer sessions. The Ordinances, no doubt, will be attended with the advantage of enabling the University degree to be obtained at less cost; but this is purchased at the expense of an inferior education, and at the loss of conferring degrees upon men who have had less experience and less study, and whose minds are less matured in Medical knowledge. It need scarcely be added, that it is not a fitting position for a University to confer its degrees upon a smaller amount of professional study than is required for an ordinary license to practise.’ I really do not think that there could be anything which could be more injurious in its application to the character of a student than this, to render it possible for a student to come for six months in the winter to Edinburgh,

and take his education in the University course ; and, during the other six months entirely give up his professional studies, and perhaps apply himself to some other business, and then come back at the end of six months to resume that which he has so long intermitted and forgotten.

*Lord Chancellor.*—In the meantime he might go to some other University—

*Sir Hugh Cairns.*—If that had been the required course. If the doing of that had carried with it any privilege, it would have been a different matter ; but he would not, because it would be the same thing in other Universities : he would come in for the summer session there. It, therefore, comes to this, that it is a question of nine months or six months in the year ; and do your Lordships think that that which is done by other Universities is the best plan or the worst, that they should study nine months, or for six ? I say that I think it is better that they should study for nine months. But, moreover, it would be calamitous, if there is to be a competition of this kind between Universities and licensing bodies ; for your Lordships will not, I presume, suppose that the licensing bodies will pitch the standard too high : they have given the best test that they think there ought to be nothing less than this, by making it their standard. But if there is to be a competition, to see which can bid the lowest, we shall have, in the place of the advancement of learning, a serious deterioration in learning. Upon the question of professional learning, I submit to your Lordships, that the minimum required by a University should be at least equal, if not superior, to that which is required by the licensing bodies.

The next point is this, as to the course which it is proposed to take as to the degree of Doctor in Medicine—

*Sir G. Cornwall Lewis.*—What was the reason on the part of the Commissioners for requiring six months ?

*Sir Hugh Cairns.*—They give no more reason than I have said ; the difference between them and the licensing bodies is to be found in the observation which I have referred to, and it is at the bottom of page 97 of the consecutive paging. There are the summer sessions in Edinburgh, and your Lordships will understand that this is a question of length of attendance—

*Lord Chancellor.*—For certain classes ?

*Sir Hugh Cairns.*—For the sessions in question. Every year



there must be some students attending the different classes, and it is not a question of instituting summer sessions, for they are instituted already. During one summer session the students must attend, and, therefore, every year there is an attendance of a certain number of classes; but the question is, are they only to attend during one summer session or three?

*Mr Rolt.*—The question is, whether the subsequent examination is such as to secure due learning and due proficiency on the part of the person examined. One scheme gives more detail than the other.

*Sir Hugh Cairns.*—It is not to rest upon the examination alone. If it did, this consequence would follow, that extra-academical education might be pursued to a much greater extent. At the bottom of page 97, the Commissioners say: 'The circumstance that the Ordinances make no provision for any repetition of attendance on classes, may explain a slight apparent inferiority in the aggregate amount of attendance required by the Ordinances as compared with that required by some of the corporations, as, for example, the Edinburgh College of Surgeons. The duration of study is, however, in fact, the same,—the candidate, in either case, being able to obtain his degree or diploma at the end of the fourth winter session, that is, after a period of three years and six months from the commencement of his Medical studies.' But they forget the question, how he is to be occupied in the meantime, which, in one case, involves his attendance at the summer sessions, and in the other case, not at all.

I now come to the manner in which the Commissioners propose to deal with the granting of the second degree of Doctor in Medicine; and I must say, with regard to the granting of that degree under the present regulations, that I suppose a degree was never conferred before, upon the same basis as this degree of Doctor in Medicine is proposed to be conferred upon. One always supposes that a higher gradus implies some further and higher qualification in the particular Faculty in which that degree is granted; and will your Lordships believe that the meaning of the Commissioners is this, that there is not to be a shadow more of test of professional qualification for a person who is to be made a Doctor in Medicine, than there is to be for a Bachelor in Medicine? He is to be a man three years

older, but of course nature will produce that qualification for him. He is, moreover, to be a person who has not abandoned his profession; and your Lordships may readily assume that a man who has abandoned his profession, would not care much to have the degree of Doctor in Medicine given him. Then we impugn the qualification for the degree of Bachelor in Medicine, as being too small; but we find, as we go on, that the degree of Doctor in Medicine is to be upon the same qualification with the addition of those two qualifications which do not fill my mind with any proof of superior merit.

*Sir G. Cornwall Lewis.*—There are degrees in Arts granted in Universities, and there is no additional examination required afterwards.

*Sir Hugh Cairns.*—There is a thesis and some disputations, which I think are a proof that it was intended that there should be a higher proficiency, even although the test may not be a very effectual or satisfactory one. But we are dealing here with a case of much more public importance as to the lives and well-being of the public, than a mere honorary degree in Arts, and I am anxious that your Lordships should understand how the Medical degree of Doctor is placed. The individual is to be three years older, and not to have abandoned his profession. As I have said, time will of course make him older; and no man who has abandoned his practice will wish for the degree of Doctor. But what is the only addition that he is to have beyond that? He is to have a knowledge of Greek. In order to make him a Doctor in Medicine, he is to have acquired a knowledge of Greek; but are we to believe that a person who is required to practise during the three years, is to occupy those three years at the same time by learning Greek? It strikes me as being one of the most absurd rules that ever was made; and I say, that if Greek is to be learned, let it be learned as a preliminary to all; but could anything be imagined more ridiculous than this, that a man should come forward at the end of three years, and that then his only additional examination is to be in Greek, with the chance of being plucked in Greek, and prevented from becoming a Doctor in Medicine because he has been plucked.

*Sir G. Cornwall Lewis.*—We have great authority for saying that Greek may be learned at seventy.

*Sir Hugh Cairns.*—Yes; and there are many men, particu-

larly self-educated men, who, at all times of their lives, are adding that knowledge which they regret they had not acquired in their youth. But the case that I am suggesting is that of a man who has not learned Greek at the beginning, and has not passed his examination; and I say, do your Lordships think that a man will peril his title to the degree of Doctor in Medicine upon the chance of his acquiring a knowledge of Greek in the interval between his first and his second degree? If the difference between a Bachelor in Medicine and a Doctor in Medicine is to be this only, that the Doctor in Medicine knows Greek, and the Bachelor does not, what are the public to think of that state of things? The result would be, that when the arrangement is introduced—if it is ever introduced—by which a knowledge of Greek will be made a preliminary step to the first degree, there will be no difference at all between the first and the second, and the case therefore will sink still further into the abyss of absurdity. The Commissioners say, We do not think that any man should be sent out into the world not qualified to practise. There I agree with them; but what I want to know is this—Is Medicine so peculiar an art that there are to be no grades in it at all; or must a man, who assumes to practise at all, be supposed to be so perfect that he is not susceptible of further improvement? If so, they can give him that first degree of Bachelor; but if he is susceptible of further improvement, then let him give some proof of that further improvement. But do not leave the public to suppose that the Doctor in Medicine is a man superior to the Bachelor in Medicine in some other way than by being three years older, and having some knowledge of Greek. The public cannot conjecture anything so absurd to exist, as a rule of that kind.

*Sir G. Cornwall Lewis.*—To refer to the practice of the Bishops: a person, before he takes Deacon's orders, is examined; do you know whether it is the custom for the Bishops ever to examine priests for orders?

*Sir Hugh Cairns.*—I think so, always.

Now, my Lords, I am happy to say, that there are only two other points upon which I have to ask your Lordships' attention, and the next is the question of the Examining Boards. The question of the Examining Boards is one with regard to which I apprehend the principles, which I shall submit to your

Lordships are those upon which the Commissioners have professed to act; but the difficulty which I have on this point in understanding the conclusion of the Commissioners is, that they have enunciated true principles and declined to act upon them. Their view is this, that it is a bad thing in a University to have as Examiners those who are Professors of the classes. It is obviously a bad thing, and the Commissioners say they think it is a bad thing; they think that the control ought not to be with the Professors of the classes; and enunciating that proposition, how do they act upon it? In this way: There are to be fifteen Examiners, twelve of those are Professors of the University, and they then introduce an external element of three only; and the result is this—it being admitted as an axiom that it is a bad thing to give the control to the Professors—they make the Professors reckon twelve votes out of the fifteen. I shall not forget the expense, but I start with this, and I will read to your Lordships a short view of the Commissioners of 1826, upon this point, which, I think, expresses the whole argument in a way which is most satisfactory. At page 52 of the consecutive paging, the Royal Commissioners of 1826 say, ‘When the candidates are examined by the Professors there is always the greatest risk that the examinations will degenerate into a mere form. The qualifications of many will be known to the Professors. The Professors will naturally be disposed to be easily satisfied in regard to the qualifications of those who acquitted themselves to their satisfaction as students; and even if more rigorously conducted, the examinations will naturally be made to correspond to the proficiency acquired in the classes, and confined to the particular topics introduced in their respective lectures. The character of the Professors will, in fact, be engaged in the success of the candidate. Each will be examining his own pupils; his eminence as a teacher will be interested in the result, and the necessary bias of the mind will be to make the degree the reward of the exertions and progress made in the class. Higher attainments will not be deemed necessary, and the degree would thus soon become merely a reward for eminence in the classes, without requiring greater exertion or encouraging greater acquisitions in knowledge. We apprehend that any approach to such a state of things would counteract the object which we have in view, and that the degree would be

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land, p. 18.

so indiscriminately conferred that it would never be an object of ambition or be raised in public estimation. The experience which has already occurred as to the Scotch Universities, demonstrates the truth of these remarks, and affords conclusive reasons for apprehending that the value of the degree will not be raised if the examination of candidates shall be left in the hands of the Professors. The nature of the duty of examining candidates for degrees, appears to us also to be very different from that which the Professor has to discharge in examining his class; indeed, the very situation in which the Professors stand as instructors, seems likely to disqualify them from the peculiar duty of examining for degrees, however great their individual eminence may be. When daily examining a great number of students, the attainments of most of whom must be greatly inferior to the qualifications necessary for degrees, it is hardly possible that the Professor should not form a certain fixed estimate of the average standards of the talents and knowledge of his class, and conduct his examination for degrees with reference to it. We are of opinion that the examination for degrees should be conducted both by a much more searching inquiry, and with a view of securing attainments of a higher order; and if provisions directed to this object, such as the appointment of separate Examiners, should lead to some intermediate study, after the termination of the fourth session, and before the degree is taken, our object will only be more effectually attained. The appointment of separate Examiners for this special duty, appears to us to be essentially necessary for the success of any scheme intended to raise the value and the practical usefulness of the degrees conferred by the Scotch Universities. It has been thought that there might be some difficulty in obtaining persons properly qualified to be Examiners; but if that is the case it is an additional proof that the system of education, as at present conducted in the Universities, stands much in need of improvement.' Now, the Commissioners are directed by the Act of Parliament to have regard to this Report. It is forced upon them as conclusive. It is unqualified in its terms, and, I submit, perfectly satisfactory in its reasons that there should be a separate Examining body; not an element of one, two, or three, but that the examination should be conducted by separate Examiners. Now, on this point my

opponents are perfectly consistent ; for they come before your Lordships on a petition which quarrels with the Commissioners for having introduced the element of three separate Examiners ; and that is quite consistent. I can understand people who say, We differ from what the Commissioners of 1826 said ; it is an illusion—a chimera which they have conjured up—as to the danger of Professors examining their classes ; we maintain that Professors may examine all the candidates. That is consistent, although I do not think it will prevail ; but the view which I think is very inconsistent, is the view of the Commissioners, for I want to know why you should have three separate Examiners ? The independent Examiners are not to be the superintendents of the examination ; they are to be Examiners to do separate parts of the work. It may be chance or design which will assign to them a particular part of the examination ; but once fix them down to be the Examiners of that particular department, they have nothing to do with any other department, and any interference will be resented. Examiners, as the practice is in all Universities, have never any consultation of that kind ; but, each having examined in his own department, the whole of them consult together with the view of comparing the marks that are to give to each candidate a standing in the whole examination.

*Mr Rolt.*—They do not join, one being an Extra-mural Examiner, and another an Intra-mural Examiner.

*Sir Hugh Cairns.*—No ; it is merely that there is to be a simple element, in the fifteen, of three, in the whole examinations. If there is a junction between them at the end, the three will be overruled by the twelve, and the Intra-mural Examiners will be virtually the Examiners of the Board. Expense is not put forward by the Commissioners, as that which would be fatal to the scheme recommended by the Commissioners of 1826. I believe that the independent Examiners are to have payment out of the funds granted by the State, of L.100 a-year. And the other Examiners, the present Professors, at present have a reward of this kind : they are allowed to divide among them the Graduation Fees ; and that is a handsome and considerable remuneration for them, for the trouble of examination. The Commissioners say that they are going to alter this, and to throw

the Graduation Fees into a common fund for the benefit of the College; but they do not say that they are not going to pay the Professorial Examiners some reward, in order to recompense them for examining. Therefore, until we find that the funds of the College will not answer the expense, and that the expense by paying Professors will be so inconsiderable as compared with paying Extra-mural Examiners, we cannot assume that the expense is an obstacle. I think we may assume the contrary. Here is a great subject which the Commissioners of 1826 represented as vital to the progress of the Scotch Universities,—not as a thing which is better than another thing, but as that which is vital to the well-being and progress of the Universities,—entirely admitted in principle by the Commissioners, and utterly disregarded in practice. I therefore submit to your Lordships, that that is an Ordinance which cannot receive the approbation of Her Majesty with your Lordships' advice, and that approbation of that Ordinance ought to be withheld.

The last point relates to the Extra-academical teaching. At first sight one might have some preconceived idea that teaching is better inside the walls of a University than outside; but I think, when we consider both the nature of a University, and the nature of Medical teaching, that that is an idea which vanishes. Here again I have the Commissioners with me in principle, because they admit Extra-academical teaching, to a certain extent, in Medicine. That Extra-academical teaching is not only proper, but essential, every one will admit, who considers what Clinical Medicine and Clinical Surgery are, and that the instruction in them must be administered at the bedside of patients. Therefore I say, my Lords, that the Extra-academical teaching in Medicine is not only proper, but is absolutely essential; and the question only is, the extent of it. But now let me speak of a question which has existed for a long time in the University of Edinburgh, and which has been treated by the Commissioners in a way very different from that in which it was treated by the former Patrons of the University. The Town Council of Edinburgh were so convinced of the truth of the principles which I have endeavoured to enunciate, that, as Patrons of the University, they introduced, a certain number of years ago, this altera-

tion in the practice, namely, allowing Extra-academical teaching of the kind I have described, to qualify as so much teaching administered in the University. The *Senatus Academicus* were in arms immediately; and they said, We cannot tolerate this; and so important did it appear to them, that they brought the case into the Court of Session, and afterwards to the House of Lords; but both the Court of Session and the House of Lords ruled that the Town Council had a right to do what they did.

*Lord Chancellor.*—Upon a point of law?

*Sir Hugh Cairns.*—Yes, my Lord. And, in point of history, from that time has dated a great increase in the reputation, and character, and acceptability, of the University of Edinburgh; and it has worked in the happiest way. Many persons went to the University of Edinburgh, because they could combine those two ingredients in their education—attendance at the University, and the University degree, with attendance in the city at eminent Schools and Hospitals there existing under the tuition of eminent men, who, not being Professors in the University, yet are teachers of Medicine, and Physicians and Surgeons in the Hospitals. And that showed the wisdom of the Town Council, as compared with the more illiberal notions of the *Senatus Academicus*. Then, my Lords, with regard to what is now done, I will sum up the whole, by reading from the statement that we find in our Case, where, I think, the subject is exhausted. In page 29 of the consecutive paging, with regard to Medical Schools, you will find these words: ‘The last point on which the petitioners object to the Ordinances, is in regard to the restrictions in the selection of Teachers, placed upon students desirous of attaining degrees. The petitioners complain that, although only one year’s attendance in the University is required, such students as are in Edinburgh will be forced, in regard to three-fourths of the classes required, to attend the Lectures of the University Professors. After careful reconsideration of the Ordinances, the petitioners feel themselves at a loss to understand the statement in the Commissioners’ Report, that the Ordinances allow a very large proportion of the classes absolutely required, to be attended under Extra-academical Teachers. Had this been the case, the petitioners could have had no objection to maintain on this point. The Ordinances are sufficiently liberal in admitting competition

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where no competition is to be feared. One year's study, with attendance upon two classes, will enable a student, attracted from some other University, to graduate in Edinburgh. But, under the Ordinances, a student studying throughout in Edinburgh must attend the Professors in the University, not in two, but in no less than twelve out of the sixteen branches of Medical study. And even the latitude of recognition allowed out of Edinburgh includes only other Universities' Schools, while the Dublin Hospital Schools, and such Schools as St Bartholomew's, Guy's, St Thomas', St George's, and other great Hospital Schools in London, and the Andersonian Institution of Glasgow, are recognised only to the limited extent of four out of the sixteen classes. Yet it cannot be maintained that the Medical education, or the means of giving it, in the former, are superior to those in the latter class of schools; or that, either as a matter of protection to certain Teachers, or as a restriction on the student's choice, such a regulation can be defended. The effect on the University is to prevent students, who have passed three years at the great majority of Medical Schools, from coming to Edinburgh to finish their education and graduate, unless on the condition of reattending most of their classes under the Edinburgh Professors.'

Then the opinion of a very eminent man, Professor Syme, is given upon the subject, in the 55th clause of the Case, in which he makes an observation which every one must admit, namely, that nothing can be so bad for a University as to be tied to the original Professor, who, perhaps, had been competent for the place, but who, in public opinion, is far distanced by some eminent man in a private Medical School. He shows how injurious it is to a University, that students coming to that University should not have the choice, at the same time that their education in that University is going on, of having the better education which they can get in the Medical Schools. Then the petitioners state that, as Medical corporations, they can have no interest in this matter, except that which is best for Medical Science, and for the credit of it; and then they show how the history and practice of other Universities is entirely at variance with the view of the Commissioners; and they show that Sir William Hamilton points out, in a very marked way, how

liberal Oxford is upon this point, and that Oxford, in this respect, has approached most nearly to giving effect to what is the original idea of a Doctor or a Professor in a University, namely, that it qualifies him to teach.

Then we add, at the bottom of page 29: 'To this must be added the consideration that the great majority of Medical Schools are what Universities term Extra-academical. This is unavoidable, from the very nature of Medical education, which can only be given efficiently by the Physicians and Surgeons attached to great Hospitals; and hence, the only way to join these schools to the Universities, is for the Universities to recognise them. The petitioners, therefore, urge the removal of the limitations in relation to these Schools.' Then we show how the interest of the students is involved in this question; and in paragraph 59 we add a passage from the Address of the Rector of this very University upon his recent installation, who, upon this head, says, 'I think there is no doubt that, in proportion as we can give a just freedom to teaching, by introducing into it the elements of a wholesome competition, do we approach more closely to the primitive spirit and system of the Universities.'

Now, your Lordships will hear upon this point, as upon others, an argument from those petitioners who are opposed to us, who are the *Senatus Academicus*. I pray your Lordships to remember who the *Senatus Academicus* of this College are, because we are not here as opponents of the University of Edinburgh. I observe with very great surprise, that the *Senatus Academicus*, who are the Professors of the University of Edinburgh, who have literally only one vote in the University Court, out of seven or eight, have taken upon themselves to affix to the petition presented to your Lordships the Seal of the University, which they have no more right to use than I have. They have sealed the petition with the Seal of the University of Edinburgh, to which they have in some way had access.

*Mr Rolt.*—Nobody else has any right to use the Seal.

*Lord Chancellor.*—The *Senatus Academicus*, for certain purposes, represents the University, and uses the University Seal.

*Sir Hugh Cairns.*—My Lord, for the present purpose of restricting the Regulations of the University, the only power to interfere would be the University Court; and therefore for the purpose of now expressing an opinion upon the Ordinances, the University Court, and not the *Senatus Academicus*, would represent the University. The Professors, of course, feel this to be a question in which there can be no doubt about their individual interests: that is quite clear. The Professors would desire, and they always have desired, to admit the teaching Extra-academical as little as possible. I only ask your Lordships not to receive their views (of course their arguments will be very able, and entitled to every weight) as if they were appearing here as the guardians of the interests of the University;—they are the guardians of their own interests; the interests of the University are in the University Court. The observations of the Rector suggested the remark to me, because the Rector and his Assessor, and the other persons whose names are specified in the Act of Parliament, compose the University Court, in which the *Senatus Academicus* have only one vote. It is for the interest of the University that the Extra-academical teaching should be as large as possible, and that you should give a liberal reception to those who flock to the University for teaching. I submit that this is a point upon which the Commissioners also have failed, and that approbation should be withheld from the Ordinance, until it is made upon this point more liberal.

My Lords, those are the various points which I wished to go through, in addition to the principal argument with which I began, and to which I shall not now add anything, only hoping that upon all these matters your Lordships will be pleased to express your opinion to Her Majesty, that she should withhold, for the present, her approbation of these Ordinances.

*Mr Rolt.*—My Lords, it is now my duty to address myself to the arguments of my learned friends; and I think it is due to those arguments to say, that as to the greater part of them at least, they certainly would have elicited the admiration of the schoolmen of those dark ages into which my learned friends carried us. The capacity for avoiding the substance for critical verbal disquisition—for leaving substantially untouched the leading question, viz., what ought to be the reasonable construction of powers of this kind, with a view to the advancement of learning in the University of Edinburgh?—has, I think, been very successful, and is entitled to that meed of admiration.

Now, my Lords, I shall follow the arguments which my learned friends have discussed, in the order in which they have taken them; and the first question is this: What is the power of the University (I am now speaking of the power) and of the Commissioners under the Act of Parliament, either to create new degrees or to mould and modify existing degrees, so as to adapt them to the advances which have been made in knowledge and science, and to the changes which have taken place in language and in the meaning of words? In truth, when we come to examine what has been done, we shall find that very little, if anything, more has been done than to adapt the existing degrees, to mould the language to fit it to the meaning of things, as that meaning is now understood; whereas my learned friends have desired to satisfy your Lordships that the form of words originally used centuries ago, as the title of a degree, is in that form of words an entity not to be touched; that it is the three, four, or five words which constitute the degree; and that any change in those words is altering the entity of the thing. It is that which you have to inquire into—it is that which you have to deal with. Because Medicine at one time, before science had advanced, was limited so as to exclude Surgery, and the healing art now by common consent includes Surgery within its ambit—the boundary between Medicine and Surgery also being actually invisible, nobody being able to draw it, the things being one and the same—because some little ambiguity in language remains from the original use of the word in the form in which it was used, we, forsooth, are forbidden, and the Universities have not the power, and the

Commissioners, who are to set everything right, have not the power, to use language which will be appropriate to the thing as it now exists. My Lords, that, I say, is in substance the contention between us—What are the powers with reference to these degrees, and to moulding and modifying them in this manner?

Now, my Lords, it is not necessary for my argument to contend that there is inherent in Universities, in the abstract, a power to create new degrees.

*Sir G. Cornwall Lewis.*—Do you admit that the powers of the Commissioners are only co-extensive with the powers of the University?

*Mr Rolt.*—Certainly not, my Lord. I say that one of the sections of the University Act is intended to meet such a case as this. I think that the power of the University is large enough; but if there is any question about it, you will find that in the Act of Parliament it is intended that the power shall be given. Of course, I contend that the power is large enough without the Act of Parliament.

Now, my Lords, upon this, which I take to be the first question—namely, the power of the University; and, if that is not sufficient, the power of the Commissioners—I do not think it is essential to my argument to insist upon the inherent power of Universities to create degrees; but it is very useful to the inquiry, and I propose to pursue it for a short period of time. My Lords, if the question be simply, What is the power of a University in the abstract, without going further, and defining what the University is created for,—there, of course, is nothing really to inquire about. We must know the nature of the Universitas, the communitas—the corporation, as it were—of which we are speaking. But you cannot call into existence a corporation, a Universitas, a communitas, for nothing; it must be called into existence for some purpose; and, being called into existence for some purpose or other, there must be incident to its existence some powers or other. That is obvious.

Now, to deal with similar institutions, similar in their creation—corporations of other characters, a communitas of another description, a municipal corporation, an ecclesiastical corporation, an educational corporation—you cannot talk in the abstract

of what is incident to a corporation; you must know what the corporation is for, and for what purpose it is called into existence. If you have a municipal corporation, there are incidents to it; if you have an ecclesiastical corporation, there are incidents to it; and so, if you have an educational corporation—which I understand the *Universitas* to be—there must, obviously I think, be some powers which are necessarily and admittedly incident to the mere fact of the existence of such a corporation. My Lords, one would say that it would be scarcely possible for an educational institution to get on without certain incidents; and the first, whether expressed or not, would be that the status or degree of each member of the *communitas* must be defined—who are to be the teachers, what is to be their title, what is the rank or degree of every person in the community. Surely that is necessary to be known; and if you have the *communitas* created for educational purposes, whether the act of creation has expressly given you the power or not, I know not how you are to go on for a day or an hour without having the power of settling the degree of each person in it. It is obvious that there is the origin of the degree; you must know who are the teachers, you must know who are the learners, you must have a scale of teaching, and binding qualifications for teachers. All your teachers are not to be from foreign bodies; your teachers will come from within your own walls. You will have degrees, which will point out who are your teachers; and it seems to me, that one of the first incidents of an educational corporation must be, that you must have the power of settling the status or degree of each member of the community.

My Lords, that is necessary also to give some encouragement to those who are amongst the learners. I will not insist much upon that; that might be done, probably, by other means. But there is to be perpetual succession in the corporation. What is to be the qualification of those who are to come after you, who are the present members of that community? You must have some degrees, steps, qualifications; and you have not the means of providing for the perpetual succession of the corporation, except by doing that which, I think, is exactly equivalent to the creation and appointment of a degree.

*Sir G. Cornewall Lewis.*—Suppose that the Crown were to

create the trustees of a grammar school a corporation, according to the language of the English law, or, according to the Roman law, a *Universitas* or a *Collegium*, which would be synonymous, would you contend that the mere fact of creating that institution would give it the power of granting degrees?

*Mr Rolt.*—My Lord, it must have the power of settling the rank of each person in the community; but those corporations are corporations in which you have a head.

*Lord Chancellor.*—Long before what are called Universities were known, Cicero went to study at Athens, and he had the most learned persons to assist him—the writers studied the Law, but I do not think that there were Universities.

*Mr Rolt.*—No, my Lord; that is so. The consequences of settling this point is another question; what may be the value to be attributed to the degree out of doors is another thing; but I do submit to your Lordships that the mere fact of the existence of the University implies that there must be the power of settling the degrees—who are to be the teachers, what is to be their style, who are to be the learners, what is to be their style;—all that is as incident to a University as anything is incident to any institution which can be said to have an existence. You cannot get on without some power of that kind.

Then, my Lords, if the *Universitas* is founded by the State, by sovereign authority, there is no doubt that the degree will give a status outside the University. In a mere voluntary Association there would, for its own purposes, be a necessity of having degrees there, but that would be of no value outside the institution itself; but if the *Communitas* or *Universitas* be established by competent authority, then the consequence will be that the status or degree will have a sanction outside the University. In the case of an ordinary grammar school, of which there is a head, there is no *Universitas* in the proper sense, there is no *communitas*; there is no incorporation in grammar schools, of the master and the scholars. There may be cases of that kind; there are cases of the incorporation of masters and scholars, and with that incorporation of masters and scholars you have a degree. What may be its value out of doors is another question; but in those corporations, if those who learn are incorporated, if there is language which consti-

tutes it a *Universitas*, though the name may not be given to it, there will be the necessary consequence, there will be masters there, there will be scholars there; and it follows at once that the moment you have the whole community incorporated together, you have the necessary incident of it, namely, the power of determining degrees there; and effect will be given to it, and the degrees will be recognised outside the community, if the community has been established by Royal authority.

Now, I say that the only limit which would be given to the power to grant degrees would be this, and there would be this necessary limit. You of course could grant no degrees except in the subjects in which you gave instruction. It is no part of our argument in any sense to contend, as was contended by Sir Charles Wetherell in the London University case, that the establishment of a University was an establishment for a universality of sciences, and that all must be taught. A University being established, it will, when established, and by the act of its constitution, be established for special purposes, either for all purposes of education or for limited and express purposes of education. The limit of the power to grant degrees will necessarily be in those subjects in which instruction is given,—those subjects in which, to use the words of the Commissioners, ‘full instruction’ is given, not as my learned friends affect to understand it (for it can be little more than affecting to understand it), that if the teachers instruct ably and efficiently, then it is a subject in which they may grant degrees. And, my Lords, if I commanded the language of contempt and ridicule which my learned friends endeavoured to throw upon the Report of the Commissioners in that particular, as well as in other particulars—if it were not for the respect which I entertain for my learned friends, I should throw it upon that representation of the Commissioners’ argument. What the Commissioners have said is—in any subject upon which it comes within their scope to give full instruction, in their judgment, there must be the power of giving degrees. That must be intended; it is not—if we, the body who are to give the degrees, in our judgment are giving full and efficient instruction, then, and then only, are we entitled to give degrees; but if we embrace the entire ambit of any particular subject of instruction, in that subject we are entitled to give degrees. And



that that is the view which the Commissioners take, I think, will appear sufficiently by their Report. 'Under these circumstances,' they say, 'the Commissioners think it cannot be doubted that the University of Edinburgh possesses the right of granting degrees in all departments of knowledge in which it gives full instruction; or, at all events, in all departments of knowledge in which it may be shown to be the practice of other Universities to grant degrees.' Further on, they say, 'With regard to the means of instruction in Surgery and in the Faculty of Medicine generally, which the University of Edinburgh affords, it may be proper to state, that the University now furnishes, as it has long done, a great teaching School of Medicine;' and after specifying the several Professorships in the Faculty of Medicine, they say that 'it furnishes to the students of the University the amplest means of instruction in every department of Medical Science, including Surgery as well as Medicine.' But it is not because these lectures are given, and because there is such full and ample instruction given to the scholars, that this power exists. That is not the ground upon which the Commissioners proceed at all, but it is that in truth Surgery is a part of Medicine. They are empowered to give full instruction in Medicine. They are not only empowered, but if they give instruction in Medicine, it is their duty to give instruction in Surgery. That is what is meant by their giving full instruction in Surgery; and being empowered, and having the duty to give full instruction in Surgery, they have the power of granting a degree; and the inquiry is not to be made here or in any other case, either by the University or by any other body, whether or not the University are efficiently instructing, whether or not they might give better instruction. Nothing of that kind entered into the opinion of the Commissioners; nor can it stand as a part of the argument by which it is contended that there is an inherent power, a necessarily incidental power in all educational corporations, to give degrees in the matters in which they give instruction.

But, my Lords, if there could be any doubt as to their power to create new degrees, can there be any as to their power to mould and modify existing degrees?

*Sir G. Cornewall Lewis.*—When you say 'their,' you mean the University?

*Mr Rolt.*—Yes, my Lord. I am now exclusively upon the powers of the University. Supposing I fall short upon that, I shall examine the powers of the Commissioners. If there be any doubt as to the inherent power of the University to create degrees, can there be any as to their power to mould and modify and deal with existing degrees in the University? My Lords, if there be no such power, one is at a perfect loss to understand how things have arrived at the state at which they have arrived in many Universities, or what is to be done with many cases which must have constantly arisen, and which will be constantly arising. Take the case of Law—the Faculty of Law; the power to teach and to grant degrees generally in Law. It is quite immaterial here to consider whether the power of giving degrees is incidental to the creation of the University, or whether it was expressly given by the instrument of constitution. I am supposing that it exists in fact, and that there is the power of giving a degree in Law, and that there being a power of giving a degree in Law, at the time at which that power was originally created there was no Law in force but the Civil Law; and, accordingly, ‘Doctor of Law’ was held to include Doctor of Civil Law: or it may be that the expression and description and language of the degree in the outset was ‘Doctor of Civil Law;’ but the right being to teach in Law, and the power, express or incidental, being to give degrees in Law, if a new system of Law is introduced into the state in which the University exists, if Canon Law or any other system of Law is added to it, the duty being to give degrees in Law, the original Law having been the Civil Law——

*Sir G. Cornwall Lewis.*—By the Civil Law you mean the Roman Law?

*Mr Rolt.*—I was putting a hypothetical case, and therefore it is quite immaterial what I referred to. But I of course did mean the Roman Law. That being so, we will assume that to have been the only law which existed at the time when the original degree was created, the title was given to it, ‘Doctor of Civil Law;’ and then a new code of Law being introduced, either gradually, or at once forming part of the Law of the State, and the power being to grant degrees in Law, is there no power to modify that name? Is there no power to add a

new degree? Can you not then create a Doctor of Canon Law or omit the word 'Civil' altogether, and say, 'Doctor of Law.'

*Lord Chancellor.*—'Doctor of Mercantile Law?'

*Mr Rolt.*—We are to assume, that the authorities having the power to mould and modify the existing degree, have a reasonable authority, and that they will exercise it only in a reasonable case. If the new law is of sufficient importance to warrant a supplementary degree, and if the old title is one which, in course of time, has come to exclude, by its signification, a degree in the subjects newly introduced, can it be contended that, in that case, there would be no power to modify that existing Faculty? I care not whether it be necessary to say, to create a new Faculty; to call that new, important, and dignified subject, thus introduced, a new Faculty, or to give a new name to an old Faculty. That is quite immaterial. I say, that if it be necessary to create a new Faculty, there must be power so to create it, in order to prevent the old Faculty from misleading, to prevent the old degree from misleading; because the theory being, that the duty of the University is to grant a degree in the entire Faculty, the degree being originally given with the view of its being a degree in the entire Faculty, circumstances have changed, it has ceased to be a degree in the entire Faculty, additions have been made to that subject of knowledge, and you are prepared to show that the old title does not comprehend the whole of the present circle of knowledge in that department. I say that there must be power to modify the existing degree for the purpose of setting the matter right; and if it be necessary for that purpose, to include that which is newly introduced, it is immaterial whether it is done by altering the name of the old degree, or making a new Faculty, and creating a degree in that new Faculty.

My Lords, to apply that to the case of Medicine, take the facts as they actually exist. In the case of Medicine, you find that the necessity for it is overwhelming. The charter says (I will assume), you are to teach and grant degrees in Medicine. I will assume that that power exists either as a necessary incident to the power of teaching, or by express power given. What does 'Medicine' mean and include? The whole healing art as a liberal profession. That is what was intended,

and what was included at the time of the creation of the degree. That was the force and effect of language then, and that is what was intended—to give a degree in the whole of the healing art. At that time Surgery was a trade, a manual operation, not being deemed worthy of being a part of the liberal profession. But knowledge advances, and language changes. Surgery does become a part of that profession from which it was excluded originally; it becomes a most essential part of the healing art, the boundaries between it and Medicine can scarcely be ascertained; and yet the old title in the original Faculty of ‘Doctor of Medicine,’ supposes a want of qualification in Surgery. Such caprices of language are not at all wonderful. Medicine has come to imply and include Surgery; the healing art clearly includes it. And yet the title of ‘Doctor of Medicine’ retains the original meaning,—which title is originally supposed to mean a Doctor of that portion of the healing art which excludes Surgery. Is that state of things to continue? Is it not within the power of the governing body to say, We must adapt our teaching, and, if our teaching, our degrees, to the advancement in science and knowledge? Surgery is now part of the healing art. We gave a degree in the whole of the healing art; this degree was intended, either by our charter or by our incidental power, to be a degree in the whole of the healing art,—it has ceased to be so now in point of form,—that was what it was intended to be, and that was the substance of the thing; and we must have the power so to deal with it, and, accordingly, by some means or other, to modify the title ‘Doctor of Medicine,’ so as to describe what it was originally intended to describe, namely, proficiency, or a step in the learning of the whole of the healing art. My learned friends say, that that cannot possibly be, that ‘Doctor of Medicine’ was the title; that you cannot look at the substance; that you have nothing to do with the substance; that you are not to inquire into what was the meaning and intent of that degree of ‘Doctor of Medicine,’ and that you are tied to those words. To take the favourite argument of my learned friend, Sir Hugh Cairns, he says that there is a dilemma; that the words either do or do not include Surgery; that if they do include Surgery, you do not want it; and that if they do not include Surgery, then you are doing that which you have no right or power to do. But I

think that that does not exhaust the subject. You must inquire whether those words did include the whole of the healing art originally; and if you find that they did, and do not now, you must then adapt your degree to the change which has taken place in language and in the advancement of knowledge. It is not enough to say that Law will decide it. Has not the University power to deal with it, and prevent any question of Law upon the subject? And, my Lords, it appears to me that it would be trifling with corporations such as this, to say that changes and modifications in degrees such as I have referred to cannot be made by these Universities. It is inherent in them;—they must have the power of dealing with degrees, by fashioning and moulding them, from time to time, so as to keep them to the purpose originally intended, and give them the full scope originally intended to be given to them; and for the purpose of giving that full scope, they must, of course, have power to alter the language, or to create a new degree, it matters not which; they are only adhering to the original purpose, and to the power originally given, and which it was intended that the University should possess.

Now, my Lords, it is no answer to this argument to say, that usually, and perhaps always, wherever there is a charter or grant, or Act of Parliament, or other Act of the State, creating a University, the power to grant degrees is given with it. That does not at all prove, that that which is not given is not also necessarily incident. Of course, it has nothing whatever to say to the power of modifying or moulding the degree. Of course, it will constantly happen as a matter of expression, that when you are describing the subjects in which the University shall give instruction, it will be a convenient form of expression, to say at the same time that they should give degrees in those matters of instruction; but to say that the introduction of that provision constantly, or even always, in grants or Acts of Parliament, when Universities are founded, proves that that power is not necessarily incident to the existence of the corporation, is certainly more than the argument would warrant.

But then, my Lords, if we look at the history of these Universities as given by my learned friend, Mr Palmer, yesterday, accepting his view and his version of the way in which these Universities have grown up, and in which the degrees have

changed from time to time, is it possible to have any better testimony to the fact, that Universities have found the necessity of dealing with their degrees, and have, from time to time, dealt with them? Much of the change which he describes to have taken place from the eleventh and twelfth centuries, down to the present time, must have been from the inherent authority of the Universities. My learned friend does not, I think, pretend to say,—he certainly has brought forward no authority to prove,—that these frequent and many changes which took place from the time when the degrees were given in each of the subjects of the quadrivium and the trivium to the present, have all taken place by Royal authority, or authority of the State. Knowledge and science advance—some departments of science become less important—others of them are swallowed up in new subjects of study—then entirely new and distinct subjects of study come forward—the degrees, as to such as cease to be important, drop—while new Faculties arise, of Law, Divinity, and Physic, in which degrees are created. My learned friend supposes that he escapes from the force of the argument derived from the degree in Music, by saying, that that was one of the degrees in the trivium or in the quadrivium—that it has never been abolished, and that it stands out apart. But I say, my Lords, that it has been absorbed in the Faculty of Arts, just as much as all the other subjects have been absorbed. There has been no Royal or State authority which has altered these degrees at all; but it has gone on, and it has been found convenient to have a new Faculty, absorbing all these minor Faculties. As to one of them, it has been thought worthy of being kept alive as a distinct Faculty, though, in another sense, it is a part of the Faculty of Arts. You have had other Faculties founded; and, unless it is pretended and proved that all these changes in degrees, from the eleventh and twelfth centuries downwards to the present time, numerous as they have been, have taken place by the Royal authority which constituted the Universities, it is perfectly clear, from the history which my learned friends themselves laid down, that there has been in these bodies—as it is obvious there must necessarily be—a power of dealing with these subjects from time to time,—keeping in view always the object of instruction for which they were originally constituted; taking care that, in substance, they give their de-

degrees in those subjects in which they give full instruction, in which it is their duty to give instruction, and not departing from that; but as time renders changes in their scheme of instruction necessary, and makes some subjects become of no importance, and elevates others into great importance, so, from time to time, exercising the power of moulding and modifying their degrees. My Lords, I say that that is the proper view; and it appears to me to be the reasonable view of what one would expect to find in the history of those degrees. I say, that if there be not the power to create degrees, there must be the power to mould and modify them, to adapt them to the exigencies of the times, as language changes and science advances.

Then, my Lords, I leave the question of inherent power, and come to see whether there was not express power in this case, which may reach the degree of Surgery. That there was express power in this case, which has reached the degree of Medicine, of course is common ground—there is no dispute between us upon that point. We have the charter of the University of Edinburgh, giving to the Town Council of Edinburgh substantially the power of erecting and calling into existence a corporation; we have the Act of Parliament, which gives them as large a power as any other University in Scotland has. Then we have the Bull of Pope Alexander to Aberdeen, which is one of the Universities in Scotland, for founding a University in Theology, Canon and Civil Law, Medicine, and Liberal Arts, and '*quâvis aliâ licitâ facultate.*' Now, I would venture here to call your Lordships' attention to the argument which has been founded upon that word '*licitâ.*' Though my learned friends shrank a little from accepting it as printed in their Case, yet I believe that substantially that is what they meant to say. It is at the top of page 14 of their printed Case. After stating the Bull, they say at the bottom of page 13, 'The first observation is, that there is no mention of Surgery. In the next place, the degrees are to be conferred by the Chancellor in any one of certain Faculties, upon the recommendation of the Masters or Doctors of the Faculty in which the candidate wishes to graduate. Hence, before a degree can be conferred under this charter, it is necessary that the University should have a Faculty in which to grant it. There is no Faculty of Surgery in the University of Edinburgh, nor has the University power to add

such a Faculty. Aberdeen had power to graduate in Theology, Law, Medicine, and Arts, and in *any other permitted Faculty*, not in any other lawful Faculty, as the expression is rendered in the Commissioners' Report.' Now, if there is any difference between 'permitted' and 'lawful,' I venture to prefer the word 'lawful.' But the next passage shows what is meant by 'permitted.' 'The expression meant that the corporation founded was to be of such a nature that a new Faculty could at any time be added to it without the necessity of re-incorporation. It is not to be believed that a University in the Middle Ages would be empowered by either Pope or Sovereign to add new Faculties or create new degrees at pleasure.' So that what is argued by, and what I say is the substance of the argument of, my learned friend is this, that the sole object of that provision is, that if the Pope, or the Sovereign authority coming in his place, thinks fit to add to the corporation of Aberdeen permission to grant a degree in a particular Faculty, a new incorporation shall not be wanted. I say it is impossible to put that construction upon the passage. I am quite contented to take this as the construction: 'any permitted Faculty' in this sense, that if the Pope, or the Sovereign authority coming after him, does make another Faculty lawful—lawful for anybody—creates a Faculty of Music or of Grammar which has not previously existed——

*Lord Cranworth.*—Or of Engineering.

*Mr Rolt.*—Or of Engineering; and if it is shown that it is lawful, the University may grant degrees in it. It is argued, you cannot suppose that the Pope would have entrusted anybody with creating a Faculty in any subject they pleased—Social Science, for instance.

*Sir G. Cornwall Lewis.*—This is an actual grant—it does not contemplate a future grant. It means any recognised Faculty.

*Mr Rolt.*—I venture to submit that the true construction is, that it does most clearly mean, not only anything at the moment recognised, but any Faculty which may be permitted; and that, if a hundred years afterwards a new Faculty comes to be permitted, it is within that clause. If the State, with the view of encouraging the University, thinks fit to establish another Faculty, then this College of Aberdeen is permitted to have power to grant degrees in that Faculty. That is my argument. The



difficulty which is suggested about the Pope not being pleased to do it, is removed, when our construction shows that you get the Pope's authority for it.

*Sir G. Cornwall Lewis.*—The Commissioners do not profess to create a new Faculty—they do not call it the Faculty of Surgery. I mean that, if there was a power of creating a new Faculty, it would not cover this case.

*Mr Rolt.*—That is the next step in the argument; but first of all this is clear. There is an express power to grant degrees in Medicine, and we need not refer to inherent power for that; there is also an express power, according to my preceding argument, to grant degrees in any newly permitted Faculty;—those two things are express. The word 'newly' is not there, but I say that it points clearly to that.

*Lord Cranworth.*—That is your interpretation.

*Mr Rolt.*—Yes, my Lord. I say that it points not only to any new Faculty created now, but at any time hereafter. Then, having got thus far, we have to inquire whether there has been a Faculty of Surgery created. Upon that, of course, my argument at once carries us to the Medical Act; that is the next step in the argument. The Medical Act, Section 15, and Schedule A.

*Sir G. Cornwall Lewis.*—That mentions separate qualifications.

*Mr Rolt.*—Of course it does not create the Faculty in terms. 'Every person now possessed, and every person hereafter becoming possessed, of any one or more of the qualifications described in the Schedule (A) to this Act, shall on payment of a fee,' and so on, be registered. Then, in the Schedule A, we find amongst the qualifications, 'Doctor, or Bachelor, or Licentiate of Medicine, or Master in Surgery of any University of the United Kingdom.' Now, that does not mean, what my learned friends, I think, have suggested that it may mean, that if, hereafter, at any time power shall be given to any University in the United Kingdom to grant degrees of that kind, then such degrees may be registered. I submit to your Lordships that the other view is the sound way of reading this language, which assumes that 'Master in Surgery' is a degree known in some University. I think it must be taken, that when the Legislature, in a public Act, speak as they do of 'Doctor,' of 'Bachelor,' of 'Licentiate

of Medicine,' all which things existed, and speak of 'Master in Surgery of any University,' if we find that in point of fact and name there was a University in the United Kingdom which was then dealing with the degree of Master in Surgery, the intention of the Legislature was to recognise that as a valid and existing degree.

*Sir G. Cornwall Lewis.*—At the time when this Act was passed, the Ordinance was not in existence.

*Mr Rolt.*—The Ordinance was not in existence at all; but at the time when this Act was passed the College of Glasgow had their degree of 'Master in Surgery.' I said that the Legislature were dealing in this clause with a 'Doctor,' 'Bachelor,' or 'Licentiate of Medicine,' as an existing degree; they were dealing with a 'Master of Surgery' as an existing degree in some University. Of course, if no such degree was known in any University—

*Lord Chancellor.*—We certainly must suppose that they knew of what had been done by the University of Glasgow, and they probably knew of what had been done in Paris and Berlin.

*Mr Rolt.*—Yes, my Lord; but this clause says, 'any University of the United Kingdom.' It would also be important if there were such degrees in Surgery existing in Paris, Berlin, and Vienna. It is enough to say, perhaps, that there was such a degree in the United Kingdom, and it must be taken that the Legislature—knowing that Glasgow was in existence as a University, because an Act passed on the same day refers to the University of Glasgow (I do not know that this Act does, but the University Act, which received the Royal Assent on the same day, does refer to the University of Glasgow)—knew that there was a degree of Master of Surgery in that University. Therefore, I say, you have it existing as, at all events at that time, a permitted degree, a lawful degree in Surgery.

Then we are met with this argument, that the essence of a degree is, that it is an entirety. They say, granted (they felt the difficulty of that passage in Pope Alexander's Bull) that the University has power to grant degrees in any permitted Faculty, yet, they say, this is not a Faculty. They say, this is only, according to your own showing, a portion of the Faculty of Medicine. I venture to submit to your Lordships, that the word 'Faculty,' like other words of the same kind, and most other words that we are

dealing with, has double meanings, and that those double meanings are constantly used. There is scarcely a document that my learned friend referred to, that did not point to the use of intermediate terms. There have been two Faculties of Law, but it is, in one sense, one comprehensive Faculty. My learned friend, Mr Roundell Palmer, told us, that before the Reformation there were two Faculties of Law. Still, in a very proper sense, you might say there is but one Faculty of Law; though the degrees of Law were two separate degrees in two separate Faculties. It is a common source of fallacy in reasoning, when you have a word which has a generic meaning, while the same word has also a specific meaning. Here you have Faculty as a genus, and you have 'Faculty' as a species too. That is not at all an uncommon fallacy. It exists here; and I say that when Pope Alexander spoke of granting degrees in any lawful Faculty, any branch of instruction in which degrees were permitted, or to be permitted, was intended, and that those words point to any branch of instruction, not to 'Faculty,' in that abstract sense of its being an entire thing which is incapable of division, which takes exactly the same position that it had in its creation, and can never be dealt with afterwards. On the contrary, this was meant: you may grant degrees in Theology, and Law, and Medicine, and Arts, and in any branch of instruction in any other Faculty, in which hereafter it shall be lawful to create degrees.

Let us suppose that in Law, in one of these Universities, or throughout the whole of Christian Europe, there had only been the degree of Doctor of Canon Law, and there had been the power, as it now stands in the Bull, to grant degrees in Law, and afterwards there had been by the Sovereign authority of the Pontiff, or any other Sovereign, a degree of Civil Law created. Well, would the argument have prevailed in this case: it is very true there is a power to grant degrees in any other permitted Faculty; it is true that at the time there was no degree in Law but the degree of Canon Law, and that since Civil Law has been added; but Civil Law and Canon Law are but branches of one and the same Faculty, namely, the Faculty of Law; therefore it does not fall within that express power created by the Pope? I say here that that could not have been tolerated. The answer that must be given is this: these words mean, in any other branch of instruction in which I, by my sovereign authority,

or those who come after me, shall make it lawful to grant degrees. And it is idle to go into any hair-splitting as to the word 'Faculty,' and trying to ascertain distinctly what it means further than that. I say that it means any branch of instruction in which thereafter it should be lawful to grant degrees; and if it has become lawful to grant degrees in Surgery, then the argument is complete. That is the true construction of the Bull of Pope Alexander; and without referring to any inherent power to create, or any inherent power to mould or modify degrees, there is, I say, an express power contained by anticipation in the Bull of Pope Alexander to this University to grant degrees in Surgery.

*Sir G. Cornwall Lewis.*—I want to know whether you think that this view should be taken. The original character of the Medical degree in a University, and in the University of Edinburgh in particular, was such that it implied instruction both in Medicine in the modern sense, and Surgery in the modern sense. Our legislation has affixed a special meaning to the word Medicine,—the effect of which is, that a Doctor in Medicine cannot practise in Surgery, or at least he is not considered qualified to practise in Surgery. In order to meet that peculiar state of legislation, the Commissioners add an additional degree, namely, that of Master in Surgery, which enables persons who take the degree of Doctor in Medicine with that of Master in Surgery under a competent Medical Faculty, to practise in any branch of Medicine; and they say that the second degree shall only be taken by a person who has taken the first degree, so that in that manner any person who takes a Surgical degree shall exhaust the whole Faculty. Do you think that that is the correct view of the case?

*Mr Rolt.*—Undoubtedly. The University has express power to grant degrees in Medicine. But my learned friends say, that may be very true, but this authority which is here given by the Pope is only to grant degrees in some other Faculty; Surgery is only a portion of the Faculty of Medicine, and you cannot split it up. Now, I think that, even in that case, your Lordships will find that my learned friend's argument is nothing more than a play upon words. I say, first of all, one Faculty may become two in course of time,—there is nothing to prevent it; and although Medicine was originally a Faculty which comprehended the whole of the healing art, it may be quite compe-

tent and quite convenient now to divide it into two Faculties, and to deal with Surgery as a distinct Faculty.

*Lord Chancellor.*—You have to put a limit to this power of subdivision.

*Mr Rolt.*—I think, practically, there is no difficulty in that. Of course, the power is in the University—it is in the hands of those who have been entrusted with the granting of degrees—it is in safe hands. You cannot suppose that it would be unworthily used—you are not entitled to make that assumption—and I think that the difficulty is rather fanciful than real. If the authority is to be exercised at all, it is in the right hands for exercising it, and there is no practical difficulty in the exercise of it. But, if it be not so, another way in which the difficulty may be satisfied may be this, that the word 'Medicine' is clearly used, as has been more than once said, in a generic sense, comprehending the whole healing art; while again it is constantly used in a specific sense, comprehending a portion of it only—that portion which excludes Surgery. Then you have got the degree of Bachelor of Medicine and of Master in Surgery. May not one fair and proper construction of these two degrees be, that together they exhaust the whole of the healing art? The one is a part, and the other is the remainder—Medicine the entirety. Medicine is also a portion, and Surgery is the remainder. But what I think is the true view of it, is the view which was referred to by one of your Lordships, that, in truth, nothing has been done but adding to the degree of Bachelor of Medicine that of Master in Surgery, as an explanation of what a Bachelor of Medicine means. It comprehends, I say, the whole of the healing art, and Doctor of Medicine does the same; but that there may be no obscurity about it, as to a Bachelor of Medicine, you tell him that he may have, if he thinks fit, the additional degree of Master in Surgery. It is nothing but a verbal explanation added to the degree that was previously granted. It was always a degree that comprehended everything. It is now necessary to explain it, and it is explained by adding the degree of Master in Surgery to it. Is there any objection to that form? It is a common form, adopted throughout Europe now—a Doctor in Medicine and Surgery—that is the common form. Here there is an examination for the Baccalaureate, which is an examination that goes fully to the title to a degree in

Surgery. Nobody can become a Bachelor of Medicine without being fully entitled to a degree in Surgery; but, being fully entitled to a degree in Surgery, if he is desirous to have the degree of Master in Surgery, though his Bachelor's degree does include it, he can have that degree. It is giving him nothing more than he had before; but doing what the University is entitled to do, by giving to it an explanation, it may be, in the form of a new degree, which creates, as far as I can see, no difficulty at all. It adds to that this explanation—Your degree of Bachelor of Medicine entitles you to practise in Surgery; you are a Master in Surgery; you have gone through the examination necessary for the purpose; and that having been ascertained, you shall be entitled, at your will and pleasure, to have that explanation of, and that addition to, your degree.

My Lords, I think, therefore, that one or other of these views is the true view. I believe the true view is, that the degree in Surgery is now a newly-recognised degree in a branch of instruction in which degrees are now lawfully granted. It is expressly within the letter of the powers of the University; but if not, there is the express power to grant degrees in Medicine. Surgery is a part of Medicine. Are they doing more than exercising (at all events, I submit, perfectly safe in the way in which they are exercising it) that power of modifying and moulding the existing degrees which I insisted upon in the outset of my argument?

We then come to inquire, How has the science of Medicine altered since the time when the degree was first created? We see it does now include what it excluded then, or what it did not include then. The word 'Medicine' has come to include what it did not include then; and yet the degree of Doctor of Medicine is left with the imperfections which it originally had. A doubt exists as to whether it comprehends that which the subject of Medicine really does comprehend; and therefore it is right and fit that this should be set right; and the power of moulding and modifying, which the University has, if there is any meaning or sense in the government of the University by its heads, must extend, at least, to the power of making that degree subserve the purposes for which it was originally created.

*Lord Cranworth.*—With regard to the argument, as to whether the University can or cannot grant a degree, what is the

meaning of saying that they cannot grant it? It is put as a *reductio ad absurdum*. Suppose, in fact, they grant a person the degree of Bachelor of Chiropody.

*Sir G. Cornwall Lewis*.—Might an application be made to the Court of Chancery to grant an injunction to restrain the University from granting such a degree?

*Mr Rolt*.—I venture to submit, with confidence, that nobody would think of conferring that degree; and if they did, they would have their labour for their pains.

*Lord Chancellor*.—I think, if I had been sitting in the Queen's Bench, and there had been an application to me for an injunction, I should have said they would take nothing by their motion; but if it were a body that pretended to grant degrees of Doctor in Medicine, I should have said, take your rule.

*Lord Cranworth*.—It has passed in my mind, that it is very difficult to say they cannot grant it.

*Sir G. Cornwall Lewis*.—In this case there are certain legal incidents attached to the degree.

*Mr Rolt*.—They can grant the degrees, and there are certain legal effects attached to their granting it. You have to inquire what is the effect, or is any effect given to such a degree by Act of Parliament; and, of course, when you come to apply the Act of Parliament, it is right also to ask, Have they any power to grant that degree? I think it might come round to that, perhaps; for, if you find that they exercise an authority to call a person by a given name, which given name would give him a status that he was not entitled to, it might come round to the question, Had they the power to grant it? Upon the power of the University, your Lordships see, therefore, that my argument reduces itself into two points. There is an express power to grant a degree in Surgery in the way I have pointed out, by a degree in Surgery having become lawful or permitted. The steps of that argument your Lordships have before you, and I leave it in your Lordships' hands. But if that does not succeed, then the next step is—There is an express power to grant a degree in Medicine, and there must be inherent in the University the power of dealing with that degree in point of language—for it is nothing more—so as to make it answer, and adapt it exactly to the purposes for which it was originally instituted.

Then, my Lords, we have to consider next what are the

powers of the University Commissioners; and it appears to me that, when we look at the words of the 15th section, and at the sub-section 5, you find that they have power to make rules for the granting of degrees, whether in Arts, Divinity, Law, or Medicine. Now, my Lords, as to making rules for the granting of degrees, it may be said that the argument is *idem per idem*; but I would ask—Suppose they made a rule for granting a degree in Music, which had not been granted before in that University; you find that Music is a lawful and permitted Faculty recognised elsewhere; Music is a part of the Faculty of Arts; and yet, if it were thought advisable, and the Commissioners gave a direction to that effect—having the power to give directions or to make rules for granting degrees in Arts—could it be contended successfully that they would have had no power to grant a degree in Music, that being a lawful or permitted Faculty? The objection would be the same as it is here. The Faculty of Arts includes Music; the essence of a degree is that it shall be in the whole Faculty; Music is not a distinct Faculty. But, I really think, it is clearly impossible to say that that is the scope or intent of the power, when it is said that you are to have the power of granting or making rules with respect to the granting of degrees under these heads. I do not think that the word here refers to Faculty. I do not know that it is material at all—I think it is a little refining—but it is not ‘granting degrees, whether in *the Faculties of Arts, Divinity, Law, and Medicine,*’ but ‘granting degrees, whether in Arts, Divinity, Law, or Medicine.’ These are the subjects in which they are empowered to grant degrees. Is Surgery within it or not? The answer is clear and distinct—Surgery is within it. There is but this answer that can be given. Yes, Surgery is within it, for Surgery is a part of Medicine. My learned friends, I think, have admitted that the argument may be taken upon that basis, or rather, they desire that it may be taken upon that basis, and that Surgery is within Medicine—a part of Medicine, and a part of the Faculty of Medicine. They so put it in their printed Case. I say this has nothing to do with the Faculty in that conventional sense in which they desire to use it. Any degree in Arts—a degree in Music—would be a degree in Arts. Any degree in Medicine—a degree in Surgery—is a degree in Medicine; and I say that the Commissioners have power to make rules respecting it. If you take the words of the



clause, there is no doubt that it is within the statute, and the object which they have in view requires it. If Surgery is a part of Medicine, then it implies that there should be a power to grant a degree in Surgery. If it was intended to include everything that Medicine did then, or would afterwards, include, then, whatever may be in the power of the University, the Commissioners have power to include it; and that they have done by the Ordinance before your Lordships.

*Sir G. Cornwall Lewis.*—When the Legislature speak of Medicine or Surgery, or Medicine and Surgery, in the 31st section of the Medical Act, they use the word 'Medicine' in the specific sense; and when they use the word 'Medicine' in the 15th section of the Scottish Universities' Act, they use the word Medicine in the generic sense, as including Surgery. The question, then, is (that being indisputable, I apprehend), whether there is any power of carving a degree in Medicine, or excluding a portion of Medicine, out of that word.

*Mr Rolt.*—I must say that the objections to it are fanciful. If Medicine, in the generic sense, has two specific branches, and if reason and convenience require that there should be a degree in each, are we to be hampered by the word Faculty? Are we such slaves to that expression that we cannot do that which reason and convenience require? There is really, my Lords, no substantial argument brought against it. My learned friends have said, amongst other things, How is anybody to know what his status is? I suppose, in substance, the meaning is, that Garter King-at-Arms would find it difficult to say where he is to put him in the next edition of the Order of Precedence. Surely such trifles as these are not matters which would weigh with your Lordships.

*Sir G. Cornwall Lewis.*—This is done from a practical view of the subject. Unquestionably the Ordinance is to meet the provisions of the Medical Act.

*Mr Rolt.*—Clearly, my Lord; and it is obvious that the act that we are doing is an act of the greatest importance, and that reason and that convenience of the highest character require that it should be done. Then we are to meet the objections to it. Having shown that it is important, and reasonable, and convenient, and having shown that Medicine originally comprehended the whole of the healing art, and that Surgery, which

was formerly excluded, has since been included in it, I say that good sense requires that there should be power to add the degree in Surgery to the degree in Medicine.

I come now to consider the objections. I have gone through my reasons for saying that the Universities have power; I have gone through my reasons for saying that the Commissioners have power. The Commissioners have the power of granting degrees in Surgery as well as in Medicine; reason and convenience require that the power should be extended to Surgery. It was originally intended to comprehend everything relating to that particular art; and you must add Surgery to it now, in order to give it its original intention. Then I come to the objections; and I say that the objections are minor and of trifling importance: but even in that trifling extent they do not exist; because there would be no more difficulty in determining which will have the precedence, a Doctor in Medicine or a Doctor in Surgery, according to the date or the order of granting the degree, any more than in the case of a Doctor of Law and a Doctor of Canon Law, supposing these degrees existed, or suppose there should be a Doctor of Botany or a Doctor of Chiropody. They are mere fanciful objections; and if you are to suppose that the governing power of a corporate institution are capable of absurd acts, you may conjure up anything, but you must assume that the acts to be done will be such as I have described this—namely, an act of the highest importance warranted by sufficient reason. And then to conjure up in your imagination that those who exercise the power may be guilty of folly, and to say that, therefore, the power does not exist, is an idle argument; and all the arguments against us are of that character.

Then we come to consider next the usage explanatory of the right; and I must say that here my learned friends have assumed a tone which, I think, it will be found, on an examination of what they have cited, they were not warranted in assuming.

Now, with respect to Salerno, your Lordships have the passage in their Case at page 14, at the letter G. They say, 'It would be of comparatively little consequence had Doctors of Surgery been made there, for Salerno was not a Papal University, but was directly under the Emperors of Germany or the Kings of the Two Sicilies. It did not stand in connection with the other Universities of Europe—never served as a model to them,

and never was governed by the same laws.' It was a University of the first character, and I do not see why it is to be treated in that depreciatory manner. 'Conringius mentions that it conferred Surgical degrees; and his authority was relied on by the University of Glasgow in their action with the Glasgow Faculty of Surgeons. But it is evident that that learned antiquary has on this point fallen into a mistake. The authorities he gives are two. The first is an edict by Frederic the Second, in which he translates a passage as having reference to Masters in Surgery. This seems not to be the proper construction of the passage; and it may be mentioned, that the learned Ackermann, who wrote at great length upon the School of Salerno, and was upon this matter a perfectly unprejudiced authority, comments upon the passage as one referring only to Doctors of Physic.' My learned friends did not produce Ackermann, though I have no doubt it is amongst the books from which the Case has been prepared, and it may be produced. It is an entire misapprehension of what was said by Ackermann upon that subject, and your Lordships will find that what did actually take place at Salerno was this: the degree was that of Master; it was a Medical University, and there was no question ever made or discussed by Ackermann, as to whether they ever granted a Mastership in Surgery. What is said is this: in the note which is referred to in the second page of Ackermann, there is a citation from, I think, a German writer named Möhsen, in which he avers, that in Germany in the twelfth and thirteenth centuries, there were practitioners calling themselves Masters in Surgery by virtue of a degree from Salerno. But Ackermann comments upon it thus: He is wrong in his date; that at that time Masters at Salerno was a title given only to teachers. Those who came there to be taught did not have the degree of Master, therefore it is a mistake.

*Lord Chancellor.*—What took place at Salerno will not much assist us.

*Mr Rolt.*—No, my Lord, unquestionably not; though my learned friends, each of them for twice four hours, occupied most of the time with this curious learning. I agree, that it will very little assist us; but it may be as well to place the matter accurately before you, and I will do it very shortly. My learned friend who has the book will correct me, if I am wrong, in his

reply. In the middle of the book he goes on to show that, at a later period of time, they gave the term Masters to those who were taught as well as to the teachers. Then he gives the statutes of the University, in which it is emphatically required that every student shall study in Surgery as well as Physic, and that no degrees shall be granted till they have been students of Surgery for twelve months. The actual name of the degree is Master, and they are called Masters of Salerno; but when you find that they are called Masters—when you find that it is erroneous to say that they were always called Masters of Physic, and the degree of Master in Surgery was not known—it was as much comprehended in the title of Master as was the title of Master of Physic; and the book which my learned friend produced, shows that the only mistake that was committed by any one in the matter, was that, when you spoke of those four Masters of Salerno, you spoke of them as Masters in Surgery.

*Mr Roundell Palmer.*—The title is *Magister in Physica*. The book is in German.

*Mr Rolt.*—I am obliged to my learned friend for giving it to me in German. I am not able to follow it in that language; but we have the book in Latin, and I think you will find, from a careful persual of that book, that the degree is that of Master; and I have no doubt that the first note that is given in page 2 of the book is an accurate note. He says, that in the twelfth and thirteenth centuries there were people practising in Germany styled Masters in Surgery, from the degree granted at Salerno. That is positively stated by one author, and Ackermann controverts it; and I say that my learned friends will find that he controverts it upon this ground—that at that time the degree of Master was only conferred upon those who taught, and not upon those who were taught. Then he goes on, as you will find, to show, that the absolute study of Surgery was indispensable as a qualification for the degree of Master. It is very likely that the degree may have been both of Master in Physic and Master in Surgery; but that the degree was intended to be one which comprehended Surgery, there is no doubt whatever when that book is looked to.

Now, with regard to Paris, as my learned friend Mr Selwyn will call your attention to what was done at Paris, I will not trouble your Lordships at any length upon that subject; but I

think you will find that the degree in Surgery was the same as the degree in Physic.

*Lord Chancellor.*—That was before the French Revolution.

*Mr Rolt.*—Yes, my Lord, before the French Revolution, under the old University of Paris. My learned friend has cited the cases of Universities where they have not given the degree of Master in Surgery, as proof that they could not give the degree. You will find from the book that my learned friend cited yesterday (if I understand it at all rightly—I thought so when he read it, and I have had an opportunity of looking at it since, and I think so more clearly now), that the position was this: It was assumed by all parties, the Surgeons of the long robe as well as the University of Paris, that if the University thought fit to grant the degree of Master in Surgery, they had abundant power to do it; but the University then, as Universities in later days, and as very many other old institutions have been, were not fond of innovation; and though they may have the power they will not exercise the power to grant degrees or to do acts which have not been done before. And you will find with respect to the case of Paris, if I understand it all rightly, that all that was done was this—For some years the Surgeons of the long robe claimed to be admitted to the degree of Master in Surgery, and the University of Paris declined to admit them to that degree, not saying, we have not the power (both parties assume that they have the power), the University admitting them to be scholars, but adding to that a proviso, that they are not to be deemed Masters in Surgery. Now, my Lord, the narrative is given at various pages in that volume of Crevier, to which my learned friend referred yesterday; some of the earlier pages might be usefully referred to, but I will confine myself to pages 395 and 396, in which there is a summary of the differences. About the year 1507 there was a dispute between the barber surgeons and the Surgeons of the long robe, and the Faculty of Medicine in the University had rather protected the barber surgeons in the dispute, at which the Surgeons of the long robe felt hurt. Then there were certain privileges attached to the degree of Master in the University; ‘but,’ says Crevier, ‘the desire to partake of academic privileges induced them to avoid an open rupture with the Physicians, and, consequently, with the University. We have seen that in 1507 they were autho-

ritatively recognised as scholars of the Faculty ; nevertheless, in the same year the quarrels were renewed, and they lasted until 1510, when the Surgeons made some steps towards peace, which the Physicians showed themselves ready to listen to, and in 1515 the peace was fully re-established. The Surgeons, in order not to be subjected to a tax which was actually levied in Paris by the order of the king, went to the Faculty of Medicine, and entreated them, according to the ancient conventions, to repute them as their scholars, and let them enjoy, in that character, the privilege of scholars ; and the Faculty consented to their demand at length on the 17th of November 1515. Being agreed with the Faculty of Medicine, the Surgeons obtained, without difficulty, equally favourable terms from the University on the 5th of March of the following year. There was added, however, in conformity with the ancient style, this remarkable clause, that they were not admitted into the Company as Licentiates or Masters in Surgery, forming a fifth Faculty, but as scholars of the Faculty of Medicine.' I say, my Lords, why is that added ? Is it not natural to suppose why ? Do we not see how it would obviously be ? You have got many institutions that have the power of doing acts which they do not desire to do, but they abstain from exercising their power. That was the case, I say, with the University of Paris ; and to prove that they did not exercise their power upon occasions when persons applied to be admitted into their fellowship as Masters whom they desired to exclude, is really proving nothing. It was the most natural thing in the world ; and you find when you look at the passage, that it was thought necessary to add a clause, that in the case of such admissions as were given to the Surgeons of the long robe, they were not to be considered as Masters in Surgery.

*Lord Chancellor.*—The Commissioners supposed the affirmative ; they take it that the degree of Master in Surgery was granted by the old University of Paris.

*Mr Rolt.*—No, my Lord, what they suppose is this ; that the old University of Paris, now the University of France, did that which was a very natural thing to do. And that is not to be called a slip, for they are now speaking of Universities which do in fact grant that degree.

*Duke of Richmond.*—At present, but did the old University of Paris grant it ?

*Mr Rolt.*—No, my Lord, there is no instance of the old University granting it.

*Lord Chancellor.*—You are supposing the identity of the two bodies.

*Mr Rolt.*—The history is just this, that the old body had become in this condition, that the circumstances of the State having altered, it wanted a re-constitution. They had declined to exercise the powers which they possessed. But showing that the University did not grant degrees of Masters in Surgery, is really by no means conclusive of the question. That is how it stood then in the University of Paris; and it appears to me clear that they had the power, and that when they were re-constituted, degrees in Surgery were then expressly created. The same was done in Berlin, and the same was done in Vienna. The University degree in Surgery is now a well-known and recognised title. But so far as the old Universities exercising the power is concerned, of course the question would never have arisen if there had not been that change in the advancement of science, and that change in language which made it necessary. It is because Medicine did not originally include that art—that the art of Surgery was not sufficiently advanced to be within it—and therefore of course it could not be done. The time at length comes when it is necessary that it should be within it, and when that time has arrived, then I say that the result is, that you find at once, as at Glasgow, either that the University takes upon itself the power, or there is a reconstitution of the University, and the degree is created; it is found that you really cannot get on without having such a degree. It does not exist; and the only question is, how it is to be brought into existence.

Then with respect to Glasgow, the facts are before your Lordships. The degree was first adopted in 1816, now forty years since; and from that time they have granted degrees of Masters in Surgery: and to speak of this having been challenged is a mistake,—I say it is not accurate. It is challenged only as to the effect of the degree. The degree exists; but there are certain privileged bodies who have the power of exclusively practising Surgery within certain limits; and the question is, does this new degree enable the University to invade those limits? The answer is, No; but it answers the same purpose elsewhere as a

degree in Medicine does. The degree has been granted from that time down to the present, and it has acted just as a degree in Medicine does. The argument that it gave no authority is really beside the question.

*Lord Chancellor.*—You say that if the degree is now *de facto*, then it has the effect of entitling the party to whom it is granted to practise according to his qualification.

*Mr Rolt.*—Yes, my Lord; it entitles the party to practise according to his qualification.

Then with respect to what was done at Dublin, you will find that the opinion that was given, which was that of Mr Greene, Mr Napier, and Mr Lloyd, was to this effect: ‘We are of opinion that the Provost and Senior Fellows of Trinity College have a legal right to confer such diploma as is proposed to be granted in accordance with the regulations recently made and sent with this case. We think the words of the charters of the 34th Elizabeth and 13th Charles the First (whereby the College is authorized to confer degrees in “omnibus artibus et facultatibus”) are sufficiently comprehensive to include a degree or diploma in Surgery. In several Acts of Parliament passed both before and since the date of these charters, Surgery is designated as a Faculty.’ I have not looked at those Acts of Parliament, but it would be very material if it be so. ‘See 3 Henry VIII., chapter 11, the English Statute, and also 32 Henry VIII., chapter 40, English, and 32 Henry VIII., chapter 42, English. In the latter Act Surgery is treated as a part of the science of Physic, and by that Act Physicians are permitted to practise Surgery. The terms “Science” and “Faculty” are repeatedly applied to Surgery in the Statute 18 George the Second, chapter 15, English’ (I will take an opportunity of looking at those Statutes, and I have no doubt that it is so), ‘which recognises the increasing importance of this science, and was passed in order to incorporate the body of Surgeons into a distinct society. It appears from the extracts of the Statutes of Oxford and Cambridge, sent with this case, that these Universities have granted a diploma in the nature of a degree in Surgery, the form of which is given in the Statutes of Oxford, enacted in the time of Charles the First, the same King by whom one of the Charters of Trinity College referred to, was also conferred.’



*Mr Roundell Palmer.*—It is a license to practise, and nothing else; it has nothing whatever in common with the degree.

*Mr Rolt.*—But amongst their reasons for thinking there must be this degree, they say, first of all, Surgery is part of Medicine—in many of these Acts it is spoken of as a Faculty—it is designated as a part of the science of Physic, and expressly designated as a Faculty, and as such they had granted a license to practise in it separately. All these reasons combined, are sufficient to satisfy us that it is a Faculty; and that if you have power to grant degrees in all Arts and Faculties, and if at the time of the case of Trinity College, Dublin, you can prove clearly that they granted degrees in Surgery, that comes most materially in aid of that part of the argument which I addressed to your Lordships for the purpose of showing that Surgery may be looked upon as a distinct Faculty, though I insisted upon its being a part of Medicine—in one sense, and a large sense, including both Medicine and Surgery—Medicine is a Faculty in another sense, and a portion of it, namely, Surgery, is also a Faculty. The word may very properly be so used, and is so used, in Acts of Parliament of Great Britain; and I think your Lordships will find, except what has been read from Sir William Hamilton's works (and I will refer to the expressions of Lord Cranworth in the Edinburgh University case, in the House of Lords, which I think are not contrary), there is not an opinion to be found anywhere expressed by any lawyer or any judge, that the University has not such a power. I will just examine the cases and the opinions that have been referred to for that purpose. I think, with respect to the Dublin University, that that opinion, and those numerous Acts of Parliament, from the time of Henry the Eighth downwards, in which Surgery is spoken of as a science, in which it is spoken of as a Faculty, in which it is spoken of as a part of the science of Medicine, do very materially assist the case. Now, the only opinions which have been expressed upon this case, except the opinion of Sir William Hamilton, which I will look at afterwards, are really all one way. The case is argued—my learned friends have argued it—as if the Judges who expressed those opinions, were, in the matter of those opinions, in the minority. My Lords, there have never been expressed two opinions upon the subject. Take the first case, as to the University of Glasgow. There was,

first of all, Lord Moncreiff; and, in his opinion, the degree of Master in Surgery was one that might very competently be granted by the University. Upon this question, whether that degree, when granted, would invade the exclusive privileges of the Faculty of Physicians and Surgeons, the other Judges were of opinion that it would not have that effect; but they gave no opinion whatever against the power which Lord Moncreiff said existed in the University of Glasgow; and it was in consequence of that that Lord Moncreiff went on to say, that it did not invade it, and to give an opinion upon the point; and every Judge who has found it necessary to give an opinion upon that point, by the necessity of his judgment requiring him to decide it, has been of the same opinion. I believe no case can be found in which a Judge has expressed the opinion that there was not power in the University to grant a degree in Surgery, if it had the power to grant a degree in Medicine.

*Lord Chancellor.*—The question was, what virtue is to be given to the degree of Medicine—the question was whether the degree of Medicine, given by a Scotch University, would qualify to practise as a Surgeon—it did not question the power of the Scotch University to grant the degree.

*Mr Rolt.*—Then when you come to the Edinburgh cases, you have Lord Glenlee and Lord Fullerton. Lord Fullerton was clearly of opinion that there can be no doubt that there was such a power. The question was as to the power of the Town Council of Edinburgh to interfere with the teaching of the University, and it was decided that the Town Council could interfere with the teaching of the University, and that the University could not say, We will have nothing to do with the Town Council; but upon the question of whether the University had the power of granting degrees, which Lord Fullerton found it necessary to express an opinion very clearly upon, he says, ‘The foundation of the College no doubt flowed from the town of Edinburgh, in virtue of the powers conferred on them by the Crown. But when they did exercise that power, and did found the College, the right of granting degrees, *i.e.*, of conferring upon persons proficient in certain departments of knowledge the recognised stamp of such proficiency, did not “flow from the founders,” if by that is meant that it previously existed in the persons of the founders, but was an inherent quality of the institution, according to the

public law of this and every other European country possessing similar institutions. Accordingly, the Charter of Ratification in 1621 bears to be granted, not only in favour of the burgh of Edinburgh, but in favour of the "said College, and of the rectors, regentis, bursaris, and students within the same," on whom it confers "all liberties, freedoms, and immunities, and privileges appertaining to ane free College, and that in as ample form and large manner as any College has or brookes within his Majesty's realm." So that it stands in point of opinion in that way, and there is nothing adverse to that. When the case got to the House of Lords, it was there decided upon the same ground as in the Court of Session. The only passage which has been referred to in the case in the House of Lords is that passage in the Lord Chancellor's (Lord Cranworth's) opinion, which is to this effect: 'But then it is said' (that is, in answer to this argument of the power of the Town Council, because it was advanced to meet that) 'that the power to regulate studies and to fix proper tests for degrees, is a power inherent in every University *qua* University. In my opinion, that is not so. Here the rights of the College (University, if it differs, is a mere assumption of name) depend entirely on the Charter and the Statute. The question is not one of an abstract nature, what the term "University" generally means, but what are the powers given by the Charters to this body, call it College or call it University. The question is, What rights do those instruments confer? My Lords, I have already stated, that in my construction of them, the College is a mere dependence of the town.'

*Lord Cranworth.*—I have not had an opportunity of looking attentively at the case since; but, as far as I remember, the question was not a question whether they could grant degrees; but the town had a particular power to create this College, or whatever it is called, and, according to my recollection of the case, they had the power of saying what the curriculum of study should be; and the argument was, that they could not exercise that power, because the right of regulating it was inherent in the University. The House of Lords thought that it was dependent upon the Charter; and the Charter gave the Town Council the power.

*Mr Rolt.*—That, I say, my Lords, is the effect of that judg-

ment; therefore, all that was said by Lord Cranworth was clearly this,—in the first place, with reference to that which had been said by the University, that it was a power inherent in every University *quâ* University, that of course you must go on and say, a University for what. Describe the University in some way. But then the Lord Chancellor's opinion did not go upon that question at all. He said, here everything is regulated by the Charter. I find by the Charter that power is given to the Town Council, and therefore the University have not the power which it claims in the present case. With respect to Lord Brougham, what he said in the case I think is this: 'It must, however, be observed, that some of the Judges seemed to think, and Lord Glenlee among others, that the mere appointing of the Professors gave the College, from the fact of their appointment, the power of conferring degrees, I should doubt that' (there is not an expression anywhere stronger than this); 'and certainly the instances of the other Scotch Universities would rather go against it. For every one of those which have been cited—St Andrews, Aberdeen, and Glasgow—has the power to confer degrees by express grant; by the grant of the Pope in the case of St Andrews and Glasgow; and by grant of the Estates of Parliament in the much later case, at the end of the sixteenth century, that of Marischal College, Aberdeen, founded by the Earl Marischal. It is, however, quite unnecessary to enter upon that here, for this case is perfectly independent of all question as to the power of granting degrees. The question here is upon the power of making rules and regulations for the government of the College.' So that, so far as opinion goes, there is none whatever expressed in the House of Lords, except, as Lord Brougham said, he should doubt whether there was that inherent power in the corporation. And you have the other Judges that I have referred to, every one of them, where it was necessary to express an opinion, expressing it in favour of the existence of the power. Then, the only other opinion that is cited in the Case, and that is not given as a legal opinion, for it is merely an historical opinion, is that of Sir William Hamilton,—an opinion, no doubt, very valuable and very important as an historical opinion.

*Lord Chancellor.*—And still more, in so far as it is a metaphysical question.

*Mr Rolt.*—Still more, as your Lordship observes, so far as it is

a metaphysical question. But what is the object of Sir William Hamilton's opinion? What is it that he is answering? He is answering Sir Charles Wetherell's argument, that the universality of science is that which gives the title. He is answering the argument which he urged at this Bar, that an University forbidden to grant degrees in Theology, would nevertheless be able to grant degrees in Theology. Sir Charles Wetherell carried his argument to that extent, and I say that upon a careful perusal of Sir William Hamilton's opinion, although sometimes you may find an expression which rather tends towards negating the power of Universities to grant degrees as being inherent in them, yet the whole scope and object of that argument is addressed to this, that the extent to which a University has any power at all, depends upon the charter of creation. If it has power to teach in Theology, it must have Theology mentioned; and when he is speaking of the power of the University, that is what he is referring to. You must, he says, find their limit in the charter or Act incorporating them; he is not referring so much to their power of granting degrees; that is not what he is addressing himself to. I believe that expression does once in the course of the discussion fall from him, but it is not that to which he has addressed his attention, or that to which he adduces instances. He adduces instances for the purpose of showing that there were many Universities incorporated for one purpose only, and some incorporated for two or three, or more purposes; but you will always find, in the instrument of creation, what was the limit and scope of their duties; and his argument was not addressed to the question of degrees. In the present case, the degree could not, from the nature of the thing, have been used for centuries, because Surgery had not got to an advanced and recognised status, and its non-use during that time amounted to nothing at all. Then, when the time had arrived at which it ought to have been admitted, the old bodies were unwilling to exercise their power, and they refused to exercise it in a way that showed that they believed, and everybody else also, that they could exercise it if they thought fit. But so essential has it now become, that the degree has been constituted; and you have at Paris, and at Vienna, and at Berlin, the degree in Surgery as part of the degree in Medicine and essential to it. I submit to

your Lordships, therefore, that there is power in the University, as well as power in the Commissioners; and that the use, and the opinions that have been expressed upon it, sanction that conclusion.

Then, my Lords, the next question that has been urged, is the question of the expediency of exercising that power. Now, here it is necessary to assume that either the University or the Commissioners have the power; and the question is one of discretion. They are not bound to do it, but they have the power of doing it; and the only question is, whether it is fit and proper on this occasion that they should exercise the power that they have.

*Lord Cranworth.*—Of course you must assume the power.

*Mr Rolt.*—Yes; and the only question is, whether it is proper to exercise it or not. The question of expediency is literally this. Is it expedient that the Medical School of the Edinburgh University should continue? There is the whole question of expediency in this case. It is, as the Commissioners say, scarcely disguised by those who are opposing this application, what their object is.

*Lord Chancellor.*—You see the argument against you with regard to expediency is based upon the manner in which you have done it. You are merely saying that it might be a good thing to institute the degree.

*Mr Rolt.*—The mode of granting it is one of the objections, but other objections have been urged. If there is nothing objected to but the mode of granting it, that assumes that we have the power of doing it.

*Lord Chancellor.*—That must not be assumed; nothing approaching to a concession was made by them that the right existed.

*Mr Roundell Palmer.*—One argument was, that without authority it could not be introduced into the University.

*Mr Rolt.*—But then they say that if it is introduced, it is inexpedient that it should be.

*Sir G. Cornwall Lewis.*—In the form in which it has been introduced.

*Mr Rolt.*—Not only in the form in which it has been introduced; but what they say is this, so patriotic, so high, and lofty are all their views—the object of the University is the higher

grade of learning. You take the degree with a very high standard of Doctor of Medicine. You have power to grant others, but take a degree of a high standard.

*Sir G. Cornwall Lewis.*—That was the argument addressed to a part of the plan, to the degree in Surgery; it was not addressed to the whole.

*Lord Chancellor.*—Would you say that a medical man like Sir Benjamin Brodie ought not to have the dignity of a Doctor?

*Mr Rolt.*—What I say they contended was this: the University ought not to look to the granting of degrees which gave a license to practise; and these degrees of Bachelor of Medicine and Master in Surgery give a license to practise.

*Sir G. Cornwall Lewis.*—They say the University ought not to mould their degrees with that view.

*Mr Rolt.*—They say you ought not to look to bring grist to your mill—the interests that you are to advance are those of religion and learning, and not the ordinary low qualification in the way of a profession; you should have just that scale which nobody can attain to, except some few persons who devote great intellect and great time and patience to the subject. That is the object, and that is the way in which this is to be done; and that really has been the strongest argument that has been used against the expediency of granting this degree. My Lords, I quite agree that the object of the Commissioners is to be the advancement of religion and learning; and that for that purpose they are to make provision for the better government and discipline of the Universities of Scotland. But if it should turn out, as it will, and as I think your Lordships will see that it must, that you cannot have a School of Medicine of the character which now exists in the University of Edinburgh, if it is to be limited to this special and rare degree, then it is clearly expedient that it should not be so limited.

*Sir G. Cornwall Lewis.*—What do you mean by the expression ‘rare degree?’ Their argument is, that the University ought only to grant a degree in Medicine, and not a degree in Surgery as well. I do not suppose that they mean to limit the degrees to those hitherto given in Medicine. What do you mean by ‘special and rare degree?’

*Mr Rolt.*—I think your Lordship will find that they have said this: You ought not to have so low a qualification; you

ought not to have degrees which are introduced for the mere purpose of qualifying to practise.

*Sir G. Cornwall Lewis.*—That, in fact, you should have Physicians only.

*Mr Rolt.*—That we should have Physicians only. If that is to be so, it is obvious that the School will be cut down at once. If the Edinburgh degree of Doctor of Medicine had not qualified, or, at least, had not enabled the possessor of the degree, out of the exclusive bounds, to act as a general practitioner, that School would never have arrived at that eminence at which it now is. We have now got provisions by which each practitioner is to practise according to his qualifications (I will show how that stands under the Act directly); and therefore henceforward the degree of Doctor in Medicine will not qualify anybody to act as a general practitioner. Nobody can now act under the degree of Doctor of Medicine except as a Physician. Of course, the School will then be very much reduced. It is obvious that it cannot maintain its present high character as a School of Medicine. And I say that these considerations must press very much upon your Lordships when you come to determine whether it is expedient, if there be the power, that these degrees which admit to practise should be given or not. The degree of Doctor of Medicine will be comparatively valueless; it will not be as valuable as it was before—it will not enable you to practise as a general practitioner, and you will be precluded from acting as a general practitioner if you have no other degree than that. A few persons may still resort to the University of Edinburgh who desire only to be Physicians; but is it possible to maintain such a School of Medicine as there is there, by giving nothing more than the degree of Doctor of Medicine, after it shall have been enacted that the degree of Doctor of Medicine will not enable you to become a general practitioner? That is really the form in which the question comes.

*Sir G. Cornwall Lewis.*—Do you conceive that to be the meaning of the Medical Act?

*Mr Rolt.*—I will state to your Lordships how that is. That is the construction which has been put upon it; and the history of it is this: The Medical Act, in the 31st Section, as your Lordship has heard several times, says, that every registered person is to be entitled to practise according to his qualification,



*Sir G. Cornwall Lewis.*—What construction do you put upon that section ?

*Mr Rolt.*—I would rather tell your Lordships the construction that has been put upon it in practice, than give any opinion upon it myself. The section says : ‘ Every person registered under this Act shall be entitled, according to his qualification or qualifications, to practise Medicine or Surgery, or Medicine and Surgery, as the case may be, in any part of Her Majesty’s dominions ; and to demand and recover in any court of law, with full costs of suit, reasonable charges for professional aid, advice, and visits, and the cost of any medicines or other medical or surgical appliances rendered or supplied by him to his patients.’ Now, what the Commissioners tell us is this : that the construction which has been insisted upon by the petitioners, and which they encourage, is this, that a Doctor of Medicine can practise as a Doctor of Medicine, and a Master in Surgery can practise as a Surgeon, and in that way only. And that opinion, the Commissioners tell us, is one that is fostered by the petitioners ; and this having got abroad, the Army and Navy Medical Boards, and the Poor-Law Board, have been inquiring of the Medical Council what is their construction of the Act ; and your Lordships will find—I think it is in the Report of the Commissioners, at page 5 of the Report, at the letter H—that they say : ‘ In consequence of the difficulty thus created, a doubt has arisen, which appears to have been much encouraged by the Medical corporations in Scotland’ (that is, my learned friend’s clients), ‘ whether the possession of the degree of Doctor or Bachelor of Medicine from a University—as, for example, from the University of Edinburgh—was intended to be taken as indicating in its holder a competent knowledge of the principles and practice of Surgery, as well as of the principles and practice of Physic. This doubt appears to have occurred to some of the Government Boards, which require from persons obtaining situations under them a competent knowledge of both branches of the profession. Thus, in August of last year, a communication was made by the Poor-Law Board to the General Medical Council, in which, after mentioning that memorials had been addressed to the Board on the subject by various bodies, including the Universities of Edinburgh, Glasgow, and Aberdeen, the Colleges of Physicians and Surgeons of Edinburgh, and the Faculty of Physicians and Sur-

geons of Glasgow, and after referring to the provisions of the 31st section above quoted' (therefore, your Lordships will see that those several bodies had been active in addressing the Poor-Law Board about it), 'the Board requested to be informed by the Medical Council, "how far the degrees, diplomas, or licenses of the several bodies by whom memorials have been addressed to the Board confer respectively the right of practising Medicine or Surgery, or Medicine and Surgery, and are evidence that the persons to whom they are granted have attained a competent knowledge of either or both of those branches of the profession." A Committee of the Medical Council having been appointed to report on this communication, prepared a report, which was presented to the Medical Council on the 10th of August, and which, after some preliminary observations, thus proceeds: "The question put by the Poor-Law Board consists of two parts—1st, How far the degrees or licenses of the several bodies above enumerated, confer respectively the right of practising Medicine or Surgery, or Medicine and Surgery? and, 2d, How far the above qualifications are evidence that the persons to whom they are granted have attained a competent knowledge of either or both of those branches of the profession?" With reference to the first part of the question, the Committee deem it only necessary to observe, that, in the words of Clause 31 of the Medical Act, "every person registered under this Act shall be entitled, according to his qualification or qualifications, to practise Medicine or Surgery, or Medicine and Surgery, as the case may be, in any part of Her Majesty's dominions" (they give the words of the Act in answer); "and that the qualifications conferred by the several bodies above enumerated appear to the Committee to be as follows" (then they are mentioned). "The second part of the question is, How far the above qualifications are evidence that the persons to whom they are granted have attained a competent knowledge of either or both of those branches of the profession? In reference to this, the Committee desire to observe, that the several bodies above enumerated are Universities or corporations legally entitled to grant degrees or licenses in Medicine or Surgery, or in both; that their curricula require an education on all the important branches of the profession; and that it is the opinion of the Committee, that a perfect equality of privileges should be maintained throughout the

United Kingdom." There was a motion that the report be adopted, and there was an amendment moved to it,—That the report be adopted, with the addition, after the word "privileges," in the last line but one, of the words, "among the Graduates and Licentiates of the bodies above enumerated, according to their several qualifications." That amendment was carried; and, therefore, the answer that was made as to the evidence which a degree afforded of a person's qualification in either or both branches of the profession, was in substance this: 'That it is the opinion of the Committee, that a perfect equality of privileges should be maintained among the Graduates and Licentiates of the bodies above enumerated, according to their several qualifications.'

*Sir G. Cornwall Lewis.*—You see that it refers to the rights of persons in different parts of the United Kingdom. There was a great deal of dispute about that in the Poor-Law Board at one time, whether a person having a Scotch title to practise, a Scotch diploma or an Irish diploma, should be the Medical officer of an English Board of Guardians. It has no bearing whatever upon this point.

*Duke of Richmond.*—It was a question of that nature entirely, and we intended to ask the Medical Council for their opinion upon the subject.

*Sir G. Cornwall Lewis.*—The answer to the question is merely a repetition of the words of the Act—it does not answer the question at all.

*Mr Rolt.*—Therefore it is left in doubt; but the doubt is raised in their minds.

*Sir G. Cornwall Lewis.*—What construction do you put upon that clause?

*Mr Rolt.*—At present, it seems to me, looking at it, to mean that a person 'shall be entitled, according to his qualification or qualifications, to practise Medicine or Surgery, or Medicine and Surgery,' according as he has a title to practise one or both.

*Lord Cranworth.*—The word 'Qualification,' looking at the 15th section, means that which entitles him to be registered—and those who are entitled are, every person possessing one or more of the qualifications described in the Schedule; the qualifications there being a Licentiate of the College of Surgeons,

and so on. And then the other section says, 'Every person registered under this Act shall be entitled, according to his qualification or qualifications, to practise Medicine or Surgery, or Medicine and Surgery, as the case may be,' subject to any by-law of the College of Physicians.

*Mr Rolt.*—Would your Lordship turn to the qualifications. The qualifications are, Fellow, Licentiate, or extra Licentiate of the Colleges of Physicians, Fellow or Licentiate of the Colleges of Surgeons, Licentiate of the London Society of Apothecaries, Licentiate of the Apothecaries' Hall, Dublin—then Doctor, and so on.

*Lord Chancellor.*—He may be a Bachelor of Medicine, or Master in Surgery of any University of the United Kingdom.

*Lord Cranworth.*—He may register one, or he may register more than one qualification; for the Act goes on to say, in the 15th section, that he 'shall be entitled to be registered, on producing to the Registrar of the Branch Council for England, Scotland, or Ireland, the document conferring or evidencing the qualification, or each of the qualifications, in respect whereof he seeks to be so registered.'

*Sir G. Cornewall Lewis.*—He may be a Member of the College of Surgeons in London, and a Member of the Apothecaries' Company.

*Lord Chancellor.*—I suppose a double fee would be paid for being a Bachelor of Medicine and a Master in Surgery.

*Lord Cranworth.*—I do not know how that is.

*Mr Rolt.*—At all events, it is quite clear that the Act creates great doubt; and that, in the Military and Naval Services, it is very doubtful whether a qualification in Medicine will be accepted as a qualification in Surgery, and the same in the other Services. And what the Commissioners say is, as it appears to me, quite unanswerable, that, 'With a doubt thus existing and fostered, as to whether the degree in Medicine of the University of Edinburgh was to be regarded as evidence that the persons to whom it was granted had attained a competent knowledge of Surgery as well as of Medicine, the Commissioners have become convinced, that, notwithstanding the representations to the contrary made by the Medical corporations, the view pressed on them from the outset by the Senatus Academicus of the University is correct; that the altered state of

circumstances renders it expedient, and, indeed, necessary for the preservation of the Medical School of the University, that it should put in force its undoubted right,—a right exercised by the University of Glasgow, and by the Universities of the Continent most distinguished as Medical Schools,—of granting degrees in Surgery. They have been further convinced, having regard to the practice which prevails in the English Universities,—then comes a passage as to the mode of granting the degree, which is a subsequent part, and which, no doubt, is very important.

*Lord Chancellor.*—According to the existing law, what penalty would be incurred by a person having the degree of Master in Surgery practising as a Physician?

*Mr Rolt.*—Upon the construction which the Commissioners say is fostered and encouraged by the petitioners, he could not recover anything whatever for his services.

*Lord Chancellor.*—That is all—there is no forfeiture?

*Mr Rolt.*—I am not aware of anything else; but your Lordships, I think, will see, that if that is the construction, that is quite enough to prevent anybody taking that step.

*Lord Chancellor.*—A country practitioner must have a title for his own safety.

*Mr Rolt.*—He must; and he would not have it upon that construction of the Act. Therefore the Commissioners say, that the consequence is this, that if there is not power to give a degree, it will be a very serious thing to such an individual.

*Lord Chancellor.*—In the other Act there are penalties incurred for practising, the person not having been duly licensed by the Apothecaries' Company.

*Mr Rolt.*—Yes, my Lord; but here there is ample penalty, that a general practitioner acting under a degree in Medicine, under the construction of this Act which has been contended for and insisted upon, could not recover his bills for attendance as a Surgeon. Now, I say, if that is so, what is the conclusion which the Commissioners have drawn? They are acquainted with Scotland; they are acquainted with Edinburgh; you have the two chiefs of each division—

*Lord Chancellor.*—An Apothecary could not maintain an action for his bill, without either producing his license, or proving that he was in practice before the Apothecaries' Act passed.

*Mr Lowe.*—That was in 1815, was it not?

*Mr Rolt.*—Yes, my Lord. But here it is contended that the effect of this Act is, that a Doctor of Medicine practising as a general practitioner cannot recover anything whatsoever for his services,—which, of course, is an estoppel to the Medical School of the University. Nobody would go there unless he intended to practise in the higher branch of the profession as a Doctor of Medicine, where fees are not to be recoverable at all. What is the consequence of that? Can you have better evidence than that which the Commissioners themselves give. They know Edinburgh,—they know the University,—they are intimately acquainted with the result,—they know what is the object of the petitioners, which is, to say, you ought not to go to the University, in order that we may have the granting of all licenses. The Commissioners know what will be the effect of that; and they say that the effect of it will be the destruction of the Medical School of the University; and, at all events, they say that it is necessary to interfere for the preservation of the Medical School.

*Sir G. Cornewall Lewis.*—For the preservation of the Surgical School—it would not affect the Medical School.

*Mr Rolt.*—It would affect the Medical School, my Lord. Is it possible to keep up the character of that School, if the construction of the Act is that which it is said to be? I say, it is simply impossible. And you have the best evidence that could be given, namely, that of the Commissioners themselves, the most competent and the most impartial persons that could be selected. Therefore, upon the point of expediency, I say that it is a matter of the highest expediency and of the greatest importance to the country. Your Lordships have to consider our increasing Empire, our Colonial Service, our Military and Naval Services, and our other Services, and the difficulty of finding practitioners for all those Services, and for all those dependencies, all of which are increasing every day; and it is quite obvious to every one, that the closing of such a school as the great Medical School of Edinburgh would be a serious, and, I might also say, a national calamity. It will be effectually closed, if what the petitioners contend for is granted.

*Sir G. Cornewall Lewis.*—How are the country parts of Scotland now supplied with medical men?

*Mr Rolt.*—I suppose by degrees at Edinburgh.

*Sir G. Cornwall Lewis.*—A degree of Medicine at Edinburgh now would not enable a person to practise Surgery.

*Mr Roundell Palmer.*—There has been no one degree in Scotland which could entitle a person to practise in Scotland.

*Mr Rolt.*—Your Lordships will understand that we are agreed upon the technical effect of the degree in Medicine. Technically it did not authorize, it gave no additional authority for practising out of the bounds; but the prestige of the degree, of course, enabled any Doctor of Medicine to practise anywhere out of the limits of Edinburgh. That was the state of things before the passing of the Act.

*Sir G. Cornwall Lewis.*—What has been the state of things since the passing of the Act?

*Lord Cranworth.*—When did the Act come into operation?

*Mr Rolt.*—I can scarcely answer that question off-hand.

*Duke of Richmond.*—In August 1858 it received the Royal assent.

*Mr Rolt.*—I am told, and I think it will very likely be so, that they have registered their Medical degrees of Doctor of Medicine, and have gone on practising as they did before, as general practitioners, taking the risk; but no case has been tried.

*Lord Chancellor.*—Generally supplying their own medicines.

*Mr Rolt.*—I suppose acting as general practitioners in the country districts.

*Adjourned to to-morrow at half-past ten o'clock.*

## THIRD DAY,

FRIDAY, 18<sup>TH</sup> JANUARY 1861.

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*The Committee met at half-past ten o'clock.*

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*Mr Rolt.*—My Lords, there were two Acts of Parliament that were mentioned yesterday, which have not been looked at. I will just call your Lordships' attention to one of the 3d of Henry the Eighth, chapter 11. That was an Act for the appointment of Physicians and Surgeons. It enacts, 'That no person within the City of London, nor within seven miles of the same, take upon him to exercise or occupy as a Physician or Surgeon, except he be first examined and approved and admitted by the Bishop of London and the Dean of St Paul's for the time being, calling to him or them four Doctors of Physic, and for Surgery other expert persons in that Faculty.'

*Sir G. Cornewall Lewis.*—That does not mean an academic Faculty.

*Mr Roundell Palmer.*—Not an academic Faculty.

*Sir G. Cornewall Lewis.*—But a craft.

*Mr Rolt.*—Still, it shows that 'Faculty' is a flexible word. Then, my Lords, the other is the 32d of Henry the Eighth, chapter 40, one section of which is this: 'Forasmuch as the science of Physic doth comprehend, include, and contain the knowledge of Surgery as a special member, and part of the same; therefore be it enacted, that any of the same Company or Fellowship of Physicians, being able, chosen, and admitted, by the said President and Fellowship of Physicians, may, from time to time, as well within the City of London as elsewhere within this realm, practise and exercise the said science of Physic in all and every its members and parts.'



My Lords, I had yesterday concluded what I had to say upon that subject, and perhaps your Lordships will recollect that what I had submitted was this: that there was express power to grant degrees in the University; at all events, there was express power to grant degrees in the Faculty of Medicine, and an inherent power to modify it according to the circumstances of the time; and that, at all events, there was such a power in the Commissioners. I then, my Lords, proceeded to answer the arguments which had been suggested upon the question of expediency, assuming the power to exist either in the University or the Commissioners, whether it was expedient that that power should be exercised in the present case. The first objection which had been made to this was, in substance, that it was inexpedient to give the University the power of granting a licensing degree, or one of so low a character—that it ought to be kept to the higher degree, the degree of Doctor of Medicine;—that I have dealt with.

Then, my Lords, I come to the next point under that head of expediency, which was the question as to the mode in which were to be granted the two degrees of Bachelor of Medicine and Master in Surgery.

In dealing with the first objection under that head—the expediency of granting power to give this degree—I say that the Commissioners acted avowedly upon this notion: that possibly the construction of the Act might be that a person could not practise in Surgery without the degrees were so modified; and then, when they came to consider the mode of granting it, there was but one way in which it could be done, so that the words of the Act of Parliament might be met and satisfied.

The Act of Parliament points out that the qualifications to be possessed by those who are to be registered are these, among others: 'Doctor, or Bachelor, or Licentiate, of Medicine, or Master in Surgery, of any University of the United Kingdom.' It would not, therefore, do to say that it shall be a Doctor of Medicine and Surgery, and Bachelor of Medicine and Surgery; it must be a Bachelor of Medicine, and Master in Surgery. That is the form pointed out by the Act; and if there is power to create a new degree or to modify existing degrees, and if it is expedient that the University shall have the power to grant a licensing degree, then, of course, the degree must be in this

form if that object is to be effected. If that is a legitimate object, it must be done in such a manner as would meet the words of the Act of Parliament.

Now, my Lords, your Lordships will also find that another reason, which operated with the Commissioners for thus framing the degree, was, that the College of Physicians and the College of Surgeons of Edinburgh had agreed to act together to grant upon one examination the two licenses. Well, that course had been adopted by those two Colleges—the College of Surgeons and College of Physicians.

*Lord Chancellor.*—If it were *mala praxis*, it could not be justified by the example of those two learned bodies.

*Mr Rolt.*—My Lords, it is not *mala praxis* at all that I am aware of.

*Lord Chancellor.*—But if it could not be justified, their example would not justify it.

*Mr Rolt.*—My Lord, I am not referring to the matter of justification at all; it is not for that purpose, but to show that that being so, something of the same kind is necessary. It is not that it is wrong, and that I refer to it to justify it, but that it is adopted by two other licensing bodies, the College of Surgeons and the College of Physicians, having one examination, and one examination only, and upon that one examination granting two degrees. I say that it is done, but I am not at all quarrelling with the doing of it.

*Lord Chancellor.*—The question is, is it right?

*Mr Rolt.*—My Lord, apart from that, if the University of Edinburgh is to be sustained as a Medical School—if the University is to have existence as a Medical School—it must have the power of doing the same thing—it must be able to do the same thing.

*Lord Chancellor.*—The question is not limited to the misconduct of its competitors.

*Mr Rolt.*—If it is right—if there is nothing wrong in it—that course must be followed; or if you do not give equal facilities, then, of course, the Medical School of the University will fall to the ground. If the degree outside the University is of as much value as a degree within the University—if the degree outside the University is a degree that can be had with less expense, and less trouble, and less study, than it can be had

within the University—then, of course, the learning, as far as Medicine is concerned, within the University, will be neglected, and will fall to the ground.

My Lords, it was said that an offer had been made by the College of Surgeons and the College of Physicians to the University to join in one examination with them; but, of course, the answer to that must be, that the University is a corporation that is meant to promote learning within its own walls. The integrity of the University must be preserved. It is not to combine and connect itself with bodies outside the University. Bodies outside the University may grow up by legitimate competition with it. All that may be very well; but it is not the object of the University to promote learning outside of its walls. It does as much as it can do; but it has its own functions to perform, and its functions are to promote learning within its walls; and, therefore, it cannot be blamed for declining to unite with those who are outside the walls in this joint examination.

Now, the Report of the Commissioners, at page 9, shows how this acted upon their minds to induce them to come to the conclusion which they did. In page 9, from letter E to letter I, after describing in the previous part of the page what the two bodies had done (I will not detain your Lordships by reading that; it is in substance what I have stated—that they have joined in having one examination each to grant the degree), the Report proceeds thus: 'This system of granting a double qualification by those two bodies, it is to be observed, is wholly new, and has been organized only since the passing of the Medical Act, and with a view to the provisions of that Act. The College of Surgeons, previous to that date, granted a large number of licenses annually; but the licenses of the College of Physicians had fallen practically into disuse, no candidates for it, as the Commissioners are informed, having presented themselves for many years. The change, however, in this respect, which is likely now to be effected by the prospect of the double license, may be judged of by the circumstance that, within a year after the coming into operation of the Medical Act, the College of Physicians admitted to its license, it is understood, above 1000 persons who were already licentiates of other corporations, and whose object in seeking the license of the College of Physicians must, therefore, have been the possession of a

double qualification. It is obvious, then, that if these corporations were to succeed in preventing the University from certifying by its degrees that its Graduates were fully qualified both in Medicine and Surgery, this system, which they have established, of conferring a double qualification after an examination by one Board of Examiners, would hold out to persons entering the Medical profession, inducements so powerful, that the vast majority of such persons would become candidates for the double diploma in preference to the University degree; and graduation in the University would ultimately be almost entirely superseded. The Commissioners, therefore, in view of the formidable competition thus established at the gates of the University, do not hesitate to express the opinion, that to prevent the University from granting the degree of Master in Surgery, would be to inflict a most serious injury on its interests as a Medical School.'

The Commissioners, therefore, my Lords, do not at all desire to conceal (of course, they conceal nothing), but they avow, that they are of opinion that it is right that the University should be enabled to give a licensing degree. Assuming that they have the power—if either the University or the Commissioners have the power—there is but one question that remains in substance, however divided and subdivided it may be, and that is, Is it expedient that the University should grant a degree which shall be a licensing degree? If they have that power, then they must grant a degree which will constitute a proper qualification within the Medical Act, or it will not be a licensing degree. That is the view taken throughout, and that is the reason why it is granted in the form here given. And, my Lords, we find that persons who are Licentiates of the Apothecaries' Company, and persons who are Licentiates of the College of Surgeons, apply for the diploma of the College of Physicians in Edinburgh to the extent of 1000 in the year, paying L.10 each. At first this was obtained without examination. The Medical Council afterwards interfered, and said, 'You must not do that.' Since then there has been an examination, candidates have got the license of Physician upon examination; and that shows the competition which those who are without the University are setting up in order to bring in candidates for their licenses.

*Lord Chancellor.*—This may be counteracted by all lawful means.

*Mr Roll.*—By all lawful means; and if your Lordships decide that it is not expedient that the University shall have the power to grant a licensing degree, that it is expedient that the power of the University should be limited to granting only a degree of a much higher character than the ordinary licensing degree (for that is the real question which is at the bottom of it all; after you have got the question of the right or power to do it, there is but one question); if you say No, that the University ought to reserve to itself the power of testing the capacities and qualifications of an individual for a higher degree, but not of one who is to act as an ordinary practitioner, that of course will be adverse to our view; but the view which the Commissioners have taken is, that it is expedient that they should exercise the power to grant a licensing degree, otherwise the whole Medical School must drop; and that you cannot support the School merely for that higher purpose. To enable them to do that as efficiently as they have hitherto done it,—and very efficiently they have done it,—there must be power to enable them to have a large School of Medicine, a School which will embrace those who want nothing more than the ordinary practising degree.

Now, another argument against this was the complaint, which, I must say, I heard with amazement, namely, that it amounts to deception, that you give either one degree or two degrees, as you think fit; that you send out a person with four letters after his name, who ought to have but two. My Lords, the substance of our case is this: The examination, it is clear, is one which qualifies every one who is examined to be both a Master in Surgery and a Bachelor of Medicine; that I assume here. When we come to the question of qualifications for degrees, we shall see whether it is sufficient or not. If it is not sufficient, it can be made sufficient. But what the Commissioners say is this: We do not limit the examination for the degree of Bachelor of Medicine to Medicine; we extend the examination to Surgery; we satisfy ourselves that the person is fit to be a Master in Surgery as well as a Bachelor of Medicine; and then he may please himself whether he will place the four letters after his name or only two; he is entitled

to the four, but he need not take up both degrees unless he chooses to do so; and the deception, therefore, literally results in this, and is nothing more than this, that the man who is entitled to credit for a high degree of qualification, namely, in Medicine and Surgery, may be modest enough to hold out to the world that he does not possess both qualifications, but that he possesses only one.

*Sir G. Cornwall Lewis.*—If a gunsmith sells a double-barrelled gun, he may call it a single-barrelled gun.

*Mr Rolt.*—Yes, my Lord; and if the purchaser got a double-barrelled gun, and there was a label upon it describing it as a single-barrelled gun, I do not think he would be very much deceived.

*Duke of Richmond.*—So long as both barrels were in good order.

*Mr Rolt.*—Yes, my Lord; but that is not the question; it does not arise here; that would arise under the head of qualification. We shall see when we come to that, whether the Birmingham tests, or the gunmaker's tests, or the Tower tests are sufficient; that will arise when I come to that part of the case, which I will presently. In this part of the argument, I assume that, when the Commissioners have appointed certain tests, certain examinations, and a certain course of education to be gone through, before there is any degree whatever to be granted, when it has been gone through and satisfied, it is sufficient. Upon this part of the argument I am entitled to take that.

*Lord Cranworth.*—The two degrees, after the passing of the Act, mean the same thing as the one degree did before.

*Mr Rolt.*—That is what I desired to submit to your Lordships yesterday, that it is a modification of language; that one degree was intended to include the other—language has fluctuated—make it clear what it now means; it is intended to mean that, therefore make it clear.

*Sir G. Cornwall Lewis.*—The Legislature, in the Medical Act, put upon the word 'Medicine' a restricted sense, which it did not bear necessarily.

*Mr Rolt.*—Yes, my Lord; and even in the time of Henry the Eighth there was an express enactment, reciting, Whereas the science of Physic does include the science of Surgery; but when we come to the Medical Act, there does appear to be a

restriction put upon it, which separates the two : it is not necessary to alter the degree in substance, but to give to it an explanation ; and that is done in the way which we propose ; and the justification of doing it in this form sufficiently appears. If there is a power, and it is expedient to do something of the sort, then it might be said, it would be enough to say, Bachelor or Master of Medicine and Surgery, to grant a degree in Medicine and Surgery ; but the question is, would that be a licensing degree ? If it would not, you have the power to modify it so as to make it a licensing degree. Then do not say Bachelor of Medicine and Surgery, because that will not answer the object ; but say Bachelor of Medicine and Master in Surgery, since the person is qualified in both. If you think fit, make it compulsory upon him. As he is going to sell a double-barrelled gun, make it compulsory upon him to endorse upon it, ' double-barrelled gun '—we have no objection to that.

But it is said, that in all this the Commissioners are taking upon themselves the power of construing a doubtful Act of Parliament—that under the Act of Parliament it is doubtful whether the Medical degree is to limit the practitioner to Medical practice properly so called, and the Surgical degree to limit him to Surgery ; that that is a doubtful question upon the construction of the Act of Parliament, and that, therefore, the Commissioners are by this Act doing this absurd thing beyond their power, instead of allowing a Court of Law to put a construction upon the Act of Parliament ; they are, forsooth, themselves putting a construction upon the Act which it was never intended they should do. My Lords, they are doing nothing of the kind ; it is an entire misapprehension and mistake of the question to say that. In this stage of the argument, we have got to this, that it is in the power of the University, or in the power of the Commissioners, to grant the degree of Master in Surgery ; we have got past that, and we do not go back to that argument. Well, then, the Commissioners say, Here is an Act of Parliament ; it is doubtful whether that is the construction that is intended ; but we will assume a Court of Law would put that construction—assume, if you please, that Parliament has expressly said that a Bachelor of Medicine shall practise in Medicine, and a Master in Surgery shall practise in Surgery ; we will assume that to be so ; we have

the power of granting the degree of Master in Surgery, and we have the power of granting the degree of Bachelor of Medicine; we adopt the construction which a Court of Law puts upon it; and having the power to do that, we think, considering the close union there is between Medicine and Surgery (nothing in the Act of Parliament can displace that fact, or proposes to displace that fact), and considering that a man is not competent to pass for a Bachelor of Medicine unless he is competent to pass for a Master in Surgery also, nor for a Master in Surgery, unless he is competent to stand the examination for a Bachelor of Medicine—we think it expedient for the interests of the University, that the University should exercise the power to grant a licensing degree within the terms of the Act of Parliament.

Then, my Lords, another argument that is urged against this mode of doing it is, that it is unfair. You have got the prestige of the University; the University has a certain degree of prestige. A Doctor of Medicine of Edinburgh is a higher degree; and though you are going to modify it, and call him a Bachelor of Medicine and Master in Surgery, a Bachelor of Medicine and Master in Surgery will be put, as to the right of action to recover payment for his services, just upon the same footing as those who get the licenses or the right to practise from the Faculty of Surgeons or Physicians, or other body outside the walls, will be; you will be carrying into your several lines of practice the prestige of the University degree. Surely, my Lord, that argument can be of no weight; the distinction is clear between Doctor of Medicine, and Bachelor of Medicine and Master in Surgery. The prestige will be the prestige of the Bachelor of Medicine and Master in Surgery, and not the prestige of the degree of Doctor in Medicine. If the qualification is not lowered at all, surely you must leave it to find its own level; if there is any alteration in the value of it by the mode of examination, it will find its own level; and it is impossible, if, in other respects, the University of Edinburgh has the right contended for, to deny it the enjoyment of this right, because hitherto it has given a degree that has, by its excellent school of Medicine, obtained a high reputation, and because the same prestige of the University will attach to any degree which it now, for the first time, proposes to grant. It is impossible,



my Lords, if on other grounds we have that right, that that argument can prevail.

But there is another important argument as to the mode of granting degrees. Your Lordships recollect there is to be uniformity in the degrees throughout all the Universities. There is a clause in the Universities' Act, that the degrees must be uniform. It is the 5th sub-section of section 15, which provides, 'that in so far as shall be practicable, and in the opinion of the Commissioners conducive to the well-being of the Universities and to the advancement of learning, the course of study, the manner of examination, and the conditions under which degrees are to be conferred, shall be uniform in all the Universities of Scotland.'

*Earl of St Germans.*—It does not follow, I presume, that it would be necessary, if it was considered that there was not a sufficient school—for example, at St Andrews. I do not know the fact, but if there were not the same advantages at St Andrews, it would not be necessary to carry out the same provision, or confer the same privileges upon the University.

*Mr Rolt.*—Just so. It is 'in so far as shall be practicable.'

*Earl of St Germans.*—That would depend upon the efficiency of the school.

*Lord Chancellor.*—The Commissioners have power to regulate that. They can withhold from them the power.

*Earl of St Germans.*—There is nothing to make uniformity absolutely necessary.

*Mr Rolt.*—Just so. 'In so far as shall be practicable, and in the opinion of the Commissioners conducive to the interests and well-being of the Universities.' But suppose there be a School of Medicine and Surgery at Edinburgh, and at Glasgow, each of them equally well furnished, and giving sufficient instruction in each substantially to the satisfaction of the Commissioners, then it will be their duty, in that case, to give the like degrees to each.

*Lord Chancellor.*—In St Andrews there is a scandal about granting degrees, without having a good school. There is one instance related in a work, where the possessor was proud of his high qualifications, because he said it could not be supposed that the 4s. 6d. which he paid for his degree could have any influence on those great dignitaries.

*Mr Rolt.*—But admitting that it is only 'so far as practicable,'

put the case of there being a Mastership in Surgery in existence. There has been one in existence at Glasgow from the year 1816 to the present time. One of two things must follow. You must either deprive Glasgow—I do not say it is compulsory, but it would be reasonable, having regard to this direction of the Act of Parliament—you will either deprive Glasgow of the power of granting a degree of Master in Surgery, or you will give the power to Edinburgh. There is no pretence for depriving Glasgow of this degree of Master in Surgery; and if there is equally good instruction in Surgery at Edinburgh, I think it is right that you should give that degree to Edinburgh.

Now, my Lords, the next question would be the question which was just now suggested—the question of the excellence of the two barrels—the question of the qualifications for degrees. Of course, that is a proper question to enter into. The main argument is, that the regulations as to the course of study and attendance upon lectures in the curriculum of the University, only require attendance upon one summer session, whereas the medical regulations outside the University require attendance upon three summer sessions. Now, it is only necessary to put your Lordships right as to the facts upon that, and to leave it to your Lordships' judgment. The period of study is the same. The one system—that is, the system outside the University—thinks it right to fetter the student with detailed and compulsory attendance upon particular lectures. The system of study in the University is founded on the assumption, and the Commissioners agree with it, that learning and science are better promoted by having, upon some subjects, an absolute necessity, and in others leaving the students at large to follow their own course and time of study; but as to the examination, placing the examination so high that it is impossible that any can undergo that examination unless they go fully through the course of study. Now, my Lords, which is best? Well, that is a question to be solved by the University Commissioners. The Commissioners have, after deliberately weighing the matter, come to the conclusion—We think it would be better done by making the academic course of study a given number of years, pointing out the subjects in which the candidates shall study, giving a limited course of lectures upon which attendance shall be compulsory, and leaving the rest to their own judgment and discretion. What

is good for one man may not be good for another. The mode of study a man will pursue he may best adapt to himself. It may be better fitted for him than if we attempted to prescribe it for him. Every one will judge for himself, but no one can pass the examination unless he is competent. We do not prescribe attendance upon courses of lectures which compel the payment of fees—and which may be wholly unnecessary—which compel the occupation of time which, to particular students, may be wholly unnecessary. We think that the better plan. It is done advisedly—it is done because an opinion is entertained that it is the better course—and I think your Lordships will not be very ready to alter it.

The views of the Commissioners your Lordships will find at page 11, between F and G. They say: 'On this question it is to be observed, that the education for the Medical profession is at present, partly through the recent operation of the Medical Act and partly owing to other causes, in a state of change and uncertainty; and considerable doubt prevails as to the best manner of effecting an improvement in the very various systems which exist throughout the country. The requirements which the Ordinances propose, while they proceed on a similar system to that which exists in the University, of not prescribing with minuteness the course of study which a student shall follow, and the amount of attendance which he shall give to the instructions of Professors and Lecturers, yet exhibit, in the amount of attendance required, an increase over that which candidates for the degree of Doctor of Medicine must show under the present regulations of the University. The Ordinances, in fact, enjoin attendance on every branch of Medical and Surgical study, without exception. The Commissioners, however, think that, in present circumstances at all events, it would be premature and undesirable to specify the number of courses in any particular subject which a student should attend, or to enter too minutely into the details of the curriculum. The opinion of the Commissioners is in accordance with those of some of the highest authorities on Medical education, who regard it as inexpedient to prescribe too closely a definite and invariable curriculum of study, and consider it preferable, while indicating to the student the departments of knowledge which he should apply himself to master, to leave much to his own discretion in determining what

classes it may be profitable for him to attend more than once. Experience soon teaches the students that, in order to succeed in the examinations, it is necessary for them to attend certain classes twice, or even three times. No one, for example, would think of presenting himself to be examined in Dissection, who had not attended more than one course of Practical Anatomy; for, were he to do so, his failure would be certain.' That, therefore, is the view of the Commissioners; and your Lordships see that it has this also in it, which may be something in favour of the petitioners. It does not compel attendance upon courses of lectures in the University to the minutest extent to which attendance is possible; so that, if they choose to attend a second course of lectures outside the walls of the University, there is nothing to prevent them. It leaves them open to do that. If the qualification required exclusive attendance upon a course of lectures inside the University, it would leave them, of course, no opportunity for attending courses of lectures in other quarters, which, if it is desirable for them, it leaves them open to do if they please.

But, my Lords, upon this part of the argument, I apprehend that, if there is any deficiency, the true answer is, that you must go to the Medical Act to correct it. The 18th, 20th, and 21st sections afford an ample remedy. They are addressed to that end, and are a full answer to objections of this sort. The Act says, that it is the duty of the University to have a proper course of education. It is the duty of the Commissioners to see that they have it; but if in course of time the Medical Council shall think otherwise, there is the means of correction elsewhere. The 18th section enacts, that the 'Council may require information as to the course of study, etc., required for obtaining qualifications.' The 20th provides that 'defects in the course of study or examination may be represented by the General Council to the Privy Council.' The 21st is, that the 'Privy Council may suspend the right of registration in respect of qualifications granted by College,' etc. Still, no doubt, it is open to the Commissioners to go into the matter, and for your Lordships to review it, if your Lordships see it is grossly wrong.

*Lord Cranworth.*—Your argument, if I understand it, is, that with respect to any details as to how much attendance shall take place upon lectures in the University, and how much out

of it, in the discretion of the students, is a matter on which the Commissioners are to exercise their discretion, and that the Crown ought not to be advised to interfere with that discretion.

*Mr Rolt.*—Certainly, it is palpable to every one, that some youths will do very much better if left to pursue their own course of education, than if tied to a course of lectures. Doubtless, we all know that it is a constant thing that attendance upon a course of lectures is considered to be a matter of form. The attendance is given—it is a subject of which the youth may be already master. He pays no kind of attention to it, but he pays for his Lectures, and his time is wasted. But, my Lords, as the Commissioners say in their Report, the real objection which the petitioners make is this, not that the qualifications are not sufficient for a licensing degree, but they come back here, as everywhere, to the one point about which alone the petitioners are anxious. Do not let the University grant a licensing degree, which shall be in competition with our licensing degree. Let them give the higher degree of Doctor of Medicine. And when they complain of the qualification and learning not being sufficient in the University, what they say is, that it is not sufficient for the higher branch, and that that is alone what the University ought to grant. The view of the Commissioners upon that, my Lords, will be found at pages 10 and 11 of their Report. They say, at letter J: ‘On this question it is to be observed at the outset, that the complaint made by the petitioners does not appear to be that the qualifications which the Ordinances require are insufficient to secure the possession by its Graduates of the requisite knowledge and skill for the efficient practice of their profession. Were that their complaint, their course would no doubt be, not to petition your Majesty to disapprove of the Ordinances of the Commissioners, but, by bringing the matter under the notice of the General Medical Council, to induce that body, under section 20 of the Medical Act, to represent the defect to your Majesty’s Most Honourable Privy Council, with the view of the remedy there pointed out being applied. On the contrary, the complaint of the petitioners is, that the requirements proposed are not considerably higher than those of the Medical Corporations, which they contend it is desirable that they should be. The argument may be gathered from the words used by the Edinburgh College of Surgeons, in clause 21 of their petition,

which states, 'that, as compared with the ordinary or minimum license for the general practitioner, a University degree should, as commonly understood, be distinguished, first, by a decidedly higher preliminary examination in literature and science, so as to give it an academic character; and second, by a more extended period of study, as well as a higher age, so as to ensure that knowledge and maturity which a University degree is commonly supposed to imply.' The Commissioners gather that the petitioners are not dissatisfied with the amount of requirements for the degree of Doctor of Medicine, supposing that no lower degree were to be conferred; but they contend that no degree should be given on lower requirements than those provided for that degree; and especially that no degree should be conferred on any candidate below the age of 24. At the same time, they have stated to the Commissioners, through their Counsel, that they consider there is no objection to the licenses of the Medical and Surgical Colleges being conferred at the age of 21. The effect of this, it is obvious, and the Counsel for the petitioners fully admitted it, would be, that the number of University degrees would be seriously diminished, and that all, or nearly all, the body of persons intending to become general practitioners, would take the licenses of the corporations to the exclusion of the degrees of the University. Thus, the University degrees in Medicine would become mere honorary distinctions; and, indeed, it is the hardly disguised object of the petitioners to make them so. Such a system would, in the opinion of the Commissioners, ensure the ruin of the University as a Medical School.' My Lords, that is the issue between us. Is there to be a power of granting a licensing degree in the University? The petitioners say no; the Commissioners, whose knowledge of the subject enables them to say what would be the effect of it, say that you would ensure the ruin of the Medical School of Edinburgh by that. Then, my Lords, all I say is, that I think your Lordships will not be prepared to do an act that would have that effect.

*Lord Chancellor.*—We must suppose the Commissioners to stand fair between the University and these Medical Boards.

*Mr Rolt.*—The contrary, my Lords, of that is not suggested, and could not be suggested; and I think if your Lordships look at the selection of the Commissioners, you will see that they are well acquainted with Scotland, and with its institutions and

affairs, and of course they can speak to the result of facts with precision, which can be entirely relied upon; and they say, if you deny the licensing degree to the University in some form or other, you ensure the ruin of the Medical School of the University, which I think would be a consequence somewhat serious, not merely to the University and Scotland, but to society at large.

Then, with regard to the objections to the qualifications for the degree of Doctor of Medicine, I think one of my learned friends said, that he should have blushed for the University to which he had the honour to belong, if it had happened there. My Lord, I do not think the University of Edinburgh has anything to be ashamed of in the qualification for its degree of Doctor of Medicine.

*Lord Chancellor.*—They do not require a knowledge of Greek.

*Mr Rolt.*—They do not require a knowledge of the Greek language; but still they have, notwithstanding that, obtained a very high degree of efficiency—they have obtained a very high reputation, and Greek is to be added. These are the objections urged as to the mode of granting the degree of Doctor of Medicine—first, that instead of being 21, which will do to obtain a licensing degree, a degree to enable a man to practise, he must wait till the age of 24. My learned friend says that is not much; nature will do that for him,—as if it were an answer to say that. My Lord, what does nature mean? Between 21 and 24, I agree, nature does much. Why, my Lords, it gives that which is of as much value as all that art can give—it gives in those three years, a steadiness of purpose and precision to previously acquired knowledge, and the faculty of applying that knowledge. Those three years are, probably, the most important in a man's life; and though it be nature that does it, nature is beneficent; and nature does in those three years, supposing there is nothing else in the matter, add greatly to the qualifications of a man for any practical purpose of life. I do not think, therefore, my Lord, there is much said against that additional qualification.

Then, the other matter is, that he is not to abandon practice. Why, my Lord, what more important can you have? You have got this, that at 21 you have gone through an examination which entitles you to be a general practitioner; there are certain provisions, not only that they are not to abandon practice, but

that they are to attend certain hospitals, or something of that kind. I will not detain you by referring to them more particularly, but something is to be done in the way of practice in those three years, and you are to show that you are master of the Greek language.

Then, my Lord, comes the question of the power and expediency of appointing Extra-academical Examiners. I admit, that though it is ordinarily desirable, and is so generally perhaps, that examiners should not be also Teachers, yet there is a manifest distinction in the case of Medical examinations. Look at the vast variety of subjects of an opposite character upon which students in Medicine have to be examined—in Anatomy, Chemistry, Pharmacy, Natural History, Pathology, Botany, Medical Jurisprudence, etc. You will hardly get any one or two men to conduct the whole course of this examination. The student may well be required to have a degree of proficiency in each; but I think, where you have Professors in each, the mode pursued of each Professor setting a paper in his own subject is the best; and I think a great deal of the argument in favour of Extra-academical examination is removed. This is the view taken by the Commissioners for the Universities of Scotland in 1826. They say, in page 64 of their Report: 'In point of principle, we should have thought it preferable that the examination for Medical degrees should not be conducted by the Professors, but by Examiners appointed for the purpose, in the same manner as the examinations which we have proposed for the degrees in Arts. On due consideration, however, we are satisfied that there are serious difficulties arising from the peculiarity of the subject; and the great opposition apt to arise in Medical discussion, renders it inexpedient to entrust the delicate duty of examinations for Medical degrees to any persons different from the teachers in the University.' That is the opinion expressed by the Commissioners for the Scotch Universities—'We are, however, decidedly of opinion that all the Professors, including those appointed by the Crown, should take a part in these examinations, whether the particular classes taught by them are included in the curriculum of study for degrees or not.' I think there, my Lords, your Lordships have reasons given, which it will be difficult for us to add to at all. There are serious difficulties arising from the great opposition of sentiment apt to arise in



Medical discussions; there are jealousies, there are different schools, and the introduction of foreign examiners may lead to consequences which it is difficult to foresee, and difficult to express; but I think, my Lords, this deliberate opinion of the Commissioners is of very great importance; and what they there say is this, that all the Professors of the University, whether they are connected with the subject in any way or not, whether the degrees are granted in their classes or not, or whether their examination goes to the degree or not, ought all to be present, and then there will be a sufficient check, and that it is not desirable they should be Extra-academical Teachers.

My Lord, as I have said, the reason that leads to the approbation, in ordinary cases, of Extra-academical examination is, that it is supposed there is some bias by teachers in favour of their pupils. I think that is very much moderated by the mode proposed in the Report of the Commissioners, by having the whole of the Professors present at the examination and taking part in the examination. As to financial bias, your Lordships are aware that that is wholly removed by the scheme of the present Commissioners. In their Report, at page 13, they say, 'To complete the security'—

*Sir Hugh Cairns.*—None was suggested.

*Mr Rolt.*—No; but still that is the ordinary reason for the appointment of Extra-academical Examiners. They say, at page 13: 'To complete the security that the examinations shall afford a thorough test of the proficiency of candidates, the Commissioners, in making financial arrangements for the University of Edinburgh, intend to remove from the Professors all interest in the number of degrees to be conferred, by providing that the graduation fees shall be payable, not as they are at present, to the Professors, but to a fund applicable to the general purposes of the University.'

Now, my Lords, your Lordships are aware that the petitioners bring this subject under your Lordships for review. We take it up, and we submit to your Lordships that there ought to be no Extra-academical Examiners at all. Your Lordships proceeding to review it—

*Lord Chancellor.*—I suppose you do not press that.

*Mr Rolt.*—Yes, my Lord; indeed it is now a matter of very great importance; it is to that I wish to address myself. I

refer to the opinion of the University Commissioners, which I have read to your Lordships, clearly against it.

*Lord Chancellor.*—Against it altogether, do you say?

*Mr Rolt.*—Clearly, my Lord; against it altogether.

*Lord Cranworth.*—You have never petitioned against it?

*Mr Rolt.*—No, my Lord; but that is a question of your Lordships' power in the matter. They have petitioned; and they state what has been done, and I, answering their arguments, meet them by showing that too much has been done—and it is legitimate for me to do that. Your Lordships, in proceeding to review what has been done, will decide whether they have done too much or too little; and my argument is, that they have done too much already. Then there is this additional observation—the chief argument of the University Commissioners of 1826 is the different sentiments which prevail upon Medical subjects, and the jealousies that arise out of them. I think, my Lords, it is very easy to see, but difficult to express, what will be the consequence, with the jealousy which exists in the Medical Schools of Edinburgh, to have a foreign Professor,—and, at all events, an Extra-medical Professor of Edinburgh,—an examiner in the University. The full object would be provided for in this way, if Extra-academical Examiners are to be appointed at all, by appointing Extra-academical Examiners from other Universities, and it is not necessary that these rival bodies should be included. As it now stands, the University Court may appoint Extra-academical Examiners from the College of Physicians, or the College of Surgeons of Edinburgh, and the Faculty of Physicians and Surgeons of Glasgow.

*Sir G. Cornwall Lewis.*—How many Professors are there in the University?

*Mr Rolt.*—Twelve, my Lord.

*Sir G. Cornwall Lewis.*—Then there will be three to twelve.

*Mr Rolt.*—There is no objection to that on the point of number.

*Sir G. Cornwall Lewis.*—There is nothing said as to any individual having a voice. It appears that the degrees are granted by the whole body, I presume by the majority of the body.

*Mr Rolt.*—Yes, my Lord; but your Lordship sees that it is not a question of number; if the fact had not been true, I could

not have ventured to have said it; but I find it in the Report of the Commissioners on the Universities of Scotland, that those difficulties do exist upon Medical subjects in connection with the Scotch Universities. Then, my Lord, if it be only for the purpose of standing by, and advising, and seeing what is done, where this great unpleasantness of feeling exists between two bodies, I think it will not work to an effective examination; and, at all events, a modification to some extent would be highly beneficial.

*Lord Chancellor.*—How does it appear that those examinations will be ineffective?

*Mr Rolt.*—I should be sorry to say that they will be ineffective; but still the question they have here raised is, You ought not to have the licensing power at all; your examination is not such as would be fit for a licensing degree of the University. Then those who have taken that view, and have taken their stand upon that, and have come to make the objection that the qualifications are insufficient, are to be the Examiners. I am suggesting that the Extra-academical Examiners should not be from Edinburgh. My Lord, I have stated the view which the former University Commissioners took. I submit their view to your Lordships. I do not know that anything has occurred in Scotland since the year 1826 to alter it. It is for your Lordships to say whether the present Commissioners have taken the right view, or the former University Commissioners have taken the right view. We prefer the view of the former Commissioners, and ask your Lordships to act upon their view, and certainly not to act upon the suggestion of the petitioners to increase the number of Extra-academical Examiners.

Then, my Lords, there remains the question of Extra-academical teaching. Now, here, my Lords, I say the Commissioners have gone beyond their power; that, so far from your Lordships doing more in the way of Extra-academical teaching, your Lordships will find, I think, upon looking at the powers of the Commissioners, that they had no power to give any such directions. It is a question of their power under their Act of Parliament.

Now, the first thing to ascertain is, what the Commissioners have done in this matter; and your Lordships will find it at pages 7 and 8 in the Ordinance of March 1860, the 6th section,

subdivisions 4 and 6: 'One year's attendance on the lectures of teachers of Medicine in the Hospital Schools of London, or in the School of the College of Surgeons in Dublin, or of such teachers of Medicine in Edinburgh, or elsewhere, as shall from time to time be recognised by the University Court, may be reckoned as one of such four years, and to that extent shall be held as attendance on courses of lectures as prescribed by the said Ordinance.' That is, in regulating the instructions that shall entitle to the University degree, they proceed to prescribe that there shall be attendance out of the University.

*Sir G. Cornwall Lewis.*—It says, 'may be reckoned.'

*Mr Rolt.*—Yes, my Lord, 'may be reckoned;' that is, if you have had that one year, you may insist upon its being reckoned, if you can produce your certificate. I do not think it would be in the power of the University to refuse to accept it. You are not obliged to go there; but if you do go there, and produce your certificate—

*Sir G. Cornwall Lewis.*—It says, 'To that extent shall be held as attendance on courses of lectures as prescribed by the said Ordinance.'

*Mr Rolt.*—Then the 6th is more important still: 'All candidates, not students of the University, availing themselves of the permission to attend the lectures of Extra-academical teachers in Edinburgh, must, at the commencement of each year of such attendance, enrol their names in a book to be kept by the University for that purpose, paying a fee of the same amount as the matriculation fee paid by students of the University, and having, in respect of such payment, a right to the use of the library of the University.' Now, there your Lordships may see the effect of that. You will observe, that any person who proposes to graduate, if, at the commencement of his career, he desires first to attend Extra-academical Teachers, enrolls himself in a book kept by the University for that purpose. Whether he afterwards graduates or not is at his own discretion; but upon enrolling himself in a book, not in the regular book, so as to make him a member of the University, he pays the matriculation fee, and has the use of the library. He may never go near the University again.

*Sir G. Cornwall Lewis.*—No; but as far as the University is concerned, he pays his fee.

*Mr Rolt.*—Yes; and he has the use of the library.

*Sir G. Cornwall Lewis.*—The University derives no benefit from his attendance upon the Professors; but he pays all that he would be required to pay for the general purposes of the University.

*Mr Rolt.*—In substance, it is this; it is compelling the University to accept a subscription to the library.

*Sir G. Cornwall Lewis.*—From a person who professes that he will attend.

*Mr Rolt.*—Who professes that he will, but it is in his discretion whether he will do so or not. That, your Lordships observe, is what is done there.

Now, what are the powers of the Commissioners? The powers of the Commissioners under the University Act appear from the preamble and the 5th section: 'It is expedient, for the advancement of religion and learning, to make provision for the better government and discipline of the Universities in Scotland—viz., the Universities of St Andrews, Glasgow, Aberdeen, and Edinburgh—and for improving and regulating the course of study therein.' 'The Senatus Academicus of each of the said Universities shall consist of the Principal or Principals and whole Professors in each University, and shall possess and exercise the powers heretofore belonging to a Senatus Academicus, in so far as the same are not modified or altered by, or in pursuance of, the provisions of this Act, and shall superintend and regulate the teaching and discipline of the University, and administer its property and revenues, subject to the control and review of the University Court, as hereinafter provided.' The University Court is only to review what they have done; they have to superintend and regulate the teaching and discipline of the University. Then the 15th section, sub-section 5, points out the powers of the Commissioners; and, my Lords, among their powers are these: 'To make rules for the management and ordering of the said Universities, the manner and conditions in and under which students shall be admitted thereto, etc.'

*Sir G. Cornwall Lewis.*—'The manner and conditions in and under which students shall be admitted.'

*Mr Rolt.*—'The manner and conditions in and under which students shall be admitted thereto, the course of study and

manner of teaching therein, the amount and exaction of fees, the manner of examination, with the qualifications, appointment, and number of Examiners, and the amount and manner of their remuneration, the granting of degrees, whether in Arts, Divinity, Law, or Medicine.' Then to provide, as far as practicable, for uniformity.

*Sir G. Cornwall Lewis.*—This is one of the conditions under which they are to be admitted.

*Mr Rolt.*—That is for your Lordships to determine.

*Sir Hugh Cairns.*—'The course of study, the manner of examination, and the conditions under which degrees are to be conferred,' that is, at the end, 'after the granting of degrees, whether in Arts, Divinity, Law, or Medicine, and to provide that, in so far as shall be practicable, and in the opinion of the Commissioners conducive to the well-being of the Universities and to the advancement of learning.'

*Sir G. Cornwall Lewis.*—That it is to be uniform.

*Mr Rolt.*—And that it shall be uniform.

*Sir G. Cornwall Lewis.*—The question is, Whether this is not one of the conditions?

*Mr Rolt.*—Then, my Lord, that is the point we should take. The only argument upon which it can be maintained is, 'the manner and conditions in and under which students shall be admitted thereto.' Now, your Lordships see the whole object of this is to advance learning within the University; the *Senatus Academicus* are to regulate the discipline.

*Sir G. Cornwall Lewis.*—Clearly they have nothing to do with discipline out of the University.

*Mr Rolt.*—Nor any power. Then, my Lord, the question really comes to this: does or does not the giving directions for education of a certain character without the walls of the University, affording a title to a degree within it, interfere with the integrity of the University. If there is any deficiency in the education in the University, cannot it be rectified by the Commissioners or by your Lordships? But I do submit, my Lords, that it is clearly going beyond the power of the Commissioners to say, that teaching out of the walls of the University of a certain character shall be a condition of their acceptation within the University. The spirit and object of the Act is to regulate the instruction within the University; to regulate the degrees which

the University is to grant. The degree which the University is to give, is to be the testimonial of the learning they have obtained in the University—of the University education.

*Sir G. Cornwall Lewis.*—Supposing the Commissioners had said, no person shall be admitted to become a Medical student of the University without a certain knowledge of Anatomy or any other branch of Medicine, a certain elementary knowledge, do you think that would be within the power of the Commissioners? If it would be within the power of the Commissioners, it would be one of the conditions under which students shall be admitted thereto; it is quite uniform with what is done in other Universities; it is quite plain that that knowledge might be obtained out of the University.

*Mr Rolt.*—Just so; the difference in that case would be this: all that I said is, let us have a certain elementary knowledge first, no matter how obtained, whether you have ever been to this school or not; before you come, you must be Master of Grammar, or Master of Anatomy, or of any of the other things described; that is a matter you must get before you go there; but as to the teaching, where it is to be, we do not enter into that.

*Sir G. Cornwall Lewis.*—This is a question of Law. Your argument is, that it is incompetent to the Commissioners to make a condition referring to any Extra-University education.

*Mr Rolt.*—Just so; as it were, you prescribe that he shall have been educated at some other place, not that the amount of his education at some other place shall have ensured a knowledge of a certain amount; you prescribe that the candidate, before he comes up for his degree, shall have a certain amount of knowledge; that there shall be four years of study, and then one of those four years of study you say may be had out of doors; you shall have no control over that one of those four years of study.

*Lord Cranworth.*—You only require four years of study, except in a certain case, and then you may have one year's study out of the walls of the University.

*Mr Rolt.*—That is one way of putting it, my Lord, which I think is not the true one.

*Lord Cranworth.*—But we are to look at the practical effect; and certainly it is clear that one year's education at one of the University Hospitals in London would be a most useful thing.

*Mr Rolt.*—Yes, my Lord; I am now only upon the question of power. But speaking of its utility, a person may attend lectures, and walk through an Hospital, paying no attention at all; the University have no control over him, one way or the other; they have no power of regulating his studies, or of seeing what is done by the student. But I question whether they have any power to deal with it.

Then as to the other question about dealing with the books, that is another legal question; have they any power to order it? It is right to say, and I believe it is stated in our Case, at all events the fact is, that the students of the University are so numerous, that the books are wanted for them, and it will not be without great inconvenience that other persons are added to the number. Is it within the power of the Commissioners to compel the University to receive subscriptions for a year to its library? It is the property of the University; it is for them; it is for their students; it is wanted for them, and a subscription is to be received of a given amount for a year, from persons who are not obliged to become members of the University. That is only upon the question of power.

*Sir G. Cornwall Lewis.*—It does not say that they shall have the benefit of the library without the payment of the fee; it merely puts them, as far as the library is concerned, on the same footing as the other students.

*Mr Rolt.*—But your Lordships see that they are not students, they are not to be matriculated.

*Sir G. Cornwall Lewis.*—But they pay the fees.

*Mr Rolt.*—They pay the fees.

*Sir G. Cornwall Lewis.*—That is an important matter as far as the University is concerned.

*Mr Rolt.*—It may be so.

Then comes the question of Extra-academical teaching in Edinburgh, which is, I think, a very important point. From the Report of the Commissioners, they appear to feel that they have gone quite far enough in this. They do not enter into it very minutely. At page 14 your Lordships will see what they say. Perhaps, my Lord, I should refer to page 13, beginning at the letter H: ‘According to these regulations, all members of the Colleges of Physicians or Surgeons, whether Graduates of the University or not, and



without limit as to the number of persons teaching any particular branch, are, on passing an examination by a Board nominated by their College, entitled to have their lectures recognised by the University. The result is, that in some branches there may be found at one time, competing with the University Professor, as many as three or four Extra-academical Teachers, some of them not members of the University, but all having their lectures recognised for its degrees, to the extent allowed by the Town Council.' Your Lordships will recollect how that originated. The University of Edinburgh did not object to admitting Extra-academical teaching in London or at Glasgow; but the competition which had grown up at Edinburgh was of course so serious, that they objected to its admission in Edinburgh. The Town Council, however, decided that Extra-academical teaching in Edinburgh should be accepted by them to a certain extent, and the House of Lords confirmed the power of the Town Council to do that. But the Commissioners say, 'The result is, that in some branches there may be found at one time competing with the University Professor, as many as three or four Extra-academical Teachers, some of them not members of the University, but all having their lectures recognised for its degrees to the extent allowed by the Town Council. It is therefore perhaps not unnatural that the Senatus should desire that an end should be put to this system. The Lecturers, however, on the contrary, instead of being satisfied with the amount of their present recognition, which the second Ordinance virtually continues to them, advocate (as they say in the interests of the University) a further extension of their privileges; and so far do they carry their views, that they have recently addressed to the Commissioners the somewhat extravagant request, that their students, if aiming at a University degree, although not attending any classes in the University, should be allowed to enrol in the ordinary University Matriculation Book, instead of in a separate book, as provided by the second Ordinance; seeking, in fact, to obtain for their students all the privileges of Matriculated students of the University. To their influence in their respective corporations may be traced the circumstance, that the Edinburgh corporations have introduced into their petitions the question as to Extra-academical teaching, and have thought fit to allege that the recognition conceded to the lectures is illiberal

and insufficient. A similar influence has probably also operated in the case of the Glasgow Faculty. In truth, however, the charge against the Ordinances of illiberality in point of recognition of teachers out of the University, is so groundless, that none of the Counsel for the petitioners thought fit to press it on the Commissioners. The Ordinances allow a very large proportion of the Classes, absolutely required, to be attended under Extra-academical Teachers; and, besides, in all cases of repetition of classes, for which, as has been above explained, the Ordinances abstain from making provision, the whole of the additional attendance may be given beyond the walls of the University. The latitude thus afforded is large and liberal—if, indeed, it does not extend too far. But the views which the petitioners urge, as to the adoption'—

*Sir G. Cornwall Lewis.*—You see the objection which the Commissioners are combating is, that they have not gone far enough—your argument is, that they have gone too far.

*Mr Rolt.*—My argument is, that they have gone too far; at all events, if it is worth anything, they have gone far enough.

*Sir G. Cornwall Lewis.*—It is clear the University has the power of recognising Extra-academical education.

*Mr Rolt.*—It is clear the Town Council of Edinburgh had the power, and the University of Edinburgh probably have the power.

*Sir G. Cornwall Lewis.*—What you contend is, that the Commissioners have not so great a legal power as the University.

*Mr Rolt.*—That is quite correct.

*Sir G. Cornwall Lewis.*—It is rather a difficult contention for you.

*Mr Rolt.*—I have left the question of power altogether, and am dealing with expediency.

*Sir G. Cornwall Lewis.*—But still, in order to support your argument, it is necessary for you to assume that the Commissioners have less power than the University; that is hardly an argument to come from your side.

*Mr Rolt.*—I am here assuming that your Lordships have the power of dealing with this part of it; I am assuming that now; I have passed from that part of the argument. I have said what I have to say about it.

*Sir G. Cornwall Lewis.*—You are now assuming something inconsistent with your previous argument.

*Mr Rolt.*—No doubt it may appear singular that power should have been given to petition upon such subjects; however, those several Faculties have petitioned upon the subject,—they have said that they have not gone far enough. It is my duty to satisfy your Lordships that they have gone too far; it will be for your Lordships to say whether they have done so. They have petitioned for the purpose of showing that they have not gone far enough, and that there ought to be more Extra-academical teaching. In answer to that, I say that they have gone far enough; my argument is, in truth, that they have gone too far, and that they have no power at all to do that. Passing from that, I say, if your Lordships think that they have the power, I think it is not expedient that they should exercise it. The Commissioners say, 'The latitude thus afforded is large and liberal, if indeed it does not extend too far. But the views which the petitioners urge as to the adoption of a system of unrestricted competition in teaching for University degrees, tend manifestly to the total subversion of the proper functions of the University, no less than those which some of them think fit to advocate regarding the appointment of the Examiners by non-academical bodies. The Commissioners, who are bound to regard both of these questions apart from the mere interests either of competing Lecturers or of the Medical Corporations do not conceive that it would be for the public advantage that the University should so far abdicate its functions as to confer its degrees on persons who have never studied within its walls, at the bidding of a Board of Examiners, in whose appointment it has had no share.' Now, my Lords, your Lordships see there what the Commissioners speak of; and though at first sight it looks trifling and unimportant, it is, when you come to look at it, very important. They speak of competing Lecturers. What is a competing Lecturer? Why, my Lord, I say human nature is the same in Edinburgh as it is elsewhere. If there are competing Lecturers, and no obligation at all about the fees they charge for attending their Lectures, we know what will be the result. There are bodies outside the University who have the power of granting a licensing degree. Let their integrity be preserved, and let our integrity be preserved. Let not

those who are called by the Commissioners competing bodies, have power within the walls of competing with the Professors; let each discharge its own duties, and let the integrity of each be preserved; that will be satisfactory. But if the Commissioners are right, and it is from them I take the statement, that there are competing Lecturers, to give to those competing bodies the power of action within the University will not be a satisfactory mode of proceeding.

It is upon those grounds, I submit, that supposing your Lordships think the Commissioners have the power of interfering to allow Extra-academical teaching, it is not beneficial that they should do so; at all events, we hope your Lordships will not go further than the Commissioners have gone.

There was something said about the *Senatus Academicus* having, by some means, come into possession of the Seal of the University, and that they had assumed to themselves the power of putting the Seal to these petitions. They have always had the custody of the Seal; and it is their duty, and it is their business to use it. The University Court have nothing to do with it—it is their right, and they have honourably discharged their duty; and I think, my Lords, the statement was quite uncalled for, certainly quite unjustified. They have the proper custody of the Seal, and the right of affixing it whenever they think fit, and they did affix it upon this occasion. For the reasons I have urged, I hope your Lordships will be of opinion that the Commissioners are right, except as to the Extra-examiners and the Extra-academical teaching; in respect of which, we hope your Lordships will think they have gone beyond their powers, if not as to the Extra-examiners, yet as to the Extra-mural teaching.

*Mr Selwyn.*—My Lords, I have the honour to appear in this case with my learned friend Mr Rolt, in support of the petition of the *Senatus Academicus* of the University of Edinburgh; and, my Lords, I cannot but feel that I am approaching a subject which is well nigh exhausted, not only by the arguments of my learned friend Mr Rolt, but also by the Report of the Commissioners, which, although my learned friends Mr Palmer and Sir Hugh Cairns have used against it, if not abused, almost all the resources of vituperative eloquence, in speaking of it in terms of such unmeasured contempt, will, I have no doubt, re-

ceive from your Lordships that attention which is due not only to the names attached to it, but to what I will venture to call its own inherent merits.

My Lords, I think I shall best discharge my duty by merely alluding, as briefly as possible, to some of those points left to my charge by my learned friend Mr Rolt, feeling that your Lordships would rather I should direct your minds to a continuous argument than to a repetition.

In one case, I am fortunate in being able entirely to agree with the statement of Sir Hugh Cairns—that is, as to the importance of the question now before your Lordships; because it is not one merely affecting the vital interests of the University of Edinburgh, when considered as a great Medical School—it is one not merely affecting the Universities of Scotland generally, but also all the Universities of the United Kingdom, so far as they are Medical Schools; and beyond that, it has a still more extended importance, because I think, when properly considered, it will be found to be a question whether the Universities are from this time, and by a tribunal of such importance as the one before which I have the honour to appear, to be considered as fettered by those minute technical verbal rules which my learned friends who support these petitions have attempted to establish; or whether, in all future times, as in all past times, that comprehensive expansive and varying power upon which the existence of Universities depends, is to be recognised and kept intact.

Now, my Lords, that appears to me to be the real substance of the question which your Lordships have to decide; and in considering that, I will pass over, with scarcely a word, the first point upon which so much stress was laid by my learned friends the Counsel for the petitioners, namely, the question which they seem to consider as essential to our case, whether a University, *quâ* University, has an inherent power of granting degrees of this kind.

*Lord Chancellor.*—To subdivide a Faculty.

*Mr Selwyn.*—That is one branch.

*Lord Chancellor.*—That is a question upon which a great deal may be said upon both sides.

*Mr Selwyn.*—Now, I propose to address a few words to your Lordships upon the question of inherent power. I think it is

to be divided into two things—one upon which a question never did, and never can arise, and the other is the real question before your Lordships.

Now, my Lords, it is to be observed that the argument that has been so often alluded to, of Sir Charles Wetherell, was addressed to this, that the power of granting degrees was so inherent in the very name of a University, or a corporation called a University, that, although any particular degree was expressly prohibited by the charter of the corporation, yet still that prohibition was nugatory, and the power remained. In dealing with an argument of that sort, it may be important to consider what is involved in the term 'University'—just as in the Edinburgh case, the University being constituted under particular charters or Acts of Parliament, giving special powers to another body—the Town Council—it was argued that there was such a special power inherent in a University of such a kind as to be able to control the charter of incorporation and to engraft certain powers which were given or reserved to another body, the Town Council. But the question as to what is involved in the term 'University' is one that does not arise in the present case, because, my Lords, to suppose that there was a body with nothing more than the name of a corporation, or the name of a University, is to suppose a thing which never did exist at all; therefore it is perfectly impossible, in truth, to separate the two things, namely, the consideration of a University simply as a corporation under the name of a University, and that other thing upon which all the question turns, namely, a University constituted by certain charters, and consequently deriving its powers from those charters. That is the consideration really before your Lordships; and when you look at it in that light, it is impossible to conceive any case presented under more favourable circumstances, for an extension of the powers of the University, than the case before your Lordships; because those who framed the charters and statutes upon which the powers of the University of Edinburgh depend, seem to have foreseen the possibility of a question of this sort arising, and of the argument which might be founded upon the rule *expressio unius est exclusio alterius*, and therefore have granted to this particular University every power which any other University in the kingdom possesses. My Lords, I think if we had now to frame a charter of incorporation for this

University—having regard to the existence of this very question—we could not possibly do it in more ample terms than those which are found in the charters and statutes under which it is incorporated already, even if we put in the very thing that is now in dispute, namely, the title of Master in Surgery. And therefore I say, that those who founded this University have, by the careful manner in which the instruments by which it is founded are expressed, provided against any possible limitation of that which I say is an inherent right in a University so constituted, namely, the right, from time to time, to mould its own institutions and its own separate orders and degrees, and course of examination and study, as the exigencies of the time and advanced science may require. My Lords, I say that this is provided for in the case of this University, as fully as it ever has been done in any other case, and, as I said before, as fully as it could be done, even if we had now to consider the question as to how the charter of incorporation should be framed.

Then, bearing in mind the very full and extensive powers with which we start, let us consider the objections raised.

*Sir G. Cornwall Lewis.*—I wish to call your attention to the words used in the charter of the University of Durham. The University of Durham was created by a local Act—a private Act of the 2d and 3d of William the Fourth. It gives certain powers to the Dean and Chapter, but it merely creates the University in general terms—it says nothing about granting degrees. It gives to the Dean and Chapter for the time being, the power of making a scheme of regulations. The Dean and Chapter exercised that power, and passed an Act of Chapter. Then there was afterwards a charter, dated June 1, 1837, which recites the previous Act of Parliament, and also the Act of Chapter, and it concludes with words creating them a body corporate, under the name of ‘the Warden, Masters, and Scholars of the University of Durham,’ with a common seal; and by that name they are to be governed and continued according to the meaning of the Act of Parliament, and by that name ‘shall have and enjoy all the property, rights, and privileges which are assured by the said Act to the University therein contemplated and authorized, or are incident to a University established by our Royal Charter.’ I cannot find any distinct power of granting degrees; but the Act of Chapter contemplates the existence

of degrees, and contemplates the existence of graduates. It says, that 'the convocation shall consist of the said Charles Thorp, the Warden, and of such persons as shall have proceeded to the degree of Doctor in any of the three Faculties, or of Master of Arts.' It contemplates throughout the existence of Graduates, but I cannot see that there is any grant of the power of granting degrees, except under those words, incident to a charter granted by the Crown.

*Lord Chancellor.*—There are certain academical degrees well recognised all over the civilised world—Doctor of Medicine, Doctor of Divinity, Master of Arts. The granting of those degrees seems to be considered as incident to a University.

*Mr Selwyn.*—It was in reference to some such question as your Lordships have been good enough to suggest to me, that I was addressing the preliminary observations which I have made. Your Lordships see that it refers to Universities established by charter, and that, as I say, would necessarily involve all those powers that have been exercised by such Universities. It is almost impossible to separate the two things from each other—to consider a University as a thing with merely a name, a common seal, and a perpetual succession, without more.

*Lord Chancellor.*—The question is, Whether such a body could grant recognised degrees? But there is another question, as to whether such a body could go on infinitely dividing the degrees.

*Mr Selwyn.*—That is a question which I will deal with by and by, as to fantastical degrees, as they were called by my learned friend Mr Palmer. He says, in this case, the University of Edinburgh have invented a new degree in a non-existing Faculty—that is the case which they present to your Lordships; and, my Lords, my learned friends, who were so very critical upon the language of the Commissioners, might, I think, have told us a little more exactly what they meant by that expression, 'a new degree,' because, of course, as your Lordships will see, that is capable of two meanings. It may either mean new in a general sense—that is, new everywhere—or it may mean new in the University itself.

*Lord Chancellor.*—The meaning is, that it is new, as recognised by the Legislature; while in the Medical Act the degrees



Licentiate of Medicine, and Bachelor of Medicine, Doctor and Master in Surgery, are recognised as known degrees by the Legislature of the country.

*Mr Selwyn.*—That is the next point I am coming to. I will take those two possible interpretations of my learned friend's statements, and will first consider his statement to mean, that we have invented a new degree in a non-existing Faculty. So far from that, I can show to your Lordships that, going back from the present time to the most distant time, this which he calls a new degree has been constantly, and I might almost say, universally, recognised. To begin with the Act of Parliament of only last session, which received the Royal assent on the 23d of March 1860. Your Lordships know that in the very first section of that Act, which is 'An Act to amend the Medical Act,' we find this—that 'the diploma or license in Surgery granted by any University of that part of the United Kingdom called Ireland, legally authorized to grant the same, shall be considered a legal qualification,' and so on, 'and with the like effect, and subject to the like provisions, as are prescribed by the said first-recited Act in respect of the Registration of any Master in Surgery of any University of the United Kingdom.' Upon that, my learned friend Sir Hugh Cairns, feeling the importance of the observation which your Lordship has just been good enough to repeat—namely, that here is a distinct recognition of this very title which they call new by the Legislature—says, Oh! this is merely an Act of Parliament relating to the diploma of the Universities in Ireland; and, in the next place, that it only extends to Universities in Ireland legally authorized to grant the same. That is not the purpose for which we cite this Act of Parliament; it is perfectly immaterial to us as to what effect it may have in Ireland, or what may be the decision of any Courts as to the legality and authority of the Universities in Ireland to grant such a degree. The materiality of the Act of Parliament is this, that, dealing with the question as to what may be the effect of a degree given by a University in Ireland, the Legislature has adopted, by way of example, as a thing which is to govern the force and effect of that which is to be enacted, and chosen this very thing—Master in Surgery of any University in the United Kingdom. That is a thing so well known, and so well established, and so well recognised by the

Legislature, that it uses it as a thing by which other things are to be tried and tested. That is the purpose for which we cite it. It has nothing to do with what may be its effect in Ireland, or what may be the decision in Ireland.

*Lord Chancellor.*—It is impossible not to recognise it as an academical degree.

*Mr Selwyn.*—My Lord, the question is, at the passing of this Act of Parliament, was this a new degree? Then we will go to the Act of Parliament of 1858. There again, your Lordships know, we find the same thing. I will not trouble your Lordships by referring to the Schedule which has been so often mentioned, Schedule A of that Act; but there you find ‘Master in Surgery.’ My Lords, I refer to this only as carrying us back two years; and also for the purpose of making this additional observation: either ‘Master in Surgery,’ in this Schedule to this Act of Parliament, referred to the Mastership in Surgery granted, and which had been granted at that time, for upwards of forty years by the University of Glasgow, or it did not. My Lords, of course, speaking theoretically, we cannot impute to the Legislature anything like ignorance, or anything certainly like gross ignorance; but, speaking practically, is it possible to conceive that they could have been ignorant of that practice in the case of an Act of Parliament, such as this Act, to regulate the qualifications of practitioners in Medicine and Surgery, knowing the lengthened discussion that this subject underwent before this Act of Parliament passed; that three Bills were introduced, which were the subject of discussion, not only in Parliament but throughout all the Medical bodies in the kingdom, in which a large amount of personal interest was involved, and a number of very learned heads constantly employed in considering what would be the best measure for settling a long disputed question? Under these circumstances this Act of Parliament was introduced in the shape of a third Bill; and after repeated discussions it received the Royal assent, having in due course come before one of the Houses of Parliament, which had, not many years before, entertained and decided a question involving very much the same principle, namely, the Glasgow case before the House of Lords; and, therefore, it was quite impossible that that branch of the Legislature at all events could have been ignorant of the fact, that this question as to

the degree of Master in Surgery had been contested, and had been left to a certain degree in an undecided state.

My Lords, with that knowledge, an Act of Parliament was passed, containing as one of the qualifications to the registration of a medical practitioner, the degree of Master in Surgery to be granted by a University. I say, that if it did apply to the University of Glasgow, it is a distinct recognition of the legality of the degree of Master in Surgery in the University of Glasgow. If it is considered as not applying to Glasgow, then it is a term which the Legislature has adopted generally, because it was aware of and has recognised such a right, as existing in a University, to grant such a degree. Because your Lordships observe, that the Act does not point to future degrees, it points to things actually existing; and it treats, as among those things actually existing, this degree of Master in Surgery. I am quite willing to take it in either of the two points of view from which alone it can be looked at. If it is to be treated as pointing to the then existing degree of Master in Surgery of the University of Glasgow, it is a recognition of that, and that is sufficient for our purpose; because it is impossible to contend, if the University of Glasgow has the right, that the University of Edinburgh has not the same right under its charters. If it is considered as not applicable particularly to the University of Glasgow, but that it has a general application, then it is, if possible, more clear that the Legislature has recognised, as existing in the Universities of the United Kingdom, the right to grant this degree of Master in Surgery.

But, in any event, is it possible to say, that after its recognition in this Act, and other Acts of Parliament, your Lordships can be told, in the language of Sir Hugh Cairns, that a Master in Surgery is a degree never heard of before?

Now, I really feel indisposed to trouble your Lordships with references of a more ancient date from the legislation of this kingdom, after those which you have had; but, after so much time has been occupied by my learned friends, to prove that nothing has been done in other Universities at other times, perhaps you will pardon me for only supplying some few points, which show that my learned friends are inaccurate in respect of every one of the instances they have cited—that they have presented nothing more than a verbal criticism upon the terms that

are actually used in conferring that which was equivalent to a degree.

Now, I will not say another word upon the subject of the University of Paris. I am willing to admit that there may be a verbal error in the Commissioners' Report, in not calling it the University of France instead of the University of Paris; but your Lordships will find, that instead of that which was said to be one of the most serious and flagrant errors, disclosing such gross ignorance, as my learned friend Mr Palmer describes it, it merely amounts to this, that they put the word 'Paris' instead of 'France.'

With respect to the University of Cambridge, your Lordships will find we have got most distinct evidence that in substance this very same thing has been done by that University. With respect to that University, we have been favoured with a communication from a gentleman who, as some of your Lordships are probably aware, is one of the most eminent members of the Medical Faculty in that University—I mean Dr Paget; he has communicated to us certain extracts from some of the statutes of that University. It is summed up in so very few words by Dr Paget, that your Lordships will probably pardon me for using his language instead of my own. He says, 'It is true, as you have been informed, that the University of Cambridge has taken steps to obtain, under its new statutes, the power of granting the degree of Master in Surgery. I will send you enclosed a copy of the new statute, which was suggested to the University Commissioners by the Council of the Senate of the University, and which, having been approved by the Commissioners, is now in process of becoming one of our body of statutes.' I may, perhaps, be allowed to pause for a moment for the purpose of saying that this is another illustration of what I have said respecting the importance of the question now before your Lordships. Because, if it is said that unless you find in very terms this exact degree used by any particular University, they are not to have that power, the result would be that it is to be denied to the Universities of England as well as to Edinburgh, and the consequence will be far more extensive than might at first sight appear. Among the sufferers from that decision will be the University of Cambridge. It has not occurred to any of the persons, and they are most learned persons, who

have been engaged in framing the new statutes for that University, that there is no inherent right in a University, constituted as the University of Cambridge is, to grant such a degree as this. Dr Paget goes on to say,—‘It is also true that the University possessed an analogous power under its old statutes. I will enclose some extracts which I have just now made from the statutes of Edward the Sixth, and of the 1st and 12th of Elizabeth. The last are those by which more particularly the University has been governed from 1570 down to 1858. The statutes (of which I send copies) for Medicine and Surgery have a close general resemblance to those which prescribe the study and modes of proceeding in Arts, Law, and Divinity. They, of course, imply that the University had the power of granting the right to the *praxis chirurgiæ*, as the similar statutes as to Arts and Divinity imply the power of the University to grant the degrees in Arts or Divinity, for which the respective statutes prescribed the course of study. This right of granting licenses or degrees in Surgery was, I believe, seldom exercised. I find that it was exercised in 1559, 1573, 1577 (twice in this year), 1607, 1612, 1616. I am not aware that any more than these seven licenses or degrees in Surgery were ever granted by the University.’ Now, my Lords, I cannot help hearing my learned friend’s eager interruption. One thing he is saying is, ‘licenses or degrees.’ I quite agree that there is that distinction which one of your Lordships pointed out yesterday between a degree granted by a University, and a mere certificate granted by some official in that University, upon which some one body or person is to proceed. The instance which one of your Lordships suggested was that of a Professor in the University certifying to a Bishop that some person had attended the professional lectures; and upon that and upon other things the Bishop was to exercise his judgment, whether the person possessing, among other qualifications, that certificate was or was not to be admitted to ordination. I agree that there is a marked distinction between such a professional certificate as that, and a degree granted by a University; but, it appears to me, I do not think you can find an instance——

*Sir G. Cornwall Lewis.*—That is something which is required in addition to a Master’s degree at Oxford or Cambridge.

*Mr Selwyn.*—Just so. A thing granted by an officer of the University upon which some other body or person is to act, is one thing; but a degree or license, which is a declaration by the University itself, to be acted upon by itself and the person who obtains it, and giving that person a certain status, is another and quite a different thing. I think your Lordships will not find any instance of a University, as such, granting that species of certificate upon which some other body is to act. An act done by the University is always an act complete in itself; and we are merely reduced to a question of words, as to how that thing, so complete in itself, and so granted by the University, is to be described. I am indifferent whether it is a license or a degree,—it means the same thing,—it means a complete act, by the University conferring a certain status or right on the individual receiving it. Therefore I apprehend, notwithstanding the interruption of my learned friend, that Dr Paget is perfectly correct when he uses, as convertible terms, ‘licenses or degrees;’ because a license or a degree is a complete certificate by the University, giving to the person a certain status.

*Lord Chancellor.*—Granted by the corporation.

*Mr Selwyn.*—Yes, my Lord; granted by the corporation of the University. Therefore we find that those licenses or degrees were granted in the cases mentioned. Then Dr Paget goes on to say,—‘In Fuller’s History of the University of Cambridge (Prickett’s Edition, 1840, page 140), it is stated (on the authority apparently of Robert Hare, the antiquary)—the same year (viz., 1419), it was ordered in Parliament that none should practise Physic or Surgery, except approved of by one of the Universities.’ I have not been able to find that statute; and I do not wish your Lordships to take that as actually being in a statute of that year. I only read the passage as it is, with the authority. Dr Paget goes on to say,—‘I have this morning referred to the statutes at large, and I could find no such statute in the year 1419; but (besides being no lawyer) I was pressed for time, and it is possible I may have overlooked something.’

*Sir G. Cornwall Lewis.*—The real effect of the statement made yesterday was this, that persons who had taken the degree of Master in Physic in the University of Salerno, might obtain a license or permission to practise in Surgery (that was

the Ordinance of the Emperor Frederick the Second); but it was necessary that he should have gone through a very long course of study in Medicine and other things, such as Logic and Philosophy, at the University of Salerno.

*Lord Cranworth.*—Was 1419 the date which Dr Paget mentions?

*Mr Selwyn.*—Yes, my Lord.

*Lord Cranworth.*—You have not looked at the copy of the Statutes published by the Statute Law Commissioners.

*Mr Selwyn.*—No. I was going to call your Lordships' attention to Ackermann's book about Salerno, which confirms what I have said. Your Lordships will find, that those extracts which Dr Paget gives from the statutes of the University of Cambridge are very material upon both these points.

*Lord Cranworth.*—Have you a copy?

*Mr Roundell Palmer.*—I have a copy of the analogous forms at Oxford.

*Mr Selwyn.*—Your Lordships will find that those statutes (the extracts are very short which Dr Paget has favoured us with) are very material upon both the points in this discussion before your Lordships—namely, as to what is the true definition of Surgery, which, as I say, is a Faculty within a Faculty, or, as it has sometimes been expressed, a branch of a Faculty, and also as to the right of the University to grant degrees or licenses which are equivalent, and in substance the same thing. Because your Lordships will find in many Acts of Parliament licentiates and graduates are the same thing. It is the act of the University giving a license or degree, certifying that the person has passed through a certain examination, and is entitled to occupy a certain position. Call it license or degree, or call it what you will, it is an act of the Corporation of the University certifying to that effect, and giving to the person who may receive it, of their own authority, without anything more being added by any other body or corporation, a certain definite and recognised position.

Dr Paget quotes from the quarto edition of the Cambridge Statutes, printed in Cambridge in the year 1785; and the first that he quotes is the Statute of Edward the Sixth, dated April the 8th, 1549, and it is headed, under the general title '*Medicina,*' '*Medicinæ chirurgiæque studiosus sex annos rem medicam dis-*

cet ejus lectionis auditor assiduus. Anatomias duas videat; bis disputet; semel respondeat; antequam baccalaureus fiat. Et duas anatomias faciat, tres ad minimum curationes se fecisse probet, antequam admittatur ad praxin chirurgiæ.

*Sir G. Cornwall Lewis.*—There, you see, a Surgeon is to study Medicine in the limited sense.

*Mr Selwyn.*—Yes; and your Lordship will find, in the first place, that assumes, as Dr Paget says, that though there is nothing in the charter of the University giving the particular right of granting a degree in Surgery, there is, in addition to the power of granting a Bachelorship of Medicine, the power of giving another extra title, or license, or degree, call it what you will, which is to be the admission ‘ad praxin chirurgiæ.’

*Lord Cranworth.*—That is very much the same as in the Oxford Statute.

*Mr Selwyn.*—Yes, my Lord. Your Lordship will find, when this is properly considered, that this is an exact description, only by another name, of what the University of Edinburgh is seeking to do with the sanction of the Commissioners; that is, there is superadded to the definition or title of Bachelor of Medicine this title or right to practise Surgery, because, under the altered circumstances of the times, the addition of it is necessary. Your Lordship sees, that the University of Cambridge considered beyond doubt that they had the power and authority to do it. And your Lordships will also observe, that all this is put in under the general head of ‘Medicina;’ it is a branch of that universal study which is comprised under the general head of ‘Medicina.’

The next Statute is that of the first of Queen Elizabeth, and that is also headed, ‘*Studiosus medicinæ.*’ ‘*Medicinæ studiosus sex annos rem medicam discet ejus lectionis auditor assiduus; anatomias duas videat; bis respondeat; semel opponat; antequam baccalaureus fiat. Chirurgiæ studiosus duas anatomias faciat; tres ad minimum curationes se fecisse probet; antequam admittatur ad praxin chirurgiæ.*’ Then there is another one of a later date, of the 12th of Elizabeth, which is headed, ‘*De Studiosis chirurgiæ.*’ ‘*Chirurgiæ studiosus duas anatomias faciat; tres ad minimum curationes se fecisse probet antequam admittatur ad praxin chirurgiæ.*’ Accordingly, in the new Statute, which has been approved by the University Commissioners, it proposes very much in the same terms with regard to the studies, ‘*Chirurgiæ*



studiosus, pariter ac studiosus, medicinæ commovetur in academiâ per præscriptam partem uniuscujusque novem terminorum, vel etiam plurium si per ordinationes academiæ plures requirantur. Operam det tum illis studiis, quæ studiosis artium præscripta sint, tum præcipue chirurgiæ, et examina per ordinationes academiæ præscripta subeat. Hæc postquam omnia perfecerit, et academiâ certam fecerit se chirurgiæ studio operam dedisse per id temporis spatium quod per ordinationem academiæ in hanc rem præscriptum fuerit, admittatur a cancellario ad incipiendum in chirurgiâ.' But then, inasmuch as the Legislature has adopted the words 'Master in Surgery,' it proposes 'Qui ita fuerit admissus, postea creetur Magister Chirurgiæ magnis comitiis admissionem insequentibus. Magister Chirurgiæ per tres annos post creationem eodem statu, iisdemque privilegiis, quibus baccalaureus artium, et postea eodem statu, iisdemque privilegiis quibus Magister artium fruatur.' I have read to your Lordships what Dr Paget says; he has exactly described the position in which the thing remains. It has passed the University, that is to say, it has passed the Commissioners. Of course, your Lordships know that there are certain other preliminaries to be gone through before it passes into a law of the University; it has to be laid before Parliament. But that is the view of the University, that whereas they had before the power of granting degrees in Medicine, and whereas, as all the Statutes show, in the University Surgery was considered as a branch of the Faculty of Medicine, or a Faculty within a Faculty; they consequently had, in addition to the degree in Medicine, which, no doubt, they possessed the power of granting, power to grant also a University degree or license, which is only different in name, but not in substance, being an act of the Corporation, certifying that the person who had passed those examinations was qualified to practise in Surgery.

*Lord Chancellor.*—After examination or disputation?

*Mr Selwyn.*—After examination or disputation. Of course, my Lord; for if a sort of case could be made out, which one of your Lordships suggested, by way of aiding the argument, namely, that somebody having no school and no examinations, as one of the Scotch Universities is stated to have done, should grant to a person a degree without any such teaching or examination, of course such a thing could not be suffered

for one moment. The real answer would be, what was given at this Bar to a question similar to that which was put by Lord Cranworth yesterday; when Lord Langdale was asked, what prevented anybody from giving the degree of Master of Arts, the answer was, 'The contempt of mankind.' I believe that is the true answer. And if I were to be asked to answer the question that was put yesterday, as to whether the Court of Chancery would interfere, I should apprehend, without a moment's hesitation, that the answer must be in the negative. And if the question were, whether any other Court of Law would interfere in such a case, I apprehend that the question would be reduced to this, Is the body which assumes to grant the degree, one which has the proper means of judging whether the person upon whom the degree is to be conferred is a fit and proper person to receive such a degree or license; and upon that, and that alone, would depend whether a Court of Law would interfere. And that the Court of Chancery would not interfere, I think is perfectly clear.

So much for the University of Cambridge. I think it is quite clear that you find from a very ancient date, and carried down to the present day, however great the variety in terms, the two things for which we contend. First, the inclusion of Surgery as a Faculty within the Faculty of Medicine; and secondly, the granting of some corporate degree or license, some act of the corporation certifying that the person who has passed a particular examination was qualified not merely in Medicine, as contradistinguished from Surgery, but in Surgery as well as in Medicine.

Now, your Lordships will find the same thing—even, if possible, more clearly—with respect to another ancient and very famous University, that is to say, the University of Padua. I have not the book which is referred to here, which is Riegle's History of Surgery; and which set out, in the case of the Appellant in the House of Lords, in that case which has been mentioned regarding the privileges of the Medical Faculty of Glasgow. What is there stated from the History of Riegle, is in a few words: They say, at page 17, 'That a similar practice was followed in the University of Padua in the fifteenth century, appears from various circumstances noticed by the author,' from which he draws the following inference: 'Ex his allatis incrementum artis medicæ didicimus, et quod ad rem nostram

facit, chirurgiam una cum medicinâ traditam fuisse in Academiâ Patavinâ jam seculo 15°, nec non doctores fuisse etiam chirurgiæ.'

*Sir G. Cornwall Lewis.*—That would mean that they were only teachers; does it mean that they were Doctors?

*Mr Selwyn.*—I think it does. He says, 'ait enim Statutum quod nullus qui non doctor sit, sive in chirurgiâ, sive in physicâ, ulli mederi possit nisi licentiam habet secundum formam præsentis statuti.' That clearly refers not merely to teachers in the University, but to persons who were to exercise the healing art. There again we find an admission of the convertibility of the terms 'license' and 'degree,' which shows that really the whole contention on the other side is reduced to a mere verbal criticism, as to whether you call this particular act done by the University by one name or another.

*Sir G. Cornwall Lewis.*—Where a degree is granted in a professional Faculty, it has the character of a license. There are three professional Faculties, Divinity, Law, and Medicine—and the Faculty of Arts is unprofessional. That is a nominal institution of the University.

*Mr Selwyn.*—Yes; and my learned friend's argument naturally flows from the sort of notion that we have of a degree, as conferring certain academical privileges, but that is not of the essence of a degree. A degree in Law may give in one University the right of voting, and in another it may not; but it is the same degree, it is the act of the University, and it gives a certain status. Then, in illustrating the effect of the indignities offered to Surgery in France, he quotes a passage, showing how much Surgery has declined in that country, 'Mira est conversio rerum Anno 1506 ipsi Medici Parisines pag. 36, tom. iv, Bulæi, inquit; Parisiis adeo maxima est penuria Chirurgorum, ut vix invenias tres aut quatuor, qui ad gradum magistri Chirurgiæ ascendere possint.'

*Sir G. Cornwall Lewis.*—Clearly that is a degree.

*Lord Cranworth.*—What is the date of that?

*Mr Selwyn.*—That is in 1506. This is this unheard of degree; this thing which was never heard of before. 'Maxima est penuria Chirurgorum ut vix invenias tres aut quatuor, qui ad gradum Magistri Chirurgiæ ascendere possint.'

*Sir G. Cornwall Lewis.*—The Doctor in Molière knew very little of Surgery, though he studied Surgery.

*Mr Selwyn.*—I should so far differ from my learned friend Mr Rolt, in thinking that it is not the raising of Surgery in the first instance that we see here, but rather its assuming the position which it originally occupied; because, as I think one of your Lordships observed yesterday, in the beginning the Medical Art certainly occupied a very high position. Indeed, those Homeric men, the sons of Æsculapius, were not only military leaders, but they had much more to do with Surgical practice.

*Sir G. Cornwall Lewis.*—They cured the wounds received in war.

*Mr Selwyn.*—Yes; that was the position which Surgery then occupied. During the dark ages it declined, but it rose again; and having risen again, it was treated in the manner I have described. But so far from its being a new and unheard of thing, it is a thing which is recognised almost as distinctly in ancient periods as it is in modern Acts of Parliament.

I am unwilling, my Lords, to go at any length into the case of the other Universities; but so much has been said about this University of Salerno, that I may be pardoned for reading two or three short extracts from the book which has been referred to, Ackermann's book, entitled, 'Regimen Sanitatis Salerni sive Scholæ Salernitanæ de conservandâ bonâ valetudine præcepta edidit, studii medici Salernitani historia promissa, Joann. Christ Gottl. Ackermann Medicinæ Doctor, etc., Stendalia, 1790,' which contains some of the statutes of the University itself. I find that, at page 71, he says, 'Quia nunquam sciri potest'—

*Sir G. Cornwall Lewis.*—This is an extract from the Statute.

*Mr Selwyn.*—Yes, my Lord; 'Quia nunquam sciri potest scientia medicinæ, nisi de scientia logicali præscribatur, statui-mus, quod nullus studeat in medicinali scientiâ, nisi prius studeat ad minus triennio in scientia logicali: post triennium, si voluerit, ad studium medicinæ procedat: ita quod chirurgiam, quæ est pars medicinæ, infra prædictum tempus addiscat.' There you find again a recognition of the same thing, that it is '*pars Medicinæ.*'

*Lord Chancellor.*—Whether a degree could be granted in Surgery, as a separate branch of the healing art, does not appear.

*Mr Selwyn.*—When I advance further in the progress of my observations, I think your Lordships will be relieved from the consideration of that; because your Lordships will find that the

Ordinance which the Commissioners have issued does not propose to grant a separate degree in Surgery, because the degree is never to be separated, but to be granted at the same time with the degree of Bachelor of Medicine. Therefore the question which your Lordship has now suggested does not arise upon the present Ordinances, because the question, whether is it right that a separate and independent degree in Surgery should be granted, is not raised. The degree in Surgery never can be granted except at the same time, and after a full Medical examination.

*Sir G. Cornwall Lewis.*—There may be a degree in Medicine without a degree in Surgery, but there cannot be a degree in Surgery without a degree in Medicine; and the degree in Medicine implies the rest of the University education.

*Mr Selwyn.*—Yes, my Lord; that is an exact description, and that was the practice of all those old Universities, except that in some places it was called a license; and in the University of Cambridge it is a license to practise; and they say that what was before called a license to practise, they shall now call a Mastership in Surgery. I find, in the next page of Ackermann, at page 72, it is enacted that, ‘Nullus chirurgicus ad practicum admittatur, nisi testimoniales literas offerat Magistrorum, in medicinali facultate legentium, quod per annum saltem in eâ medicinæ parte studuerit, quæ chirurgiæ instruit facultatem.’

*Sir G. Cornwall Lewis.*—That is not a degree, strictly speaking. He is to have studied Surgery one year under the Medical Faculty; that seems to be the effect of it.

*Lord Cranworth.*—It treats Surgery as a Faculty there.

*Mr Selwyn.*—Yes. In order that I may not have to go back to these books again, I wish your Lordships to observe, that almost every one of them bears upon the two points, namely, upon the existence of the Faculty of Surgery as a Faculty within the Faculty of Medicine; and, secondly, upon the granting, by the University, of some definite license or degree with regard to Surgery. Thus, at the bottom of page 72 I find this: ‘Præsenti etiam lege statuimus ut nullus in medicinâ vel chirurgiâ nisi apud Salernum vel Neapolim legat in regno, nec Magistri nomen assumat, nisi diligenter examinatus in presentîâ nostrorum officialium et Magistrorum artis ejusdem.’ There is again the title of Master in Medicinâ vel Chirurgiâ.

*Sir G. Cornwall Lewis.*—That means that the Masters shall read separately in Surgery.

*Mr Selwyn.*—Yes, my Lord; and that Surgery was treated as something separable from, but still as a part of, Medicine.

*Sir G. Cornwall Lewis.*—As allied to it, and having affinity with it.

*Lord Chancellor.*—If they liked, they might be Masters in each.

*Mr Selwyn.*—Yes, my Lord. ‘Præsenti etiam lege statui-mus ut nullus in medicinâ vel chirurgiâ nisi apud Salernum vel Neapolim legat in regno, nec Magistri nomen assumat, nisi diligenter examinatus in præsentiâ nostrorum officialium et Magistrorum artis ejusdem.’ Accordingly, that is the conclusion which is drawn by a German writer; and the question in regard to which my learned friend Mr Roundell Palmer pointed out what he called an error was only a question as to dates, as to whether certain persons had assumed the title of Master at a certain period, being only Doctors. I agree that Master did, as it does even now in the Universities, imply teaching; but I say that in the thirteenth and fourteenth centuries there were persons bearing the title of Master who were not Teachers in the University at all. It then came to imply merely a degree or a license to practise. I care not what you call it. Therefore I really feel that it would be useless to fatigue your Lordships by going through any more examples of what is so abundantly proved. And I feel that an apology is necessary for adding anything to the distinct recognition of this title by the Act of Parliament of this country. I need not add anything with respect to the importance of this question to all Universities, and among others to one in which I feel a very great interest, namely, the University of Cambridge; because, if your Lordships are to lay down the rule, that in the case of a University like Edinburgh, with a Charter and an Act of Parliament containing words so unlimited, referring to any powers in any other University, unless you can prove that there are words granting, *eo nomine*, this degree, therefore it is to be taken from them, I say your Lordships then will take away that power which the University possesses, namely, the power of adapting itself to circumstances from time to time.

That brings me to the second point urged on the other side,

as to whether they mean new in the University of Edinburgh. I say that that cannot be the real meaning; because, if it were so, they would make the same objection to the degree of Bachelor of Medicine; for we admit that up to this time, in the University of Edinburgh, the degree of Bachelor of Medicine has not been conferred. But the answer is, that, speaking of a University created at no very distant date, as this was, every degree must necessarily be new at some time or other in that University. Where are you to stop? If you have the power of granting degrees, and if you are to say, because you have not done it for ten or twenty years, you are not to do it at all, you would never be able to grant any new degrees.

*Sir G. Cornwall Lewis.*—The argument was, that it was a new title in a new subject, not a new grade.

*Mr Selwyn.*—Yes; and with regard to that my learned friend Mr Roundell Palmer made another inaccuracy, when he said that Master is always equivalent to Doctor. There he was entirely in error, because at the University of Cambridge it is not the same thing. In respect to Law, there are three degrees, Bachelor of Law, Master of Law, and Doctor of Law.

*Lord Cranworth.*—Is that modern?

*Mr Selwyn.*—Yes; it has not existed for many years, but it is now existing; and according to this, every person who bears the title of Master of Law is to be told, that by a decision of your Lordships, because he cannot show that something of the kind was done 300 or 400 years ago, therefore it is illegal. That is the new view which has been entertained. In the University of Cambridge there are existing those three degrees.

*Lord Cranworth.*—That would not determine the question whether you might grant a new degree in an unknown Faculty.

*Sir G. Cornwall Lewis.*—It is the creation of a new degree in Surgery—that is the point.

*Mr Selwyn.*—Yes; that of course is the point, which I will not lose sight of. But it is quite evident that, by the practice of the University of Cambridge—which, I apprehend, your Lordships would not lightly dissent from—there is this power from time to time of regulating degrees, and modifying them as circumstances may require. To say that you may grant the degree of Doctor, but not any other degree, is absurd; because

that is what the argument on the other side comes to. They say—We do not object to your granting the degree of Doctor, but you shall not grant any other degree, because it is new. Your Lordships find that, as Science progresses, those degrees become more refined and minute, and, consequently, more numerous. It may become necessary to do so, and are your Lordships prepared to deny that power to the University? In rude times a clock may be sufficient that marks the hours, but, as science advances, from time to time, you have other degrees. You mark the minutes, and a physician's watch marks even the seconds. So, I say, the University of Cambridge, having power to grant the degree of Doctor of Laws, has found it convenient to subdivide it, not, as is usual, into two parts or two degrees, but into three. So, I say, a University which has the power to grant that which is the larger, namely, the full degree of Doctor of Medicine, has necessarily—especially where it is founded upon a charter so comprehensive as that of the University of Edinburgh—power to grant the lesser.

*Lord Chancellor.*—If there be such a graduation known and recognised.

*Mr Selwyn.*—Just so, my Lord; if there be such a graduation known and recognised. And it is for that purpose that I commenced with showing your Lordships that, if my learned friends could say that this Master in Surgery was a thing so utterly new and unheard of, I admit that there would then be that objection to the present branch of my argument which your Lordship has been good enough to suggest. But, if I am well-founded in what I have stated—and the evidence I have submitted proves that it is not new—then I say, that if you have the power to do that which is superior, namely, creating the degree of Doctor of Medicine, you have the power of doing the lesser—that is, of granting this subordinate degree of Master in Surgery.

*Lord Chancellor.*—It is not necessary for you to argue that any University can grant a degree in any aliquot part of a Faculty; but, according to the usage of one University, the Faculty of Medicine has been subdivided into two, and you say that the University of Edinburgh may follow it.

*Mr Selwyn.*—Just so, my Lord. And that brings me to consider the next branch of the statement upon the other side—



namely, that this is not merely a new and unheard of degree, but that it is also a degree in a non-existing Faculty. I have anticipated that to some extent, because in almost all the instances cited of the cases of ancient Universities, it is repeatedly spoken of in one or the other of these terms. With respect to recent legislation, there is only one clause, in an Act of Parliament which has not been called to your Lordships' attention, but which is equally conclusive upon the subject.

*Lord Cranworth.*—The Medical Act only says you must be a Master in Surgery of one of the Universities. It only says, you must be, *inter alia*, a Master in Surgery of any University, if they have been in the habit of granting degrees in Medicine and in other things, but only granting under the name of Master in Surgery, that which is in truth a Master in Medicine.

*Mr Selwyn.*—With regard to the practical working of the Act, in consequence of what fell from your Lordships yesterday, I have obtained a list of the entries in the Local Register for England during one month. It goes from the 30th of September to the 31st of October 1860, and it illustrates what, I think, more than one of your Lordships mentioned yesterday—namely, the practice, under this Act of Parliament, of registering more than one title. I find here a person who registers three titles. On the 30th of October 1860, Mr William Henry Barlow registers himself as M.D. of the University of St Andrews, 1860; a Member of the Royal College of Surgeons of England, 1860; and a Licentiate of the Society of Apothecaries of London, 1860. And, among other things, I find, during this month, one person registering as Master in Surgery of the University of Glasgow, 1829. If your Lordships wish to see this list, it will afford considerable insight into the practical working of the present Act.

*Lord Cranworth.*—It is clear that there is no Act of Parliament on the subject in 1419.

*Mr Selwyn.*—I think so. Dr Paget says that he could not find it.

*Earl of St Germans.*—Do you know where he found that reference?

*Mr Selwyn.*—Yes, my Lord; he found it in a book on the Antiquities of Cambridge. I do not mention that as of any authority of course; but it is perfectly material so far as the

argument which I am addressing your Lordships is concerned, that, whether with or without legislative authority, there was a practice in the University of Cambridge of doing a corporate act, granting by its corporate action something, call it degree or license, which gave a person a certain definite title to practise.

Now, my Lords, with regard to the second branch of the allegation on the other side, namely, that this degree, whatever it was, was conferred in a non-existing Faculty, in addition to all the authorities, which I will not repeat, but which I have already incidentally cited from the practice of other Universities, I will again call your Lordships' attention to the declaration upon the subject, in the recent Act of Parliament, which is the Act of 1858, the Universities Act. In section 18 of that Act, your Lordships will find it is said, with respect to the powers of the Commissioners in regard to the University of Aberdeen, that in the Faculty of Divinity there are to be such and such Professors: 'and in the Faculty of Medicine, Professors of the Institutes of Medicine, of the Practice of Medicine, of Chemistry, of Anatomy, of Surgery, of Materia Medica, of Midwifery, of Medical Jurisprudence, of Botany, and such other Professorships in each of the said Faculties as the said Commissioners shall think to be expedient.' So far from this being a non-existing Faculty, your Lordship sees it treated there exactly as it has been in each of the other instances that I have cited, as being a Faculty within a Faculty, or a branch of the more general Faculty of Medicine. And with regard to the use of the word 'Medicine' in these Acts of Parliament, I think it is not necessary to go far to ascertain that it is used in a double sense, as my learned friend Mr Rolt showed, first, as including the whole of the science of Medicine, properly so called, as well as Surgery, and also as meaning Medicine as contradistinguished from Surgery. The three first lines of the Medical Act of 1858 are sufficient. It begins, 'An Act to regulate the qualifications of practitioners in Medicine and Surgery.' There, of course, it is used in the limited sense; but in the very next line it goes on, 'Whereas it is expedient that persons requiring Medical aid should be enabled to distinguish qualified from unqualified practitioners.' Of course, a person who required Surgical aid would be as much within that necessity as the person who merely required Medical aid, in the limited sense of the term.

Therefore you have, in the first three lines of the Act, the word used in these two senses, and showing in what way it is to be treated, when you find it in subsequent sections of the Act. Therefore, my Lords, I say that we have, in the first place, established a most complete negative to both the branches of the proposition upon which the principal objection to the right of granting this title turns. We have shown that it is not a new thing, and we have shown that it is not a degree granted in a non-existing Faculty.

But it is then said, you are here splitting up the degree. Let us assume, for the sake of argument, that there is that splitting up of the degree; and I say, Is that a thing which is to be prohibited by the Legislature or by your Lordships, having regard to the circumstances under which it is intended to be done? Is there anything new or illegal in it? I say that when you have got a branch of a science, as Surgery is a branch of Medicine, and when you have got, in an Act of the Legislature, a distinction drawn between Medicine, as including Medicine and Surgery, and Medicine as contradistinguished from Surgery, and when, beyond that, you have got one of these two things so distinguished, having elevated itself to the rank of a separate science, I say that you have got one of those occasions upon which the expansive power inherent in the University ought to act; you have got exactly the occasion when, if it were necessary to split and remodel a degree, the occasion and the necessity for so doing has arisen. And, my Lords, in answer to those questions which have been put by way of *reductio ad absurdum*, as to what you would do with Midwifery and Chiropody, and other matters of that kind, I answer without hesitation, that if you find those two elements existing with regard to Midwifery or Chiropody, or with regard to any other branch of Medicine that you might like to mention, I say, the same consequence would ensue. If you were to show that the art or mystery of Chiropody had become, in course of time, so elevated and so ennobled as to assume such a distinction as to render it proper that the Legislature should define and distinguish between it and Medicine properly so called, and if you found that insisted upon not only by the Legislature but by large public bodies—

*Lord Chancellor.*—If you have confidence in showing that this was done by the University of Salerno, the University of

Padua, and various other Universities, surely you need not dwell upon any question of expansive power as to whether it may be extended to Chiropody.

*Sir G. Cornwall Lewis.*—Surgery from the very earliest times has been a very important part of the art of Medicine, and it must always remain so. You can scarcely say the same of Chiropody.

*Mr Selwyn.*—I should not have said a word upon it had it not been mentioned on several occasions not merely by my learned friends, but by one or more of your Lordships.

*Lord Chancellor.*—If you carry the probability clearly to the point at which you say it has been exercised, you need not assign to it any indefinite extent.

*Sir G. Cornwall Lewis.*—Here you have a clear distinction recognised between Medicine and Surgery by Act of Parliament.

*Mr Selwyn.*—Yes, my Lord; and all that I was going to say upon this branch was in answer to those fanciful points which have been put forward.

*Lord Chancellor.*—You have no expectation surely of Chiropody being made a Faculty?

*Mr Selwyn.*—Scarcely, my Lord; but in order that such expectation should be realized, these two things should exist, namely, recognition by the Legislature of Chiropody, and also the elevation of the art of Chiropody to such a point as to render such recognition by the Legislature possible or probable. But there is another, and, if possible, a more conclusive answer to the whole thing, with regard to the splitting up of degrees, which is, that the Ordinance does not split up the degree at all—because, as your Lordships are aware, by the Ordinance as it now exists, the Commissioners have said (it is the second Ordinance, at page 6 of my copy), ‘That the degree of Master in Surgery shall not be conferred on any person who does not also, at the same time, obtain the degree of Bachelor of Medicine.’ Therefore it is impossible that the thing ever can be split. If a person comes, having gone through such an examination as would entitle him to practise in Surgery as well as in Medicine, and to receive a certificate, call it what you like, from the University, that he is so qualified, it is impossible that the thing can be split up, and that he should be sent forth into the world with the degree in Surgery only. Because the Commissioners have

provided that it shall not be granted by itself, but shall be accompanied by the degree of Bachelor of Medicine. How can any objection be raised to the splitting up of the degree? It seems to me a mere verbal criticism; it comes to the same as saying, that a mere Bachelor of Medicine shall include a certificate of fitness to practise in Surgery, and that shall be done by a different form of words, and he shall not be called a Bachelor in Medicine only, but a Master in Surgery also. It is only adopting the words which the Act of Parliament has used for expressing a previously existing thing. I am not here to contend, that if a degree, or license, or certificate, were granted by a University having no power of teaching, having no power of licensing, having no power of examination, that that would confer anything more than a status which would be only productive of contempt. But in the case of a University such as this, having the most extensive powers, and under the charter of incorporation, being, as it is admitted to be, one of the most distinguished schools of Medicine in Europe, and having its examinations conducted in such a manner as they are conducted, can anything be pleaded in the way of suspicion against them, that in the case of such a University there should be any objection to their expressing, in the very words which the Legislature have used, an existing fact, namely, that a person has in that school of Medicine, and after a proper examination by duly qualified Examiners, proved that he is possessed of a qualification which is, in truth, in the sense in which the Legislature has chosen to divide Medicine from Surgery, a double qualification in Medicine and Surgery also, and that they should express this in a double form of words, or, if you like, in four letters instead of two? The Legislature having expressed a doubt whether M.D. does include Surgery as well as Medicine, they say, It does so in fact, and we will declare that it does so.

*Sir G. Cornwall Lewis.*—Would the practical result be different, if the Commissioners had required that the degree should in every case be a joint degree, that is, that they will not allow a separate degree of Medicine to be granted?

*Mr Selwyn.*—I presume that my learned friends would object to that. They would say that a Bachelor of Medicine was one thing, and that a Bachelor of Medicine and a Master in Surgery were different. I say that they are different only in name. They

do not object to the degree, to the Medical Bachelorship, and, in truth, their second objection completely answers the first. Instead of objecting to this joint degree, which they say is split up, their real objection is against that which they admit is unobjectionable, namely, the degree of Bachelor of Medicine by itself.

*Sir G. Cornwall Lewis.*—A Bachelor of Medicine may, if he thinks fit, take out the other degree also.

*Mr Selwyn.*—Yes, my Lord. He has in fact, by his degree of Bachelor in Medicine, a certificate that he has passed his examination which qualifies him in Medicine and Surgery. With the present view entertained, the doubt which has been fostered by the words of the Act of Parliament, and the action of the public Boards who have acted under it, it may be convenient and necessary that he should say, The certificate which I have obtained is in its very terms a certificate that I am competent to practise in Surgery as well as in Medicine. That is the whole that is here done. There is no splitting up of the degree, there is merely an explanation of a pre-existing fact, namely, that a particular person is qualified to practise either the whole of the Art of Medicine, if you treat it as being undivided, or the two Arts, if you treat it as divided into its two parts.

*Sir G. Cornwall Lewis.*—If a person took out the degree of Bachelor of Medicine only, without taking out both that and Master in Surgery, would he pay less fees?

*Duke of Richmond.*—What is the object of splitting the degree?

*Mr Selwyn.*—It is this. The Act of Parliament has said that a person shall practise according to his qualification.

*Sir G. Cornwall Lewis.*—If he has both, he can practise either. Therefore, if he like, he can drop the adjunct to his name if he wish it. What is the inducement to him not to take out both? Is it double fees?

*Mr Selwyn.*—No; I presume that the only possible inducement that would prevent it, is, that sort of idea of there being something more dignified in being a Doctor than a general practitioner.

*Sir G. Cornwall Lewis.*—He would be a Doctor?

*Mr Selwyn.*—No; I can imagine a person who was looking forward to what we call the superior walks of the profession—to

be merely a consulting Doctor, a person who would only take guineas—not wishing in any way to take out a degree, which would seem to point to his being a general practitioner. He might say he would be a Bachelor of Medicine, without being at the same time a Master in Surgery.

*Mr Lowe.*—The difference would be, that he would receive an honorarium at the time he was practising as a Physician, and he might make out and receive his bill if he was practising as a Surgeon; but he might prefer the former.

*Mr Selwyn.*—Perhaps so, my Lord.

*Mr Lowe.*—This statute reserves the right of the College of Physicians to declare that they shall not recover their fees by action.

*Mr Selwyn.*—Yes, my Lord. Upon that therefore it seems to me, taking the very objection which they themselves have raised, that it is a complete answer as to the legality of doing this, which is, in fact, as I have already said, no more than expressing by four letters that which, before those legislative doubts were created, was expressed by two. It is the same thing; because, as your Lordships are aware, we do not contend that any University not properly constituted in the way of teaching, and in the way of examination, and in the way of study, could grant any such thing. But when these things do exist, and when a person has qualified himself to practise Medicine in its general sense, or Medicine or Surgery in the separate senses, then, I say, it becomes entirely immaterial whether you express the recognition of that fact by the corporation of the University by two letters or by four. But if the Legislature has adopted a particular form of words, it would be exceedingly indiscreet in the University Commissioners to raise the question as to whether a person simply registered as a Bachelor of Medicine would or would not have the right of practising in Surgery also, when you have an Act of Parliament before you drawing a distinction between the qualifications, distinguishing Medicine from Surgery. And I ask, Why should a graduate of the University of Edinburgh be put to try that question? It is a question of some difficulty. I do not say that it might not be decided, if it were clearly proved before a court of law, as it would be, that a person who had obtained a degree of Bachelor of Medicine had in fact a qualification which was sufficient to enable him to

practise in Surgery, then, under the words of that Act of Parliament, he might be enabled to recover his charges as a Surgeon. But, my Lords, why, when a doubt does exist, and when the language of the Act of Parliament is such as it is, should a graduate of the University of Edinburgh be put to try such a question as that, when the whole difficulty is removed by the addition of these two letters, and by the University taking upon itself to declare in another form that fact which before existed, and not, as I have said, granting any new or unheard of degree, or any new degree in a Faculty never heard of before, but expressing its own opinion of the result of the examination which one of its own students has passed, and expressing it in the very words which the Legislature has used? Certainly no authority has been cited for any such proposition.

I will not trouble your Lordships by going again into a citation of the case before the House of Lords, because that case was entirely separate and distinct. But my learned friend Sir Hugh Cairns has said that, in point of fact, in consequence of that decision of the House of Lords, the degrees granted by the University of Glasgow were not sufficient to over-ride the local and exclusive privileges which the Faculty of Surgeons and Physicians of Glasgow at that time possessed; and he says, that in consequence of that, the degree of Master in Surgery has never been granted since 1840. He is as unfortunate in that as he is in the other. The assertion having been made, we thought it worth while to ascertain how the fact was; and we have found that, with the single exception of the year 1850, this degree of Master in Surgery has been granted in Glasgow every year from the time it was instituted down to the present time. In the year 1840 there were 19, in other years 7, in other years 13. Sometimes they were as low as 2 or 3; but the University has continued to grant them, with one single exception, from that first occasion in 1816—now forty-four years ago—down to the present time. I think, therefore, that I have said as much as I should be justified in saying, with regard to the question as to whether there is or is not a legal right—I do not care whether you call it an inherent right, or any other term—but a legal right in the University to grant this new degree.

I will next deal with what my learned friends have called



the question of expediency. I cannot but think that, in their observations upon that question of expediency, they have entirely overlooked the circumstances of the case.

After a short adjournment.

*Mr Selwyn.*—My Lords, with reference to this second branch of the case, which has been termed the question of expediency, I was observing to your Lordships that the argument on the part of the petitioners appears to have lost sight almost entirely of the circumstances under which, and the powers in the exercise of which, your Lordships are now sitting here. Your Lordships are now sitting to review the decision of the Commissioners who were appointed to inquire into this matter, and you must necessarily place yourselves, as far as possible, in the position of those Commissioners; and though there may be many questions which, in another place and under other circumstances, may be very material for your Lordships to consider as members of the Legislature, yet what you have now to consider is, the duties that were entrusted to the Commissioners, and that which is their main, if not their only object—namely, the benefit of the Universities, and the advancement of learning therein. It is with regard to that point of view that we must look at that question of expediency; and so regarding it, a great portion of the observations on behalf of the petitioners falls to the ground. It may be right or not that the Universities should have power to do that which admits people to a license. That is a thing which may be granted by the Legislature, or which may require to be taken away; but that is not the question to consider now. The question now before your Lordships is, the preservation and extension of the great Medical School which, for the advantage of the public, has so long existed in the University of Edinburgh. And it is not merely confined to the Medical School, but—what is of the very essence of the advantage of University education—it has reference to the admixture of students, who are brought to one common centre of education, though their future course in life may be widely different. And it is one of the objects of the University to bring together those students from different parts of the country with different ultimate objects in life, so that they may act and re-act upon each other; not only the teachers

and students in any particular branch, but the students in every branch acting upon every other, so that you make one uniform whole, and give to every man an education which may be founded not merely upon that which he learns in the particular Faculty, but that which he may gather from others pursuing similar, though in some respects different, courses of study. If you establish a school with precisely the same amount of teaching in another place, that would not be the same thing as continuing the same course of study in the same place where it has been established for so many years. We must first consider what is the character of the persons who have been and are now educated there, because we are here in London very much in the habit of talking of doctors in reference to those with whom we associate, and who bear that title. But in Edinburgh the term has a very different meaning indeed; and those persons who are graduates of the University, almost the whole of them, with the trifling exception of three or four, are what is termed general practitioners. That is the class of persons who are educated; and it is for their benefit that the advantages of education, which have been conferred in the University of Edinburgh, have been for a long series of years bestowed. Your Lordships must also remember that this is one of the poorest of modern Universities. It has no endowment: it depends upon the payments which are made by the students who are attracted to that University; and if you take away that, the University itself, in a great measure, especially the Medical portion of it, must be a failure. That is another consideration which it is impossible to lose sight of. It may be well to take the high ground which my learned friends have assumed, and to talk about academical considerations; but all men must have the means of living; and, no doubt, it would be a very good thing if there were such emoluments attached to this University as that learned men might be attracted there, with no purpose of ultimately practising any particular profession, but who might be there devoted to the simple end of the advancement of learning. But, unfortunately, this University is not in that position. And even, with regard to those exalted notions of academic distinctions, numbers appear to me to be as essential as they are with regard to the more gross and common and pecuniary interests to which I have alluded. What is that

which has always been considered a test, and the best test, of merit and success in teaching? It is the number of the students. What do we find in those very passages to which my learned friend referred, with respect to the old teachers? What is that which remains as a mark and proof of their successful teaching? In the times of Abelard, we find it recorded that crowds flocked to his teaching. Remember, numbers are not only essential to the material, but also to what I may call the fame of this University. Therefore, in considering what will be for the advancement of learning, and for the benefit of the University—which is the point at which your Lordships must look in that part of the case—the maintenance of the number of students in the Medical portion of the University is most essential. That brings us at once into issue with the persons who have a direct and pecuniary interest in saying, ‘We will be the teachers. We will be the licensing bodies; and if the Legislature has conferred upon you any such licensing power, we will do all we can to cripple that power, or, if necessary, to induce the Legislature to take it away.’ Whether they may succeed in that contention in another place or not, is one thing; but I say here—and I say it most respectfully—that your Lordships are bound, as putting yourselves in the place of the Commissioners, to do all you can to counteract any such attempt or tendency, or any measures which may lead to such a result. I cannot put it in any stronger language than that which the Commissioners themselves, the persons most competent to judge, have used. They say that, under the existing circumstances, and having regard to the altered state of things introduced by the statute, it is necessary for the preservation of the Medical School of the University that it should put in force its undoubted right of granting degrees in Surgery, and that a denial of power to grant this addition to the degree which is here sought, will have the effect of ruining the Medical School of Edinburgh. My learned friend Mr Roundell Palmer said, ‘Why should the University have the power of granting a Surgical degree?’ He says the College of Physicians has it not, and why should the University have it? I say, the answer is at once involved in the consideration of the elements of which the University is composed. I quite agree that, if they could say, as they have not ventured to say, that the University

has not a proper school for the teaching of Surgery as contradistinguished from Medicine, that they have not a proper Board of Examiners, or that they grant the degrees from improper motives or in an improper manner, then there might be reason for hesitating to grant this addition to what they have hitherto done. But in the absence of all that, and when it is one of the admitted facts of the case that there is an admirable school for teaching not only Medicine, but Surgery,—when it is, as it is, one of the admitted doctrines in this case that they have the power of granting the superior degree of Doctor in Medicine, which implies proficiency in Surgery as well as in Medicine,—why should they be unable to do that which the Legislature says may be necessary on particular occasions—namely, to add to their certificate that the person who has obtained that certificate is also qualified to practise in Surgery,—because another body outside the University—namely, the College of Physicians—has not in its possession the power of granting that which they call a double qualification?

*Lord Chancellor.*—There are two bodies that seem to act as one. They may unite in that, and it may have the same effect.

*Mr Selwyn.*—I was going to make an observation upon that, my Lord. They say that the College of Surgeons is united with the College of Physicians, and they say, Why do not you unite too? Why, the College of Surgeons and the College of Physicians united because neither of them was complete in itself; and I agree, that if your Lordships should be satisfied that the University of Edinburgh is not complete in itself, and has not a proper school of Surgery as well as of Medicine, then not merely the degree that we now ask to give, but all the degrees that we have before given, are a mere delusion. Because it is plain that the Medical degree, which they before gave, was, in fact, an assertion upon their part, that the person who received the degree had passed an examination, and was qualified in Surgery as well as in Medicine. I say, if they have not the proper tests or teaching, so as to certify that that man has that double qualification, their former degrees were entirely wrong; but, upon the admission of the petitioners, it is plain that they have the double schools, and the double means of examination, and the right to give, and a right, which they have always exercised, of giving a degree which, by whatever name it was called,

did imply a qualification to practise in Medicine as well as in Surgery. Why should that be taken from them now? and why should not they have the power of expressing in other words that which they before expressed in a different form? That really is the whole question; and to say that they refused to unite with a body which has not got that double power, is only to say—

*Lord Chancellor.*—These are not bodies *ejusdem generis*; they are Medical corporations, which are very different from the University.

*Mr Selwyn.*—Yes, my Lord; and neither of them possesses the double power, nor the double means of examination, nor the double means of teaching—all of which the University has.

*Sir G. Cornwall Lewis.*—Do they require the general qualification which the University does?

*Mr Roundell Palmer.*—Yes, my Lord, rather more so.

*Mr Selwyn.*—I was upon the point which the Lord Chancellor suggested, as to the union of the two bodies; and it is certain that they have done the very thing which they object to our doing—namely, giving a double qualification. The Act of Parliament contemplated that two or more of those bodies should unite for the purpose of examination, and that power has been exercised by two of them, who, without that sanction, would not have been able to confer the double qualification. But can they say, in the first place, that a body which possesses in itself the power, the right, and the means, of giving that double qualification, can deny its own power, and associate with itself, for no conceivable purpose, another body, which is again united with another body, like itself, for granting the double qualification? But there is another objection to our doing that, which has been already anticipated by the Lord Chancellor, and which is, that those bodies are not at all analogous bodies to the University; and to unite with them is a thing which would be derogating from the position, the dignities, and the duties of the University. The Act of Parliament, it is true, contemplates a subsequent union of the different Universities, so as to make one national University of Scotland; and one can understand that the Universities, as they now exist, are to become Colleges of that University; but no one imagines that the University is to unite itself with the Medical corporations for the purpose of doing nothing more than abandoning its own power and its own

functions. I found my argument upon that which cannot be disputed—namely, that this is a perfect school for Surgery as well as for Medicine, with perfect teaching, with perfect examination, and with the power of giving a qualification. Why should a body, constituted as this University is, possessing these means of instruction and graduation, derogate from its own position, and abandon its rights and surrender its privileges, for the purpose of uniting with some other body, from which it derives no additional powers, but loses both in doing so? That is the charge brought against us—that we, with no other result than the abandonment of our own privileges, are refusing to unite with one of these Medical corporations.

With respect to the observation of my learned friend—namely, as to what is required—they do require certain things, and so does the University. My learned friend has made use of another statement which, I am sorry to say, is also incorrect—as to what is required for the Medical degrees in the Universities of Oxford and Cambridge. He says: In Oxford and Cambridge they require a degree in Arts, as a preliminary to a degree in Medicine. In the University of Cambridge that is not required: but there it is required that students should pass the examination which is popularly called the ‘Little-go;’ and by recent regulations, as late as the year 1859, they have superadded to that another examination in certain elementary Mathematics. But it is not necessary, either in Cambridge or Oxford, that a person, to take a degree in Medicine, should have previously taken a degree in Arts.

*Mr Roundell Palmer.*—In Oxford it is the same examination as for a degree in Arts.

*Mr Lowe.*—They entitle themselves to a degree, but they do not take it.

*Mr Selwyn.*—Yes, my Lord. But in Cambridge they go through the preliminary examination, which, as your Lordship knows, is passed generally after about one half the time usually spent at the University. After the student has been there for one year, or a year and a term, there is a sort of preliminary examination which he is required to go through. That, the student in Medicine is also required to pass; but he is not required to pass the examination which Bachelors of Arts are required to pass. At Oxford he passes the examination, but he does not take the degree.

The effect of this union, to which my learned friends have referred—namely, the union of the Colleges of Surgeons and Physicians, coupled with the effect of the Act of Parliament—has made it absolutely necessary, if the University wished to continue possessed of those numbers which, as I have already shown your Lordships, are essential to the maintenance of the Medical School, that it should be enabled to do that which the Medical corporations can do. That we can do too, by means of our examination and the granting of such a certificate as will satisfy, beyond doubt, the requisitions of the statute. Now, I say, put yourselves in the position of a young man—one of that class of which the students at the University of Edinburgh are almost exclusively composed—that is, persons intending to practise in the mode which is usually termed ‘general practice.’ He finds two bodies—the College of Surgeons and the College of Physicians—who are capable, by means of one single examination, of giving him this double qualification, and enabling him to go and enter the Registration Office, and there put down that he has been examined by the College of Physicians and also by the College of Surgeons, and thereby he gets the double qualification at the expense of one examination. Now, on the other hand, upon a very probable, and certainly possible, construction of the Act of Parliament, by going through another examination equally severe at the University, if you refuse this degree of Master in Surgery, he gets only the degree of Bachelor in Medicine.

*Earl St Germans.*—Is he not examined in both branches?

*Mr Selwyn.*—Yes, my Lord; it is one examination in both branches. I put on one side the single examination of the two united corporations of Physicians and Surgeons; and then he gets two qualifications, or what I will call a double qualification.

*Lord Chancellor.*—A Physician must be examined in Anatomy as well as Surgery?

*Mr Selwyn.*—Yes, my Lord; he is equally examined in both branches, as he would have been if he had gone to the united corporations. Being so examined, if your Lordships refuse this title of Master in Surgery, and say it is not lawful, he can obtain only as the result of the same double examination the degree of Bachelor in Medicine. Then, my Lord, he has got that, and he is told that there is a question existing, which has

been raised by the language of the Act of Parliament, whether that degree of Bachelor in Medicine does qualify him to practise in Surgery. He is told that that question has been solemnly argued; that it has been referred by the authorities of the Government to the Medical Council, who have returned what I admit was aptly described by your Lordships as an ambiguous answer, or no answer at all; he is told that the authorities of the Army and Navy, and the Poor Law Board, have acted upon the limited or exclusive construction of the Act of Parliament—that is to say, unless a person has a qualification in Surgery as well as a qualification in Medicine, he is not qualified to accept any office under the Poor Law Board, or under the authorities of the Army and Navy. As I said before, putting yourselves in the position of the young man, is he to say, I will, at the very outset of my career, before I know where I may be located, subject myself to the certainty of not being capable of being elected to any of these offices, which are an object of ambition to most young men in that rank in life; and I will expose myself to the possible and probable risk of having to try an action against any person who refuses to pay my bill for attendance upon him, and medicines supplied to him; having to try, at my expense, whether the construction which the Poor Law Board and the authorities of the Army and Navy have adopted is the right one,—I say, no prudent young man would put himself in that position; and the result would be, that he would say, I will go for that which is complete, and that which will put me in a position free from doubt or ambiguity. I will abandon any attempt to obtain a University degree, but I will go to the Board constituted by the union of the College of Surgeons and the College of Physicians, who can give me that double qualification. The Legislature has given what my learned friend has called a passport to practise; they have opened the door to practise through the Registration Office, and they have entrusted certain bodies with the keys of that door. My Lords, the union of the College of Surgeons and the College of Physicians has created a key which will, beyond all doubt, completely open the door, the upper and the lower; but the key which has been confided to the Universities, as it at present exists, will very doubtfully open one part, and only certainly open the other part; and when a person is put to the election as to which of these



keys he will procure, he will surely choose to adopt that one which will open the whole of the door, and let him in to all the rights and privileges of Medical practitioners. That is the inevitable result, and that is what you are told is the result by the Commissioners. Consequently, the option will be exercised by those young men to such an extent, that that which I have already described as being essential to the maintenance of the Medical School—namely, the number of students—will at once fall off, and that which is the real object of those Medical bodies will be accomplished, namely, that the granting of licenses, which was intended by the Act to be confided to the Universities, will be taken away from them; and the corporations will have in Edinburgh, and throughout the kingdom, that which they had before within certain definite limits, namely, the exclusive privilege of granting licenses to practise. That is a question of expediency, which your Lordships are to try, and which, as I said before, you will have to try under the circumstances to which I have before adverted, namely, as reviewing the Ordinances of the Commission specially appointed for the benefit of the University and for the improvement of learning.

My learned friends have asked, why should the Universities compete with those Medical corporations? Again I say, that that is a question that we must ask of the Legislature, but we cannot ask it of your Lordships sitting here. I answer it by saying, that we compete with the Medical corporations, because the right to compete with them has been given us by express terms, by the statutes regulating Medical practice and regulating the Universities. The law has thought fit to confide that power to the Universities; and with regard to the position which Medical practitioners filled before, your Lordships will not fail to bear in mind, that before the passing of this Act of Parliament, with the single exception of those districts which were governed by this exclusive privilege granted to the Medical corporations of Edinburgh and Glasgow, a person having obtained the degree of Doctor of Medicine might have practised over all Scotland, and he did practise as a general practitioner.

*Sir G. Cornwall Lewis.*—He could send in a bill for Surgical attendance, and recover.

*Mr Selwyn.*—Yes, he could practise as a general practitioner, which of course includes the right and duty of practising Surgery.

*Sir G. Cornwall Lewis.*—Suppose this case—the case of a Doctor of Medicine before the Medical Act, living in Caithness, or anywhere not in the privileged districts, and he attends a Surgical case, and sends in a bill for Surgical attendance: could he recover?

*Mr Selwyn.*—Unquestionably. The question, however, was never tried, as I understand.

*Lord Chancellor.*—That he can send in a bill, I can testify myself.

*Mr Selwyn.*—Persons practising in the manner in which those whom we call London Doctors practise, are very few indeed; there are only two or three in Edinburgh; even the gentleman who fills the position of President of the College of Physicians is a general practitioner; and therefore the persons who have in great numbers during the last fifty years, and before the passing of the Medical Act, obtained the degree of Doctor of Medicine, have, with the single exception of those districts in which the exclusive privilege prevailed, had the power of practising as general Practitioners, including of course the practice of Surgery.

*Lord Cranworth.*—Now, in order to go on in that course, they must get a license from the College of Surgeons.

*Mr Selwyn.*—Yes, my Lord, at least it is an arguable case; but, assuming the construction put by the public bodies to be right, Graduates of the University must go to the College of Surgeons to get a right to practise as Surgeons. I say, as to the question of expediency, when it is obvious that the intention of the Legislature was to abolish this exclusive privilege, are you, upon this point of expediency, to extend it to the whole kingdom? That is what is asked. If my learned friend were right in saying, why should the University have a licensing power at all?—if he could induce your Lordships to think that, sitting here, you could repeal the Act of Parliament, then there would be something in it; but if it was intended, some way or other, that the University should open the door to practise by means of some certificate, by means of being registered, I say, why are the Medical profession to be hampered, and why are they, for the first time, to be put in the subordinate position of having to go to the College of Surgeons for liberty to do what they have always done? If your Lordships were here sitting generally

upon the question of expediency, and having regard to the position of the two bodies, the College of Surgeons and the College of Physicians on the one hand, and the University on the other, I should have no doubt what your Lordships' decision would be; but remembering what your position here is, it is impossible to doubt what the answer to that question would be.

My learned friend has said something about the mode in which the license ought to be granted. I am unwilling to enter into anything like an invidious comparison upon the subject. But when your Lordships hear of the number of licenses which have been granted by those Medical Colleges, one having granted 1000 in a year, and 350 in a fortnight, your Lordships may be able to judge what sort of examination must have been gone through before the license was granted (what one gentleman has called the wholesale sale of indulgences), and how the whole affair has been conducted. It is not, however, necessary to enter into any such question as that. It is sufficient for me to say, that the propriety, the strictness, and the exactness of the examination in the University of Edinburgh, never have been, and never can be questioned.

I will not detain your Lordships by going through those minute objections as to the terms and course of study upon which my learned friends dwelt at such length; yet I think that has been sufficiently answered, by saying that there are powers in the Medical Council, proper, if necessary, to be controlled by this Council, which are quite sufficient to meet any such objection if it should ever arise.

With regard to the Doctor's degree, what has been said as to that? They say it is an unreasonable thing that a degree, conferring additional dignity, should be conferred without an additional examination. In that again, if it is wrong, your Lordships will have the satisfaction of erring at least in company with the University of Cambridge, because, as your Lordships are aware, the degree of Master of Arts, which equally implies teaching,—your Lordships know that the Senate, which is composed of Masters of Arts and Doctors, is divided into two bodies, the Regents and the Non-regents; the Regents being those who, for the period of five years, are supposed to be under the obligation of teaching in the University—I say, the degree of Master of Arts so constituted, and containing that form of

obligation, is nevertheless conferred without any examination at all. The person who has passed the degree of Bachelor of Arts, after the lapse of three years, and with no additional qualification excepting that which the additional time has conferred upon him, is at once made a Master of Arts.

*Lord Chancellor.*—There used to be a disputation before the degree of Master was conferred.

*Mr Selwyn.*—There is nothing whatever now, my Lord.

*Mr Lowe.*—There was, sixty or seventy years ago.

*Lord Chancellor.*—It was supposed, before the degree of Master was conferred, there should be a test of his power of disputation, when he would have to answer all comers.

*Mr Selwyn.*—I have no doubt that your Lordship is accurate in that; but I think I am equally accurate in my present position. Your Lordships have to deal with the present time, and I think that you have to deal, in that case, with what I may venture to call an illustrious example that the degree conferring those privileges, and supposed to imply the necessity of teaching, is——

*Lord Chancellor.*—I know, from the high authority of the Attorney-General, that in the University of Oxford, down to his time, before the degree of Master was conferred, there was an examination required as a test of classical proficiency.

*Sir G. Cornwall Lewis.*—When I became a Master of Arts at Oxford, there was no examination, and no test whatever.

*Mr Selwyn.*—At all events, speaking of the present time, I am justified in saying that this, which is considered to be a thing so improper, and, to use my learned friend's term, deceitful, and expressing a mere sham, which your Lordships are to interfere to prevent, is the very practice of the Universities of Oxford and Cambridge.

One word, my Lords, upon that point which has been mentioned, as to this University not requiring Greek. Your Lordships are aware that, so far as the Doctorate is concerned, Greek is required. There was some little misapprehension upon that subject yesterday, but the fact is, that no person can be a Doctor of Medicine of Edinburgh without having passed an examination in Greek. It is true, it is not required for the degree of Bachelor of Medicine; but if a person, who comes to the degree of Doctor in Medicine shall not, at the time that he

acquires the subordinate degree of Bachelor, have passed such examination, or he shall not have produced some degree in Arts from some other University where Greek is required as an essential, he must, before he obtains the degree of Doctor, pass an examination in Greek. That is expressly provided for by the Ordinances, and therefore, so far as the degree of Doctor is concerned, no such objection can be entertained. And I think that your Lordships will pause—at all events in this stage of the proceedings—before you will make any alteration with respect to the minor or subordinate degree. It is only one of the instances which we find of leaving Universities to make such alterations as the exigencies of the time require. At this time, when there is such a very large demand, and, unfortunately, so very little means for paying, the Medical practitioners all over the world—and we all know how very insufficiently the practitioners who are employed by the Poor Law Board are remunerated—yet, with the very small remuneration that they receive, there is a great demand for those Medical practitioners in the colonies, and there is a great demand for them in different parts of the world in every direction, extending year by year—it is a matter of very serious consideration, whether any considerable obstacles should be put in the way of a person's advancing himself to such a degree of proficiency as is required to fill those offices; and, if the supply were checked, it would be a very great injury. Therefore I think the Commissioners have exercised very laudable caution in saying, that at this time, while the state of the Medical profession confessedly is in some degree in difficulties, arising from recent changes, this would not be the time to introduce that restriction for the minor degree of Medicine. At all events, I think, for the present purpose, it is sufficient to say, that it is not a small matter which would induce your Lordships to interfere in a summary way in dealing with those Ordinances. If your Lordships would leave it with the Medical Council and the other authorities, it would come before this Council in another shape at another time.

*Lord Chancellor.*—The Commissioners retain their power, I think, till the year 1862.

*Mr Selwyn.*—Yes, my Lord.

*Lord Chancellor.*—They may issue a new set of Ordinances.

*Mr Selwyn.*—Yes. But beyond that, there is, in the general

Act, a general power given to the Council of Medicine, from time to time to alter those requisites; and that power might be exercised in this manner without your Lordships being called upon, on this occasion, to interfere at all in the matter.

My Lords, I will pass over the other points, which I think my learned friend Mr Rolt sufficiently disposed of, and I will say but a very few words upon those two points upon which there is any difference of opinion at all between the Senatus Academicus and the Commissioners. We are here in support of the Report of the Commissioners, and desirous of raising no controversy or dispute whatever with that body; but when, upon the other side, objections have been made to their Report, upon the ordinary principles so familiar to all who are conversant with Courts of Law, that when a portion of a case is appealed from, the whole case is opened to the Respondents, it is certainly open to us, without any breach of that respect which we feel for the Commissioners, to submit to your Lordships that in some of these points the Commissioners have gone too far. I will not say more than a word with respect to the Board of Examiners, and I am willing to admit generally, that it is advisable, in most cases, that there should be a distinction between the teachers and the persons who are to test the result of their teaching; but, as the Commissioners of 1826 have pointed out, the Medical Examinations are an exception to that rule; and this particular University, having regard to its poverty, is one, the introduction to which, of strangers, to whom a considerable sum of money is to be paid, is a matter of considerable importance. Your Lordships see that there are to be three according to the Commissioners, and according to the contention on the other side, many more persons to be introduced, receiving each L.100 a-year. This is a thing which has been introduced in order to satisfy some theoretical notion, or some speculation as to future difficulties, because it has not been suggested that there has been anything defective in the system of examinations conducted in the University. It is only to meet some possible contingent future difficulty. And I say, when you find a body constituted as this is, with very insufficient resources, it would not be quite prudent to impose some considerable burden upon its finances, unless there were some existing abuse which that expense is calculated to mitigate. But there is no complaint whatever on that ground. I

venture to suggest that, if your Lordships thought it right that there should be any additional Examiners from any other body, instead of pointing as this Ordinance does to those two or three Medical corporations, who by the statute have necessarily been placed in a certain degree in antagonism with the University,—instead, I say, of pointing to them as the bodies from which these additional Examiners should be selected, some other University, say the University of Glasgow or some other University, should be named as the body from which these additional Examiners should be selected. That would involve no additional expense at all; because, throughout these observations, your Lordships will bear in mind that, according to the Act of Parliament, by which the Commissioners are enjoined to make, as far as possible, the practice of all the Universities in Scotland uniform, if these Examiners are to be introduced into one University, they will probably be introduced into them all. Therefore, if, instead of pointing to those rival bodies as the sources from which these additional Examiners are to be derived, the other Universities were to be mentioned, or some other cognate body, there would then become a sort of interchange of courtesies between the different University bodies. Let a Professor of Aberdeen or Glasgow be added, and, in return for the favour of his services to the Professors of Edinburgh, let the Professors of Edinburgh, in their turn, join in the examination in the other Colleges;—that would be a thing which would be productive of no sort of disunion or possible contention in the Board of Examiners, in which everything of that kind ought to be most scrupulously avoided; and that would avoid any additional burden upon the poor finances of the University, as those persons might reasonably be expected to do it, the one in exchange for the other.

*Sir G. Cornwall Lewis.*—It would not be more uniform than the system now adopted, and the system which was adopted in Edinburgh might be adopted in other Universities.

*Mr Selwyn.*—Yes, my Lord; but the uniformity would involve a multiplication of expense.

Then, my Lords, I pass on to the only remaining point as to the Extra-mural Teachers: and the first observation that I have to make upon that is, that it appears to me to be a thing which, even as it is at present proposed, and still more as it is proposed to be extended, is inconsistent, not only with the Act of Parlia-

ment under which the Commissioners proceed, but also with the general progress of education in Universities at all. Because, take for instance what the Legislature has done in this very statute. Take the case of Aberdeen. There were in Aberdeen two Medical Schools and two Universities, but it was considered by the Legislature to be inexpedient, and to be an unseemly thing, that there should be in one town a rivalry between two such schools, and consequently the principal object of the Act of Parliament is to unite those two, and the title of the Act is, among other things, 'for the Union of the two Universities and Colleges of Aberdeen;' and doing that, the Legislature has in fact only been following the example of those Popes and Monarchs who, in ancient times, united (which one of your Lordships, I believe the Lord Chancellor, referred to yesterday) different schools existing in places where a University subsequently existed, into one corporate body as a University. There can be little or no doubt, that in almost every place where a University was established, there was before the creation of the University a school, or more than one school, existing at the time, and which led to the grant of a charter of incorporation to the persons who were then actively engaged in education at that place. That is the thing upon which the Universities proceed; that is to say, you find in a certain place, as at Edinburgh, or at Cambridge, or at Oxford, a certain number of unconnected bodies, or persons, there engaged in the common end of advancing learning. That was considered to be an inconvenient mode of advancing that object; and the Pope, or the Crown, or some other competent authority, took upon themselves to unite all those different bodies into one consistent whole, and call it a University. And, following out that principle, this very Act of Parliament has prevented the existence of two separate Schools or Colleges in Aberdeen, and united them into one. Now, in the very face of that Act, those Commissioners and your Lordships, acting under the Universities Act, are asked to establish at the very doors of the University another and a rival school; because your Lordships will observe, that all we say with respect to those Extra-mural Schools is, that we are objecting simply to those schools in Edinburgh. We have not the least objection that a student may pass a certain portion of his time in Dublin, and a certain portion of his time in London, and a certain por-



tion of his time in the Hospitals and Medical Schools here. We think that it is not merely very convenient, but highly important. And what, my Lord, the *Senatus Academicus* does consider to be of very essential and vital importance, is, that the principle upon which the Universities were originally founded—the principle which was acted upon in this Act by the union of the two Colleges in Aberdeen—should not be departed from, by favouring rival Schools at the very gates of the University. I feel, though the ultimate results as expressed in the Ordinances are unfavourable to the opinion which I am expressing, yet the opinion of the Commissioners, as expressed in their Report, is not unfavourable, for I am quoting their opinion as to the evil of rival Schools in opposition to the University. I would ask your Lordships always to bear in mind that our opposition is confined, I think, to schools in the very town in which the University is. Your Lordships cannot fail to see the necessary consequence of such a state of things. You give to a young student the option of choosing whether he will attend the Professors appointed by the University, or some other teachers to be chosen by himself. Your Lordships may observe, in the first place, he may be influenced by these motives, where he can go for the least money—or where he can go with the least strictness—or where he may obtain some other advantage which the rules of the University would not allow him to obtain. The Commissioners have felt it apparently necessary to guard against that, by making provision that those Extra-mural Teachers shall require from all persons who actually take degrees the same fees as are demanded by the Professors; but it is limited only to those who take degrees, who are a very small proportion of the number of students, because a great number of persons enter upon this career who do not go to the length of obtaining a degree. And if, therefore, I was well founded as to my first observations as to the necessity of numbers for the maintenance of the Schools, your Lordships will obviously see that here is a motive for students withdrawing from the University, and obtaining, to a certain extent, the advantages which the University is intended to confer upon its own students, to be enabled to follow the teaching of other teachers, and pay them either the same or a smaller sum, and say, by reason of our names being entered into a book, we are entitled to have that which the University

provides, but does not more than sufficiently provide, for its own students, namely, the use of the library and other apparatus necessary for Medical studies. That seems to me to be creating or fostering the very evil which the institution of Universities was intended to prevent. How is it possible that any regulations can be made for the discipline and the teaching in those Extra-mural Schools? It is obvious that neither the Commissioners nor your Lordships have any power to interfere in the matter at all; but still they are to be recognised and encouraged. I think the slightest consideration of the evils of such an anomalous system will show your Lordships, that unless some great necessity were shown for it, which has not been shown, it ought not to be allowed to continue.

*Mr Lowe.*—I thought you said that you limited your objection to the Extra-mural Schools in Edinburgh. Your argument now goes to all the Extra-mural Schools.

*Mr Selwyn.*—No.

*Lord Chancellor.*—It has nothing to do with Dublin.

*Mr Selwyn.*—Just so.

*Lord Cranworth.*—Is there any discipline at all exercised by those schools?

*Mr Selwyn.*—I mean, supposing a person were to set up a school, and say, You shall attend my lectures, but if you come in at any time you shall be considered as attending,—I am merely putting a case. But the other schools which are alluded to, could not, so far as their internal discipline is concerned, be regulated by the Commissioners acting with regard to the Edinburgh University. A person who attended the Medical School at Cambridge, and produced a certificate to the University of Edinburgh that he had attended the lectures, would afford conclusive evidence that he had attended the same courses and the same discipline as in Edinburgh itself—and the same with regard to any person who had attended any other Medical School. And, though I admit that there is some force in what your Lordship has been good enough to say, I think my objection is confined to the schools in Edinburgh, for which I think no necessity has been shown, so long as the University of Edinburgh remains as it is. There is no reason that they should be exposed to this competition at their very gates; and the reasons that may be assigned, even of health and family considerations, that may in-

duce students to pass a certain portion of their time in London or in Edinburgh, cannot apply to a man belonging to the University of Edinburgh, and actually going to a school that is not in any way connected with the University.

My Lords, any possibility of incompetency in the Professors, as your Lordship knows, is removed now by the provisions of the Act of Parliament, which have given power to the authorities set over the University, to remove Professors if necessary, and to provide retiring pensions for them, if from age they become incompetent. Therefore we have now a certainty of the Chairs in Edinburgh being sufficiently filled. Your Lordships know how numerous they are, and that every possible branch of Medical science is there provided for. And why should the dignity and importance of those Chairs be impaired by establishing rival schools of the same class, and giving students the option of going to either the one or the other? That seems to be placing the Professors of Edinburgh in a very invidious position, in which they ought not to be placed.

*Lord Chancellor.*—The Professors of these schools have often been introduced into the Chairs of the University.

*Mr Selwyn.*—I will not pursue this subject further than to say, that this fee, which one of your Lordships alluded to as having been paid by the young men, is only a fee of one guinea, which is called a matriculation fee; and the Ordinance is now, that all students not availing themselves of the University, are, upon payment of one guinea, to have a right which, I submit respectfully to your Lordships, neither your Lordships nor the Commissioners have power to give them,—namely, the right of interfering with the property of the University, and using the library and the other apparatus necessary for the prosecution of Medical studies.

My Lords, I think I have now gone through the whole of the points that were left untouched by my learned friend Mr Rolt. And I am sure that it is not necessary that I should say more than a word with regard to that point with which my learned friend Sir Hugh Cairns concluded,—namely, as to the appearance, on this occasion, of the *Senatus Academicus*, or as to the possession of the Seal by them, and the use that they have made of that Seal, by affixing it to the petition before your Lordships.

*Lord Cranworth.*—It is hardly before us.

*Mr Selwyn.*—But so much was made of it by my learned friend.

*Lord Chancellor.*—Many things that fell from him made a deep impression upon my mind, but that I had forgotten.

*Mr Selwyn.*—I may only say that the *Senatus Academicus* are the real Executive of the University, having the common Seal. And your Lordships will go with me to this extent, that this is a question vitally affecting the Medical School in Edinburgh. It was therefore a question which it was absolutely necessary should be brought before your Lordships, when the vital interests of that body were affected, as they were, by petitions presented by the Medical Boards. The only question that could arise was, whether the formal appearance should be by the University Court or the *Senatus Academicus*. By the 19th section of the Act, the University Court is put in a state of suspense. During the continuance of the powers of the Commissioners, they are made expressly subordinate to the Commissioners; and it would be a violation of decency on their part, if they had come with any remonstrance against the acts of those persons to whom they had been made subordinate. But, on the other hand, it was the duty of the Executive body of the University to do their best to prevent its interests being assailed. That duty they have endeavoured to discharge; and having entrusted that duty to us, however imperfectly it has been performed, I feel I may safely leave those interests where I now leave them, namely, in your Lordships' hands.

## R E P L Y.

*Mr Roundell Palmer.*—My Lords, the arguments which have been addressed to your Lordships are partly new arguments advanced on the other side, and requiring independent consideration, and partly attempts to answer those which were addressed to your Lordships on the part of the petitioners. I will first address myself to those which are new arguments; as to which, it is a very singular fact, that I am able to answer all, or nearly all of them, out of the mouths of the Commissioners themselves.

*Lord Chancellor.*—We are not estopped by the Commissioners. If they say that the Medical Act has nothing to do with this matter, I entirely differ from them.

*Mr Roundell Palmer.*—Of course, my Lord.

*Lord Chancellor.*—What I mean to say is this, that it is not a conclusive argument that the Commissioners have said this or have said that.

*Mr Roundell Palmer.*—I am most fully aware of that. I know very well that your Lordships will form your own opinion upon the points; and the circumstance that the Commissioners have formed an opinion which should not happen to be your Lordships', cannot be decisive upon your judgment. But, on the other hand, it is a remarkable fact, and I think I may refer to it as showing, at all events, that the Commissioners, who naturally examined and considered their own powers in this matter with some care, and not without a disposition to support them, have certainly not taken that view of their own power and of the influence of that question upon the others referred to, which has been so much relied upon at this Bar. But I quite agree that the Commissioners may be on that matter wrong, as, I submit, they are upon points on which they have expressed other opinions. And it would certainly be a singular result, that the Report, not being successful in satisfying your Lordships on the grounds on which it proceeds, nevertheless should be supported by your Lordships upon grounds which it rejects; though I hope that will not be the result of this discussion. But I set that aside, having said as much as I think was proper, though not more than was proper, upon the point. And I will first of all examine the

arguments of that class, in this order : Does the University Act give the power to the Commissioners to create and to introduce new degrees ? Then : Does the Medical Act, or any other Act of Parliament upon that subject, really determine, or in any important degree affect, this question, as a question of law with respect to the power to introduce a new degree ?

As to the Universities Act itself, I submit to your Lordships that it would be a construction entirely foreign to the intention of the Legislature, and to all sound principles of construction, to hold that this Act enables the Commissioners to confer upon the Universities privileges and powers which the Universities did not possess before; and I submit that the Commissioners have only to regulate the exercise of those privileges and powers which the Universities did possess before. My Lords, it will not require a prolonged examination of the Act to show that it justifies that construction which I have placed upon it. First of all, the preamble certainly, though perhaps it may be said not to be inconsistent with anything distinct and clear in the operative part enabling the Commissioners to give new powers, yet has no aspect that way, because that which is said to be expedient is, 'to make provision for the better government and discipline of the Universities in Scotland' (not for enlarging their powers and privileges), 'and for improving and regulating the course of study therein'—apparently referring to something which exists requiring to be improved and regulated. The preamble would not, of course, be conclusive at all if there were in the body of the Act anything which went beyond it. In the body of the Act, in the 15th clause, several subjects are treated of by their different heads; and the third head is this: 'Subject to the provisions of this Act, to regulate by Ordinance the powers, jurisdictions, and privileges;' and the various elements of University authority are enumerated in considerable detail. I think that your Lordships would never hold that these words, 'to regulate by Ordinance,' would involve the power of enlarging the powers, enlarging the jurisdictions, or enlarging the privileges which the body before possessed. It is simply to regulate by Ordinance the manner in which these shall be distributed and exercised.

*Sir G. Cornwall Lewis.*—In the previous paragraph there is the power of altering.

*Mr Roundell Palmer.*—Yes, my Lord; that is expressly granted, to revise the respective foundations and to alter. I would refer to that as a further illustration. That was the thing that they were to have express power to do—altering the dispositions of previous founders. Those dispositions of previous founders did not give the Universities their powers or privileges, but they imposed upon them certain obligations which it was intended to relax or dispense with; and, accordingly, that power is expressly given.

Then we come to the 5th Article, which is the one in question; and what is the meaning of 'to make rules for?' Certainly to regulate. It is not the same thing with the word used in the previous clause—'to regulate by Ordinance;' and when you find that they are to make rules for the granting of degrees, the manner of examination, course of study, and the conditions under which degrees are to be conferred, and so on—

*Sir G. Cornwall Lewis.*—I do not think these words, 'make rules,' necessarily limit it to the power which exists. They might make rules for enlarging the powers; it means as to the substance.

*Mr Roundell Palmer.*—It is enough for me if the words have no tendency by themselves to imply an intention to enlarge the powers and jurisdictions. I think that the clear and natural meaning is, to regulate that which, by existing power, the Universities can do; and everything mentioned in that clause is of that nature. The Universities did grant degrees; and it was necessary that the manner in which they did exercise that power should be regulated. But there is not the slightest indication of any intention either to introduce new degrees or to vary in principle the powers under which degrees were granted.

And, my Lords, such other parts of the Act as have any bearing upon this question, directly confirm that construction. Look at the 16th section; that refers to degrees: 'If Her Majesty shall be pleased at any time within the duration of the Commission, to grant a Charter for the Foundation of a National University for Scotland, the Scottish Universities named in this Act, or any of them, may, if they shall think fit, surrender to the Commissioners the powers of examining for and of granting degrees, with or without the exception of degrees in Theology,'

and so on. What does that refer to? Obviously to the power of granting degrees already possessed by each of the Universities.

*Sir G. Cornwall Lewis.*—The Commissioners are to become the permanent executive body.

*Mr Roundell Palmer.*—I think not, my Lord. If Her Majesty shall grant a charter to found a National University for Scotland, to enable that to be done, those particular Universities may surrender to the Commissioners the power of examining for or of granting degrees, with or without a particular exception. They may become affiliated to the National University. That has only an indirect bearing upon this question; but that indirect bearing is very strong.

*Sir G. Cornwall Lewis.*—It appears to me to refer to an entirely new set of functions, out of harmony with the rest.

*Mr Roundell Palmer.*—That is quite true; and, therefore, it is proper to consider any observation to be made upon inferences drawn from that, bearing that in mind. But that shows that it is not considered that the Commissioners can take away these powers. They must be surrendered by the voluntary act of the Universities in the case referred to, and they are referred to as powers which are possessed by them, and of such a nature that the surrender must be by their own voluntary act; and if the Commissioners could not take them away, it is not to be inferred that the Commissioners could grant them.

The next clause, which refers to the University of Aberdeen, seems specially to confirm what I have said. It says, that the Commissioners are to ‘possess and exercise, subject to the provisions of this Act, the following powers:—1. To make Ordinances in order to determine the number of Professors, and to prescribe and regulate the course of study in the several Faculties of Arts, Divinity, Law, and Medicine.’ The same were referred to before, but not exactly in those terms. Before it was, ‘whether in Arts, Divinity, Law, or Medicine;’ here it is, ‘in the several Faculties’—showing that the Legislature took notice of the known division of study into these Faculties, and considered that the degrees, and the instruction with a view to the degrees, would still have reference to that known distinction of the defined Faculties; and that they did not mean either to give the Commissioners power to alter that distinction, or to do anything except in regard to, and in subordination to it.



Then the section goes a little more into detail: 'Provided that in the Faculty of Arts there shall be' certain Professors, in the Faculty of Divinity there shall be certain Professors, in the Faculty of Law one Professor, 'and in the Faculty of Medicine Professors of the Institutes of Medicine, of the Practice of Medicine, of Chemistry, of Anatomy, of Surgery, of Materia Medica, of Midwifery, of Medical Jurisprudence, of Botany, and such other Professorships in each of the said Faculties as the said Commissioners shall think to be expedient.' My learned friend Mr Selwyn seemed for one moment to speak as if that meant Faculties of Surgery. 'Said Faculties' there means the Faculties of Arts, Divinity, Law, and Medicine before-mentioned—'such other Professorships in each of the said Faculties, as the said Commissioners shall think to be expedient.' If we wanted, which we do not want, evidence that in some sense Surgery is included in Medicine, there it is; but that is not disputed. But there is not the slightest indication that the determination of the known lines of demarcation which divide Faculty from Faculty, or anything affecting the character of a Faculty, or in relation to a Faculty, shall be placed in the power of the Commissioners; but simply, that they are to regulate those Professorships, and other things which are subordinate to the instruction given, but which is still to be given as before in these several known Faculties of Arts, Divinity, Law, and Medicine. Therefore, my Lords, I say, that neither looking at the whole of this Act, nor at the particular clauses, can you gather for a moment, from any part of it, any evidence of intention, on the part of the Legislature, to enable the Commissioners to confer upon the Universities (for it comes to that, if our argument upon the principle is right) new powers and privileges, which, from the nature of the case and the history of the institution, must be derived, in the first instance, from Royal or public grant. The delegation of such a power is not to be inferred without a much stronger and clearer indication of intention to delegate than that which you find here. Therefore, so far as the argument is founded upon this particular Act of Parliament, without saying more, I submit that the Commissioners are perfectly right in their conclusion, that this Act does not give them the power either to create a new Faculty, or to do anything equivalent to that.

*Sir G. Cornwall Lewis.*—Supposing an Act of Parliament

were passed, that no person could practise in a Court of Law who was not a Barrister in Law, and no person could practise in a Court of Equity who was not a Barrister in Equity; and suppose that the Benchers or the Inns of Court were thereupon to admit to the Bar in Law, and to admit to the Bar in Equity, you would consider that as a new degree—and that would be exactly parallel to what the Commissioners have done under this section.

*Mr Roundell Palmer.*—Yes, my Lord, under the Medical Act.

*Sir G. Cornwall Lewis.*—No—under this section.

*Mr Roundell Palmer.*—Your Lordship's way of putting it is founded upon the Medical Act—I agree, if it were done under its powers. But having regard to the circumstance that an Act of Parliament has been passed, which, adopting your Lordship's analogy, said that nobody should practise Law except those who had been admitted as Barristers at Law and Barristers in Equity—

*Sir G. Cornwall Lewis.*—That no person should practise in a Court of Law, or a Court of Equity. Law, you see, is just like Medicine,—it is an ambiguous term, and it may mean Common Law or Equity Law, or it may mean Law generally.

*Mr Roundell Palmer.*—Yes; your Lordship puts a case, supposing there were passed in the same day Statutes authorizing Commissioners to admit to the Bar all persons in the Societies of Lincoln's Inn and the Temple. I think that a fallacy frequently lies hid in an illustration, because a case put by way of illustration may be susceptible of questions which do not apply to the principal case. For instance, if the case which your Lordship has put were to happen, the question would immediately arise, what is the nature of the power by which the Benchers of the different Inns of Court call to the Bar? Are these degrees? Or is it merely a conventional language which the Judges have power to alter or to support? Your Lordship sees in what way I should deal with that. I should say that if the power exercised by the Benchers in that respect were really *ejusdem generis* with that of granting degrees by the Universities, if my argument as to the nature and character of degrees is correct, then it would require express authority. If, on the other hand, the power is of a different nature, and

more flexible in the hands of those who use it, or in the hands of other persons inferior in authority to the Royal or Legislative authority by whose assistance it might be modelled or controlled, it would be much more difficult to say that express authority was requisite. But on the assumption that the power was *ejusdem generis* with the power of granting degrees, that the thing was a dignity, an honour, a title, though of an academical character, then I say confidently, that the Legislature themselves must call into effect that which your Lordship has supposed, and that it does not exercise that intention by prohibiting practice. It must find the means of accomplishing its own intention, if it were found that any part of the public service should be dependent upon the new condition of things so introduced. That would be my answer to such an illustration.

That question, my Lords, naturally brings me to the arguments founded upon the Medical Act, which I think will clearly not, upon any sound or just principles, bear the weight which it is attempted to rest upon it. What is it the Legislature is dealing with, and with what object? The subject of Medical practitioners. It is not dealing with the subject of Universities—it is not dealing with the powers and the privileges of Universities—it is dealing with the case of Medical practitioners. It takes notice of the fact, that there are certain bodies in existence which do or may grant certificates, as it views them, of competency, or which grant certain honours or titles which it is content to regard as certificates of competency; and—without reference to the question, what are the powers of this body or of that body—whether this body or that body may or may not at the present time assume powers which it does not possess—or whether such powers may or may not be afterwards granted—it takes notice of those qualifications which, for the purpose of this Act, if legally possessed, will be sufficient, and it neither decides nor, I venture humbly to say, prejudices any question as to whether this body or that body does rightly possess the power of giving such qualifications. That question entirely turns upon the 15th section, and the Schedule, ‘Every person now possessed, and (subject to the provisions hereinafter contained) every person hereafter becoming possessed, of any one or more of the qualifications described in the Schedule (A) to this Act, shall, upon certain things being done, be entitled to be registered.’ And then there is a subsequent section, the

31st, which says, 'Every person registered under this Act shall be entitled, according to his qualification or qualifications, to practise,' etc. We find in the Schedule, among several other things, this 10th Article, 'Doctor, or Bachelor, or Licentiate of Medicine, or Master in Surgery of any University of the United Kingdom; or Doctor of Medicine by Doctorate, granted prior to the passing of this Act by the Archbishop of Canterbury.' The observation upon that is this, there the Legislature takes notice of the title of 'Master in Surgery of any University.'

*Lord Chancellor.*—It supposes that there is *in rerum naturâ* such a thing, or there may be such a thing, as a Master in Surgery.

*Mr Roundell Palmer.*—Your Lordship has said that which I am quite content, if it come from your Lordship's authority, to adopt, that the Legislature has said that there may be such a thing as a Master in Surgery; and that there might be such a thing is quite clear.

*Lord Chancellor.*—You mean that some University in the United Kingdom may make a Master in Surgery.

*Mr Roundell Palmer.*—That some University in the United Kingdom may, either now or hereafter, make a Master in Surgery.

*Lord Chancellor.*—By existing powers?

*Mr Roundell Palmer.*—The Crown might unquestionably, at any time, grant a charter or authority to do so.

*Lord Chancellor.*—If a new charter should be granted to the Universities of the United Kingdom, and if, by that charter, there was power granted to make a Master in Surgery, the Master in Surgery so made may have his name registered?

*Mr Roundell Palmer.*—I think there can be no doubt, that if the Crown should do so, or Parliament should do so, that would be the effect under this Act.

*Lord Chancellor.*—That, you say, is the meaning of this clause.

*Mr Roundell Palmer.*—I say that it is not necessary that those who passed this Act should go into the question of title to grant degrees. They must have meant that question of lawful title to grant degrees to be determined *aliunde*.

*Sir G. Cornwall Lewis.*—Do not you think that the object of the Legislature, in annexing practical privileges to a certain

prescribed status, was to grant the privilege to practise to persons as to whose competency there was some reasonable security? If they looked into the uncertain future, there could be no reasonable security.

*Lord Chancellor.*—You see they make no distinction in this case between the degree of Bachelor of Medicine and of Master in Surgery.

*Mr Roundell Palmer.*—I consider the circumstance which led them to place confidence in the manner in which any University in the kingdom, having power to do so, would exercise the power of granting the degree of Bachelor or of Licentiate, induced them to place the same confidence as to their exercise of the power of granting the degree of Master in Surgery. At that time there was only one body in the United Kingdom professing to grant such a degree. I do not lose sight of that body professing to grant that degree, and claiming to do it as a right. I do not say that the Legislature were likely to affirm that right; or, on the other hand, to disaffirm it. They were not dealing with the question of the rights of the University of Glasgow; but they might take cognizance of the fact, that there was a University in the kingdom claiming to exercise the power of granting degrees under that title; and upon the question having been settled by some competent authority, whether or no that title could be granted by that University, the same reasons which led them to place confidence in the University of Glasgow as to the other degrees, would lead them to place confidence in them as to this. The fact of persons claiming to have the right under the diploma of the University of Glasgow, coupled with the fact that, in a foreign University, under unquestionable authority, the same title existed (so that it was a title that had a known existence somewhere, if not in this kingdom), was quite sufficient to explain its introduction into this Act. But am I wrong in saying, that those who introduced it left the question entirely open, so that any person who might acquire that title might have the benefit of the Act? That is what my learned friends on the other side are contending for. The question is this—There are Universities in the kingdom which did not create Masters in Surgery at the time that the Act passed; are they able now, by the exercise of their powers, to give such a qualification? Is it really meant to be argued, that using such

words in the Act conferred upon every University in the kingdom that power?

*Lord Chancellor.*—It would be for the Commissioners, who would have the power of regulating the Universities, to consider that.

*Mr Roundell Palmer.*—It is not possible to collect, from any portion of this Act, that it was the purpose and object of the Legislature to interfere in one way or another with the question of academical powers, rights, or privileges, or to determine that any University, or all the Universities, can grant these degrees. There might be Universities which, by express powers in their charters, could grant the degree of Licentiate of Medicine, and others which could not. It would apply to those which could.

*Sir G. Cornwall Lewis.*—I do not quite see the drift of your argument.

*Mr Roundell Palmer.*—I say that this Act is intended solely and simply to recognise the licenses which shall qualify for Medical practice. It is not meant to interfere in one way or the other with the constitution of the Universities. It is not meant to give to any one of our Universities any power which they did not possess before.

*Sir G. Cornwall Lewis.*—The argument on the other side, as I understand it, is this, that the Schedule to the Medical Act recognises the degree of Master in Surgery as an actual existing degree in some University.

*Mr Roundell Palmer.*—As a possibly existing degree.

*Sir G. Cornwall Lewis.*—Their argument was, that it was an actually existing degree; and they assume from that, that it was a legal status such as a University might legally grant. That is how I understand their argument. What is it that you are exactly pointing to?

*Mr Roundell Palmer.*—I say that it is no part of the office of this Act to determine any such question as that. The fact of there being such a title in existence, and of the power to grant it being claimed as a right, is a sufficient reason for not excluding it from the Schedule of the Act, if the general principle of the Act would lead to its inclusion, supposing it be rightful.

*Lord Chancellor.*—Is not this a recognition, by the Legislature, that there was such a degree as Doctor of Medicine?

*Mr Roundell Palmer.*—No doubt there was, my Lord.

*Lord Chancellor.*—Is not this a recognition of it?

*Mr Roundell Palmer.*—Yes, in a certain sense.

*Lord Chancellor.*—And they are all recognised in the same words?

*Sir G. Cornwall Lewis.*—Without reference to the question as to prospect—that may be put out of the question—the question is, Whether it does not recognise it as something subsisting?

*Mr Roundell Palmer.*—It does not so recognise it as to give it any validity whatever as a degree which it had not before. It says, If there be that degree it shall make a qualification; and it leaves the question as to its legality open.

*Sir G. Cornwall Lewis.*—According to your view, it must have some effect—it must either have an actual effect or a prospective effect.

*Mr Roundell Palmer.*—The only effect is, that if there is such a degree it will make a qualification.

*Sir G. Cornwall Lewis.*—Prospectively it has an effect upon a degree that may hereafter exist?

*Mr Roundell Palmer.*—If it did exist, it had it then; if it does not exist, it has it not until it does exist. It depends upon considerations extrinsic to the Act altogether, whether the degree existed or not. There might be, at the time the Act passed, no body claiming the degree. There might be in existence a body claiming, but wrongfully claiming, power to grant that degree. And I submit that it shows clearly that the Legislature was of opinion that any person rightfully claiming that degree was a fit person to practise Surgery; but it does not show that the Legislature meant to exercise any judgment upon the question whether there was any one in existence lawfully bearing that degree, or any University lawfully conferring it. What was the meaning of the other Act, the Medical Amendment Act of 1860, which my learned friends laid stress upon, if this is such a recognition of the Mastership in Surgery as to give it a legal validity, if it had it not before that? That was not the intention of the Legislature in the Act of 1860. That Act never ought to have been passed, if this argument was good for anything.

*Lord Chancellor.*—It was that the Dublin University had granted the new degree of Master in Surgery.

*Mr Roundell Palmer.*—If this Act operated as it is said, what

was to prevent the Dublin University from granting the degree of Master in Surgery?

*Lord Cranworth.*—They had granted diplomas.

*Sir G. Cornwall Lewis.*—They did not wish to alter their practice.

*Mr Roundell Palmer.*—It shows pretty strongly that the University of Dublin had not much faith in their power to grant the degree of Master in Surgery; because it is not to be supposed that the University of Dublin would be so much attached to the particular form in which they granted licenses, as to come to Parliament on purpose to give this effect to them, if their object was sufficiently answered by simply conferring the degree of Master in Surgery. They might do just the same with regard to those which were already granted.

*Sir G. Cornwall Lewis.*—The way in which it was done was legal and effectual for that purpose. It seems to me that what has been done, equally accomplished the object.

*Mr Roundell Palmer.*—This is a direct legalization of the diploma.

*Sir G. Cornwall Lewis.*—It is a recognition of an existing practice; and it enables persons who have actually obtained diplomas to practise as if they were Masters in Surgery.

*Mr Roundell Palmer.*—The words are remarkable. It is not as if they were Masters in Surgery, but, ‘and with the like effect, and subject to the like provisions as are prescribed by the said first-cited Act in respect of the registration of any Master in Surgery.’

*Sir G. Cornwall Lewis.*—That gives the right.

*Mr Roundell Palmer.*—That gives the right; but it is evident that they did not like to give the right in words, as if they were Masters in Surgery of any University. It refers to the name. The Act is about registration; and it says that the diplomas shall have this effect, as giving a qualification. I cannot help thinking that, if those who advised the University of Dublin had been satisfied as to their power of granting Masters’ Degrees in Surgery, a shorter, and simpler, and less expensive mode might have been found, than coming to Parliament and passing a public Act.

*Sir G. Cornwall Lewis.*—I do not know that a public Act is a very expensive mode.



*Mr Roundell Palmer.*—But we know that a good deal is spent in the necessary measures for that purpose; and I should have supposed that a simple exercise of the power of that University would have been sufficient. I say, according to the argument on the other side, no Act was necessary. They would say, Every person who has a license or diploma shall, if he pleases to claim it, be admitted to the degree of Master in Surgery.

*Sir G. Cornewall Lewis.*—There were no Commissioners in that case. The question here is, as to the act of the Commissioners. If there had been Commissioners for the organization of the College, perhaps they might have said so.

*Mr Roundell Palmer.*—Possibly they might. They had not the benefit of the combined argument, founded upon the Commissioners' act and the Medical Act; but I do not think that the combined argument makes it much better, unless each argument is good. I have already dealt with the argument on the Commissioners' act, which, I think, falls to the ground; and I think your Lordships would be imposing a construction upon this Schedule of the Medical Act which has never been admitted in the construction of any other Act, if it is supposed that it legalizes a status which was not otherwise legal; at all events, if you hold that it does so as to any University which did not confer it. I can understand the argument carried to this length, that there was a University claiming power to grant that degree, and doing it *de facto*; that that is the degree referred to in the Schedule—the degree in Surgery granted by the University of Glasgow; that the Legislature takes notice of it and must be held to validate it; that its validity rests upon the Act of the Legislature; and that it cannot be granted by any body claiming to exercise that power, who can show no other title to it but an inference drawn from that Act. To say that, because there is that Schedule and that name in the Schedule, the whole legal argument is overthrown, and it is not necessary to look for any proof of right in any University in the kingdom claiming power to grant this degree, would be very startling.

*Mr Lowe.*—You argue that this Act does not validate the degree of Master in Surgery, so as to make it a legal degree.

*Mr Roundell Palmer.*—Yes.

*Mr Lowe.*—What says the proviso? By the 15th section

of this Act it is provided, that 'it shall be lawful for the several Colleges and other bodies mentioned in the said Schedule (A)' ('shall be lawful,' I suppose, means that they are enjoined), 'to transmit, from time to time, to the said Registrar, lists, certified under their respective seals, of the several persons who, in respect of qualifications granted by such Colleges and bodies respectively, are, for the time being, entitled to be registered under this Act,' among which they, of course, could certify, if they please, the case of a Master in Surgery.

*Mr Roundell Palmer.*—Yes.

*Mr Lowe.*—Upon the receipt of those lists which the Colleges are required to send, the Registrar is ministerially required to enter those persons upon the Register. When those persons are entered upon the Register, by the operation of section 31, the privileges of the Act accrue to them. Now, suppose that this Act had not made this degree what you call strictly legal, so as to give it precedence and other incidents, has it not given it that special privilege to practise which the Commissioners might bestow upon the University, without reference to validity?

*Mr Roundell Palmer.*—I am much obliged to your Lordship. I thoroughly see the bearing of the question. But my answer to it is this:—It may be, from the confidence placed in those bodies, the Legislature has made it the duty of the Registrar to register every name in the lists transmitted by the Colleges, taking it for granted that the bodies will only transmit the names of those persons who are, for the time being, entitled to be registered by the Act; but it does not follow that your Lordships, advising the Crown as to the exercise of the power of those Commissioners, can rest upon the estoppel, as it were, which there may be upon the Registrar to examine into the validity of the title. It was not meant that this title of Master in Surgery should be created for the purpose of getting this qualification. It was meant that it should be a degree of Master in Surgery competently granted by a University of the United Kingdom; and, being so, it was to be accepted as a qualification. Now, if your Lordships were to look at it in that point of view merely, it might come to this, that, because the validity of this title cannot be questioned by the Registrar, the being admitted and registered will enable persons to practise; and, therefore, although it is the assumption of a power

not belonging to the University, yet still, on account of the convenience of the consequences, it should be adopted. That, I think, is not the way in which your Lordships can possibly regard the case. The Crown has to act in a manner which must, I think, be most carefully and religiously preserved from anything like connivance at, or encouragement of, the usurpation of a power which does not by law exist. I assume, for that purpose, that that should be your Lordships' opinion upon the question of law; if it were otherwise, there would be an end of the whole argument. But, upon the assumption that the case could be put in this way, I say that it is not an argument which can be advanced to your Lordships sitting here, and inquiring whether the Commissioners have competently exercised their powers, and, therefore, whether this is a fit thing for her Majesty to sanction.

*Mr Lowe.*—May it not be that the Universities might have the power to grant the title, though it did not confer the privileges of a degree; and that the Legislature might take up that which was a title conferring no rights and privileges, and annex to it certain rights and privileges; and has the Legislature not done so in this case?

*Mr Roundell Palmer.*—That is also a very fit question to be considered; but upon that I would submit, that it was not the intention of the Legislature to deal with it otherwise than as a degree. It is found in the society of the words, 'Doctor,' 'Bachelor,' and 'Licentiate,' each of those being words expressing a known and legal status.

*Sir G. Cornwall Lewis.*—It is so described in the provision, 'that the degrees in Medicine to be hereafter granted by the University of Edinburgh, shall be divided into three classes, and be designated respectively,' etc.

*Mr Roundell Palmer.*—The Vice-President of the Council for Education referred me to the Medical Act.

*Mr Lowe.*—Another question might arise, how far that would satisfy this Ordinance.

*Mr Roundell Palmer.*—That would, of course, be under the Medical Act. I submit, it is found in company of three terms of a known and legal signification, two of them being the known University degrees of Doctor and Bachelor, and the third, Licentiate of Medicine, denoting a person who is, by competent

authority, licensed by the Universities which possess the licensing power, which some do, and others do not. It is meant, I think, that a Master in Surgery should be a person having an independent right to that title, as a real University degree, not as a mere *nominis umbra*, invented for the purpose of creating this qualification, or for some similar purpose. And there, my Lords, I think I may refer again to the case of Glasgow. Glasgow did not put forward this name as a mere imitation of a degree, as something which was not a degree, but a title of honour of an analogous character, within their own power, and not purporting to convey rights or status; but they put it forward as a regular degree. And the very name itself, I think, being the title of Master, a regular degree in Arts equivalent to Doctor, proves the same thing. I should venture to answer, in that manner, that branch of the argument.

Now, with respect, my Lords, to another point that was thrown out, in the course of the argument, more than once, both, I think, by one of your Lordships, and to some extent by my learned friends, Mr Rolt and Mr Selwyn,—that is, the suggestion that it is a mistake to think that it is a different degree at all, but that it is a mere expansion or modification of the title of an old degree. The answer to that lies quite upon the surface. One of your Lordships (the Home Secretary) has just alluded to it. On the face of the Ordinance itself, which says, ‘*Primo*, That the degrees in Medicine to be hereafter granted by the University of Edinburgh, shall be divided into three classes, and be designated respectively, Bachelor of Medicine, Master in Surgery, and Doctor of Medicine,’ and throughout, it is treated as a distinct degree. It is impossible, therefore, that your Lordships could allow the Ordinances to stand, on the ground that the degree is not a different degree, but is one and the same degree, granted by accumulation for purposes of legitimate explanation, the old title of Bachelor of Medicine being expanded so as to add Surgery to Medicine. It is obvious that this is not an Ordinance adapted to that purpose; it makes them distinct degrees. It is not that only, but the very title contradicts the thing—to talk of a Bachelor of Medicine and a Master in Surgery—it is a grade different as to Surgery from what it is as to Medicine. It is utterly impossible that it can be one degree, or only an expansion of language.

*Lord Chancellor.*—It is treated as a substantive degree.

*Mr Roundell Palmer.*—It is, my Lord, no doubt. And further than that, the whole scheme implies that some may have it and that others may not. Therefore I have endeavoured to answer those arguments, some of which, founded upon the Acts of Parliament, if I rightly collected what fell from some of your Lordships, appeared to be considered of weight, and I hope the answers I have given will be approved and will be sufficient.

Now, upon the answers to our arguments, I proceed to make such observations as, having regard to the time your Lordships have had already occupied, and the time that remains of to-day, may be, I hope, not superfluous, and in some degree useful. I shall, therefore, pass over everything in the nature of mere rhetoric, and shall address myself simply to those remarks of my learned friends which they appear to attach importance to, and which I hope to treat as having importance in your Lordships' eyes. My learned friend, Mr Rolt, insisted very much upon the general necessity of some such inherent power as that which he claimed in Universities, to alter, and mould, and subdivide, and increase, and multiply their degrees. He said, that there was such a power to alter as the exigencies of the times and the alterations of circumstances might require, and it must be presumed that it existed. This power, he said, existed nowhere except in the Universities themselves, and it was not difficult to assign to it its necessary limits, which would be found in those subjects of instruction in which it was within the scope of their duty to give a full curriculum. My Lords, I think it is a sufficient answer to that argument to say, that it is an argument which has no historical basis whatever; because, when the instances are referred to, it will not be found that any single University has claimed or exercised such a power heretofore. And it is a strange argument indeed, which is founded upon an *à priori* necessity for a power which cannot be proved ever to have been exercised in practice. Certainly that is a very strange mode of proving it. If that argument were well founded, it is clear that no one could assign the limit which would exist to this license. I do not mean that it is unreasonable, because I agree that there may be extreme cases, such as Chiropody; and such reasoning is only useful when it is necessary to test a principle. If the question is

a practical one,—and we are not dealing with an abstract principle,—one would like to fix the limits to its reasonable exercise, and I say the limits to its reasonable exercise are indefinable. It is not only such a power that, if it existed, we should be sure to find traces of in other Universities, but that reasonable exercise would have been likely to be frequent. As often, for example, as new studies were introduced into the University, and new Professorships were founded, it might be a great encouragement to students, if special degrees could be granted in those studies. From the time of the Reformation downwards, we have had in all the Universities of the kingdom a succession going on to the present day, of the foundation of new Professorships, and the subdivision of branches of knowledge in that way. It would have been perfectly natural that there would have been some corresponding institution of degrees, if it was understood that it was in the power of the Universities to subdivide and create degrees. But that has never been done; no new degree has been instituted; and subject to the very few, misconceived and non-existing, exceptions upon this very subject of Surgery, I confidently say, that no instance can be pointed out, in which this supposed inherent power has ever been exercised by any University. I will not descant upon it further, or go into all the illustrations of which it is susceptible. My learned friend referred to the subject of Music in connection with this; and upon that subject I will only repeat what I said at the outset, that Music is an ancient minor degree of itself. Music never was properly in the Faculty of Arts. Bachelor of Music was one of the subjects of the quadrivium which was introductory to Arts, and, so far as I know, instruction in Music has not been granted in any University as part of the curriculum in Arts.

Passing over the doctrine of inherent power, and having said as much as I think it deserves in reply, I come to the question of express powers. The express powers relied upon are two, and two only,—one which is supposed to be found in the words, '*quâcunque licitâ facultate*;' the other, which is supposed to be found in the words of the Act of Parliament, that they shall have as large powers as any other University 'has or bruikes within these realms.' My learned friend left out those words, 'in these realms,' once or twice in his argument; but, of course, it must be borne in mind——

*Sir G. Cornwall Lewis.*—That meant Scotland?

*Mr Roundell Palmer.*—Yes, my Lord, it must be limited to Scotland; but it will not be found to increase the certainty of the argument the least in the world, for it has not been attempted to be shown that any University in Scotland exercised at that time the power of granting degrees or of inventing new ones.

*Mr Lowe.*—That was after the union of the Crowns?

*Mr Roundell Palmer.*—Yes, my Lord, but that was an Act of the Scottish Parliament; the union of the Crowns made no difference whatever. I do not think I should do rightly to dwell very long upon the argument which was offered as to the '*quâcunque licitâ facultate.*' The argument was, that it meant any Faculty which at any time might be recognised. I do not think that the word *licitâ* means that. It must mean *licitâ* to them; it does not say, *licitâ quibuscunque* or *licitendâ*, if I may invent a very canine expression. The utmost it could mean, at that time, would be any Faculty then recognised. If you could extend it into the future, the utmost extent would be, any Faculty that competent authorities shall add hereafter to those now recognised in this University. But, to say that because the new University of France, founded by Imperial authority, makes the new Faculty, therefore those words will adapt themselves to that result in the course of time, was an argument (if it was meant to be used, which I doubt) which would be almost too absurd to answer. If it is not meant to be used, then, *cadit quæstio*, because it is not pretended that any such Faculty has been ever created by any lawful authority, unless by the Medical Act, in the United Kingdom, much less in Scotland.

However, my Lords, in connection with this part of the argument, I must allude to something that was said as to the use of the word 'Faculty' in the various Acts of Parliament referred to. I think that Mr Napier's opinion was quoted about the Irish case. It is quite true that the word '*Facultas*' is referred to in various ancient Charters, and in some Statutes as to the Barber Surgeons, and other things; but is it referred to in the sense of an Academic *Facultas*? It is perfectly clear that, in those old Charters referred to in that opinion, it has no such sense. I take the first of them. Your Lordships, I daresay, know that Mr Willcock has collected the Medical Charters and

Statutes, in a valuable work on the Laws of the Medical Profession, now of some date (I do not know if there is any recent edition); and there is the first Charter of Edward the Fourth to the barbers of the city of London, which was one Charter that was referred to,—‘Rex omnibus ad quos, etc. Sciatis quod nos considerantes qualiter dilecti nobis probi et liberi homines Misteræ Barbitonsorum civitatis nostræ London, utentes mystera sive facultate’ (I presume the barbitonsors must have supplied the Latin) ‘Sirurgicorum tum circa vulnere plagas.’

*Sir G. Cornwall Lewis.*—They probably took it from the French ‘Métier.’

*Mr Roundell Palmer.*—We find ‘mystery’ in English Acts of Parliament. However, I always thought it was derived from a Greek word, that signifies something in which a person was initiated; but, as your Lordship has suggested, it may be formed from ‘métier;’ but ‘métier’ may be formed from the Greek word. But your Lordship here sees the sense in which they use, in this document, the word ‘Facultas.’ It is perfectly clear that that is not an academical Faculty. Nobody contends that the barbitonsors were an academical Faculty. That is only an example of the general use of the word Faculty, which, no doubt, has this philological connection, and a very close one, with the academic use of the word. But the academic use is one which has acquired a clearly defined sense. And it is all very well for my learned friend to smile at the Surgery of the dark ages, and so on; but, when we are dealing with institutions of antiquity, we must remember that nothing rises higher than its source, and that these institutions have undergone very little alteration; though, in the way in which they have been adapted to the exigencies of society, they may have acquired a new meaning. We never can know that these words signify things, without going back to the origin of these institutions, as to which the law has given to old words, in modern times, a different effect from that which they formerly possessed. Therefore, as to that use of the word ‘Faculty,’ it comes to nothing whatever.

Now, my Lords, my learned friend, Mr Rolt, in this part of his argument as to the power, referred to the judicial opinions, which, he said, were, as far as he saw, in one way. I should like to speak with very great respect of the eminent persons



whose opinions he mentioned ; but it is impossible to treat any opinions expressed by them as having the least feather's weight of authority, when we reflect, with regard to two of them, Lord Moncreiff and Lord Fullerton, that those opinions which they expressed, were expressed as the foundation of a conclusion, from which, in each case, the Court of which they were members dissented, the House of Lords subsequently agreeing with the dissentients. Lord Moncreiff was in a minority of one upon the question, whether the Surgical degree of the University of Glasgow entitled its possessor to practise within the privileged districts in Scotland. He held that it did. He founded his argument upon what he considered to be the clear right of the University to grant a degree in Surgery, and its connection with the subject of Medicine and with their general powers. If he was right in that, I think it would be difficult to show any great logical flaw in the rest of his reasoning, which, at all events, was the conclusion which he drew from these premisses. The other Judges dissented from that conclusion, and so did the House of Lords. They were not therefore called upon to express a judicial opinion upon the premisses, and did not do so. Lord Fullerton, wishing to maintain the independence of the University of all control and regulation by the Town Council of Edinburgh, as to the subject matter of degrees, founded his conclusion upon similar reasoning as to the inherent rights and powers of Universities as to degrees to a certain extent. His Lordship did not go anything like so far as to this argument as your Lordships have heard. But the fact that he was in error upon the whole case, and that his view did not prevail, deprives the grounds upon which he proceeded, I think, of any considerable authority. Then Lord Glenlee only remains, who certainly did express an extra-judicial opinion in favour of an inherent power ; as to which Lord Brougham, in a later case, expresses his serious doubt as to whether that could be maintained. I think, from an examination of the history of the matter, which your Lordships have had from Sir William Hamilton, and have listened to in the course of this argument, you will not have any hesitation in reference to Lord Brougham's doubt being well founded ; and, as Lord Glenlee gives no authorities, and the case does not depend upon what he said, I will not repeat what I and my learned friend, Sir Hugh Cairns,

have already said upon this point. I think there has been no answer at all given in regard to it; and the only point to which there has been an answer attempted, is that which related to historical precedents, concerning which my learned friend Mr Selwyn has made some able remarks, which I do not think I shall find any serious difficulty in answering. First, as to the case of Cambridge. My learned friend, with his accustomed adroitness, smoothed the way to the introduction of this part of this history, by saying it was a license, and whether you call it a license or a degree, made no difference, especially in a profession where a degree was of the character of a license. My Lords, that is begging the whole question: not only is a license not a degree, not only is a license not of the character of a degree, whether it relates to a profession or not; but those examples of Cambridge and Oxford, to which, I think, might be added the example of Padua, and probably some other foreign Universities, tell directly against the main argument; for your Lordships find the Universities which granted degrees in Medicine, treating Surgery as a subordinate branch of the Medical art, which they by no means abstained from interfering with. Yet they never granted a degree in it; but all they do, is to give licenses to practise, without a degree, to those persons who are objects of their favour or members of their bodies. And so far is it from correct that those licenses had anything in common with the nature of a degree, that you will find in this little book, which I put into your Lordships' hands, the Statutes of the University of Oxford, which seem, in this subject, to go on all-fours with Cambridge, that not only are licenses of that character given to practise in Surgery, and to practise per universam Angliam, but that there are similar licenses to clergymen to preach per universam Angliam, who are graduates before they get them; and similar licenses to practise Medicine, which licenses are granted to those who had taken the degree of Doctor; so that the degree of Doctor does not carry with it a license to practise Medicine; the license is a thing superadded to the degree, and as distinct from it as anything can possibly be. I believe those privileges were founded upon a supposed Act of Parliament, for which Lord Cranworth searched in vain; that is, there is some tradition of the existence of a statute for the authority under which these licenses were assumed by the

University. That there is such a tradition, your Lordships know from what has already been said. I am not able to trace it to its source; but I believe these powers were founded upon some supposed or expressed authority. In the Caroline Statutes of Oxford, the subject is treated in a separate section—Title 9 of these Statutes,—that section being found in an entirely different part of the body of the Statutes from that dealing with degrees. It is not as to the conferring of degrees, but refers to the licensing of preachers and others. It is in these words,—‘Statutum est quod gratiæ pro licentiatione ad concionandum prout aliæ gratiæ.’ That is founded upon an ancient custom. Its origin, so far as that goes, is put as an ancient custom; and your Lordships will recollect that charters and bulls were granted, from time to time, to the Universities of Oxford and Cambridge, confirming and giving, by charter, the right to exercise their customary privileges from time to time. This is one of those customary privileges. Then comes the form of license which is granted to a preacher, and that supposes him to be already of the degree of ‘Magister Facultatis artium,’ and so on. He is a Master of Arts, and he asks for a license. Then comes the form of letters testimonial, and then the 4th Section, which relates to the qualities, thus,—‘Qui ad praxin in Medicinâ licentiandi sunt. Statutum est quod Doctor quilibet in Medicinâ, post inaugurationem seu admissionem suam, practicare licite potuerit in omni medicandi genere. Alius vero nemo in Medicinâ publice practicare Oxoniæ permitatur nisi sit Magister Artium et Gradum Baccalaurei in Medicina susceperit,’ and shall have got a license; and then it goes on to give this form. So that your Lordships see there is a general license to practise given to all Doctors; and those who are not Doctors, though they may be Bachelors of Medicine, are to have a separate license. It says,—‘Nisi sit Magister Artium et Gradum Baccalaurei in Medicinâ susceperit.’

*Sir G. Cornwall Lewis.*—A Bachelor being also a Master of Arts might get a license.

*Mr Roundell Palmer.*—It gives a general license to all Bachelors and Masters of Arts.

*Lord Chancellor.*—That is to say, a Bachelor of Medicine, if he was also a Master of Arts, might get a license.

*Lord Cranworth.*—That in very recent times was the case—a Bachelor of Medicine got a license.

*Mr Roundell Palmer.*—Yes, he is to be admitted to practise in the regular form; so that the degree of Doctor does not carry, *suo vigore, primâ facie*, a right to practise, but the Statute gives a general license. But the other degree of Medicine is to entitle the person to apply for and obtain a special license if he be a Master of Arts. Then it goes on as to Surgeons—‘*Chirurgiam vero nullus exerceat intra præcinctum Universitatis nisi Licentia a Cancellario sive Vice Cancellario impetrata,*’ subject to certain penalties. Then it goes on, after dealing with Medicine, to deal with the form of licensing to practise in Medicine, and that is a license which gives ‘*potes-tatem et facultatem practicandi in medicinâ et ea omnia faciendi quæ ad eam spectant facultatem, ubivis per universum Angliæ regnum in perpetuum duraturam,*’ under conditions to be then regarded.

*Sir G. Cornwall Lewis.*—He may have no degree.

*Mr Roundell Palmer.*—No degree whatever. Any person, *studiosus chirurgiæ*, might apply for this license, and this was a license which was assumed to be operative throughout the kingdom. Nobody could avoid seeing the different character of a practical license and an entirely scientific or academical degree. The one was not a necessary consequence of the other, even in the lower degree of Medicine; and, with respect to Surgery, though there was this license, there was no degree at all; so that these instances, instead of helping my learned friend’s argument, appear to support altogether the view of the subject which we have presented to your Lordships.

So much, my Lords, for Cambridge; because Cambridge and Oxford obviously in this respect were the same; they did the same thing. What may now be intended at Cambridge, of course my learned friend is the best possible authority upon that subject; but it was quite new to me to hear that it could have any bearing, except as an argument affecting the question of expediency tending to increase what we did not need anything suggested to increase, namely, your Lordships’ sense of the importance of the functions which you are exercising upon this occasion. Upon the question of law or of principle, the circumstance that a very eminent gentleman, Dr Paget, has prevailed upon the

authorities of the University of Cambridge and the University Commissioners, to entertain favourably the proposition which he recommends, namely, a new Statute, which is to introduce the degree of Master in Surgery, can have no bearing upon the main argument that your Lordships are to determine. If it does exist, we shall find all the other Universities exercising it; if it does not, it proves no more than that somebody contemplates exercising it at Cambridge.

Then my learned friend referred to Padua, which is the same as the case of Cambridge. There is not the slightest trace of there being any separate degree granted in Surgery at Padua. It is found quoted in a book upon the history of Surgery quoted in the printed cases of the Appeal Case in the House of Lords. We have looked into the history of the University of Padua, and we have seen that the form of licensing in Surgery there is very much like that at Oxford, and there is not the slightest trace of a degree in Surgery ever having been granted there.

With regard to the University of France, I was surprised to hear my learned friend, after the reference which I made (short it was, no doubt) to the history of the differences between the College of Surgeons at Paris and the University of Paris,—I was very much surprised, I say, to hear him relying upon another quotation from the same source, that is, from the printed papers in the Appeal Case in the House of Lords, quoting 'Riegle's History of Surgery,' in which this passage occurred—that there was such a '*penuria chirurgorum ut vix invenias tres aut quatuor qui ad gradum Magistri Chirurgiæ ascendere possint.*' It was justly observed that that had an aspect of something formal—'*qui ad gradum Magistri Chirurgiæ ascendere possint.*' And my learned friend, I suppose, wished it to be understood, or perhaps understood it himself, to mean that the University of Paris granted such degrees, or that some University or other granted such degrees. But the book which I referred to before shows your Lordships distinctly what was the meaning of that. The relations of the Surgeons of Paris to the University are mentioned in a great many passages of that book. I mentioned only one of them, in the 5th volume of Crevier, and it is quite clear that there was a Corporation of Surgeons erected, with Charters originally granted; and you find that the College of Surgeons arrogated

the right, as it were, to confer themselves, and claimed by virtue of what was done within their own body, such titles as the title of Professors, Bachelors, Licentiates, and Masters in the Art of Surgery, which your Lordships will remember they are said to have got inserted in the body of a Charter of Francis I., which the author comments upon as a sort of surreptitious way of getting an apparent recognition which was of no legal value. We know from this and other sources that the Paris College of Surgeons claimed something like the right of granting those degrees themselves, they not being a University, but attributing them to their own members according to some rules of their own, in rivalry of the University of Paris and the Medical Faculty there. But those were not academical degrees; and it is obvious Crevier thinks that they had no legal validity whatever.

I will not dwell at any length upon the College of Salerno. It appears to me impossible to hold that there were degrees granted in Surgery, or Masterships in that Faculty expressly, as well as in Medicine. We know from Ackermann, which we have put into your Lordships' hands, and it is twice repeated, the title is '*Magister in Physica.*' It is true that the course of Medicine at Salerno did include Surgery, and it was treated as an art of great importance, and it appears to me that those who had that title had demanded the right to practise in Surgery; but, so far from it being an example of granting separate degrees, it is an example to the contrary, since, even in that University which was confined to the Medical Faculty, and where therefore, *à priori*, there would have been the most reason for subdividing the degrees, and where Surgery was so much studied and so well understood, even there, it was never attempted to create a separate Surgical degree.

My Lords, I am glad to have come to the conclusion of that part of the Case; and now I will endeavour, with as much brevity as I can (and I think that my argument will really gain by brevity), to deal with what has been presented to your Lordships on the question of expediency as connected with this subject, both as to the general point and as to the detail which has a bearing upon the general question.

My learned friends have insisted that this School of Medicine at Edinburgh will be ruined, as a consequence of the

Medical Act, if your Lordships should not accede to what the Commissioners have done.

*Lord Chancellor.*—That is retracted.

*Mr Rolt.*—I only read it from the Report. I have no other evidence.

*Mr Roundell Palmer.*—It is retracted perfectly fairly. I do not mean to lay too much stress on the word 'ruined,' but at all events they say that it will materially suffer. I really think that that argument is utterly fallacious, and that it will not take much to induce your Lordships to see that it is so, whether you look at the state of things which existed before, or at the state of things which would exist if these Ordinances in that respect were disallowed. What was the previous state of things? The previous state of things was, that the Medical degree granted by the University of Edinburgh operated only as a degree in Medicine as distinct from Surgery, and gave no title anywhere to practise Surgery, as of right, more than any person not having that title would possess. And not only that, but that the persons having it could not practise Surgery within what have been called the privileged districts of Scotland without the license of the Colleges of Surgeons. And, my Lords, those privileged districts of Scotland were about half the kingdom, including the most important part of it—the great centres of population. And your Lordships may judge—in fact, you could anticipate what I am going to say, because it will strike the common sense of any one, that it was of so much importance to have a Surgical as well as a Medical qualification, in order not to be excluded from practice in Edinburgh, in Glasgow, and in all the great and most populous districts, that the incapacity to practise Surgery in the privileged districts would be a disability and an inconvenience which would be so felt, that, practically, it would operate in much the same way as if they could practise nowhere. Accordingly, it did so. We have in this room the Scottish Medical Directory, which gives the names of all the Doctors of Medicine in the kingdom resident and practising there; and how many do your Lordships suppose there are without any Surgical license? Out of the first fifty upon the list, which those who have looked at the book say is a fair sample of the whole, there are only seven. There are forty-two who have a Surgical license of

the College either of Glasgow or of Edinburgh in addition to their Doctor's degree, and one who has the so-called degree of Master in Surgery of Glasgow besides his Medical degree. It is clear that nearly all of them, under the former system, if they intended to practise, were obliged to do that which, if we are right, they will still have to do, namely, to qualify themselves in Surgery, and obtain the license of the Surgical Colleges. Therefore all this great mischief that my learned friends talk of, is a mischief that, practically, they were subject to before. And, in that state of things, what was the real condition of the University? Now, we have the actual state of the case thus stated, I believe correctly,—I take it from the notes of the argument before the Commissioners upon this petition: 'Of the whole members of the Medical profession in Scotland, one-half are Licentiates of the Royal College of Surgeons of Edinburgh; one-fourth hold the diploma of the Glasgow Faculty,' that is to say, of Surgeons; 'and no less than two-thirds of the gentlemen who are graduates of the University of Edinburgh—I mean, who hold the degree of Doctor of Medicine in the University of Edinburgh—are also Licentiates of the Royal College of Surgeons.' It is quite clear, therefore, that the University of Edinburgh could and did flourish as a great Medical School under these circumstances. And, therefore, all that we contend for is, that in that respect the Medical Act will produce no practical alteration; things will remain in substance in that respect as they did before. And, as to granting the degree of Master in Surgery, why should they do it? This, if my learned friends are right, will obviously place the Universities in a position so much more favourable than the Medical Corporations, that they would have a tendency rather to destroy those bodies to whom the policy of the State from the time of Henry VIII. downwards has conceded the superintendence of Surgery and Medicine. Because the College of Physicians can make no Surgeon, and the College of Surgeons can make no Physician, and no Medical College in any part of the kingdom can do more than give a license in its own branch of the Faculty. Therefore, to say that it is ruin not to make them able to give them in both, obviously applies to the Medical Colleges, which certainly are not able to give them in both. How is that met? The Medical Colleges have always co-operated with the University;



they have availed themselves of the University School, and those who have become Licentiates of the Medical Colleges have been students of the University School. An instance of the manner in which they have co-operated hitherto is well put in the note in page 5 of our Case—'The history of the foundation of the Chair of Surgery affords the example which is most relevant to the present petition. In 1777 the College of Surgeons of Edinburgh memorialized the King to found a Chair for Surgery in the University. The Principal and Professors of the University opposed it, and, as the best means of preventing it, got the commission by the Town Council, in favour of Dr Monro, as Professor of Anatomy, extended so as to include Surgery. The College of Surgeons disapproved of this insufficient provision for Surgery, and in 1804 appointed a Professor of Surgery of their own, and it was not till 1831 that the Professorship of Surgery was at last instituted in the University by the Crown. The Professor in the College was transferred to the University, and the College's Chair of Surgery was thereupon voluntarily suppressed.' Therefore the Medical instruction of the University has received all the support hitherto which the Medical Colleges could possibly give it; and the University will not be deprived of Medical students, or the Medical School in the University suffer, because the examinations for the license shall continue to be conducted, and the license given as heretofore, by the bodies whom the Crown and the Legislature thought specially fit to be entrusted with that power formerly. It is quite clear that the University has flourished and become what it has hitherto been under that system, with the concurrence, the co-operation, and the support of the Medical Colleges. And so it will be still.

And, my Lords, what is the manner in which the College of Physicians and the Colleges of Surgeons propose to co-operate? In this way: the examination common to both subjects is taken by Professors common to both; the examination which would be best conducted by the College of Physicians separately, is conducted by the College of Physicians, and the examination proper to Surgery is conducted by the Colleges of Surgeons, and each gives a separate diploma under a common arrangement. The University had an opportunity of coming into it, but they did not choose to avail themselves of it; and it

is quite obvious that they are claiming to be put in a more favourable position than it was considered desirable by the Legislature to put any of the Medical bodies in, and with the result of aiming at the complete fusion, so far as their influence goes, of Medicine and Surgery. They say that everybody is to be sent out into the world as a qualified Surgeon who is qualified for Medicine—that the same qualifications, the same examinations, conducted in the same manner, shall be addressed to both branches of the profession. It is obvious that the tendency of what they claim is rather to obliterate than to maintain as far as is useful the distinct branches, the two departments of Medicine; and I think it must have a tendency to take away the safeguards which previously existed for the very jealous development, in each particular branch, by examination specially addressed to all those qualities which, for practice in that particular branch, are of special importance. It does not commend itself to our reason, I think, in the first instance, that, if these two branches of the profession have a distinction which practically they have obtained, they should be reduced, in the preparatory stage before a license is given, to one common level, in the manner in which the Commissioners' system proposes to reduce them.

But it is said that the University will be at a disadvantage. I have already dealt with that, and I say that, if these Ordinances pass, the University will be at an advantage, and a most unfair one, of which we have evidence. One of my learned friends said that he did not understand the argument coming from us, that, under the present scheme, the academical character of the degree will be given to those who are not required to show that they possess any superior qualification in point of general or preparatory education to those who are licensed by other licensing bodies. The argument was this—and I wonder my learned friend did not understand it,—that they go into the world, and are received in the world as having a superior qualification; and of that I hold in my hand the best evidence that can possibly be given. My learned friend referred to the communications by the Poor Law Board and other Boards, by which it appeared to be doubtful whether Physicians not having a separate Surgical qualification would be admitted to practise as Surgeons, or recover charges under that footing. I

now hold in my hand authoritative communications from the Army Medical Department to the Royal College of Physicians of Edinburgh, to the effect that that Department will proceed upon the principle of giving the preference to those having degrees, because they take the degrees to be evidence of the superior excellence of their general education; and that we, therefore, are to be, in those Departments, postponed systematically: that is to say, those who have the license of the College of Physicians and the College of Surgeons are to be systematically postponed to those who have University degrees, because it is assumed that the degree is a test and an evidence of qualifications of a general order higher than those which can be proved by the license. In that state of things, it appears to me to be a most unreasonable thing to talk of the University being at a disadvantage.

*Mr Rolt.*—I should be glad of an opportunity of explaining that.

*Lord Cranworth.*—I do not know that it is of much importance what particular departments consider to be qualifications.

*Sir G. Cornwall Lewis.*—It may be that they proceeded upon an erroneous supposition. It appears that the Colleges of Surgeons and Physicians do require the qualifications.

*Mr Roundell Palmer.*—Yes, they do, my Lord; they require at least as much as is required by the University.

The truth, upon this subject of expediency, my Lords, is, that the whole grounds of the Commissioners' recommendations overrule and are a departure from their own original opinion, and are avowedly founded upon this principle of competition in practice. I submit again, my Lords, as I did before, that that was not the proper ground on which to proceed, for it is not the practice out of the University which they are to consider, so much as the operation of the Act within the University; and if the influence of that desire to facilitate the competition of the University with the other Medical bodies can be shown to have had a deteriorating effect upon the education according to the scheme which they propose, that appears to me to be an abundant reason for guarding against it. Is that so or not? Take the scheme as a whole, with all the details that we object to, and I think it will be clearly found that that is the case. The Doctor's degree is all but practically abolished.

Hitherto the degree of Doctor in Medicine has been considered an evidence of special qualifications, and has carried with it the credit and prestige due to them. But the degree of Doctor of Medicine is now to be a mere honorary advancement above the degree of Bachelor of Medicine, without involving any additional professional qualifications whatever (a knowledge of Greek only is rather strangely superadded for that purpose), and the means of going into general practice are offered by taking the degree of Master in Surgery, making it unnecessary to proceed further. So that the degree is less. No one will have any motive to take the higher degree; and what in practice will be the principal degree in Medicine, is lowered in order to put it within the reach of general practitioners.

*Lord Chancellor.*—What is the advantage in point of law that arises from the degree of Doctor of Medicine above that of Master and Bachelor of Medicine?

*Mr Roundell Palmer.*—Under this scheme, none whatever, my Lord.

*Lord Chancellor.*—Irrespective of the degree of Master in Surgery altogether, how is the degree of Doctor of Medicine at all affected by these Ordinances?

*Mr Roundell Palmer.*—In no other way, my Lord, than by bringing about the absence of all inducement to the great majority of Medical practitioners to proceed to take the higher degree.

*Lord Chancellor.*—They have the same practical advantages now; the degree of Doctor of Medicine does not give them the power to practise Surgery.

*Mr Roundell Palmer.*—No, my Lord, it has nothing to do with Surgery in particular. I am now dealing with the question of expediency, and am not confining myself to the point of the Surgical degree, but to the general tendency of these Ordinances as to the Medical profession.

Bearing in mind that the Bachelor's degree is conferred at the early age of twenty-one, and in substance the Doctor's degree is thrown back to that age because a Doctor is now made a merely nominal degree by way of advance beyond Bachelor—

*Sir G. Cornwall Lewis.*—Is there any limit of age now as to the degree of Doctor?

*Mr Roundell Palmer.*—No, I am not aware that there is.

*Sir G. Cornwall Lewis.*—Is a Doctor now in the same position pretty much as a Bachelor would be under this Ordinance?

*Mr Roundell Palmer.*—I should think very much so.

*Mr Rolt.*—A Doctor formerly was twenty-one; under the Ordinances it is twenty-four.

*Mr Roundell Palmer.*—However, at present it carries all the honour that is associated with it in this country; but the tendency of the Ordinance will be to bring that degree very much into disuse, and to give the full power and authority of Doctors of Medicine to young men of twenty-one who take a Bachelor's degree under this Ordinance.

Then, my Lords, notwithstanding the reluctance with which the Commissioners have come to that conclusion, it being against their own judgment, your Lordships observe they have declined to introduce any academical qualifications of any higher order than those which the licensing bodies consider necessary for every practitioner; and they have done that in the teeth of the opinion of the former Commissioners, who seem to me to have a passage in their Report of 1832, at page 57, in which they appear to have answered, to a great extent, the arguments which have been urged in favour of this scheme, and in which they say—'An idea seems to be entertained by persons of great respectability, that the character of the Universities as Schools of Medicine is to be measured by the number of degrees which are conferred by them, and that, if any considerable extent of previous education were required, fewer persons would apply for them. Licenses to practise would be obtained elsewhere, and the number of students attending the Universities would be greatly diminished. But, while we should not be satisfied of the sufficiency of this objection, even though the principle of it were well founded, and humbly think that it would go far to sanction laxity of examination in general, we are of opinion that it is not correct in principle, or at all supported by experience. It appears to us that the reputation of a University does not depend on the number of the degrees which are granted by it, but must depend entirely on the nature of the qualifications which the possession of such degrees implies in the persons on whom they are conferred; and, being satisfied of the

truth of this proposition, we see no good ground for thinking that, by raising the value of the degree in Medicine in the Scotch Universities, we shall thereby lessen the demand for it. On the contrary, the only consequences which we can anticipate from any regulations reasonably laid down for this object are, that the students will come to the study of Medicine better prepared to profit by the instructions they receive, and that there will be a more general desire to obtain a degree in these Universities when it has thus been rendered the more sure introduction to professional success or eminence.'

And there is another passage at page 64 of the same Report of 1832, which I think should lead your Lordships to be very cautious upon this matter. They say—'We are of opinion that this system' (the system of examination by the Professors themselves in the Medical Faculty) 'is liable to very serious objections. The emoluments of the Professors who examine ought not to depend on the number of candidates for degrees. At present the fees drawn by the several Professors from this source are very considerable, in consequence of the great number of candidates; and it appears from the evidence that the number of degrees conferred has been continually increasing during many years, in a proportion much greater than corresponds to the number of students attending the Medical School of Edinburgh. No explanation has been given of this extraordinary increase in the number of degrees, and we are satisfied that it cannot be accounted for from any external causes. We are of opinion that the present system has a necessary tendency to render the examinations less strict than they might otherwise be, and practically to lower the standard of qualifications in the estimation of the Faculty. It is, besides, scarcely to be doubted that there must be a natural reluctance in Professors to reject candidates, to many of whom the fees paid to the examiners may be a very serious sacrifice,' and so on.

Now, my Lords, no doubt the Commissioners have, to some extent, met that, by saying that the fees paid for examination are not to go direct to the examining Professors; but a great deal of force remains in it, because the advantage which the Professors derive is not only from the fees that are paid at the time that the degrees are taken, but from the fees that are paid by the general resort of students to the University; and the

influence of attachment to their own system of teaching, and the influence of attachment to their own pupils, will operate in the same way as before.

Sir William Hamilton expresses in very terse and strong terms his view of the state of preliminary education for Medical degrees in the University, in which he said, that a man who, from ignorance of Greek, cannot be admitted as an Apothecary at Dublin, will be compelled to subside into an Edinburgh Physician.

Upon that part of the case, looking at it as a whole, it does seem obvious that everything here is sacrificed to competition, to that very evil influence which the Commissioners in 1832, observing the effects of it, desired to obviate. We have a Bachelor substituted for a Doctor; we have no Greek introduced; they do not fix the future time at which that is to be done; we have less time in the summer sessions, that being left out which is required by the Medical College; we have the examination still left in the hands of the Professors themselves, to so preponderating an extent that it may be said to be almost altogether in their hands; and we have the Extra-mural instruction much more limited than it is at present. I think the whole tendency of that is, for the sake of competition, to lower the standard, and, at the same time, to give the University, in the way of competition, unfair advantages over the Medical Colleges, so as to throw, if that were a proper thing to be considered at all, a dangerous—I will not say unfair, because I prefer resting the argument upon purely public grounds, for those corporations can have only public interests at heart—but I say to throw a dangerous preponderance into the hands of the Academical Professors, who are not the bodies whom it has been the policy of the Crown and the Legislature to entrust with the power of admitting to the Medical profession in this country. The fact in this case of their putting Medicine and Surgery on one level, seems to me to make it obvious for the public interest, that that should not be done.

I do not know whether your Lordships have been much impressed with the arguments that my learned friends have used in support of that part of the case of the *Senatus Academicus* which attacks the Ordinances of the Commissioners, against which we have not petitioned. If our arguments have any

weight with your Lordships, they certainly will tend to show that the Commissioners have erred in the direction of too much closeness rather than in the direction of too much openness. But, with respect to the principle of these arguments, that the Extra-mural instruction and the introduction of an element of examiners into the University is objectionable, I oppose the answer that that is the very question which was considered in the House of Lords. The experience of the City of Edinburgh led the Town Council to introduce this system of Extra-mural instruction.

*Lord Chancellor.*—The House of Lords gave no opinion upon that; they merely gave an opinion upon the question of law; and the House of Lords held that the Town Council could control things of that sort.

*Mr Roundell Palmer.*—I perfectly agree with your Lordship's remark; but what I meant to say was this: that the Town Council, in the exercise of the authority which belonged to them, found it expedient, in their judgment, for the public advantage, that the thing should be done, and done to a greater extent than the Commissioners propose to continue it. That they had a right to do so, consistently with the constitution of the University, was the point, I think, which was determined in the House of Lords. And my observation was addressed to the remark of my learned friend, that there was something inconsistent with the principle of a University in introducing this extraneous element, and to show that it is not inconsistent with the principle of this University.

I think, my Lords, that it is needless to prolong this reply any further, beyond a single observation. Several times during the course of the argument, something has been thrown out as if a new character had been given to the Medical bodies and to the relations of Medicine and Surgery, not merely by the creation of legal qualifications and by the manner in which they were created under the Medical Act, but by the distinction for practical purposes recognised in that Act between Medicine and Surgery. But, my Lords, that distinction is as old as the earliest Charters and Statutes upon the subject; it pervades them all. It was upon the ground of that distinction that, upon the construction of the Charter of the College of Surgeons of Glasgow, it was held that the degree of Doctor of Medicine, which



was specially excepted from the authority of the College of Surgeons, did not entitle persons to practise Surgery. Medicine and Surgery, from the earliest times at which there has been any regulation of the subject by law, have been practically distinguished, though belonging to a common subject. Nothing has happened now for the first time to make it more necessary than it was formerly, that bodies which have the power of granting Medical degrees should also have the power of granting Surgical degrees; and the Legislature, by recognising Surgical degrees as a sufficient qualification if competently granted, has certainly not intimated any opinion that it would be for the public advantage so to extend the practice of granting Medical degrees in Universities as to interfere with practically, if not entirely to supersede, the operation and utility of the great Medical and Surgical Colleges themselves.

I respectfully submit, therefore, upon both branches of the case, that it will be right that your Lordships should advise Her Majesty that these Ordinances should not be affirmed.

*Lord Chancellor.*—I am very much obliged to the Bar for the valuable assistance which they have given us. I suppose it is understood that it is merely as a Committee that we sit, and that no formal judgment is to be given. It is a matter for after consideration what we should advise Her Majesty as to the most proper way of dealing with these Ordinances.

## A P P E N D I X.

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HER MAJESTY'S ORDER IN COUNCIL in reference to the Ordinances appealed against.

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At the Court at Buckingham Palace, the 4th day of February 1861.

Present—*The Queen's Most Excellent Majesty in Council.*

WHEREAS there was this day read at the Board the humble Report of a Committee of the Lords of Her Majesty's Most Honourable Privy Council, dated the 18th of January 1861, in the words following, viz. :—

‘ Your Majesty having been pleased, by your Order in Council of the 10th of May 1860, to refer unto this Committee two Ordinances of the 6th of August 1859, and 19th of March 1860, relating to Graduation in Medicine and Surgery in the University of Edinburgh, framed by the Commissioners appointed by and acting under an Act passed in the 21st and 22d years of your Majesty's reign, intituled “ An Act to make provision for the better Government and Discipline of the Universities of Scotland, and improving and regulating the Course of Study therein, and for the Union of the two Universities and Colleges of Aberdeen.”

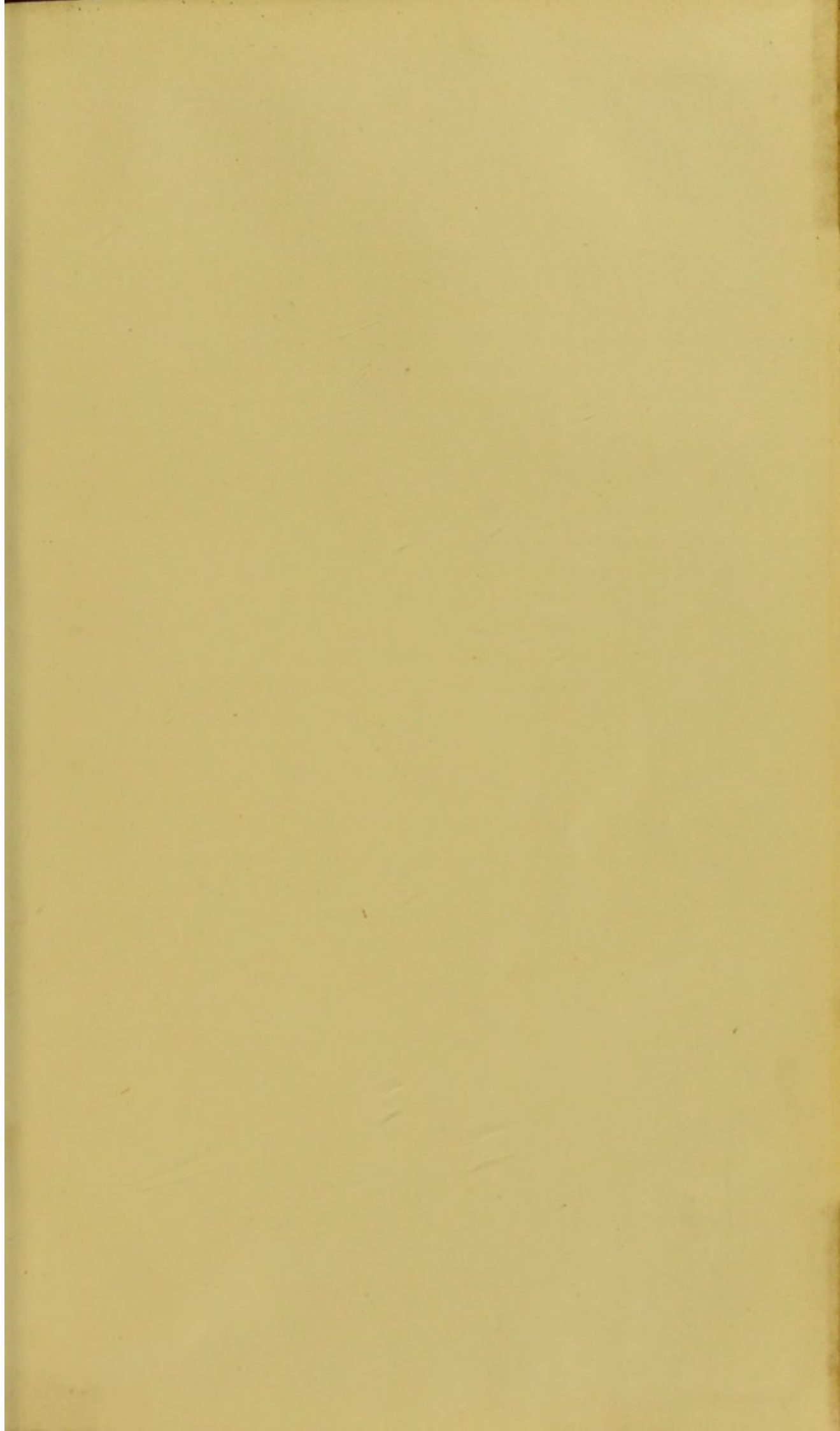
‘ And your Majesty having been further pleased, by your Order in Council of the 9th of June 1860, to refer unto the said Commissioners, under the provisions of the said Act, certain Petitions, praying that your Majesty would be pleased to withhold your approbation from the said Ordinances, viz. :—

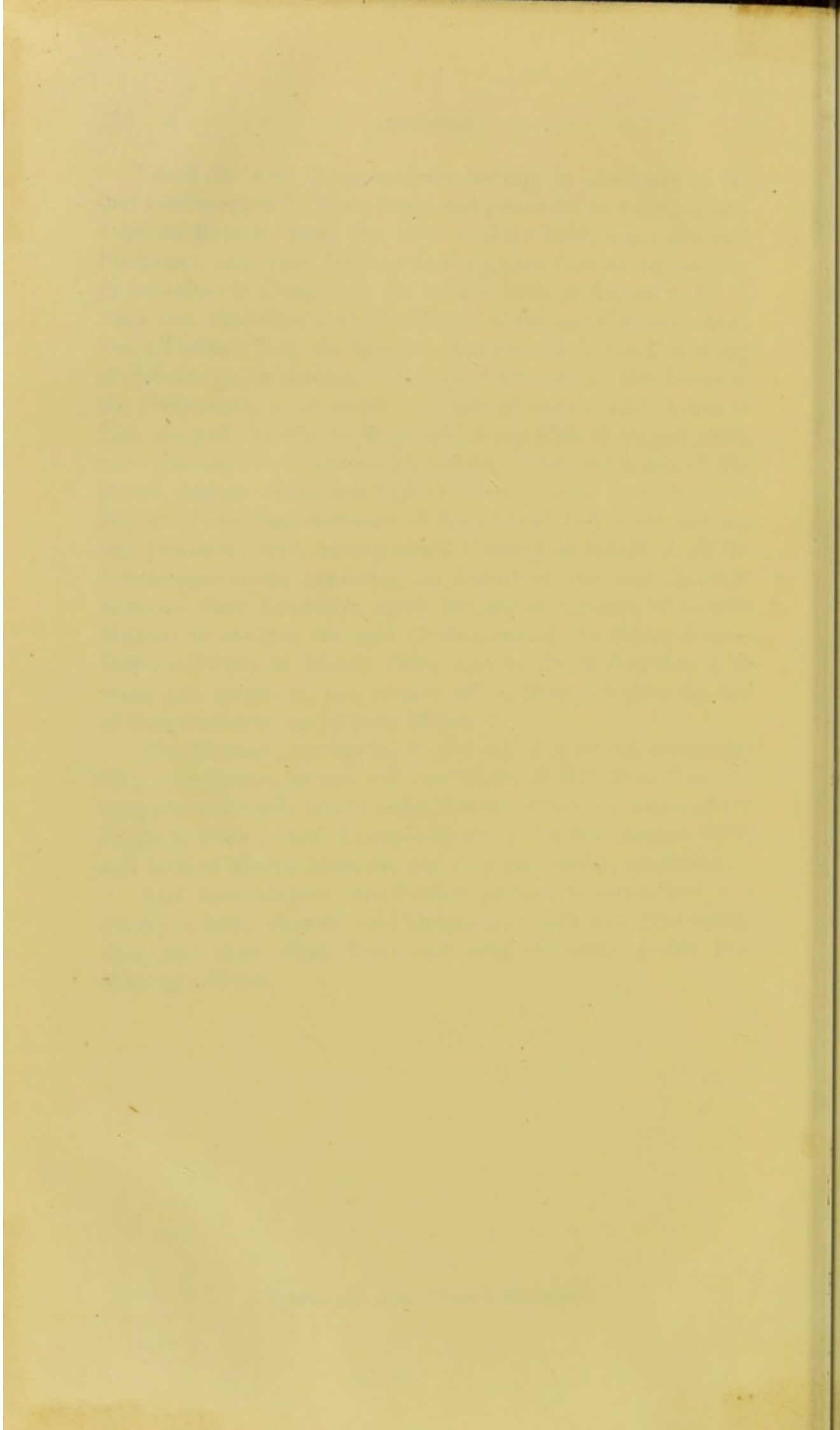
- ‘ 1. Petition of the Royal College of Physicians of Edinburgh.
- ‘ 2. Petition of the Royal College of Surgeons of Edinburgh.
- ‘ 3. Petition of the Faculty of Physicians and Surgeons of Glasgow.
- ‘ 4. Petition of the Royal College of Surgeons of England.

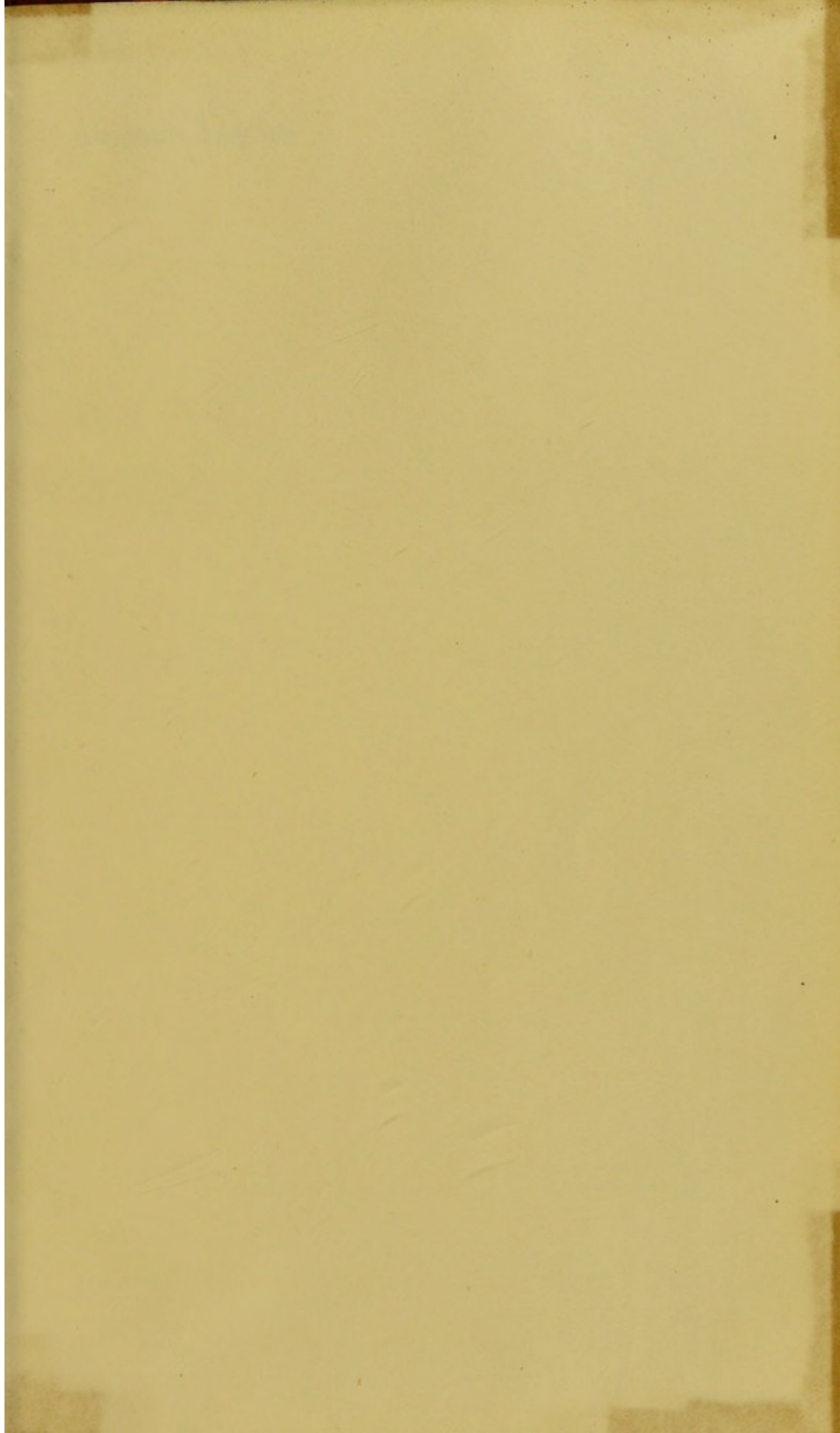
‘ And the said Commissioners having, in obedience to the said last-mentioned Order, made and presented to your Majesty a special Report, dated the 18th of July 1860, upon the said Petitions; and your Majesty having been further pleased, by your Orders in Council of the 1st and 27th of August 1860, to refer unto this Committee the Report of the said Commissioners, and a Petition from the *Senatus Academicus* of the University of Edinburgh, in relation to the said Ordinances; the Lords of the Committee, in obedience to your Majesty’s said Orders of Reference of the 10th of May and 1st and 27th of August 1860, have this day taken into consideration the said Ordinances of the 6th of August 1859, and 19th of March 1860, as well as the Report of the Commissioners of the 18th of July 1860, and the said Petitions; and, having heard Counsel on behalf of all the Petitioners,—none appearing on behalf of the said Commissioners,—their Lordships agree humbly to recommend to your Majesty to confirm the said Ordinances of the 6th of August 1859, and 19th of March 1860, and to direct that they shall come into operation, and receive effect, from and after the day of their confirmation by your Majesty.’

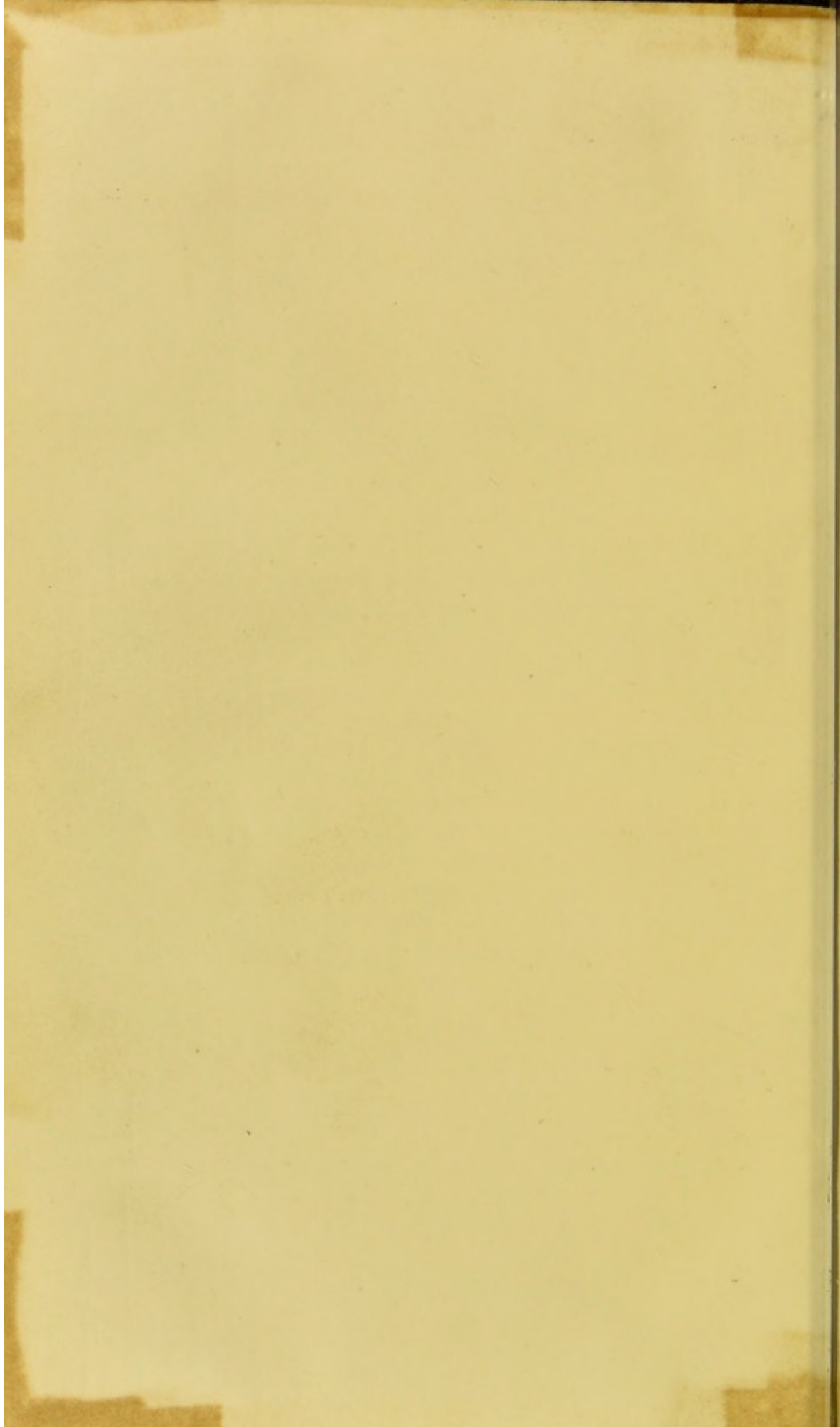
Her Majesty, having taken the said Report into consideration, was pleased, by and with the advice of Her Privy Council, to approve thereof, and to order that the said Ordinances of the Scottish Universities’ Commissioners of the 6th August 1859, and 19th of March 1860, be, and they are hereby, confirmed.

And Her Majesty was further pleased to order, and it is hereby ordered, that the said Ordinances shall come into operation, and take effect, from and after the date of this Her Majesty’s Order.









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