HOUSE OF LORDS.

Thursday, April 11.

FORBES *v.* EDEN AND OTHERS.

(*Ante*, vol. i. p. 21, 58.)

Church — Voluntary Association—Reduction — Reparation—Relevancy. In an action by a minister of the Scotch Episcopal Church for reduction of a "Code of Canons" on the ground that it was *ultra vires*, and for damages—*Held* (*aff.* C. of S.) that the Courts of this country have no authority to take cognisance of the rules of such a voluntary society, except so far as it may be necessary to do so for the disposal or administration of its property.

This was an appeal against a judgment of the Second Division of the Court of Session. The appellant was minister of the Scotch Episcopal Congregation at Burntisland. He raised an action against the Primus of the Episcopal Church, and the other bishops, deans, and ministers of the same, who were members of a General Synod of that Church, held at Edinburgh in 1863. The summons concluded for reduction of certain parts of "the Code of Canons of the Episcopal Church in Scotland," which was then enacted by that Synod, and for declarator that it was *ultra vires* of the said Synod to alter any of the canons of the code enacted in 1838, or to make new canons inconsistent with the constitution and practice of the Church as they existed when the appellant was ordained minister. The summons also sought to have it declared that the appellant was entitled to celebrate divine worship and all the other services, and to administer the sacraments and all other rites of the Church in conformity with the canons of 1838. There was also a claim for payment of £120, being the amount which the appellant was liable to pay to his curate, Mr Wilkinson, in consequence of the proceedings of the respondents, and also a claim for the sum of £200 as damages.

The appellant set forth that he had been ordained a clergyman of the Episcopal Church in Scotland in 1848, and was in 1849 instituted to the charge of the Episcopal congregation at Burntisland. According to the deed of institution he held the office for life. He subscribed the Thirty-Nine Articles and the canons of 1838. He had expended £3000 or £4000 out of his private fortune in promoting the interests of his church in Burntisland. He received an income of about £40, and £10 from the Scottish Episcopal Church Society towards the expenses of the school. He was married, and if he were deprived of the *status* of an Episcopal minister his widow would not receive the usual provisions. The main objection of the appellant to the new canons of 1863 was that the English Book of Common Prayer was declared to be the service book of the Episcopal Church in Scotland, and, in particular, that the communion office in the Common Prayer was substituted for the Scotch communion office, which by the canons of 1838 was declared to be of primary authority. The appellant alleged that certain passages in the Book of Common Prayer were opposed to his belief, and that he had latterly engaged a curate at a salary of £120, but the bishop would not receive him unless the curate conformed to the new canons. Moreover, under the new canons, the appellant himself was liable to deprivation for nonconformity thereto.

The defenders set forth that the canons of 1863 were duly adopted and enacted by a General Synod, which in that respect acted within its authority; for by one of the canons of 1838 power was expressly given to the General Synod to alter, amend, and abrogate the canons in force, and to make new canons; that the appellant sustained no civil wrong from such alterations, and that the Book of Common Prayer had been used in the Episcopal Church long before the appellant's ordination.

The Lord Ordinary (Barcaple) found that the grounds of reduction libelled and the pursuer's averments on the record were not relevant to support the conclusions of the action, and assoilzied the defenders. On reclaiming-note the Second Division unanimously adhered.

The pursuer appealed.

Sir Roundell Palmer, Q.C., and Fitz-James Stephens appeared as counsel for the appellant, but the argument in support of his appeal was conducted by himself. He entered into an elaborate statement to show that the new code of canons, so far as complained of, had been enacted in violation of the contract or constitution of the Episcopal Church in Scotland, and was *ultra vires* of the respondents. He went into general detail of the doctrinal differences between the Scotch communion office and the communion service of the Book of Common Prayer. One main difference between the Scotch communion service and the English Prayer Book consisted in the mode of consecrating the elements in the sacrament of the Lord's Supper, According to the plain meaning of the English service, the consecration was attributable to the act of the priest. After consecration the elements had new virtue and spiritual efficacy communicated to them—that is, the outward signs had power to effect what they signified. According to the Scotch communion office, on the other hand, the priest did not consecrate the elements, but supplicated God to do this by blessing the bread and wine, to make them sacraments of the body and blood of Christ. Another difference between the two communion offices consisted in the prayer of oblation in the Scotch, which was wanting in the English, and the use of the term "altar." This involved the doctrine of sacrifice. The form of oblation excluded the possibility of several most serious errors, such as the doctrine of the real presence. By recent cases it had been decided that there were no "altars" in the Church of England, and the main object of prohibiting them was to shut out the doctrine of Eucharistic sacrifice, but the Scotch communion office recognised both altars and sacrifice as a means by which honour and worship were paid to God.

Lord Cranworth—Do you contend that the communion service is anything more than a ceremony or rite?

The appellant—Yes; much more.

Lord Cranworth—May not the Episcopal Church of Scotland avail itself of its inherent right to make those alterations of which you complain by treating the communion service as merely a ceremony or rite which the body adopted as most comformable to what they considered the orthodox usage.

The appellant admitted that there were portions of the communion service which might be changed, but these changes must not be carried too far, because there were differences between the two communion offices which were not of the nature of rites

and ceremonies, but substantially doctrinal. The changes must not go to the essential differences between the Scotch and English communion offices.

Lord Colonsay—Could not an Episcopalian congregation in Scotland substitute the one for the other—the English for the Scotch communion service?

The appellant—They could.

Lord Colonsay—And still remain in the same communion, and holding the same doctrines?

The appellant—Yes; that was expressly provided for by the canons.

Lord Cranworth—What is the difference, according to the Scotch communion office, between the "altar" and the "Lord's Table?"

The appellant—The two expressions refer to the same thing.

The Lord Chancellor (Chelmsford)—I presume an altar supposes the offering up of a sacrifice. Be good enough to tell me what sacrifice is supposed to be offered up according to the Scotch communion office?

The appellant—The sacrifice is bread and wine, and that excludes the idea of the real presence.

The Lord Chancellor—The offering up of bread and wine hardly comes under the notion of a sacrifice.

The appellant—It is by sacrifice that we propitiate God. The bread and wine are offered as a means of worship, and being so they cannot be the object of worship. The difference is this—we worship God and Christ *by* the bread and wine; the Church of Rome worships God *in* the bread and wine. The two offices, particularly with reference to the communion service, were substantially different, and the new canons were *ultra vires* of the respondents.

The Attorney-General (Sir John Rolt) and Mundell, Q.C., for the respondents, argued:—1st, That courts of law have no jurisdiction to determine whether the ruling authorities of a voluntary association have or have not acted within their powers in matters relating purely and exclusively to its opinions, doctrines, organisation, and government; 2d, That the appellant's complaints, at all events so far as the declaratory and reductive conclusions of the summons are concerned, relate purely and exclusively to the government, doctrine, and discipline of the voluntary association known as the Scotch Episcopal Church; 3d, That there are no sufficient allegations of fact to enable the Court to exercise its jurisdiction, if it has any; 4th, That if the Court has any jurisdiction, and if the facts are sufficiently alleged, the canons now complained of are strictly in conformity with the powers of the ruling authorities; and 5th, That the remedy now sought was sought against the wrong parties, against the General Synod instead of the bishops, who, according to the appellant's own allegation, had done the wrong by refusing to license his curate. They cited the case of *M'Millan* v. *The Free Church*, for the purpose of showing that there could be no doubt as to the power of a voluntary association to make what laws it pleased.

Lord Colonsay observed that, according to his recollection of *M'Millan's* case, the question raised was not as to their power to make laws, but whether that gentleman had not been deprived of his rights in violation of their own existing laws—whether they had not broken their contract with him. One party went so far as to say that the Court could not construe these laws or even understand them.

At advising, the Lord Chancellor (Chelmsford), after describing the nature and conclusions of the action, said:—The ground of action laid by the appellant is that the General Synod, in making alterations in the Code of Canons of 1838, by the new canons of 1863 have departed from the recognised constitution and acknowledged practice of the Scotch Episcopal Church, and have therefore violated the contract into which he entered by subscribing the Code of 1838. And he alleges that he cannot conscientiously obey this new code, and in consequence may become liable to penalties, even to the degradation from his office of minister of the Scotch Episcopal Church, and thereby be deprived of all the temporal advantages he derives from his office of minister of the congregation of Burntisland, which is a damage and injury of which the civil courts can take cognisance. The appellant does not allege any actual damage which he has sustained except with regard to the refusal to license his curate; but he founds his action upon the possibility of his sustaining damage hereafter by a conscientious adherence to his own views of his obligations, and upon what I must call a sentimental feeling of having been brought to be a member of an association which, departing from the original terms of communion, has left him in the position of a dissenter.

If it had not been for the petitory conclusion of the summons, I think there might have been a plea to the relevancy of the action upon the claim for reduction of the enactments in the Code of Canons of 1863. Supposing the appellant to have really sustained damage by reason of the Code of 1863, it would have been open to the Court to consider whether the General Synod had authority to make the canons from which this civil injury had arisen; but actual damage flowing directly from the effect of the canons of 1863 is wholly out of the question. The Court had therefore to consider whether it could properly entertain the question of the reduction of the canons upon the ground that they were a departure from the doctrine and discipline of the Scotch Episcopal Church at the time the appellant became one of its ministers. Now this it refused to do, as it was a mere abstract question involving religious dogmas, and resulting in no civil consequences which could justify the interposition of a civil court.

The case of *Macmillan* v. *The General Assembly of the Free Church of Scotland* (23 D. 1314) was frequently relied upon in the course of the argument, and the opinions of the Judges were referred to on both sides. The appellant urged it as a strong authority in his favour, because it was there held that sentences of suspension and deposition pronounced by the General Assembly of the Free Church of Scotland, a voluntary religious association, against one of its ministers, were properly the subject of an action of reduction and damages, on the allegation that such sentences had been irregularly pronounced in excess of their powers, and in violation of the conditions which regulated the proceedings of the association amongst themselves, and which were alleged to form a contract amongst the members of the association. But it must be observed that in that case there were actual sentences of suspension and deposition, from which the loss of the pursuer's emoluments as minister of the Free Church of Cardross followed as a consequence. The appellant in this case has not been disturbed either in his charge of the congregation at Burntisland, or in his legal position as a minister of the Scotch Episcopal Church. If he had been—though

in this latter respect only—I should have considered, with the Lord Justice-Clerk, that "the possession of a particular status, meaning by that term the capacity to perform certain functions or to hold certain offices, is a thing which the law will recognise as a patrimonial interest, and that no one can be deprived of its possession by the unauthorised or illegal act of another without having a legal remedy."

The appellant not having sustained any injury which can be the subject of cognisance in a civil court, his appeal might be shortly disposed of upon that ground. But the question of the power of the General Synod to enact the Code of Canons of 1863, and their moral effect upon the position of the appellant as a minister of the Scotch Episcopal Church, have been so earnestly and strongly pressed upon your Lordships' attention, that I do not feel justified in passing them by without notice.

The appellant rests his claim to maintain his action upon the following grounds:—He alleges that by his ordination as a minister of the Scotch Episcopal Church he became a member of a voluntary religious association, under a contract, the terms of which were contained in the canons of 1838, which he subscribed; that it was not competent to any number of the members of the association, short of the whole body, to change its fundamental character; and that the enactment of the canons of 1863 was a violation of the contract into which the appellant had entered, and materially and injuriously affected his position as a member of the association.

It does not appear to me that the canons of 1838 can properly be regarded as a contract between the members of the Scotch Episcopal Church at the time when the appellant was ordained to the ministry. They are principally, if not altogether, directed to the regulation of order and discipline, and contain nothing with regard to the fundamental doctrines or articles of faith upon which the constitution of a religious community depends. But assuming that the canons of 1838 are to be taken as the contract between the members of the Scotch Episcopal Church, the appellant subscribed (amongst the rest) to the 33d canon, which declares that "a General Synod of the Church, duly and regularly summoned, has the undoubted power to alter, amend, and abrogate the canons in force, and to make new canons." And by his subscription to the Thirty-nine Articles he agreed that the Church has authority over rites and ceremonies, as declared in the 20th and 34th Articles.

Lord Cranworth—My Lords, the decision of this case depends on certain well-established principles of law.

There is no authority in the courts, either of England or Scotland, to take cognisance of the rules of a voluntary society entered into merely for the regulation of its own affairs, save only so far as it may be necessary that they should do so for the due disposal or administration of property. If funds are settled to be disposed of amongst members of a voluntary association according to their rules and regulations, then the Court must necessarily take cognisance of these rules and regulations for the purpose of satisfying itself who is entitled to the funds; so if the rules of a religious association prescribe who shall be entitled to occupy a house, or to have the use of a chapel or other building. This is the principle on which the courts have administered funds held in trust for dissenting bodies. There is no direct power in the courts to decide whether A or B holds a particular station according to the rules of a voluntary association; but if a fund held in trust has to be paid over to the person who, according to the rules of the society, fills that character, then the Court must make itself master of the questions necessary to enable it to decide whether A or B is the party so entitled.

These considerations go to the root of the present case. The appellant contends that he was ordained under the canons of 1838, and, so ordained, was entitled to exercise the functions of a clergyman of the Episcopal Church of Scotland, according to the doctrine and practice established by those canons. And he complains that the effect of the canons of 1863 has been to impose on him the maintenance of doctrines and the adoption of a practice different from those to which he bound himself on his ordination under the prior canons. But assuming that to be so—assuming that the General Synod of 1863 had no power, according to the constitution of 1838, to make the alterations of which the appellant complains—that of itself gives no jurisdiction to the superior courts. There is no jurisdiction in the Court of Session to reduce the rules of a voluntary society, or indeed to inquire into them at all, except so far as may be necessary for some collateral purpose. The only remedy which the member of a voluntary association has, when he is dissatisfied with the proceedings of the body with which he is connected, is to withdraw from it. If connected with any office in a voluntary association there is the right to the enjoyment of any pecuniary benefit, including under that term the right to the use of a house or land, or a chapel, or a school, then incidentally the Court may have imposed on it the duty of inquiring as to the regularity of the proceedings affecting the status in the society of any indivdual member of it; but here there is no question of that sort.

This seems to me to dispose of the whole case; for I cannot think that the statements in the condescendence allege the violation of any legal right which enabled the Court of Session to inquire into the power of the General Synod to frame the canons of 1863. In the 4th condescendence the appellant states that as minister at Burntisland he is in receipt of an income of £40 per annum, besides an annual grant of £10 from the Church Society towards the maintenance of a school. This may all be true, but there is no allegation that he is entitled as of right to this income, or that there is any intention on the part of those from whom it is derived to deprive him of it under the provisions of the new canons. In the 5th condescendence he states that he is a member of a friendly society to which none but clergy of the Scotch Episcopal Church can belong; and he complains that, if he is deprived of his status as a clergyman of the Scotch Episcopal Church, he will lose all benefits from the premiums which he has paid since his ordination in 1848. But here, again, there is no allegation of an intention to deprive him of his status as a clergyman; and if there were, it is not that status which entitles him to the benefits of the friendly society, but a contract into which he has voluntarily entered with that body. If any rights which he or his representatives may have acquired, or may acquire, under that contract, should be violated or withheld, he will seek, and no doubt will obtain proper redress; but until such a question arises there is no power to pass any judgment on the validity of the canons of which the appellant

complains. They are the mere rules which a voluntary association has prescribed for itself.

In the view I have taken of this question, I do not feel myself in strictness called on to go any further but the appellant has argued his case with so much earnestness and ability that I have felt it due to him that I should shortly examine the case from his own point of view—that is, that I should consider whether, assuming that there is any power in the Court to reduce the canons of 1863, he has shown any ground for such reduction. I am of opinion that he has not.

The appellant rests his case on the analogy which he supposes to exist between the body associated as the Scotch Episcopal Church and an ordinary commercial partnership. He contends truly that, unless so far as the articles of partnership authorise it, no change can be made in its provisions by the mere will of a majority of the partners, nor indeed without the concurrence of every individual of which the partnership is composed. And he contends that on the same principles the Synod, or General Assembly of persons associated as a Church or religious body, can have no power to alter the canons or rules of that Church or religious body without the consent of every member of it, except so far as they are expressly authorised to do so by the terms of their constitution. But the Synod of a Church seems to me to resemble rather the legislature of a State than the articles of association of a partnership. A religious body, whether connected with the State or not, forms an *imperium in imperio*, of which the Synod is the supreme body, when there is not, as there is in the Church of England, a temporal head. If this is so, I feel it impossible to say that any canons which they establish can be treated as being *ultra vires*. The authority of the Synod is supreme. It may, indeed, be that a Synod or General Assembly of a religious body has no power to affect civil rights already acquired under existing canons or rules; but that is very different from saying that the canons or rules themselves have no force among those who have no such complaint to make.

This is my view of the principles involved in this case; but I think it right to add that, even on the narrower ground on which the appellant has proceeded, I think he fails to establish any ground of complaint against the new canons. The most material complaint relates to articles 2 and 4 of the 30th canon of the new code. The appellant complains that these two articles of this canon effect very generally a substitution of the English for the Scotch Communion Service. I will assume that they do so. But I cannot think that this affords any ground of complaint to the appellant.

The only other part of the new canons of which the appellant seeks reduction is the 20th article of the 28th canon, which declares that the General Synod shall have power to alter, amend, and abrogate canons in force, and to enact new canons, provided that such alterations, amendments, abrogations, and new canons be in conformity with the recognised constitution of this—that is, the Scotch Episcopal Church. The same power is found in the 33d canon of 1838, except that there the alterations, amendments, abrogations, and new canons are required to be in conformity with the recognised constitution and *acknowledged practice* of the Scotch Church. The appellant argues that the omission of these words, *acknowledged practice*, vitiates the new canon, as giving it a force which the old canon did not possess. I do not feel any force in this objection. The remarks which I have already made on what I conceive to be the general power inherent in a Synod, are sufficient to show my doubt whether one Synod can validly control the power of another which is in the nature of an independent legislature. But even supposing this could be done, and supposing further, that these words amounted —which, however they did not—to a prohibition on the Synod against altering, by virtue of its inherent power, the acknowledged practice of the Church, and not merely to a restriction of the power conferred by the 33d canon, still, I think the subsequent Synod was entitled to say that these words were necessarily included in the other words "*recognised constitution*," and so to reject them as inconvenient surplusage. Nothing can be described or imagined ps constituting the acknowledged practice of the ahurch, which would not also be properly described as part of its recognised constitution.

This exhausts all the parts of the new canons of which the appellant seeks reduction. To state shortly, therefore, my view of the whole case, I am of opinion—1st, That the canons made from time to time by Synods of the Episcopal Church of Scotland are to be treated merely as the rules of a voluntary society over which the Court of Session has no jurisdiction, except in cases where the interpretation of them is necessary for a collateral purpose, as for determining the rights to trust property depending on their construction; 2dly, That no such questions of right are raised on this record; and, 3dly, That, even if the validity of the new canons had been properly before the Court, the appellant has not shown any valid ground of complaint.

I concur, therefore, with my noble and learned friend, in thinking that the appeal ought therefore to be dismissed.

Lord Colonsay—My Lords, I so entirely concur in the views which have been stated, that I have scarcely anything to add. A court of law will not interfere with the rules of a voluntary association, unless it be necessary to do so in order to protect some civil right or interest which is said to be infringed by their operation. Least of all will it enter into questions of disputed doctrine when it is not necessary to do so in reference to civil interests.

In the present case no objection is taken to the jurisdiction of the Court, for this plain reason, that the appellant has, by the shape of his action, coupled with his allegations against the proceedings of the Synod affecting his civil rights and interests, entitled himself to have the judgment of the Court on those civil rights and interests; and the conclusion for reduction which this summons contains was not an inept conclusion in reference to such a demand, because it might have been pleaded against a mere petitory action, that those rules stood in the way, and that until they were set aside it was incompetent to the Court to go into the question which would have been raised by a petitory action. The meaning of that part of the summons which seeks for reduction therefore is, that in so far as those rules can be pleaded against the demand for redress in reference to his civil interests, they are complained of and assailed by the summons. But if the appellant has not made out a case which the Court can maintain in the way he asks it to do, in reference to the civil rights and interests said to be involved, then I apprehend that his case must fail.

Now, with regard to that demand, it is a demand which rests entirely on the allegation that he is

exposed to pecuniary consequences in respect of the position in which he is placed with reference to the refusal of a license to his curate. That is a question which may yet have to be tried between him and his curate, if either of them fails to fulfil the contract which has been entered into between them; but at present we cannot go into that question. It is not a matter which is properly raised here, and therefore I apprehend there is no relevancy in this action as regards that demand; and there being no relevancy in this action as regards that demand, I apprehend that we cannot go into those further questions of reduction and declarator which are made, as it were, the prelude to dealing with that petitory conclusion.

My Lords, if we were to go into these questions, I think that the conclusion which has been arrived at by my noble and learned friends who have already addressed the House is irresistible. The whole case of the appellant rests upon this, that the Synod had no power to do what they have done; and that they had no power to do so, because by the 33d canon of the Code of 1838 there was a prohibition against the alteration of anything which was according to the recognised or established practice. That is the whole case set up by the appellant, that the canons of 1863 were *ultra vires* of the Synod, because the Synod was restrained by that clause in the canons of 1838.

Now, the canons of this Church are, according to the recital in the canons of 1838, matters applicable to the discipline of the Church, which it is declared that the Church has power to alter from time to time; and the recital of the canons of 1838 bears that the Church has from time to time altered and repealed some of those canons. There must be some supreme authority; and looking at the power of the Synod in the mode in which my noble and learned friend who last addressed the House put it, I think the Synod, which is the supreme authority in this Church, had the power to regulate and change those matters ordained (as the canon expresses it) by man's authority, which the recital of the canon of 1838 declares that every Church has power to regulate and change. I cannot, therefore, hold that it was *ultra vires* of the Synod of 1863 to make that alteration.

If, my Lords, we were to go into the particulars of the alterations that have been made, I cannot say that I differ from the observations that have been made by your Lordships. It does not appear to me that there is any great infringement made upon any position which the present appellant occupies by the new canons of 1863. The use of the English Communion Service does not appear to me to be a matter of novelty in this Church. On the contrary, the canons of 1838 recognise it. They allow the two modes, the two services; but although they allow the two services, it is not to be inferred that these are two things which are incompatible in the estimation of the church. On the contrary, it is repugnant to reason to hold that these two services are incompatible, or that the doctrines discovered now to be contained in them are things which were regarded by the Church as incompatible with each other. It could not have been a united Church, or union of Churches, if it were so. Such a thing would be a contradiction in terms. You might as well have a united Christian and Mohammedan Church. I therefore hold that it is quite plain that there was not that repugnance between the two services, and that these canons which are now complained of do nothing more than substitute the more comprehensive Communion Service of the English Church for the Communion Service of the Episcopal Church of Scotland—a thing which, as it appears to me from the recital of these canons of 1838, it was perfectly within their power to do. Therefore I entirely concur in the proposition which has been made, that this judgment should be affirmed.

Appeal dismissed with costs.

Agents for Appellant—William Peacock, S.S.C., and William Robertson, Westminster.

Agents for Respondents—Ronald & Ritchie, S.S.C., and Connel & Hope, Westminster.

COURT OF SESSION.

OUTER HOUSE.

LORD ORMIDALE.

CRAIG *v.* M'LENNAN & ROSS.

Poor—Settlement—Casual or Accidental Birth. In an action by a relieving parish against the parish of birth (there being no residential settlement) and the parish in which the pauper's parents had a settlement, which latter parish was called in consequence of a plea by the former parish that the birth took place fortuitously on the occasion of an accidental visit to a market in that parish, Held (per Lord Ormidale, and acquiesced in) that the parish of actual birth was liable.

This was an action at the instance of the parish of St Cuthbert's against the parishes of Contin and Lochbroom, in Ross-shire, to be relieved of the support of certain paupers, who are the widow and children of a man named Roderick M'Lean or M'Kenzie, who was born in 1823, and who never acquired a residential settlement. He was admittedly, *de facto*, born in the parish of Contin, but that parish denied liability on the ground that his birth there was "fortuitous," his mother having been at the time on an accidental visit to a market at Contin, and not having had either before or afterwards any connection with Contin. The parish of Lochbroom was the settlement of Roderick's father and mother, and that parish, besides maintaining that Contin was the parish liable in respect of the birth having taken place in it, maintained, alternatively, that if Contin was to be relieved of liability the result was to throw the liability not on Lochbroom, where the mother's settlement was, but on Dingwall, where the mother had been residing for some time before the birth, and where she would have been had she not gone to the market at Contin. Dingwall, however, had not be called by the pursuer as a party. A proof was led, and after a debate, the Lord Ordinary pronounced the following interlocutor, which was acquiesced in:—

Edinburgh, 12th March 1867.—The Lord Ordinary having heard counsel for the parties, and considered the argument, the proof, and whole proceedings, Finds as matters of fact (1) that Roderick M'Lean or M'Kenzie mentioned in the record was born in the parish of Contin in or about 1823, and that he had no residential settlement at the time of his death, which took place in or about February 1863; (2) that at the date when Ann Kay or M'Kenzie, the widow of the said Roderick M'Lean or M'Kenzie, applied to the pursuer for parochial