

1865.
*March 16th, 17th,
 20th, 21st.*

THE INCORPORATION OF THE TRINITY
 HOUSE OF LEITH, AND THE INCORPO-
 RATION OF THE MERCHANT COMPANY
 OF LEITH, ET AL., APPELLANTS.
 THE REVEREND HENRY DUFF, MINISTER OF
 THE SECOND CHARGE OF SOUTH LEITH, RESPONDENT.

When the legislature has adjusted existing differences by an equitable and permanent arrangement, parties,—more especially those who have gained by that arrangement,—shall not be allowed to disturb it by renewed or further litigation.

THIS case, (one solely of local interest, involving no general principle, and depending on the construction of a local Act, and of certain documents and proceedings,) is very fully reported in the Second Series of the Court of Session cases (*a*). It is also reported copiously in the Scottish Jurist (*b*).

The Appeal was brought by the above Incorporations against a judgment of the Court of Session (First Division), finding that they were not discharged from liability to pay stipend to the Respondent, although a local Act had deprived them of the seat rents, revenues, and patronage of the benefice.

The question was, whether the arrangement established by the local Act was not in itself so comprehensive and exhaustive, as well as so just and equitable, as to preclude the institution of the action to which the minister of South Leith had resorted against the Incorporations. The Court below determined that the action was maintainable, and they decreed accordingly.

The *Attorney-General* (*c*) and Mr. *Anderson* were for the Appellants.

Mr. *Rolt* and Mr. *Neish* for the Respondents.

(*a*) Vol. 24, p. 1103.

(*b*) Vol. 34, p. 548.

(*c*) Sir Roundell Palmer.

The points contested appear sufficiently from the following opinions delivered by the Law Peers.

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v.
DUFF.

The LORD CHANCELLOR (*a*):

My Lords, I think that the whole question now agitated was settled in a very equitable and proper manner by the Act of Parliament which was passed in the year 1846.

*Lord Chancellor's
opinion.*

Remembering that the right of the minister to an augmented stipend was matter of controversy, I beg of your Lordships to observe the exact status of the several parties, and also the facts of the case as we collect them from the preamble of the Act of Parliament.

The four Incorporations were entitled to receive, and did receive, all the rents and revenues resulting from the sittings in the church as their own proper funds. They also derived some benefit from the burial fees and mort-clothes, and they were entitled to the patronage of the second minister of the church; and they were subject to the obligation of paying the stipend of that minister.

There is also another fact which is material to be collected from the preamble, and it is that the Incorporations themselves, as corporate bodies, were likely to fall into decay; a fact unquestionably of great importance for the second minister to consider with reference to the security of his stipend.

Controversies arose as to who were liable to the repair of the church, whether the heritors or the Incorporations? And the Legislature had to determine what was best to be done with reference to the interest of the minister, with reference to the interest and the liability of the Incorporations, and also with reference to the interests of the heritors. The fact is

(*a*) Lord Westbury.

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particularly mentioned that the minister was likely to be compelled to take legal proceedings for the purpose of having it determined what amount of stipend was legally exigible by him from the Incorporations.

The Legislature required the heritors to agree to the complete restoration and repair of the church, and they laid upon them the necessary burden for that purpose, namely, the sum of 3,500*l.* By the fulfilment of this obligation the parish church was placed in a state of complete repair, and of course the amount of revenue derivable from it was likely to be greatly augmented. The Legislature then took away from the Incorporations the right of patronage to the church, which they vested in the male communicants of the parish. The Legislature also took away from the Incorporations their ownership of the church, and vested it in trustees, upon trust to let the seats and receive the pew rents, and after deducting the expenses of keeping the church in repair and insuring it against fire, the income was burdened with the payment of the stipend of the second minister, fixing that stipend at 247*l.* 1*s.* 3*d.*; and contemplating the probability of a surplus, the Legislature provided that the ownership of the church should vest in and belong to the heritors of the parish, but that the right to levy seat rents should be limited to that sum of money which the necessity of keeping the church in repair might require.

We have here, therefore, evidence which demonstrates a final arrangement and settlement of this matter. The property is taken away from the Incorporations absolutely. The church is placed in the best possible state of repair at the expense of the heritors. It is handed over to the trustees in order to provide for the minister out of the proceeds the stipend which he claims. It is then subjected to a trust, in order to

afford security that the minister's stipend shall be independent of the revenue derived from the seat rents ; and by way of compensation to the heritors, the patronage is disposed of for their benefit ; the ownership of the church is given to them, and the trust is to be determined when and so soon as the fund shall become adequate for that purpose.

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If the matter had rested there, the reasonable presumption undoubtedly would have been that, inasmuch as the Incorporations were divested of the whole of their property, and of their rights and interests in the church, it would be reasonable to infer that their liability in respect of that property was also intended to be determined. But we are not left to conjecture merely upon that subject, because, by the 10th section of the Act, the amount of the liability of the Incorporations is expressly defined, it being declared that they "shall be bound," (your Lordships will observe the futurity of the expression), "and they are hereby taken bound to pay" the stipend up "to the term of Martinmas one thousand eight hundred and forty-six ;" and they are also placed under the obligation of paying all the arrears or by-gone demands at that date. Here, therefore, is a definite declaration of the extent and period of their liability.

It is a thing not immaterial for the benefit of the minister, that the Legislature, finding a sum of 570*l.* in the possession of the Kirk session of South Leith, hand over that sum to the trustees of the fund, as the commencement of a fund to be derived from the accumulation of the seat rents for his benefit.

I am compelled, therefore, my Lords, to move your Lordships that the Interlocutors appealed from be reversed, and that in lieu thereof a decree of absolvitor be substituted.

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Lord Cranworth's
opinion.

Lord CRANWORTH :

There is an advantage which I think the minister has gained, beyond the benefits which have been adverted to by my noble and learned friend, namely, that the amount of his salary was fixed. The preamble of the Act states that the amount of the minister's stipend was a matter in controversy. It was fixed by the statute at the highest sum he had ever demanded.

With reference to the argument of the Respondent, that the 16th clause was not a part of what the Legislature did, but an arrangement of the parties *inter se*, I cannot assent to such a proposition; but I think that, even if the fact were so, it would furnish an argument still stronger in favour of the Appellants. To suppose, however, that these parties, not being forced so to do by the Legislature, voluntarily entered into an agreement which they were not bound to enter into, that those who derived more benefit from the change than others should make good the difference in respect of by-gone transactions, and by-gone transactions only, seems to me to impute to them an intention which is as absurd as it is undiscoverable upon the face of the proceedings.

On the whole, therefore, I quite think with my noble and learned friend, that these Interlocutors cannot stand, and that the Defenders in the action ought to have been absolved.

Lord Kingsdown's
opinion.

Lord KINGSDOWN :

My Lords, I am of the same opinion as my two noble and learned friends, and I think that it is unnecessary to say anything further.

Judgment appealed from Reversed.

LOCH & McLAUREN—DODDS & GREIG.