

[5th August 1839.]

(Appeal from the Court of Chancery, England.)

SAMUEL BIGNOLD and another, Appellants.

(No. 30.)

[*Knight Bruce—Jacob—Girdlestone.*]

THOMAS OSBORNE SPRINGFIELD and others,
Respondents.

[*Attorney General (Campbell)—Pemberton—Blunt.*]

Statute 5 & 6 W. 4. c. 76. s. 71. (Construction of)—Charity.
—Held, on consulting the judges, and affirming an order in Chancery, that the import of the above section of the above statute is, that the estate, title, and interest of bodies corporate, &c. of boroughs, in charitable estates, held by them in trust, should absolutely cease and determine on 1st August 1836, notwithstanding its being thereby provided that said estate, title, and interest should continue “until the 1st day of August 1836, or until “parliament shall otherwise order.”

THE 71st section of the act of parliament of the fifth and sixth of King William the Fourth is as follows:

“And whereas divers bodies corporate now stand seised
“or possessed of sundry hereditaments and personal
“estate in trust, in whole or in part, for certain cha-
“ritable trusts, and it is expedient that the adminis-
“tration thereof be kept distinct from that of the public
“stock and borough fund; be it enacted, that in every
“borough in which the body corporate, or any one or
“more of the members of such body corporate, in his or

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“ their corporate capacity, now stands or stand solely,
 “ or together with any person or persons elected
 “ solely by such body corporate, or solely by any parti-
 “ cular number, class, or description of members of such
 “ body corporate, seised or possessed for any estate or
 “ interest whatsoever of any hereditaments, or any sums
 “ of money, chattels, securities for money, or any other
 “ personal estate whatsoever, in whole or in part, in
 “ trust or for the benefit of any charitable uses or trusts
 “ whatsoever, all the estate, right, interest, and title,
 “ and all the powers of such body corporate, or of such
 “ member or members of such body corporate, in re-
 “ spect of the said uses and trusts, shall continue in the
 “ persons who at the time of the passing of this act are
 “ such trustees as aforesaid, notwithstanding that they
 “ may have ceased to hold any office by virtue of which
 “ before the passing of this act they were such trustees,
 “ until the 1st day of August 1836, or until parliament
 “ shall otherwise order, and shall immediately there-
 “ upon utterly cease and determine: Provided always,
 “ that if any vacancy shall be occasioned among the
 “ charitable trustees for any borough before the said
 “ 1st of August, it shall be lawful for the Lord High
 “ Chancellor or Lords Commissioners of the Great
 “ Seal for the time being, upon petition in a summary
 “ way, to appoint another trustee to supply such
 “ vacancy, and every person so appointed a trustee as
 “ last aforesaid shall be a trustee until the time at
 “ which the person in the room of whom he was chosen
 “ would regularly have ceased to be a trustee, and he
 “ shall then cease to be a trustee: Provided also, that
 “ if parliament shall not otherwise direct, on or before
 “ the said 1st day of August 1836, the Lord High

“ Chancellor or Lords Commissioners of the Great Seal
 “ shall make such orders as he or they shall see fit for
 “ the administration (subject to such charitable uses or
 “ trusts as aforesaid) of such trust estates.”

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On the 16th of August 1836 the appellants presented a petition to the Lord Chancellor by their description of two of the inhabitants of the city of Norwich, and also two of the persons who at the time of the passing of the said act of parliament were members of the body corporate called the mayor, sheriffs, citizens, and commonalty of the city of Norwich, on behalf of themselves, and all other the persons who at the time of the passing of the said act were members of and constituted such body corporate; which petition prayed that it might be declared that, according to the true construction of the said act of parliament, all the said charity estates, funds, and properties did then remain and continue vested in the said petitioners and the other of the surviving persons therein named, or in such of them as were or might be living at the time of making the order to be thereupon made, upon the uses and trusts and for the purposes to which, at the time of the passing of the said act of the 5 & 6 Will. IV., the same were applicable as aforesaid; and that they the said petitioners and the said other persons might be at liberty and might be authorized to administer and apply the same, and the rents, interests, dividends, and annual profits thereof, upon and for such uses, trusts, and purposes, in like manner as the same had been theretofore applied; or in case it should appear to the Court that such is not the true construction of the said act, then that they the said petitioners and such other persons as aforesaid might be appointed trustees for the aforesaid

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purposes, or otherwise that it might be referred to the master of the vacation to appoint proper persons to be such trustees, with liberty for them the said petitioners and the said other persons to propose themselves as such trustees, and that in the meantime the said petitioners and the said other persons might be at liberty to act in the administration of the said estates and funds, rents and income thereof, and that all proper directions might be given for effectuating the aforesaid purposes, and for duly administering the said estates and premises, and that the costs of and incident to the said application might be paid out of the said trust estates; or that his Lordship would make such further or other order as to his Lordship should seem meet.

On the 19th of August 1836 the respondents (who were respectively members of the council of the present body corporate of the mayor, aldermen, and burgesses of the borough and city of Norwich,) presented another petition to the Lord Chancellor, stating that, in consequence of the lapse of the said 1st day of August, and parliament not having given any order or direction in respect to said estates, there were no longer any trustees to administer the charity, and therefore praying simply that it might be referred to one of the masters of the said Court to approve of some proper persons to be appointed trustees of the said charities; or that his Lordship would make such other order for the administration of such trust estates as to his Lordship might seem just and fit.

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On 20th August 1836, the Lord Chancellor made an order to the effect following; viz., That it be referred to the master of this Court in attendance during the vacation to appoint proper persons to be trustees of and for

the charity estates and property late vested in or under the administration of the corporation of Norwich, or any of the members thereof, in that character, which are affected by the said section of the said act. And it is ordered, that all deeds, books, papers, and writings in the custody or power of any of the parties, relating to the said charity estates and property, be produced before the said master upon oath, as he shall direct, and he is to be at liberty to state any special circumstances, as he shall think fit. And his Lordship doth reserve the consideration of all further directions, and of the costs of these applications. And any of the parties are to be at liberty to apply to this Court, as there shall be occasion.

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Messrs. Bignold and Rackham appealed.

Upon hearing counsel for the parties respectively, on the 19th February 1839, the cause was postponed, in order to have the opinion of the Judges upon the import of the foresaid section. On the 25th June Lord Chief Justice Tindal delivered the same, as follows:—

Lord Chief Justice Tindal.—My Lords, in answer to the question proposed by your Lordships to Her Majesty's Judges, viz., Whether the administration of the charity estates and funds, comprised in and described by the 71st section of the 5 & 6 W. 4., c. 76., continued after the 1st of August 1836 in the persons described in the said 71st section, no subsequent act having been passed respecting the same before the 1st August 1836, and no vacancy having been occasioned among such persons before that time? I have the honour of stating our opinion to be, that the administration of the charity estates and funds referred to in the question did not

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continue, after the 1st August 1836, in the persons described in the 71st section of the act.

It was admitted by the counsel for the appellants in the course of the argument, and very properly admitted, that it is impossible to put any construction on the whole of the clause without meeting with difficulty. But we think ourselves bound to put that interpretation upon it, which, taking the whole of it together, appears to do the least violence to the words employed in it, and at the same time to give a consistent meaning to every part of the section; and keeping this object in view, we think the words in the 71st section, that the powers of the former trustees shall continue “until the 1st day of August 1836, or until parliament shall otherwise order, and shall immediately thereupon utterly cease and determine,” are to be construed as if the words had been, “until the 1st of August 1836, or until parliament shall ‘in the meantime’ or ‘sooner’ otherwise order;” and that the words “shall immediately thereupon utterly cease and determine,” intend that if parliament does not in the meantime otherwise order, the powers shall cease and determine upon the 1st of August; and if parliament did in the meantime otherwise order, then they should cease upon the day which should be thereby appointed and substituted by the legislature instead of the 1st of August. And we feel ourselves warranted in giving this construction to the earlier part of the clause, by the consideration that the last provision in the same clause contains an enactment relating to the same subject matter of legislation, and which is free from all ambiguity whatever, viz., “Provided also, that if parliament shall not otherwise direct before the said 1st day of August 1836,” the Lord Chancellor

shall make such orders as he shall see fit for the administration of such trust estates; and we cannot understand the legislature to have had in its view an alteration by parliament unlimited in point of time in the former part, but limited in point of time to the 1st of August in the latter part of the same section.

The construction contended for on the part of the appellants is further liable to this objection,—that it leaves the time at which the powers of the former trustees are to cease and determine altogether undefined and uncertain. There might happen, according to that construction, an interval of time of unlimited extent before parliament might think fit “to interfere and otherwise order,” and in the meantime it is obvious all would be involved in doubt and uncertainty. And again, there is, as it appears to us, a very strong objection against the reading “and” instead of “or,” as contended for on the part of the appellants; that is, again reading the act, “until the 1st of August 1836, and until parliament shall otherwise order;” for this would imply that parliament could have no power to make such an order until after the 1st of August had passed, a construction not only inconsistent with the general authority of parliament, but irreconcilable with the proviso above referred to, which expressly refers to an alteration to be made before the 1st of August.

Upon the whole, we think the administration of the charity estates and funds did not continue in the persons described in the 71st section after the 1st of August 1836.

LORD CHANCELLOR. — This is a case, in which your Lordships have heard the opinion of the Learned Judges. It is an appeal from an order made in Chancery; and

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the opinion of the Learned Judges being (in conformity with that order), that the administration of the charity estates did not continue in the persons described in the seventy-first section of the act after the 1st of August 1836, I shall move that your Lordships adopt the opinion so expressed; and the only question will be as to the costs. This being an appeal against an order which, in the unanimous opinion of the Learned Judges, is considered to be a correct order, and the respondents being trustees of charities, I apprehend your Lordships will think it a case in which the order ought to be affirmed, with costs.

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LORD WYNFORD.—My Lords, I quite agree in the judgment of the Learned Judges, and the opinion which they have expressed was that which I had formed upon the question before I heard the judgment which has now been delivered. But I confess that, considering the difficulty in construing the act of parliament, and considering too that this is the first time that this question has come under the consideration of this House, and that it was important to the interests of the municipal charities in this country generally that the question should be determined, I think it would be hard to visit the appellants with costs. In this case, the Learned Judges have found their way, through all the mazes and perplexities of this act of parliament, in my opinion, to a right conclusion. But when it is admitted, even by the counsel, that the act of parliament was attended with difficulties, I think the appellants should not be visited with costs, and I would, therefore, move as an amendment upon that part of the motion of my noble and learned friend, that the judgment be affirmed without costs.

LORD CHANCELLOR.—I was not in the least aware that upon this point there would be any difference of opinion, otherwise I should have proposed that the farther consideration of the case be postponed, inasmuch as it is in the absence of a noble and learned Lord who had been present during the whole of the argument, and with whom I communicated on this subject before he left the House. But as the noble and learned Lord who has just addressed your Lordships differs in his view of the case, I would suggest that the consideration of the case be postponed.

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Mr. Attorney General.—May I be allowed to say, that on behalf of the respondents I am instructed to pray that the costs be allowed? We submit that it would be hard that the costs should fall upon the charity.

The cause stood adjourned till the 5th of August.

LORD CHANCELLOR.—In this case, which was heard some time since, your Lordships had the assistance of the Learned Judges, whose opinion was unanimous, that the order appealed from was the correct order. My Lords, when the Learned Judges gave that opinion I moved your Lordships to affirm the judgment. One question remains as to costs. My Lords, the order appealed from is an order made in the Court of Chancery. The Learned Judges have delivered their opinion unanimously that the judgment below is correct, and it is matter of course, unless there is some reason to the contrary, that costs should follow the affirmance of the judgment, and particularly in this case where the respondents are trustees of a charity.

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LORD BROUGHAM.— My Lords, there can be no doubt whatever upon it. I cannot say that a case might not have arisen in which a contrary practice might be adopted; but in this case there was not any doubt raised upon the construction of the act; the Learned Judges being unanimous shows there was no doubt.

The House of Lords ordered and adjudged, That the said petition and appeal be and is hereby dismissed this House, and that the said order therein complained of be and the same is hereby affirmed: And it is further ordered, That the appellants do pay or cause to be paid to the said respondents the costs incurred in respect of the said appeal, the amount thereof to be certified by the clerk assistant.

BRUTTON and CLIPPERTON — PARKES and PRESTON,
Solicitors.