

of a parish is because they are by the disjunction to be loaded with a certain expense in building the church, and perhaps in providing a stipend and glebe for an additional minister, whereas they can have little or no interest to oppose the union of two parishes into one, by which union one incumbent is to supply the place of the two former." Applying this principle to the present case, I think the matter is one which does not affect the interests of the heritors as such, and does not require their consent.

I am therefore for granting the prayer of the petition.

The LORD PRESIDENT, LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court granted the petition.

Counsel for the Petitioners—G. N. Johnston. Agent—J. B. M'Intosh, S.S.C.

Saturday, July 15.

SECOND DIVISION.

[Lord Stormonth Darling,
Ordinary.

RANKINE v. DEMPSTER.

Poorhouse—Roman Catholic Clergyman Remunerated for Services in Addition to Chaplain—Parochial Board's Discretion—Poor Law Act 1845 (8 and 9 Vict. cap. 83), sec. 64—Board of Supervision Rules.

The Poor Law Act of 1845 directs parochial boards to make rules for "the admission of any known minister of the religious persuasion of any inmate of such poorhouse at all reasonable times, on the request of such inmate, for the purpose of affording religious assistance to such inmate," and to submit the rules for the approval of the Board of Supervision. The Act makes no provision for the remuneration of such services. The rules framed by the City Parish of Glasgow, and approved by the Board of Supervision, provided that the religious instruction of the inmates of the poorhouse should be committed to a chaplain. His duties and position were carefully defined, but no provision was made as to his remuneration. The rules further provided for the admission of any regular minister of the religious persuasion of any inmate without providing for remuneration.

The Parochial Board of the City Parish appointed a chaplain at a yearly salary of £300, and they further resolved that £52 should be paid out of their funds to the Roman Catholic clergyman who was in the habit of visiting the Roman Catholic inmates, who numbered one-third of the inmates of the poorhouse. A ratepayer sought to interdict this resolution as illegal and *ultra vires* of the Board.

The Court held that the resolution was within the competency of the Parochial Board, and refused the prayer of the note.

The Poor Law Act 1845 (8 and 9 Vict. cap. 83), sec. 64, provides, *inter alia*, "that parochial boards shall frame rules and regulations for the management of poorhouses, 'and for the discipline and treatment of the inmates thereof, and for the admission of any known minister of the religious persuasion of any inmate of such poorhouse at all reasonable times on the request of such inmate, for the purpose of affording religious assistance to such inmate, and shall submit such rules and regulations to the Board of Supervision for approval; and no rules or regulations shall be effectual or shall be acted upon except such as shall have been approved of by the Board of Supervision.'"

The rules and regulations for the management of the poorhouse of the City Parish of Glasgow, approved by the Board of Supervision, and which had the authority of statute, provided—

"XLIX. The religious instruction of the inmates of the poorhouse shall be committed to a chaplain, who shall be a distinct officer from the House Governor, and the following shall be his duties." His duties were carefully defined, and this note was added—"Qualifications of Chaplains—It is not competent to appoint a layman to the chaplaincy of a poorhouse; the chaplain must be an ordained minister or licentiate of a Protestant Church.

"LI. Any regular minister of the religious persuasion of any inmate of the poorhouse shall at any time of the day, on the request of any inmate, be allowed by the House Governor to enter the poorhouse for the purpose of affording religious assistance to such inmate.

"LII. When a regular minister of any religious persuasion shall request permission to visit members of his congregation who may be inmates of the poorhouse, orders shall be given for his admission at such hours as the House Governor may consider proper."

In accordance with the rules approved of by the Board of Supervision, the Parochial Board of Glasgow appointed a Protestant clergyman to be chaplain to the City Poorhouse at a salary of £300 per annum, and this appointment was held by the Reverend Mr Proudfoot, a Presbyterian minister. Full access has always been given by the Board to the ministers of various religious denominations, especially to Roman Catholic clergymen, for whose use a special apartment was provided.

At a meeting of the Parochial Board of the City Parish of Glasgow, held on 4th April 1893, the Board confirmed a resolution of the House Committee of the Board to the effect that a sum of £52 should be paid by the Board out of the funds raised by assessment for the relief of the poor to the Roman Catholic clergyman (without naming him) who had been in the habit of visiting certain of the inmates of the poorhouse who were Roman Catholics.

George Crawford Rankine, parochial agent, 108 Montrose Street, Glasgow, a ratepayer in the city of Glasgow parish, brought a note of suspension and interdict against Archibald Dempster, inspector of poor for the parish, as inspector, and as representing the Parochial Board of the said parish, and prayed that the Board be interdicted from carrying into effect the resolution of the Board of 4th April 1893, and in particular from applying the rates for the purpose of paying the sum of £52.

The complainer averred—"The resolution referred to was absolutely illegal, and *ultra vires* of the said Parochial Board. They have no right or power whatever to apply the funds in their hands in the way proposed, and the complainer, as one of the ratepayers who would be prejudiced by the said payment, objects to its being made."

Upon 13th June 1893 the Lord Ordinary (STORMONTH DARLING) refused the prayer of the petition.

"*Opinion.*—The complainer, who is a ratepayer in the city of Glasgow, asks me to find that a resolution of the Parochial Board of the City Parish, passed on 4th April 1893, was illegal and *ultra vires*. The resolution was to the effect that a sum of £52 should be paid by the Board out of the funds at their disposal to the Roman Catholic clergyman who is in the habit of visiting such of the inmates of the poorhouse as are of his religious persuasion, and the complainer says that there is no warrant for any such payment either in the Statute of 1845 or in the rules and regulations framed by the Board of Supervision under the authority of that statute.

"The statute provides, as might be expected, for complete religious toleration as regards the inmates of all poorhouses, but it does not lay down any rule with regard to payment being made for clerical services rendered. By the 64th section it provides that the Board of Supervision shall approve of regulations for the discipline and treatment of the inmates, and for the admission of any known minister of the religious persuasion of any inmate of a poorhouse at all reasonable times, on the request of such inmate, for the purpose of affording him religious assistance.

"Under that authority the Board of Supervision has framed rules dealing with a great variety of matters, and the 49th of these rules is to the effect that the religious instruction of the inmates of a poorhouse shall be committed to a chaplain who shall be a distinct officer from the House Governor, and the rule goes on to provide what his duties shall be. The 51st rule provides for the admission of any regular minister of the religious persuasion to which any inmate of the poorhouse belongs at the request of the inmate, and provides that he shall afford religious instruction to such inmate and to any children he may have. It also provides that such assistance shall be so given as not to interfere with the good order and discipline of the establishment, and shall be strictly confined to those inmates who are of the religious persuasion of the visiting minister. The 52d rule also

provides for visits of a regular minister of any religious persuasion to members of his congregation who may happen to be in the poorhouse, and for his holding a religious service in some convenient apartment, where it can be conducted with decorum, and subject to the direction of the house governor as to the hours when it shall take place.

"But all these rules are entirely silent on the question of remuneration. One can very well understand why that is so, because the question whether or not services of that kind are to be paid for is one which depends on circumstances, and is best decided by the Parochial Board, which administers the ratepayers' money, and is acquainted with the needs of the establishment under its charge.

"In the present case, the poorhouse being a large one, it appears that the Parochial Board have been in the habit of paying a chaplain at the rate of £300 a-year, who devotes his whole time to his duties. In other and smaller poorhouses it might be quite enough that the chaplain should be a regular minister, having a cure of souls outside, and merely visiting the poorhouse at intervals.

"The particular payment which is here challenged is a payment over and above the remuneration of the chaplain. I have not before me the considerations which led the Parochial Board to resolve to make it, but one may very well figure what these were from the statement that not less than one-third of the inmates of this establishment are Roman Catholics. I do not know whether the Parochial Board found it impossible to obtain the services of a Roman Catholic chaplain without remuneration, or whether they thought it just and right that services of so onerous a kind should not be given gratuitously. It does not seem to me at all material to the question which I have to decide whether their motive was the one or the other, because I have no doubt at all that in either case they were quite within their powers in deciding as they did.

"Mr Jameson, for the complainer, laid great stress upon the fact that the regular chaplain is by the rules to be a distinct officer of the poorhouse, whereas the visiting clergyman is not dignified by that name, but I do not know that that makes any difference in the question of remuneration. Both are subject to the regulations of the establishment, and must conform in all respects thereto. I think therefore it is impossible to say that the resolution which the Board came to—and I must assume that they came to it upon reasonable grounds, and in the knowledge of local circumstances of which I am ignorant—is in any way *ultra vires* or illegal."

The complainer reclaimed, and argued—The respondents had made a voluntary gift for past services to this Roman Catholic clergyman out of the funds raised by assessment, and they were not entitled to do that. The policy of the Poor Law Acts was that when anyone was paid for subjects beyond the mere support and clothing

of the pauper, that must be specially provided for by the statute. The statute said nothing about paying for religious instruction. The only way in which any payment could be made for religious instruction was under the rules approved of by the Board of Supervision. In these rules the only payment that could be made was to the Protestant chaplain. As he was the paid officer who was appointed for the purposes stated in the Act, the Board could not appoint any other officer for the same purposes—*Board of Supervision v. Parochial Board of the City Parish of Glasgow*, February 1, 1850, 12 D. 627. This resolution was therefore *ultra vires* of the Board.

The respondent argued—The only section of the Act which dealt with the matter of religion was the 64th, which said nothing about any payment. The only appointment which was made under the Board of Supervision rules was that of a paid Protestant chaplain, but although the Parochial Board could not appoint another chaplain, there was nothing to prevent them from making such payments, as in their discretion seemed proper, to clergymen who were allowed to visit paupers of their own persuasion under the rules. This was eminently a case for the exercise of that discretion.

At advising—

LORD JUSTICE-CLERK—The question in this case is, whether it is illegal for a parochial board in Scotland to grant a sum of money to a Roman Catholic clergyman for services which he has rendered as such to the Roman Catholics in the poorhouse? It appears that in the City Parish Poorhouse of Glasgow, which is the one in question, there are as many as 500 Roman Catholic inmates, whose spiritual needs have been regularly and efficiently attended to by this clergyman, for whose services the grant is made to the religious organisation which sends him to do the duty.

It is admitted that the board are not entitled to appoint a Roman Catholic clergyman as an official of the poorhouse. Under the regulations issued by the Board of Supervision, acting by authority of the Poor Law Act, a chaplain must be appointed to a poorhouse, and such a chaplain has certain prescribed or regular duties for the performance of which he receives a salary. As regards all persons whose religious belief makes them desire to be visited by a clergyman other than the official chaplain, provision is made by the regulations that facilities are to be given for their receiving such visits from any minister of religion at any suitable time, and where it is expedient from their number, facilities are to be given for religious instruction to those desiring it collectively, and for holding divine service.

In Glasgow, where there are so very many Roman Catholics congregated in one house, the authorities of the Roman Catholic Church do not leave it to the individuals in the poorhouse to ask for and obtain visits from clergymen selected by themselves, but appoint a priest to attend

to the spiritual care of the Roman Catholic inmates, and conduct divine service for them. Thus, although without any official appointment so far as the Parochial Board is concerned, the care of these Roman Catholics becomes a matter of systematic and regular procedure, so that in fact they are as fully and well attended to as if they were under the charge of a chaplain holding their own religious creed.

In these circumstances the Parochial Board have come to be of opinion that the labours of this priest in the past might properly be recognised by a voluntary grant from the funds in their hands, while on the other hand certain ratepayers object to any such grant as an illegal appropriation of the rates.

I am unable to hold that the Parochial Board in giving this grant have exceeded their powers. It is a grant in respect of services the efficiency of which is not impugned, and services of a character which the regulations expressly recognise that the inmates are entitled to have. It was contended on behalf of the objectors that no clerical services can legally be recognised by payment except those of a Protestant clergyman appointed to be chaplain, and that if those who could not accept such services desired the services of others they could only have them at their own expense, which, of course, in the case of paupers, would mean that they could not have them at all. I do not concur in any such strong view as to the application of the rates. I think the Parochial Board are entitled, if they consider that valuable services have been rendered to the inmates of the poorhouse in a matter in which the inmates have a proper and legitimate need for services, to give a reasonable grant in recognition of their careful and efficient performance. I cannot say that such a discretionary award is beyond the powers of the board. That board is elected by the ratepayers, and the ratepayers can deal with them if they consider that the discretion vested in them is unwisely or improperly exercised. But I cannot hold that the board has here done what is illegal so as to entitle the individual ratepayer to demand the intervention of a court of law to interdict them from making such a grant, even although such grant may go beyond the salary fixed for the chaplain.

It is to be noted that the regulations, under which alone provision is made for religious services and visitation, does not even in the case of the chaplain make any allusion to remuneration. All questions regarding remuneration are left to be dealt with by each board according to its discretion in the circumstances. I do not think it to be *ultra vires* of the board to recognise efficient services of a religious character by a grant of money. They could surely give such a grant where assistance had been given to a chaplain in a case where the work was too great to be overtaken by one person. I see no reason why they should not also make such a grant where a certain number of the paupers required the ministrations of a

clergyman of another creed. I am therefore of opinion that the Lord Ordinary's judgment should be affirmed.

LORD RUTHERFURD CLARK—My opinion is that the payment in question is not beyond the powers of the Parochial Board.

LORD TRAYNER—The question raised in this case cannot be decided by a reference to any of the provisions of the Poor Law Act 1845, or of the rules and regulations issued subsequently to that Act by the Board of Supervision. The Act of 1845 makes no provision directly for affording "religious assistance" to the inmates of a poorhouse by the appointment of a chaplain or otherwise. It simply directs the parochial board to make rules "for the admission of any known minister of the religious persuasion of any inmate of such poorhouse at all reasonable times, on the request of such inmate, for the purpose of affording religious assistance to such inmate." Naturally the Act makes no provision for the remuneration of services so rendered on the request of an inmate. The Board of Supervision, however, by rules which under the Act of 1845 it is authorised to make (and the validity of these rules is not now questioned), provided that the religious instruction of the inmates of a poorhouse should be committed to a chaplain; but again, by these rules, although the duties of the chaplain are somewhat carefully defined, no provision or direction is made or given as to his remuneration. As the law at present stands, therefore, every inmate of a poorhouse is entitled to ask and to have facilities afforded for obtaining "religious assistance" from a minister of that religious persuasion to which the inmate belongs; and there is no direct provision for the remuneration of these services, no matter of what particular persuasion the minister rendering them may be a member. I am not surprised that the law should stand thus, because what religious assistance may be necessary or proper, and what payment in return for it may be reasonable, are entirely questions of circumstances which no general provision could properly meet. It may be quite a reasonable question for the determination of a parochial board, whether in the special circumstances of the poorhouse under their charge they should appoint a chaplain or not, and if appointed, what in the circumstances would be a proper remuneration for his work. Equally it appears to me to be a fair question for the parochial board, and one quite within their competency to decide, what remuneration, if any, should be given to a minister who has attended to the religious wants of inmates of the poorhouse of a different religious persuasion from that of the appointed chaplain. That is what has been done here and is complained of by the suspender. I agree with the Lord Ordinary that the resolution of the respondents should not be interfered with. There is no law against the resolution they have adopted; there is,

it appears to me, as much law in favour of it as there is for any payment made in return for religious assistance rendered to the inmates of a poorhouse; and the resolution appears to me to be one that is supported by considerations of good sense and propriety.

LORD YOUNG was absent.

The Court adhered.

Counsel for Reclaimer—Jameson—Wilson. Agents—E. A. & F. Hunter & Co., W.S.

Counsel for Respondent—C. S. Dickson—Younger. Agents—W. & J. Burness, W.S.

Friday, June 30.

SECOND DIVISION.

THE NORTHERN ACCIDENT INSURANCE COMPANY, LIMITED, PETITIONERS.

Company—Memorandum of Association—Extension of Object of Company—Special Resolution—Companies (Memorandum of Association) Act 1890 (53 and 54 Vict. cap. 62).

A company registered under the Companies Acts, *authorised* to extend the objects of the memorandum and articles of association, for the purpose of securing economy of management, and of enabling the company to carry on subordinate branches of business usually associated with the original business of the company, and which were not foreign to these original objects or of a speculative nature.

The Companies (Memorandum of Association) Act 1890 (53 and 54 Vict. cap. 62) provides, section 1—"Subject to the provisions of this Act a company registered under the Companies Acts 1862-1886 may, by special resolution, alter the provisions of its memorandum of association or deed of settlement with respect to the objects of the company so far as may be required for any of the purposes hereinafter specified, but in no case shall any such alteration take effect until confirmed on petition by the Court, which has jurisdiction to make an order for winding-up the company." Section 2—"Before confirming any such alteration the Court must be satisfied (a) that sufficient notice has been given to every holder of debentures or debenture stock of the company, and any person or class of persons whose interests will in the opinion of the Court be affected by the alteration." Section 5—"The Court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company (a) to carry on its business more economically or more efficiently; or (b) to attain its main purpose by new or