

Tuesday, July 8.

OUTER HOUSE.

[Lord M'Laren.

PEAKE AND OTHERS v. THE ASSOCIATION
OF ENGLISH EPISCOPALIANS IN SCOT-
LAND AND OTHERS.

*Church—Voluntary Association of Dissenters—
Right of Minority to Resist Resolution of
Majority to Dissolve Association and Pay away
its Funds.*

An Association was formed by members of various English Episcopalian congregations for the purpose of providing the services of a bishop to exercise episcopal functions among them, and the services of a bishop were secured. In consequence of a majority of the Association coming to be of opinion that a basis of union with the Scottish Episcopalian Church had been arrived at, and that the Association was no longer necessary, they proposed to dissolve the Association and repay to contributors the extant subscriptions to the Bishop's Fund. A minority were of opinion that the reasons for securing the bishop's services still existed, and sought to interdict the majority from carrying out the resolution. *Held* that the proposed acts were *ultra vires* of the majority of the Association, and interdict granted against the carrying out of the resolution.

There have existed in Scotland for a considerable period various separate congregations of Episcopalian in connection with the Church of England, and having certain points of disagreement on matters of doctrine with the Scottish Episcopalian Church. These congregations had not prior to 1877 been under any bishop.

In March 1877 there was formed an Association of English Episcopalian in Scotland. The purpose of the Association was to promote the interests generally of the English Episcopalian congregations, and specially to secure the continuance of the services of a bishop of the Church of England to exercise episcopal functions among them. For this purpose a fund was established to provide an income of £500 for the purpose of providing an annual allowance to the bishop, and for defraying the whole expenses of the Association, the fund to be called the Bishop's Fund. Seatholders and communicants in the various English Episcopalian Chapels in Scotland became members of the Association by paying ten shillings annually or by giving a donation of £10 or upwards to the Bishop's Fund. No subscription was required from the minister of any of the congregations. The congregations, members of which took part in the Association, were—St Thomas, Edinburgh; St Vincent, Edinburgh; St Jude's, Glasgow; St Silas, Glasgow; St Peter's, Montrose; St James, Aberdeen; St John's, Dundee; English Church, Nairn; besides the proprietors of some private chapels. A fund was thus formed to which the largest contributors were members of St Thomas', of St Peter's, and Mr Burnley, proprietor of Dunoon Chapel. The Association made an arrangement with a retired Colonial bishop of the Church of England, Bishop Beckles, and for some years the Bishop's Fund was employed in paying a salary to him.

In December 1882 the Primus and other bishops of the Scottish Episcopal Church prepared and issued a declaration in regard to the import and effect of two canons of that Church with a view to remove certain difficulties which had been felt by English Episcopalian congregations, and had led them to hold aloof from the Episcopal Church in Scotland. In consequence of this declaration a majority of the congregations, the members of which formed the Association, came to be of opinion that a basis for a union or satisfactory arrangement with the Scottish Episcopal Church whereby a bishop of that Church might perform episcopal functions among them had been arrived at, but the members of St Silas, Glasgow, St Jude's, Glasgow, and the proprietor of a private chapel at Skelmorlie, together with the incumbent of St Peter's, Montrose, did not share this opinion.

The articles of constitution of the Association make provision for its dissolution by article 15, which provided, "No alteration shall be made on the constitution of the Association without the sanction of the General Council, given at a meeting specially called for the purpose, on the requisition of ten members, and of which ten days' notice shall be given and confirmed by a general meeting of the Association."

On 8th April 1884 a requisition signed by ten members of the Association, the present respondents, was presented to the secretary calling on him to summon a meeting in terms of the above article, and stating that this resolution was to be submitted to the meeting—"That, looking to the change of circumstances that has taken place in regard to the congregations of English Episcopalian in Scotland and their relation to this Association since its formation, it is no longer expedient to continue the Association; that the same be therefore now dissolved, and that the balance on hand of the sums subscribed towards the capital of the Bishop's Fund, after meeting the allowance to Bishop Beckles for the current year, and all expenses, be repaid to the contributors thereof, or their representatives, in proportion to the amount of their respective contributions."

The meeting was held on 23d April 1884, and was attended by representatives of St Thomas' and St Peter's, and Dr Peake, incumbent of St Silas', and Dr Connolly, incumbent of St Peter's, two of the present complainers, when the resolution was carried with only two dissentients—Dr Peake and Dr Connolly. In consequence of the intimation of this note of suspension and interdict the meeting was adjourned to 29th October 1884. Drs Peake and Connolly, together with some other members of the Association, thereafter brought this note of suspension and interdict against the Association, its president and secretary, and the members of the council who had signed the requisition calling the meeting. The complainers were of opinion that no satisfactory basis of union existed.

They pleaded—(1) The proposed resolution, and the consequent dissolution of the Association and the division of its funds, being *ultra vires* and illegal, the complainers are entitled to interdict as craved. (2) The respondents are only entitled to apply the funds in terms of the constitution, and, *inter alia*, in payment of the allowance to Bishop Beckles or any other English bishop who may be arranged with by the Association. (4) The respondents not being entitled to divide any of the funds of the said Association

among alleged contributors thereof, unless under judicial authority, except by the unanimous consent of the whole Association, the complainers are entitled to interdict as craved. (5) No mere majority of the Association being entitled to pass the resolution complained of, or to dissolve the Association, or to divide and repay the funds thereof as proposed, the complainers are entitled to suspension and interdict as craved."

The respondents pleaded—“(3) The members of the Association are entitled, under the articles of constitution thereof, by a majority of their numbers at meetings of the General Council and of the Association respectively duly convened, to pass the resolution complained of, and to dissolve the Association and repay its funds to contributors as proposed. (4) The members of the Association are entitled, at common law, by a majority of their number, at a meeting of the Association duly convened, to pass the resolution complained of, and to dissolve the Association and repay its funds to contributors as proposed. (5) A majority of members of the Association being of opinion that material changes, occurring since its formation, supersede the objects thereof, is entitled to dissolve the Association and repay its funds to contributors as proposed.”

On 7th May LORD RUTHERFURD CLARK, Lord Ordinary on the Bills, passed the note without caution, and in respect of an undertaking given by respondents' counsel at the bar not to distribute the funds of the Association or to proceed any further with the matters mentioned in the note until the question had been tried, refused interim interdict.

The process was marked to LORD M'LAREN, who, after hearing counsel, pronounced this interlocutor:—“Sustains the reasons of suspension and interdict in so far as founded on the first and fifth pleas-in-law for the suspenders, suspends the proceedings complained of, interdicts, prohibits, and discharges the respondents and all others, the members of the Association, from passing at any meeting of the General Council or of the said Association a resolution in the following terms—[*Here followed the proposed resolution as above quoted*—]—and from acting upon or following out in any way as valid and legal the said resolution if carried at any meeting of the said Association or General Council; and further interdicts the respondents from dissolving the said Association; and further interdicts the respondents from repaying the balance on hand of the sums subscribed towards the capital of the fund known as the Bishop's Fund, after meeting the allowance to Bishop Beckles for the current year, and all expenses or any part of said balance or of the funds of the said Association to the alleged contributors thereof or their representatives, and decerns, reserving in the meantime the question of expenses.

“*Note.*—This is a process of suspension and interdict instituted by certain members of the Association of English Episcopalians in Scotland for the purpose of prohibiting the Association from passing a resolution, of which notice has been given, for dissolving the Association and dividing its surplus funds amongst the contributors. The prayer of the note contains other consequential clauses, to which it is not necessary that I should more particularly refer.

“The complainers deny that the objects of the

Association have failed, and claim that its funds should be administered in accordance with its constitution and rules.

“The Association of English Episcopalians is not a church or religious community in the proper sense. It is a voluntary Association of persons adhering to the communion of the Church of England, and its object is to provide a fund for enabling the congregations in Scotland who adhere to the distinctive doctrines and discipline of the Church of England to obtain the services of a bishop of the Church of England, especially with a view to the administration of the rite of confirmation. For some years the Association was able, in concert with the congregations which it desired to assist, to obtain the services of a retired Colonial bishop of the Church of England. In November 1882 a declaration was published by the bishops of the Scottish Episcopal Church with reference to certain canons of their Church to which exception had been taken by the English Episcopalians in Scotland. The purport of that declaration was to qualify the effect of subscription to the canons in this sense, that clergymen and others subscribing the canons were no longer to be regarded as being committed by their subscriptions to an approval of the distinctive peculiarities of these canons, or to the acceptance of doctrine which might be supposed to be inconsistent with the Book of Common Prayer, and (2) to permit the engaging in religious worship at informal meetings for devotion and instruction without requiring that the order of service should be the same as that of the regular stated services.

“In consequence of this declaration by the bishops of the Scottish communion, the majority of the English Episcopal congregations came to be of opinion that the elements of difference between the Scottish Episcopal Church and themselves were so far narrowed that they could conscientiously avail themselves of the ministrations of a bishop of the Scottish communion. In their opinion it was no longer necessary to continue the arrangement under which they had been in use to obtain the services of a Colonial bishop, and the congregations have in consequence dispensed with the attendance of an English bishop, and have accepted the ministrations of the Scottish Episcopal bishops having the oversight of the dioceses in which these congregations are respectively situated. This narrative will sufficiently explain the reasons which influence the majority of the Association of English Episcopalians in desiring that their Association should be wound up and its funds restored to the contributors.

“But a minority of the Association, being the complainers, represent to me that their objections to the ministrations of a bishop of the Scottish communion are not removed by the bishops' declaration. Their view is, that so long as the canons to which they take exception remain on the statute-book or standard of faith of the Scottish Episcopal Church there remains a real difference of faith and doctrine between the Churches, and that the mere disaffirmance on the part of the bishops of any desire to commit individual subscribers to what is distinctive in these canons does not release them from the obligation to form their own opinions of the meaning and importance of the distinctive doctrine of the canons. They consequently claim the right to act according to

their convictions, to decline the offered services of the bishops of the Scotch communion, and to continue the system under which they receive spiritual benefits from a bishop of the Church of England.

"It will be seen that the question in dispute is not precisely the same as the questions which have arisen in consequence of a schism or divergence of views between opposing parties in a religious community. Nor is the case to be assimilated to that of a charitable, literary, or scientific society which desires to be wound up on the ground that its purposes have been fully accomplished or that the supply of objects of the trust has failed.

"Yet there are principles of general application which may furnish a solution of this case. The leading principle is, that the Court will examine the standards of opinion of the two parties, not for the purpose of determining which of these is the true opinion, but for the purpose of ascertaining which of them is most in accordance with the views of the society as originally constituted. It is perhaps unfortunate that in such cases greater weight is not allowed to the opinion of the society itself as ascertained by the votes of a majority of its members. But according to settled practice the opinion of the majority is only to furnish the rule of action in these questions which the constitution of the society has left open. If the matter in dispute is not left open by the standards of the community, and a difference arises, the Judge cannot inquire as to the materiality of the difference. Differences which to a neutral person appear very small may in the view of the members of the society be of very great importance, as involving in some degree the affirmation or the dereliction of a principle which they greatly value. Therefore I can only inquire into the nature of the difference so far as to see that it is a real difference founded on religious conviction and conscientiously entertained.

"In the present case there is no question as to the sincerity of the complainers' avowal that they feel themselves precluded from accepting spiritual services from a bishop of the Scottish communion. That being so, it is necessary that they, and all who adhere to them, should be provided with the means of defraying the expenses of a bishop of the Anglican communion who may be willing to officiate as their bishop. I have then to consider whether the fund which is in dispute is applicable to this purpose. Why is it not to be applicable in the future as it has been in the past? It is a fund provided no doubt by voluntary contributions, but I apprehend that every contribution to such a fund is an irrevocable appropriation of the donor's money to the purposes of the Association. Of course if these purposes fail the donors or their heirs have a resulting interest in the fund. I do not understand that view to be disputed. But here there is no failure of the purpose, because there are still two English Episcopalian congregations in Scotland who desire the services of an English bishop, and who insist in continuing in a state of complete separation from the Scottish communion on the grounds and principles on which their Association was constituted. The canons from which they, in common with the respondents, dissented, remain on the statute-book, and the com-

plainers say that their objections are not removed by the interpretation which has been put upon these canons by their authorised expositors.

"While, for the reasons indicated, I shall grant interdict against the contemplated dissolution of the Association and conversion of its funds, I do not wish to prejudge the consideration of the question, whether, after providing for the spiritual requirements of the congregations who keep aloof from the Scottish communion, the surplus income of the Association may not be employed in adding to the income of one or more of the bishops of the Scottish communion in the less wealthy dioceses. The object of the Association was to make provision for defraying the expenses connected with the pastoral visitation of the English congregations by an Anglican bishop. But if the majority of those congregations now prefer a Scottish bishop to an Anglican bishop, while I must hold that the minority have the first claim upon the income of the fund as having the nearest contact with its declared purposes, I am far from saying that the majority may not be entitled to the use of what remains of the income of the fund on the ground that they are fulfilling its purposes in an altered form, but in the only form in which the fund can be made beneficial to the majority of the contributing congregations. I venture to think that this a question which may be settled by the parties interested without resort to a court of law."

Counsel for Complainers—Dickson. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for Respondents—Lorimer. Agents—Stuart & Stuart, W.S.

Wednesday, August 20.

B I L L C H A M B E R.

[Lord Fraser, Lord Ordinary on the Bills.

JOHNSTONE'S TRUSTEES v. LARGS BONE AND SEED CRUSHING COMPANY (LIMITED), AND LIQUIDATOR.

Public Company—Winding-up—Enforcement in Scotland of Order by English Court in course of Winding-up English Company—Diligence—A. S. 21st June 1883—Jurisdiction.

Held that the Act of Sederunt of 21st June 1883 providing for the enforcement in Scotland of orders made by a Court in England or Ireland in the course of winding-up a company under the Companies Act 1862 applies only to orders for payment of a sum of money.

Therefore where the liquidator of an English company had obtained from the English Court an order to seize the money and goods of a contributory residing in Scotland, and keep the same in safe custody till the further order of Court, and had registered this order in the Bill Chamber in the register of English judgments kept in pursuance of the Act of Sederunt, and then proceeded to seize goods alleged to belong to the contributory, the Lord Ordinary on the Bills granted interdict against his seizing or retaining the goods.