Wednesday, December 19.

SECOND DIVISION.

(Before Seven Judges.)

[Lord Stormonth Darling, Ordinary.

METCALFE *v.* UNIVERSITY OF ST ANDREWS.

Act of Parliament—Construction—University—Affiliation of Dundee College to St Andrews University—Powers of University Commissioners — The Universities (Scotland) Act 1889 (52 *and* 53 *Vict. cap.* 55), *secs.* 15, 16, 19, *and* 20.

By section 15 of the Universities (Scotland) Act 1889 it is provided that the Universities Commissioners appointed under the Act may "make ordinances" to extend any of the universities by affiliating new colleges to them under, *inter alia*, two conditions, (1) the University Court and the college must be consenting parties, and (2) the ordinance may, on the application of either body, be rescinded by the University Committee of the Privy Council.

Section 16 provides that, without prejudice to any of the powers hereinbefore conferred, the Commissioners shall, with the consent of the University Court of the University of St Andrews and of the University College of Dundee, have power to affiliate the college to and make it form part of the University, with the object, *inter alia*, of establishing a fully equipped school of medicine.

Section 19 provides, *inter alia*, that the draft of any ordinance prepared by the Commissioners must be submitted to the University Court, the Senatus Academicus, and the General Council of each University, who are empowered within three months to state objections or to propose amendments.

By section 20 it is provided (1) that "all ordinances made by the Commissioners" shall be published in the *Gazette*, and laid before both Houses of Parliament, and if neither House presents an address praying the Queen to withhold her consent, it shall be lawful for the Queen in Council to approve of the ordinance; (2) that the University Court, Senatus Academicus, General Council, or any person directly affected by "any such ordinance," may petition the Queen in Council to withhold her approbation of the whole or any part thereof, and on hearing the petition, the Queen in Council may either declare her approbation of the ordinance in whole or part, or signify her disapproval thereof, "and no such ordinance shall be effectual until it shall have been so published, laid before Parliament, and approved by Her Majesty in Council."

Held (*aff.* judgment of Lord Stormonth Darling), by a majority of Seven Judges—Lord Justice-Clerk, Lord Adam, Lord M'Laren, Lord Trayner, and Lord Wellwood—that section 16 of the Act conferred upon the University Commissioners the power of uniting the University College of Dundee and the University of St Andrews, with the consent of the University Court of St Andrews and of the said college, by their own order, and without any necessity for their deliverance being laid before Parliament and approved of by the Queen in Council, as would have been the case had they proceeded by ordinance under section 15 of the Act—*diss.* Lord Young and Lord Rutherfurd Clark, who *held* that sections 15 and 16 must be read together, and that the affiliation authorised by section 16 of the Act could only be effected by issuing an ordinance according to the procedure prescribed by the Act, which did not become effectual till laid before Parliament and approved by the Queen in Council.

By the Universities (Scotland) Act 1889 (52 and 53 Vict. cap. 55) a Commission was appointed to sit for a limited period, and general powers were given to the Commissioners for the purpose of introducing reforms in the constitution and equipment of universities, and also for the extension of universities by the affiliation of colleges with them.

By the Act it was, *inter alia*, enacted—"Section 15—The Commissioners may, if they think fit, make ordinances to extend any of the universities by affiliating new colleges to them, and after the expiration of their powers the University Court may make similar ordinances under regulations to be laid down by the Commissioners, or after the expiry of their powers by the Universities Committee, subject to the following conditions:—(1) The University Court and the college shall be consenting parties; (2) in cases arising after the expiration of the powers of the Commissioners the approval of the Universities Committee shall have been signified; (3) the University Court or any college which under this Act shall have been affiliated to the university may respectively at any time thereafter resolve that such college shall cease to be affiliated to such university, and upon such resolution being passed by the University Court, or notified to the University Court by such college, the University Court shall, subject to the approval of the Universities Committee, rescind the ordinance by which such college was affiliated to such university; (4) the Commissioners, and after the expiry of their powers the Universities Committee, shall make arrangements where it seems desirable for the due representation of the University Court on the governing bodies of affiliated colleges, and of the governing bodies of affiliated colleges in the University Court, having regard to the circumstances of each particular case, to the relative numbers in the university and the college of the teaching staffs, and of the students proceeding

to graduation, to the nature of the connection proposed to be established, and to the purposes for which such representation is desirable: Provided always that these arrangements may include a limitation of the right of the persons so representing the University Court or the affiliated college, as the case may be, to sit and vote while any particular subject or subjects are under consideration; (5) no person who, at the date of any college being affiliated to a university under the provisions of this Act, shall hold or possess the office of head, principal, or master in such college, or who shall thereafter be appointed or admitted to the office of head, principal, or master in such college, shall in respect only of holding, possessing, or of being appointed or admitted to such office, be entitled or bound to become a contributor to the fund established and regulated by the Acts passed in the nineteenth year of the reign of his late Majesty George III., cap. 20, and in the fifty-fourth year of his said late Majesty, cap. 169, for the better raising and securing a fund for a provision for the widows and children of the ministers of the Church of Scotland, and of the heads, principals, and masters in the Universities of Saint Andrews, Glasgow, Edinburgh, and Aberdeen, but nothing in this Act contained shall alter or affect the right or liability of any person to contribute to said fund who would have been entitled or bound to do so if this Act had not been passed."

"Section 16—Without prejudice to any of the powers hereinbefore conferred, the Commissioners shall, with respect to the University of St Andrews and the University College of Dundee, have power—(1) To affiliate the said University College to and make it form part of the said university, with the consent of the University Court of St Andrews, and also of the said college with the object, *inter alia*, of establishing a fully equipped conjoint University School of Medicine, having due regard to existing interests, and to the aims and constitution of the said college as set forth in its deed of endowment and trust. (2) In the event of the said University College being affiliated to and made to form part of the said university, to regulate the time, place, and manner of the first election of the assessors to be elected to the University Court by the General Council and by the Senatus Academicus of the said university after such affiliation, which election the Commissioners shall appoint to take place as soon as conveniently may be after such affiliation, and in the event of such affiliation not taking place within such time after the passing of this Act as the Commissioners shall consider reasonable, they may regulate the time, place, and manner of such election as seems to them best."

"Section 19—(1) The University Court of any university may, within three months after the commencement of this Act, give notice in writing to the Commissioners of their intention to submit draft ordinances relating to such university, and every such draft ordinance shall, before being submitted to the Commissioners, be communicated to the Senatus Academicus, whose opinion thereon shall be taken into consideration by the University Court; and if, after such notice, they submit such draft ordinances within six months after the commencement of this Act, the Commissioners shall take them into consideration in preparing ordinances for such university. (2) When the Commissioners have prepared the draft of any ordinance they shall cause it to be printed, and printed copies of it to be sent to the University Court, the Senatus Academicus, and the General Council of each University to which such ordinance relates: And shall also at the same time cause it to be published in such manner as they think sufficient for giving information to all persons interested. (3) During three months after the transmission to the University Court of any university of the draft of any ordinance relating to such university, the Commissioners shall receive any objections respecting such ordinance, and any amendments proposed thereon submitted to them in writing by the University Court, or the Senatus Academicus, or the General Council, or by any member or members of any of them, or by any public body or persons directly affected thereby, and as soon as may be after the expiration of the said three months the Commissioners shall proceed to consider such objections and amendments, provided that in computing the period of three months for the purposes of this section, the months of August and September shall not be counted, nor any part thereof."

"Section 20—(1) All ordinances made by the Commissioners shall be published in the *Edinburgh Gazette* for four consecutive weeks, and shall be at the same time laid before both Houses of Parliament, if Parliament be sitting, or if not, then within three weeks after the commencement of the next ensuing session of Parliament, and shall thereafter be submitted for the approval of Her Majesty in Council, and if neither House of Parliament within twelve weeks, exclusive of any period of prorogation, after an ordinance, or part of an ordinance, has been laid before it, presents an address praying the Queen to withhold her assent from such ordinance or any part thereof, it shall be lawful for the Queen in Council by order to approve the same or any part thereof to which such address does not relate. (2) It shall be lawful for the University Court, Senatus Academicus, or General Council of any university, or any governing body, and for the trustees or patron of any foundation, mortification, bursary, or endowment; or for any other person directly affected by any such ordinance, within one month after the last publication thereof in the *Gazette*, to petition Her Majesty in Council to withhold her approbation of the whole or any part thereof, and it shall be lawful for Her Majesty in Council to refer such petition to the Universities Committee, and to direct that they shall hear the petitioner or

petitioners by themselves or by counsel, and report specially to Her Majesty in Council on the matter of the said petition; and it shall be lawful for Her Majesty, by Order in Council, either to declare her approbation of any such ordinance in whole or in part, or to signify her disapproval thereof in whole or in part; and in case of such disapproval, the Commissioners may proceed to frame other ordinances in respect of the matters to which such disapproval relates, subject to the like provisions and conditions as are hereinbefore enacted; and no such ordinance shall be effectual until it shall have been so published, laid before Parliament, and approved by Her Majesty in Council. (3) The cost of any petition under this section may be regulated by the Universities Committee."

On 15th February 1890 the University Court of St Andrews and the University College, Dundee, agreed that the College should be affiliated to the University on certain terms and conditions, including, *inter alia*, the following—that the union should be permanent and dissoluble by Act of Parliament only; that the Council of Dundee should elect to the University Court such number of representatives as the University Commissioners might fix, and that the professors in the Dundee College should become members of the Senatus Academicus.

On 21st March 1890 the University Commissioners issued an order affiliating the College to the University on the above terms.

On 10th April 1890 the University Commissioners by declaration under their seal declared the new University Court of the University of St Andrews to be duly constituted in terms of the Act.

From the date of the affiliation order of 21st March 1890 the various bodies whose constitution was affected thereby were summoned and met as upon the basis of the order and agreement being legal. Disputes, however, arose, especially on and after 11th March 1893, as to, *inter alia*, the validity of the order pronounced by the University Commissioners.

On 2nd March an action was raised by (1) the Rev. William M. Metcalfe, D.D., and other two members of the University Court of the University of St Andrews; and (2) six members of the Senatus Academicus of the University of St Andrews, who are also professors of said University, against (1) the surviving members of the University Court of the University of St Andrews, constituted under the Universities (Scotland) Act 1858, which was in office in February 1890; (2) the individual members of, or those claiming to be members of the University Court of the University of St Andrews, constituted under the Universities (Scotland) Act 1889, as individuals, and as composing or claiming to compose such University Court; (3) the members of the Council of University College, Dundee, as such members and composing such council; (4) the members or those claiming to be the members of the Senatus Academicus of the University of St Andrews; (5) the Scottish University Commissioners, as constituted under section 11 of the Universities (Scotland) Act 1889; and (6) the University of St Andrews.

The pursuers sought, *inter alia*, reduction of the order of the University Commissioners affiliating the College of Dundee to the University of St Andrews, and declarator that the University Commissioners had no power to issue the affiliation order, or otherwise had no power to do so except by way of ordinance in accordance with the Act, and particularly of sections 19 and 20 thereof, and that the College of Dundee had not been affiliated to the University of St Andrews.

The pursuers pleaded, *inter alia*—"(3) The pursuers are entitled to decree of reduction and declarator as concluded for, in respect it was *ultra vires* of the said Commissioners to pronounce said orders; *et separatim*, in respect that if they had power to pronounce said orders they were entitled to do so by way of ordinance only."

The defenders pleaded, *inter alia*—"(4) The said proceedings for affiliation of University College, Dundee, to the University of St Andrews, and the orders of the Commissioners now complained of being authorised by statute, and having been regularly and orderly taken and carried out by the University Court of the University of St Andrews and by the Commissioners respectively, under and in terms of the statute, the defenders should be assoilzied from the conclusions of the summons."

On 7th July 1894 the Lord Ordinary (STORMONTH DARLING) sustained the fourth plea-in-law for the defenders, and in respect thereof assoilzied the defenders from the conclusions of the summons.

"*Opinion.*—The pursuers of this action are certain members of the University Court and Senatus Academicus of the University of St Andrews, and its purpose is to reduce all the proceedings taken in 1890 for uniting University College, Dundee, to that University. The union has been complete and in full working order for the last four years, though, unhappily, it would appear from this action that it has not been working so harmoniously as might be desired. The pursuers' delay in bringing their challenge is not very satisfactorily accounted for on record, and its success would undoubtedly dislocate many arrangements and cause considerable inconvenience. The defenders accordingly have stated a plea-in-law which would exclude the action upon that ground. *Prima facie* I think there is considerable force in it, but I have not found it necessary to come to a definite conclusion with regard to it, because I have formed a decided opinion upon the merits of the case.

"The pursuers' leading objection is that the Commissioners, under the Act of 1889, had no power to pronounce the order which they did on 21st March 1890 under section 16 of the Act, affiliating Dundee

College to, and making it form part of the University, and that, if the thing was to be done at all, it ought to have been done by ordinance under section 15.

"Now, this makes it necessary to consider these two sections together. Section 15 is the only section under which affiliation in general can take place. It leaves it entirely in the discretion of the Commissioners to affiliate a new college to a university or not, but, if they do so, they must proceed by way of ordinance, subject to certain specified conditions; and one of these conditions is, that at any time after affiliation the University Court or the affiliated college may resolve to put an end to the connection, in which case the University Court, subject to the approval of the Universities Committee of the Privy Council, must rescind the ordinance by which the affiliation was effected. Section 16 bears to be enacted 'without prejudice to any powers hereinbefore conferred,' and it applies solely to the University of St Andrews and the Dundee College. In many respects it is in marked contrast to section 15. There is not a word in it from beginning to end about an ordinance, and the power which it confers on the Commissioners is not merely to affiliate Dundee College but to affiliate 'and make it form part of the said University.' The only condition annexed to the power is that it must be exercised with the consent of the University Court and of the College, and the declared object of the union is, *inter alia*, to establish 'a fully-equipped conjoint University School of Medicine.'

"In the second sub-section there is a power conferred on the Commissioners, in the event of the union taking place, to regulate the mode of the first election of certain members of the University Court, and the sub-section in effect declares that the Commissioners are to wait a reasonable time, in order to permit of the affiliation taking place. When this is taken in connection with section 5 (4), which enacts that the old University Courts were not to exercise any of the additional powers conferred by the Act of 1889 (except the power of consenting to affiliation), the result plainly is that the new Act could not be brought into operation in the University of St Andrews until every reasonable effort had been made to bring about the proposed affiliation with Dundee. The second sub-section, though in form a power, is plainly a direction, and this seems to me to throw an important light on the meaning of the word 'power,' as used with reference to the first sub-section. In short, I think that with respect to the particular case of St Andrews and Dundee, the Commissioners were not intended to have the wide discretion which was conferred upon them by section 15 with regard to all other affiliations.

"The reason of this is not far to seek. Some kind of union between the two bodies had been in contemplation for many years, for it had been considered and reported on by the Universities Commission of 1876. There were obvious advantages in uniting two institutions so near each other in local situation, and in combining the prestige of an ancient University, which wanted nothing but students, with the vitality of a new and growing college which wanted nothing but prestige. So completely had Parliament accepted some form of union as likely and desirable, that it had by the 5th section of the Act made the Provost of Dundee a member of the University Court, without attaching to his nomination any condition as to affiliation having first taken place.

"It seems to me, therefore, that when the Commissioners had presented to them an agreement between the University Court on the one hand and the Council of the Dundee College on the other, they were quite within their powers in deciding to give effect to it by way of Order and not by way of Ordinance. The course which they adopted had at least two great advantages. It saved time, which, as I have shewn, was necessary for bringing the new Act into early operation. It also enabled them to give effect to the first head of the agreement, which provided that the union should be permanent, and dissoluble only by Act of Parliament. If they had proceeded under section 15, it would have been impossible to do that, because the affiliation would have been clogged with the statutory condition that either party might at any time bring it to an end. Moreover, it seems to me that in its very nature the union contemplated by section 16 was not intended to be dissoluble in that way, both because it was to be an incorporation as well as an affiliation, and because a 'fully-equipped conjoint University School of Medicine' could not be properly established without financial arrangements of an essentially permanent kind. The only plausible argument which can be urged against the course which the Commissioners adopted is, that the various University bodies—the Senatus Academicus, the General Council, and their individual members—were thereby deprived of the opportunity of stating objections to the scheme, which they would have had, under section 19, if the procedure had been by way of Ordinance, and that the scheme in its completed form could not come before Parliament or before the Queen in Council. But I think that the obvious reason which Parliament had for not requiring such elaborate procedure in this particular case was just the reason which I have indicated, viz., that the principle of this union had been generally accepted, and had received the sanction of Parliament itself. In such circumstances the Legislature might well be content to leave the details of the scheme to the governing bodies of the two institutions; and, whether I am right in this supposition or not, it is enough for me to find that by the 16th section the Commissioners are empowered to carry out the union with no other consent than that of these two bodies. It is nothing against the course which the Commissioners followed to say that the 4th article of the agreement invoked one of the powers

of section 15 of the Act, and that the Commissioners afterwards gave effect to it by an Ordinance which became law on 9th May 1891. This Ordinance related to the election of representatives to the University Court by the Dundee College, which could not be accomplished in any other way. The Commissioners' right to make such an Ordinance seems to me to be made clear by the fact that section 16 was without prejudice to their other powers, and that section 5 (1) (k), which dealt with the University Court of St Andrews, expressly imported section 15 (4)." . . .

The pursuers reclaimed to the Second Division of the Court.

By interlocutor dated 10th November 1894 the Court appointed the cause to be argued before themselves along with Lords ADAM, M'LAREN, and WELLWOOD, on the questions raised under the third plea-in-law for the pursuers.

The arguments advanced are fully set forth in the opinion of the Judges.

At advising—

LORD JUSTICE-CLERK—By the Universities (Scotland) Act of 1889 considerable changes were made in the constitution of the University Courts, and various reforms of greater or less importance were introduced. A Commission was also appointed to sit for a limited period, which might be extended by order of the Queen in Council. The general powers given to the Commissioners were for the purpose of introducing reforms in the constitution and equipment of universities, and also for purposes of university extension by the affiliation of colleges with them. The general course of procedure prescribed was that the Commission should frame ordinances, or should consider draft ordinances submitted to them by university authorities, and adopt them with or without amendment, and when a draft ordinance had been adjusted by the Commission, the Commission were required to communicate it to the University Court, the Senatus Academicus, and the University Council, and receive and consider their observations and objections. When after such procedure the Commission issued their ordinance, it did not thereby take effect, but it was necessary that it should lie on the tables of both Houses of Parliament for a certain time to give opportunity for an address from either House praying the Sovereign to withhold approval, and thereafter it required to be submitted for approval by the Queen in Council, and in the event of objection being stated, the matter had to be remitted to the Universities Committee of Council for report, after which approval might be given or withheld by the Queen in Council. Then and then only the ordinance became operative and effectual.

It is thus certain that in the ordinary case the Commissioners' ordinances had to run the gauntlet both of Parliament and the Privy Council before they became effectual to any extent, and that all directly affected by any ordinance had a power of representation to the Commission, and of redress through Parliament, or by appeal to the Queen in Council.

Now, one of the matters in regard to which the Commission has power to make ordinances is the affiliation of colleges to universities. And if an ordinance is made affiliating a college to a university, then that ordinance can only become effectual by its successfully passing both Parliament and the Privy Council. The Commission has thus only a power of initiation in affiliating, and what they initiate obtains final operative force only by confirmation by the Queen in Council. Special duties are laid upon the Commission in the extension of universities by the affiliating to them of colleges, and the statute by sec. 15 gives full and elaborate instructions as to the procedure to be followed in doing so. But as their procedure under that section is to be by ordinance only, it is necessarily subject to the same rules as regards the things necessary to render an ordinance binding and operative as in any other case.

If this 15th section had been the only one relating to affiliation of colleges, then there could have been no question as to what the powers of the Commissioners were in any particular case. They would have been restricted to proceeding by ordinance, and no deliverance or any other form could have been operative, unless being accepted as an ordinance, it had as such received the confirmation of the Queen in Council.

But this case relates to procedure taken by the Commissioners in regard to the University of St Andrews and the University College of Dundee. With reference to these two institutions there is a separate clause, viz., clause 16, which relates to that matter and that matter only. The enacting part of it is in the following terms:—"The Commissioners shall, with respect to the University of St Andrews and the University College of Dundee, have power (1) to affiliate the said University College to and make it form part of the said university with the consent of the University Court of St Andrews, and also of the said college, with the object, *inter alia*, of establishing a fully-equipped conjoint university school of medicine, having due regard to existing interests, and to the aims and constitution of the said college as set forth in its deed of endowment and trust. (2) In the event of the said University College being affiliated to and made to form part of the said University, to regulate the time, place, and manner of the first election of the assessors to be elected to the University Court by the General Council and by the Senatus Academicus of the said University after such affiliation, which election the Commissioners shall appoint to take place as soon as conveniently may be after such affiliation; and, in the event of such affiliation not taking place within such time after the passing of this Act as the Commissioners shall consider reasonable, they may regulate the time, place, and manner of such election as seems to them best."

Under this clause the Commission, having before them the consents required by the

clause, or at least what it is maintained were the consents required, has issued an order not bearing to be, nor according to the form of an ordinance, uniting the University College of Dundee with the University of St Andrews. And the question to be decided is, whether they have, in acting under section 16, gone beyond their powers, so that the order they have given shall be reducible on that ground. That question turns upon this, whether section 16 confers upon them a power which they do not possess in the ordinary sense contemplated in section 15, viz., a power to unite the University and the college by their own order, and without there being any necessity for their deliverance being laid on the table in Parliament or approved by the Queen in Council, as would be the case had they proceeded by ordinance, or should have been the case if what they have done is in reality an ordinance under the statute, although not being so in form.

The words of the section are that the Commission in a certain event have power to do a certain thing. That is an expression which cannot in itself be called ambiguous. Had this Act consisted of two clauses only, one appointing a Commission and the other expressed in the language of the enacting part of section 16, then it is difficult to see how there could have been any doubt as to its meaning. The Commission appointed being instructed that, given certain circumstances, they can order a certain thing, their order doing it would be operative and binding as if the thing had been done by order of the statute itself. This is not disputed. But it is maintained that, considering the rest of the statute, the words "have power" in section 16 are not to be taken in their natural sense, but must be read along with and in the light of section 15, and that if so read, then the power to affiliate and make the college form part of the University is not conferred, but only a power to make an ordinance, in the same way as would be done in a case under section 15. This mode of dealing with section 16 is not maintained on the ground that the words of section 16 are not in themselves words of clear meaning and effect. No such argument could be urged with hope of success. But it is said that, as reading the words of authority in their direct and ordinary sense implies that such extraordinary power is given to the Commission, that it is not to be assumed that the Legislature intended to confer such power, and that the words of authority must be read as meaning something less if in the other parts of the statute words may be found which, being inferred as repeated in section 16, may modify the natural sense of the expressions there used. It is pointed out that under section 16 the Commission can, if only the University Court of St Andrews and the governing body agree, without anyone else interested having any say in the matter or power to object, carry out the affiliation of the latter to the former, and that if there is no procedure by ordinance there is no appeal of any kind. It is further pointed out that it is not mere affiliation which is to take place. Affiliation is in the statute defined in a definition clause, which is remarkable for its generality and vagueness. The definition clause declares that "affiliation for the purposes of this Act means such a connection between an existing university and a college as shall be entered into by their mutual consent, under conditions approved by the Commissioners, or, after the determination of their powers, by the Universities Committee." This may mean much or little, according to what may be agreed on. But by clause 16, if the Commission acts upon it, Dundee College is to be not only affiliated to, but is to be incorporated with the University of St Andrews. They are empowered to make it "form part of" that University, which is a much more important proceeding than an ordinary affiliation might be, and of necessity would make a dissolution of the union a much more complicated and difficult process than it might otherwise be. Moreover, it is also pointed out that while under the statute an ordinary affiliation can subsist after it is made only so long as the affiliated bodies choose to remain connected, the affiliation of Dundee and St Andrews would be indissoluble by the University or College, if it be held that it can be made specially under section 16 by act of the Commission alone. These circumstances, it is maintained, point strongly against the idea that in such a case the Commission could be intended to be vested with a power to effect this affiliation and this making "form part of" finally, and without the checks provided in cases of less importance to all concerned, and without the power of dissolution to either party. If this were a legitimate argument, it would undoubtedly be a weighty one. But it may well be considered doubtful whether it is legitimate to consider the important effects which may follow a reading of a statutory enactment, which is according to the natural reading of the language used, for the purpose of justifying a different reading. Where a statute uses different language in one section from that which is used in another, relating to a similar matter, and the difference in the sense is not doubtful, is it not to be held rather that the change of language was intentional, because the purpose was different, than to endeavour to make both phrases read as meaning the same thing, thus proceeding on the assumption that a mistake was made in the statute as passed which requires to be got over by altering words in reading or supplying words which are not to be found in it? I do not mean to say that where the first and most natural reading instead of another and reasonable meaning would make a statutory enactment to be unworkable, or create an inconsistency between parts of a statute which the context made it plain was not the intention, the reading which prevents a deadlock such as that may not be adopted. But this is not a case of that kind. There is here no question of making a statutory enactment nugatory or contradictory to itself. The only suggestion is

that if section 16 is read according to the meaning of its words, the Commission receives a power which is very wide, and as to which it may be possible to doubt whether the Legislature intend to confer it. Assuming that there were reasons for such a doubt, I do not think a court could be justified in considering it a ground for giving a restrictive interpretation to words which upon the face of them have an absolute meaning. Even if I thought it likely that less had been intended by the words used than their plain import implies, I should not feel myself justified in giving a limited interpretation to them by, in effect, altering or adding to them, as must be done here if the pursuers are to prevail. For conjecture as to what the Legislature intended cannot be a ground for judicially deciding that something was enacted different from what is set down, otherwise different conjectures as to intention might lead to different readings of words. But statutory words must be held to have had only one meaning attached to them when they were enacted. Therefore a plain meaning cannot be rejected, and a different meaning attached to them, merely because it may be thought that the intention may not have been what the words express. It must be practically impossible to read them in their direct sense, consistently with the rest of the statute. If the words themselves do not present any real ambiguity, they must be given effect to. They certainly do not present ambiguity here, and even if it were thought that the power given by them was so extraordinary as to be highly unlikely, that is not as I think, a ground for giving them a different meaning from that which appears plainly upon the face of them.

Even if it were otherwise, I do not see in the clause any ground for doubting that it was the intention of the Legislature to confer the power which is expressed. The clause itself indicates upon the face of it that the case was not one in which a mere possible future expediency of or desire for affiliation was being provided for. It proceeds plainly upon something known to the Legislature, and which had already received consideration from those interested. For it is declared that the affiliation and making part of is to be "with the object, *inter alia*, of establishing a fully-equipped conjoint University School of Medicine."

This therefore indicates past negotiation and tentative arrangement and knowledge of it on the part of Parliament. It indicates a case in which it was already ascertained that for a definite and most important purpose a junction was desirable if the governing bodies of the two units to be combined could agree as to details. And that this was so is known by reference to the public documents connected with the Universities Commission of 1876. But it is evident that an amalgamation with a special practical end, such as that indicated, was not a suitable case for leaving it open to either of the units at any time, and at their own will, to break up the union which had been formed, as would be the case if it were done by the ordinary procedure by ordinance. The successful establishment of a conjoint university school of medicine could scarcely be looked for if the affiliation was such as could be broken up at any time by either of the two bodies. On the other hand, there was obvious importance if this end was contemplated, in the procedure being as prompt and as binding as possible, so that the new institution might as one university promote before the Commission such draft ordinances under section 19 as might help to work out the scheme in view to a successful issue.

That the case of St Andrews and University College, Dundee, was a special one in which a special and more close affiliation was to be looked for, and that within a short time after the passing of the Act, is shown by the provision in the latter part of section 16, and also by the fact that under the Act the Lord Provost of Dundee is made a member of the University Court of St Andrews, an appointment which it would be difficult to account for, except upon the footing that an affiliation was looked upon as an immediate consequence of the passing of the Act.

I think, therefore, that assuming it to be competent, in considering the construction to be put upon the words of section 16, to take likelihoods into account, the Act itself gives indications favourable to the reading which has been adopted by the Lord Ordinary. And therefore, whether the case be taken on the footing that the words of the clause are to be read according to their ordinary and natural meaning without regard to extraneous considerations, or whether it be taken on the footing that such considerations are to be given weight, the conclusion to which I come is that there is no sufficient ground for altering the Lord Ordinary's judgment, and that it ought to be adhered to.

LORD YOUNG—The act, deed, or order (I avoid at present the term "ordinance") made by the University Commissioners on 21st March 1890 professes to affiliate the University College of Dundee to the University of St Andrews, subject to certain specified conditions, and in terms of the Universities (Scotland) Act 1889. It is impeached by the pursuers on substantially two grounds, viz.—1st, That the provisions of sections 19 and 20 of the statute were not observed, which the pursuers contend they ought to have been with respect to it; and 2nd, that one (the first and most prominent) of the conditions subject to which the affiliation bears to be thereby made is in violation of the statute, viz., the condition that "the said union shall, as regards duration, be permanent and dissoluble only by Act of Parliament."

1. The provisions of section 19 of the Act are clearly expressed, and looking to their purpose, which is manifest, of first-class importance. That purpose is to ensure that not only the universities and colleges immediately interested in a proposed ordinance, and their members, "but all per-

sons interested" shall have such reasonable notice (of not less than three months) as may enable them to state objections and submit amendments before the ordinance is finally made. These provisions were not observed, the act of affiliation in question being made without any prior publication or notice, and before the lapse of three months from the commencement of the statute.

The provisions of section 20, also of the highest importance and manifest purpose, were similarly neglected, or perhaps I should say, thought inapplicable, and so not observed. The act of affiliation in question was not laid before Parliament, and was not approved of by the Queen in Council.

The defenders contend that these provisions of sections 19 and 20 of the statute apply only to "ordinances," and that the act of affiliation in question is not an "ordinance." Their view is that while affiliations under section 15 of the statute must be by "ordinance," an affiliation of Dundee to St Andrews under section 16 cannot be by "ordinance," or at least need not, and in fact was not.

The pursuers' contention, on the other hand, is that the statute does not contemplate or provide for "the extension of universities" by the affiliation of colleges being effected otherwise than by "ordinances" made by the University Commissioners; that sections 15 and 16, which deal with this matter, must be taken together, and construed and given effect to, as if they had formed one clause—section 16 being the concluding part of section 15, and amounting to no more than the specification of a particular and important case without prejudice to the preceding generality.

My opinion is in favour of the pursuers' contention. I read sections 15 and 16 together, and to the effect of providing that the Commissioners "may, if they think fit, make ordinances to extend any of the universities by affiliating new colleges to them," subject to specified conditions, and that, "without prejudice to" such powers conferred generally, the Commissioners shall have power to affiliate Dundee College to St Andrews University, with the object, *inter alia*, of establishing a conjoint University School of Medicine. It would not, I own, have occurred to me that this particular affiliation was intended to be effected otherwise than any other—that is, by some sort of act or deed differing in form or substance from an "ordinance." The Lord Ordinary observes upon section 16 "that there is not a word in it from beginning to end about an ordinance." But neither is there a word in it from beginning to end about an "order" or a "rule" or about writing or sealing, or the form or name of the act or deed by which the power given is to be executed.

The statute gives no definition of the word "ordinance," and we must determine for ourselves the meaning of it as used in sections 19 and 20. Nor does it seem a hard task. It is a word with several synonyms—as, for example, act, deed, rule, order—assuming always the subject-matter and purpose to be the same or similar. In the University Act of 1858 all these words are used synonymously with 'ordinance"—see section 15 of that Act. Suppose the thing itself which you are in search of an appropriate name for, to be a rule, order, or law made by a statutory body in execution of a statutory power, and set forth in a formal writing under its statutory seal, is it doubtful that the name "ordinance" would be appropriate, although several other names not inappropriate might be found?

The Lord Ordinary calls the Act of the Commissioners (of 21st March 1890) an "order" as distinguished from an "ordinance," and seems to be of opinion that it was in the option of the Commissioners to affiliate Dundee to St Andrews by "ordinance" under section 15 or by "order" under section 16. I agree that they might have affiliated under section 15, and that section 16, even though not superfluous (as I think it is), would have been no impediment, bearing, as it does, to be "without prejudice." Now, suppose that they had,—would their written rule or order (or whatever name you use) have been other than it is, and being as it is in form and substance, would it not have been an "ordinance"? If not, the conclusion must be that an affiliation under section 15 could not be effected by a rule or order of the Commissioners under their corporate seal in form and substance similar to that of March 1890. The reference to section 15 or section 16 can have no bearing on the appropriateness of the name "ordinance." In my judgment, both sections might with propriety have been referred to in any affiliation of Dundee to St Andrews within the power of the Commissioners to make, nor do I think that the omission of any express reference to either would hav afforded a ground of objection. I have pointed out that the statute gives no name other than "ordinance" to any Act of the Commissioners effecting an "extension of Universities" under sections 15 and 16, the only two sections dealing with the subject. Their Act of March 1890 is certainly designed thus to extend the University of St Andrews. What is the purpose of the desire to withhold from it the name "ordinance"? There is no other that I can see than that the provisions of sections 19 and 20 of the Act may be avoided. I cannot think this legitimate. These provisions are not formal, but substantial, and with an object clearly applicable to the Act of the Commissioners in question, whatever name you give it. To frustrate that object by mere quibbling about a name—whether it should be "ordinance" or "order"—is not in my opinion allowable. The Act of the Commissioners is the same whether you call it by the one name or the other, and the provisions of sections 19 and 20 are, in sense and reason, applicable to the thing thereby done or designed to be done. If the Act of the Commissioners is in substance and truth an "ordinance" according to the ordinary

sense of the word, and such as the provisions of sections 19 and 20, having regard to their manifest purpose, are applicable to, I should hold them to apply. An act may well be an ordinance although not so titled, and although another name may also fit it.

The Lord Ordinary points out three respects in which he thinks that section 16 is "in marked contrast" to section 15. These are—First, that the word ordinance does not occur in section 16; second, that the power conferred is not merely to affiliate Dundee College to St Andrews University, but to affiliate "and make it form part of the said University;" and third, that the declared object of the union is, *inter alia*, to establish a fully-equipped conjoint university school of medicine. I am unable to see any contrast. With respect to the first particular, I have already noticed that section 16, taken *per se* and irrespective of section 15, gives no name whatever to an Act of the Commissioners under it affiliating Dundee to St Andrews. With respect to the second, viz., the power to affiliate so as to make the affiliated college form part of the University, I have to observe that this must be a consequence of every affiliation under the Act. The primary and leading words of section 15 conferring the power of affiliation are these—"The Commissioners may, if they think fit, make ordinances to extend any of the Universities by affiliating new colleges to them." It is clear therefore that every affiliation under the Act must "extend" the University to which it is made by making it comprehend at least one college more than it did before. With respect to the third particular, I can only say that every affiliation and extension must presumably be made with some object or objects, and that the establishment of a school of medicine seems a very ordinary and in no way remarkable object. But anything that can be said about these particulars can have no bearing upon the only question with which I have hitherto been dealing, viz., the character of the Act of the Commissioners making the affiliation and extension, and whether or not the name "ordinance" is applicable to it. The proposition that the Act would be an ordinance if it affiliated so as to extend the University by the addition of the affiliated college, while it would only be an order, or something other than an ordinance if it affiliated so as to make the college form part of the University, is not convincing on the statement of it, and I have heard no argument that makes it so, or even gives it an aspect of reasonableness. That it will be an ordinance if the establishment of a university school of medicine is not one of the objects of the affiliation, but only an order if that be one of them, *inter alia*, is also a proposition with nothing that I see to recommend it. I must therefore hold that even in the view that section 16 is not a superfluity, but permits the affiliation of Dundee to St Andrews in a manner, and with an effect which could not have been accomplished under section 15 alone, the Act of the Commissioners making the affiliation is nevertheless an ordinance in the common meaning of the term, and as it is used in the Act. It follows that the provisions of sections 19 and 20 are applicable, and ought to have been observed. The idea that these provisions, looking to their purpose, are inapplicable because of all or any of the three particulars specified by the Lord Ordinary is, I think, inadmissible.

2. A very few words will sufficiently express and explain my opinion on the second ground of the pursuer's challenge of the ordinance in question, viz., that the affiliation thereby made is declared to be "permanent and dissoluble only by Act of Parliament," whereas it is a condition of every affiliation under the Act that "the University Court, or any college which under this Act shall have been affiliated to the University, may respectively at any time thereafter resolve that such college shall cease to be affiliated to such University," and that thereupon the ordinance of affiliation shall be rescinded.—(See section 15, sub-section 3.)

I am of opinion that there is no power to make an affiliation "under this Act" of any college to any university—which shall be permanent and dissoluble only by Act of Parliament, and that the ordinance in question is therefore objectionable and invalid or inoperative, in so far as it professes to make the affiliation permanent. I do not mean to say that this would be a good or sufficient ground for reducing the ordinance if otherwise unobjectionable. Thus, had the provisions of sections 19 and 20 been observed, I incline to think that while this condition as to permanency of duration would have been no obstacle to the ordinance being rescinded under section 15, sub-section 3, it would have operated a valid affiliation till so rescinded.

After what I have said regarding the word "ordinance," I need not, I think, notice the argument that the provision of section 15, sub-section 3, does not apply to an affiliation by "order" any more than the provisions of sections 19 and 20. I find nothing in section 16 even to suggest the idea of a permanent union dissoluble only by Act of Parliament. Certainly, to use the Lord Ordinary's language, "there is not a word in it from beginning to end" about a permanent union dissoluble only by Act of Parliament, while the statute itself declares that any union by affiliation under it (and there can be no other) shall be dissoluble by either of the parties to it—"at any time."

I have in conclusion to observe that this condition of permanency of duration and consequent exclusion of all right on the part of University or College to terminate it is the only remarkable or notable feature of the ordinance in question, and of the affiliation which it makes. In other respects there is nothing in it, so far as I know, which might not, lawfully and regularly, be in any ordinance of affiliation under section 15, and irrespective altogether of section 16. The idea that what would otherwise be an ordinance is not so

because, and only because, what is thereby ordered or ordained is declared to be permanent, is absurd on the statement of it; and if the Act before us is an ordinance, it must be set aside, even on the assumption that the condition of permanency is lawful. Indeed it must, I should think, occur forcibly to anyone considering the subject that the condition of permanency and consequent exclusion of all right in the parties interested to have the union terminated, should experience lead them to think that expedient, affords only the stronger reason for observing the provisions of the statute applicable to ordinances, the purpose of these provisions being, as I have pointed out only too frequently, to enable objections to be urged both before and after the ordinance is finally made, and to invoke the judgment of the Queen in council upon its expediency generally, or in any of its details —as, for instance, this very detail of permanency.

The proper course, in my opinion, is, that such new ordinance as the University and College may consent to do, and the Commissioners approve of, shall be prepared and dealt with according to the provisions of sections 19 and 20 of the statute.

LORD RUTHERFURD CLARK—By the 16th section of the Universities Act, the Commissioners are empowered, with the consent of the University Court of St Andrews and of the University College of Dundee, to affiliate the College to the University. The pursuers contend that this power can only be exercised by an ordinance issued according to the procedure prescribed by the Act, and which does not become effectual until it is approved by the Queen in Council. The defenders maintain that the power is so absolute that it may be exercised without supervision or control, and even without notice to the bodies or persons whose interests are affected. Both parties are agreed that there is no middle course. In this I think that they are right.

The Act came into operation on 1st January 1890. On 15th February in that year the University Court of St Andrews and the University College of Dundee agreed that the College should be affiliated to the University on the terms and conditions set out in the fifth article of the condescendence. It is not necessary to examine them. It is sufficient to say that it was provided that the union should be permanent, and dissoluble by Act of Parliament only; that the Council of the Dundee College should elect to the University Court such number of representatives as the University Commissioners might fix, and that the professors in the Dundee College should become members of the Senatus Academicus. I notice these clauses merely to show the permanence of the contemplated union, and that the constitution of the University Court and of the Senatus Academicus was to be thereby affected.

On 21st March 1890 the Commissioners issued an order affiliating the College to the University on the above terms. It is not said that before the order was made the agreement was known to any other persons than those who were parties to it. The Commissioners did not inform the Senatus Academicus or the University Council that they proposed to affiliate. Their order was not published or laid before the Houses of Parliament. It was regarded as completing the union by its own power without the possibility of objection, and without any right of appeal.

The 15th section of the statute enables the Commissioners to "make ordinances" to extend any of the universities by the affiliation of new colleges under certain conditions, of which I need to notice no more than two. First, the University Court and the college must be consenting parties; and second, the ordinance may, on the application of either body, be rescinded by the University Committee of the Privy Council. Before any such ordinance can be made it must be submitted in draft to the University Court, the Senatus Academicus, and the General Council, who are empowered within three months to state objections or to propose amendments. The 20th section then provides that "all ordinances made by the Commissioners" shall be published in the *Gazette*, and laid before both Houses of Parliament. If neither House presents an address praying the Queen to withhold her consent, it is lawful for the Queen in Council to approve of the ordinance.

It is further provided that the University Court, the Senatus Academicus, &c., and all persons directly affected by "any such ordinance" may petition the Queen in Council, and on hearing the petition, the Queen in Council may either declare her approbation or signify her disapproval of it, "and no such ordinance shall be effectual until it shall have been so published, laid before Parliament, and approved of by Her Majesty in Council."

It is plain that in the exercise of these powers the interests of all concerned are carefully safeguarded. It is difficult to see any reason which could have induced the Legislature to dispense with the same safeguards in the case of St Andrews. In both cases the affiliation requires the same consents, and if, as the defenders say, more can be done under the 16th section than under the 15th, there is the greater reason for the existence of control.

The statute does not state any reason why the institutions with which we are dealing should be exceptionally treated. An inference in that direction was drawn from the words with which the section begins— "Without prejudice to any of the foregoing powers." I do not think that they mean much, nor do I see how they can aid the defenders. They may be of some use when a lesser power is added to a greater. But they have no value in the opposite view, for a greater power cannot detract from a lesser. They show, however, that the power given by the 16th section is a supplementary power, and there is a strong inference that it is to be exercised under the same condi-

tions as the power to which it is supplementary.

It was urged that the 16th section is an empty form if we are to read it as merely re-enacting the provisions of the 15th. Surplusage is not without example in statutes, and I should prefer to regard the section as repeating for a particular case a power which had been previously conferred in general terms than to hold that it conferred an absolute power. But it is not a mere repetition. It enables the Commissioners to affiliate with a view to the establishment of a fully equipped conjoint medical school, and as I think to issue regulations for the school to be so established. This is an important addition. It saves the section from the charge of being unnecessary, and it may explain why the general powers are repeated in reference to a particular case.

The consent of the University Court and of the University College is required in order to the affiliation. The college is a private institution and the governing body may have power to consent to affiliation on such conditions as they think proper. With the University it is different. It is a public institution, and it is matter of public concern that no change shall be made on it without giving the parties affected by the change an opportunity of being heard for their interest. The University Court does not represent all the interests of the University. Its consent to a union is not the consent of the University, nor the consent of all that is comprehended under that name. I do not see, therefore, why it should be a warrant for the Commissioners to do without notice an act by which important interests might be materially affected. It is not in the case of any other university, and I see no reason why it should be in the case of the University of St Andrews.

The 16th section enacts that the Commissioners shall with the specified consents have power to affiliate. The power must be exercised by some written order. I do not know that it could be called by a better name than an ordinance, which is used to denote the act by which affiliations are to be made to other universities. I do not think that I do violence to its language if I construe the section as meaning that the Commissioners shall have power to affiliate by ordinance. It seems to me that I am bound to supply these words in order to avoid an injustice which the Legislature, in my opinion, could never have contemplated. I am aware that this consideration may not by itself be conclusive. For it might be shown that such an ordinance was not an ordinance within the meaning of the 20th section of the statute. At the same time I think that it would be very difficult to take it from under the universality of that section, which applies to "all" ordinances without exception or distinction.

The defenders say that the language of the section, according to its natural meaning, imports an absolute power. They contrast it with the language of the 15th, which merely enables the Commissioners to issue ordinances on the condition that they shall have no effect until they receive the approval of the Privy Council. They urge that under that section the Commissioners have nothing more than a power to initiate a process which may end in affiliation, while the 16th section gives them a power to complete the affiliation. To hold, therefore, that the affiliation contemplated by the 16th can only be effected by issuing an ordinance is, as the defenders contend, to withhold from the Commissioners the powers which the statute has expressly conferred on them.

I allow that if we are to have regard to nothing but the words of the section, the more natural construction is that the Commissioners have of themselves a power to affiliate. But as I cannot hold that the Legislature meant to be unjust, I decline to put a construction on them which might lead to injustice. I see no necessity for an absolute power nor any end which it is intended to serve. The Commissioners do possess the power to affiliate though the exercise of it is subject to review. They are the only body who can affiliate in whatever form it is done, and the affiliation is their act, though the effect of it may be suspended until the approval of the Privy Council is obtained. The Privy Council have no initiative. They can only give or withhold their approval. To hold that in this sense the Commissioners have power to affiliate satisfies, in my judgment, the words of the statute, and it is a construction which commends itself to my mind, both because it leads to uniformity in every act of affiliation, and because it avoids an obvious injustice. In the general case both Houses of Parliament reserved their right to consider of the propriety of every affiliation, in order that the universities, as public institutions, might not be changed without their approval. There is no less reason for their approval in the case of the University of St Andrews. In the general case very full provision is made for hearing all parties who may be affected by the change. It would, in my judgment, be iniquitous to hold that the Legislature disregarded their interests in the particular case, and empowered the Commissioners to deal with them without notice and without review.

It must be observed that the power is not limited to mere affiliation. It is hardly possible that there should be affiliation without the settlement of many conditions which would affect the institutions which were united. But in this case the affiliation is or may be made in order to the creation and regulation of a joint medical school "having due regard to existing interests." The regulation of such a school is a fitting subject for ordinance. I cannot imagine that a medical school could be set up without consultation with the Senatus and the University Council, to whom all draft ordinances are to be communicated, and I cannot conceive how existing interest could be duly regarded without such a communication. There would be no obligation

to make any communication if the power given by the 16th section is absolute. For if anything may be done under it with absolute power, everything which it authorises may be done with the same power. I am of course referring to the first part of the section; for the second deals with matters which are not within the region of ordinances.

It is said that a reason can be assigned for giving the Commissioners the exceptional power which they are said to possess, and the reason is found partly in certain external circumstances and partly in the statute itself.

The defenders tell us that the union of the two institutions was the subject of special legislation, because the union and conditions of union had been fully discussed before the Act was passed. Beyond the fact that there was discussion we know nothing. There is no reference to it in the Act. It is admitted that there was no agreement. Consequently everything remained open. The conditions on which the University Court and College might consent to affiliation were unknown, and the conditions on which their consent came ultimately to depend might affect in a material way the interests of the University, both in relation to its existing constitution and in the regulation of the proposed medical school. I cannot believe that the Legislature would confer powers of so exceptional a nature on the chance of existing proposals being converted into agreement, and with possibility of the powers being so used as to give effect to an entirely different arrangement.

The defenders urged that an indication that the Commissioners were to possess this exceptional power is to be found in the provision for the establishment of a conjoint school of medicine. They said that it was useless to expect that the two institutions would agree to carry such a purpose into execution, unless their union was permanent, and that a permanent union was impossible by ordinance, inasmuch as it might be dissolved by either body with the approval of the University Committee. Hence, in the agreement for a union it was stipulated that the union should be permanent, and should not be dissolved except by Act of Parliament.

I am sensible that permanency of union must be an important element in considering whether a conjoint medical school is to be established, and that a union which can only be dissolved by Act of Parliament may be considered to be more permanent than one which may be dissolved with the consent of the Universities Committee. I doubt if in a matter of this kind there is any material difference, and I cannot regard the permanence which is secured by an ordinance as too slender for the purpose in view. The committee which is charged with the interests of the Universities may be as difficult to move as Parliament, and would not, except on strong grounds, permit either institution to undo a great work for which they had been united. But this is mere speculation. There is nothing in the Act to suggest that the Legislature had in view a more permanent union than a union made by ordinance, or that the permanence so secured is not sufficient for any purpose contemplated by the statute. Unless it be clear that the union must be more permanent, the argument of the defenders has no force.

Again, the defenders appealed to the second sub-section of the 16th section. By the 5th section the Commissioners are empowered, immediately after the passing of the Act, to make regulations for the election of the additional assessors, who are to be members of the University Court of the Universities of Glasgow, Aberdeen, and Edinburgh. But the sub-section to which I have referred provides that in the event of University College of Dundee being affiliated to the University of St Andrews, the Commissioners may regulate the first election of the assessors to the University Court, and in the event of the affiliation not taking place within such time as the Commissioners may consider to be reasonable, they may regulate the election as they think best. The inference which the defenders draw from these enactments is, that the affiliation of the University of Dundee to the University of St Andrews was to be made sooner than was possible if the affiliation was to be by ordinance, and therefore that it was not to made by ordinance.

It is quite possible that the Legislature anticipated no objection to the affiliation, and therefore that it would be accomplished at an early date. But there is nothing to show that they expected an earlier affiliation than could be made by an unopposed ordinance. Without going into details I may take it that the affiliation, if made in that manner, would be completed in six months. I see no reason for thinking that the Legislature meant or expected that it would be completed sooner. If it were certain that they did, I might be forced to hold that the affiliation was not to be made by ordinance on the ground that any other construction would create inconsistency. But to my mind there is no such certainty, and therefore no inconsistency. There was no necessity for an immediate election, for the University Court, as constituted under the Act of 1858, continued in office. It could not, indeed, exercise any of the powers conferred by the Act of 1889 except the power of consenting to the affiliation of a new college, but in giving it that power the Legislature provided everything which was necessary to affiliation at what time soever it might take place. But the argument of the defenders seems to be displaced by the simple fact that the clause contemplates the possibility of delay. For it enables the Commissioners to direct that the election shall proceed in the event of the affiliation not taking place within such time as they might think to be reasonable.

It was further pointed out that by the 5th section the Lord Provost of Dundee is made a member of the University Court of St Andrews, and that in no other case is the Provost of any non-university town made

a member of such a Court. The defenders look on that fact as indicating that the Legislature intended to give in this particular case an absolute power. I can draw no such inference. It may shew that the Legislature thought it to be certain that the affiliation would take place; though there was no certainty in fact. It can shew nothing more. It does not in my opinion give any support to the view that the affiliation might be accomplished with an entire disregard of existing interests, or in a different manner from that provided for other universities.

I see nothing, therefore, either in the statute or in the surrounding circumstances which would lead me to suppose that the Legislature intended to give an absolute power. In my opinion they give no such power. I think that I am bound, if possible, to reject a construction which would enable the Commissioners to dispose finally of important interests, without notice to the bodies or persons concerned, and without any supervision or control. The Legislature is not in use to confer such a power, and if they ever do they will make their meaning very clear.

I am therefore of opinion that the order of the Commissioners is invalid and ineffectual, inasmuch as it never received, and cannot receive, the approval of the Privy Council, and that the agreement of 15th February is not within the powers of the Act, inasmuch as it attempts to withdraw from the Universities Committee the power of rescinding the affiliation.

LORD ADAM—Lord M'Laren has prepared an opinion which I have had an opportunity of considering, and concur in.

LORD M'LAREN—The question referred to us is, whether the University Commissioners have exceeded their powers in making an absolute order for the union of University College of Dundee with the University of St Andrews, instead of proceeding by way of ordinance, subject to the approval of the Queen in Council. My opinion is that the Commissioners have rightly interpreted their powers under the Act of 1889, and that the order in question is not subject to reduction. The provisions of the statute chiefly to be considered are the 14th, 15th, and 16th sections. Under the 14th section the Commissioners are empowered to make ordinances relating to a large number of defined subjects affecting the internal economy of the Scottish universities, the system of instruction there carried on, and the granting of degrees. By the 15th section the Commissioners are empowered to make ordinances affiliating colleges to any of the Scottish universities. By the 16th section it is provided that, without prejudice to the preceding power, "the Commissioners shall, with respect to the University of St Andrews and the University College of Dundee, have power (1) to affiliate the said University College to and to make it form part of the said University, with the consent of the University Court of St Andrews, and also of the said college, with the object, *inter alia*, of establishing a fully-equipped conjoint University school of medicine, having due regard to existing interests, and to the aims and constitution of the said college as set forth in its deed of endowment and trust. (2) In the event of the said University College being affiliated to and made to form part of the said University, to regulate the time, place, and manner of the first election of the assessors to be elected to the University Court by the General Council and by the Senatus Academicus of the said University after such affiliation, which election the Commissioners shall appoint to take place as soon as conveniently may be after such affiliation; and, in the event of such affiliation not taking place within such time after the passing of this Act as the Commissioners shall consider reasonable, they may regulate the time, place, and manner of such election as seems to them best."

It is not said in this section of the Act that the Commissioners are to make an ordinance for the purpose of accomplishing the union of University College with the University of St Andrews, and I think the inference is plain that the necessary authority is to be given by the act of the Commissioners themselves exercising the authority delegated to them by Parliament.

It was not suggested in argument that the Commissioners had any discretion under the statute to exercise their powers, either by framing "ordinances" or by issuing "orders," according to their judgment of the requirements of the case or the expediency of giving opportunity for objection. Their duty is to proceed in strict conformity with the statute, and the only question is, whether in order to the accomplishment of the union of these corporate bodies it was necessary that the Commissioners should make an ordinance, or whether they were merely empowered to give effect to the agreement of the parties. According to the conception of the statute, it appears that in all other cases where the reforms contemplated by the Legislature were intended to be carried out by an ordinance, the word "ordinance" is used, and it is impossible to hold that in the 16th section the omission of the word "ordinance" was undesigned. It will also be observed that in those sections of the Act of Parliament which relate to ordinances, the language of the Act is uniform, the direction to the Commissioners always is that they shall "make an ordinance." Then, by a subsequent section—the 20th—the course of procedure before the Commissioners is prescribed, and it is then provided that the ordinance is to be laid before both Houses of Parliament, and is only to become effective on being approved by Her Majesty in Council. I understand that an "ordinance" is a law to which the royal assent is to be given. It is so in the case of Colonial legislation, and it is so under this Act. That being so, it seems clear that the University Commissioners can only make ordinances in these cases in which they are empowered to do so by the Act of Parliament. Accordingly, where the Com-

missioners are intended to act on their own responsibility, the language of the Act of Parliament is different; it is then said that it shall be lawful to the Commissioners to do the particular thing. I therefore come to the conclusion that the Commissioners had no power under this Act of Parliament to make an ordinance providing for the union of St Andrews University and Dundee College (which would have implied a right on the part of the Commissioners to revise the terms of the union irrespective of consent of parties), but that their right was to give or withhold their approval to terms of union agreed upon by the two governing bodies.

The chief argument against the validity of the instrument or "order" made by the Commissioners in the assumed exercise of the powers of the 16th section is founded on the supposed improbability that the Legislature would delegate to a Parliamentary Commission absolutely and without appeal so important a power as that of the extension of the privileges of the University of St Andrews to Dundee.

I assent to the proposition that in construing a statute a construction which is consistent with justice and equity is to be preferred to one which would be attended with injustice or possible injury to private rights. But I do not admit that the 16th section raises any question of construction, the language of the power is to my mind unambiguous, nor do I think that any injury to private rights could reasonably be apprehended from the exercise of the power according to its terms. If we are at liberty to consider at all the reasons which influenced, or were likely to influence, the Legislature (as to which it is not necessary that I should express an opinion), it may be kept in view that the Royal Commission of 1876, under the presidency of the late Lord Justice-General, had made a full inquiry into this subject, and had reported to Parliament in favour of the incorporation of University College, Dundee, with the University of St Andrews. Now, if Parliament, proceeding on the report of the Royal Commission, and without further inquiry, had decreed the incorporation of these bodies into a new University, it could not be said of such an enactment that it was contrary to the usage and constitutional practice of Parliament. But if Parliament might without injustice have itself directed the union of the two bodies, plainly it might do the same thing through the intervention of Commissioners. I think there are clear indications in this Act of Parliament, and particularly in the 5th section, and in the second part of the 16th section, that the union in question was regarded as a natural and probable result of the powers conferred on the Commissioners, and it does appear to me that private interests were completely safeguarded by the requirement of the consent of the chief governing bodies of the University and the College together with the authorisation of the Commissioners.

If it were necessary to seek an explanation of the difference in the powers given by the 15th and the 16th sections, there is at least one clear distinction. In the 15th section, which relates to the affiliation of colleges in general, the Legislature was dealing with unknown cases, as to which no opinion could be formed in advance. As to these, the Commissioners were only empowered to make ordinances, and their resolutions were accordingly subject to review under the 20th section. But the 16th section refers to a known and existing case which Parliament was in a position to consider on its merits, and it may have been thought that it was undesirable to invite opposition to a union which was so far approved in principle that Parliament conditionally directed the establishment of a fully-equipped School of Medicine in Dundee, and authorised the application of public money towards it establishment.

There is one consideration which I venture to think is conclusive against the supposition that in the 16th section there was a merely casual omission of a direction to make an ordinance, such as could be supplied from the context of the statute. Under the statute all ordinances are subject to be repealed, and notably in the case of an application under the 15th section it is left open to either of the corporate bodies concerned to withdraw from its connection with the other body at any future time. But the existence of a reserved power to rescind the union is plainly unsuited to the case of the union of St Andrews and Dundee. The kind of union which is contemplated in the 16th section is a very different thing from the affiliation which might be effected by an ordinance under the 15th section of the Act. The union of Dundee College with St Andrews University was to be a union for the purpose of establishing a fully-equipped, that is to say, a permanent Medical School at Dundee, whose students should be entitled, after examination, to receive the medical degree of the University of St Andrews. It could not be intended that, after such a school was set up at the public expense, the University of St Andrews should be entitled to withdraw from the union so as to deprive the Dundee College of the privilege of obtaining degrees, or that the rights of the students and members of that College should be subject to reconsideration by any other authority than that of Parliament itself.

Now, if it had been intended that in this matter the Commissioners should carry out their powers by making an ordinance, I think that some restriction would have been placed upon the power of withdrawal which is given under the 15th section, and also on the power of repealing ordinances which is given in a subsequent section to the Commissioners and the Universities Committee of the Privy Council. But if I correctly read the 16th section as merely empowering the Commissioners to give approval and legal effect to an agreement of the two corporate bodies, then the suggested restriction is unnecessary, because the instrument of union is not

an ordinance, and it bears to be irrevocable. I need hardly point out that my view is in no way inconsistent with the continued existence of the powers of the Commissioners and the Universities Committee from time to time to make all necessary internal reforms in the constitution of the united University.

I have endeavoured to deal with the argument which is founded on the supposed policy of the statute, by shewing that the powers of the Commissioners under the 16th section, as interpreted by themselves, are neither contrary to the practice of Parliament nor unreasonable. But, as already indicated, I do not think that the decision of this case ought to depend on the opinion that may be formed by a court of law on such considerations, the relevancy of which I greatly doubt. I think that the Commissioners had authority from Parliament to effect an irrevocable union of the University of St Andrews and the Dundee College by making the order which is sought to be reduced, and that the Lord Ordinary's interlocutor is well founded.

LORD TRAYNER—I concur with the views expressed by the Lord Ordinary, and the opinion expressed by Lord M'Laren.

LORD WELLWOOD — I agree with the majority that the Lord Ordinary's interlocutor should be adhered to. I have also had an opportunity of reading Lord M'Laren's opinion, and I adopt it.

The Court adhered.

Counsel for the Pursuers—C. S. Dickson—Pitman. Agents—J. & F. Anderson, W.S.

Counsel for the Defenders—Asher, Q.C.—H. Johnston. Agent—J. Smith Clark, S.S.C.

Thursday, January 10, 1895.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

OWNERS OF "NERANO" *v.* OWNERS OF "DROMEDARY."

Ship—Collision—Fog—Regulations of 1884 *for Preventing Collisions at Sea, Article* 18.

By Article 18 of the Regulations of 1884 for Preventing Collisions at Sea, "Every steamship, when approaching another ship, so as to involve risk of collision, shall slacken her speed or stop and reverse, if necessary."

The steamship "Dromedary" was going up the Clyde at a moderate speed, but in a thick fog, when those in charge of her heard the whistle of another vessel ahead, which proved afterwards to be a tug towing the steamship "Nerano" down the river. The "Dromedary" proceeded on her course after hearing the whistle, and did not reverse until she saw the tug ahead of her. Immediately afterwards she collided with the "Nerano," which was on the wrong side of the river.

Held that the "Dromedary" was not in fault, in respect that it was not her duty to stop and reverse immediately on hearing the whistle of the tug.

Ship — Collision — Evidence — Inferences from Nature of Damage.

Observed (following the opinion of Lord Chancellor Halsbury in the "*Ceto*," 1889, L.R., 14 App. Cas. 670) that, after a collision between two vessels, where it is desired that the Court should draw inferences from the real evidence supplied by the nature and extent of the damage sustained, it is necessary that witnesses, such as mechanical engineers or shipbuilders, should have spoken to the nature of the damage and the inferences to be drawn therefrom, and that it is not competent to supply the want of such evidence by referring to the opinion of the nautical assessor who hears the case.

The Columbia Steam Navigation Company, Limited, Sunderland, owners of the s.s. "Nerano" brought an action of reparation against Messrs G. & J. Burns, Glasgow, owners of the s.s. "Dromedary" for damage sustained by their steamer while proceeding in tow down the river Clyde through collision with that of the defenders, and caused as they averred by the fault of those for whom the defenders were responsible. The faults alleged against those in charge of the "Dromedary" were "causing it to sail on the wrong side of the river, viz., on the north instead of the south side of the channel, and in causing it to sail at an excessive rate of speed whilst there was a fog, and in failing timeously and properly to stop or reverse before the collision, and in failing to give the fog signals prescribed by the "Regulations for Preventing Collisions." The defenders answered that the "Dromedary" was on her own side of the river and was navigated with all possible care. A good look-out was kept on board, and fog signals were duly made. When the fog became very thick some time before the collision the engines of the "Dromedary" were stopped, and they were not moved again until the tug of the "Nerano" was seen ahead, when they were immediately put full-speed astern. The collision was caused by the fault of those in charge of the "Nerano," for whom the pursuers are responsible. A good lookout was not kept by them. The "Nerano" was being navigated on the wrong side of the channel, at too high a rate of speed, having regard to the fog, and prior to the collision her engines were not timeously stopped and reversed. The fog signals prescribed by the regulations for preventing collisions were not duly made.

The regulations issued in 1884 by virtue of the Merchant Shipping Act 1862 (25 and 26 Vict. c. 63), sec. 25, require, by article 13,