

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Lang v. Purves and others, from the Supreme Court of New South Wales; delivered on the 25th February, 1862.*

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Present:

LORD KINGSDOWN.

MASTER OF THE ROLLS.

SIR JOHN T. COLERIDGE.

THIS case has been most ably and elaborately argued, and many points of great nicety and difficulty have been raised with respect to the construction and effect of the Colonial Statutes; the authority of the Synod to pronounce the sentence of deposition and to declare the vacancy of the church; as to the regularity of the proceeding which resulted in that sentence, and the extent to which it can be considered binding, as the Judgment of a Court of competent jurisdiction, or can be held to be subject to review by another tribunal.

If it were necessary for their Lordships to express any opinion upon these points they certainly would have heard a reply upon the whole case, and would probably have taken time afterwards to consider their Judgment.

But in order to have these important questions decided (of some of which the decision may have a very extensive operation), it is essential that they should be raised in a suit properly constituted and brought forward within proper time.

It appears to their Lordships that this suit is open to objections upon both these grounds.

Upon what principle or in what character have the Plaintiffs here any right to sue?

When a trust of this description is established there are several modes in which an alleged breach of it may be brought before a Court of Equity.

The ordinary mode is an information by the Attorney-General, at the instance of the relators, who, if they have an interest in the matter, frequently join as Plaintiffs.

If the Attorney-General declines to interfere, and the *cestuis que trust* differ amongst themselves as to the proper mode of administration of the trust, a certain number may file a bill on behalf of themselves and others, making some of the dissentients and the Attorney-General Defendants.

The same course may be pursued by trustees of a charity.

But mere strangers to the trust cannot file such a bill, though a certain number of a class may sue on behalf of the whole body; those who sue must be members of the body. The suit must be maintained either by somebody having an interest in the subject matter, or by some public officer intrusted by law with authority to institute it.

But what private interests or public authority have the Plaintiffs upon this record? They are a number of gentlemen who describe themselves as composing the Synod of Australia, and who profess to sue "on behalf of the said Synod, and also for and on behalf of the members of the congregation of the church." But they are none of them members of the congregation; they were none of them, as far as appears, contributors to the funds out of which the church was built, and so far from really representing the feelings or wishes of the congregation, there is no evidence that any one member of that body desires the success of this suit, and it is clear from the evidence that the great mass of the congregation dissents from it; yet not one member of the congregation is in that character made a party either as Plaintiff or Defendant.

If, then, the Plaintiffs have no right to sue in respect of any interest of their own or of any other persons whom they are authorized to represent, are they entitled as a public body to maintain the suit?

It is said, that in Scotland this Synod would be allowed to sue in such circumstances. The case of the Presbytery of Fordyce referred to at the Bar does not seem to their Lordships to bear out the proposition for which it was cited; but if it did, it could have no application to the present dispute.

In Scotland the Lord Advocate has no such duty

or authority with respect to public trusts as are in this country vested in the Attorney-General, and it may well be, therefore, that in order to prevent a failure of justice public bodies may in Scotland have rights of suit which the law of England does not require and does not allow.

The proceedings in this case are governed by English law, and there can be no doubt that as far as the right or duty of correcting any breach of trust exists in any public officer, that right and duty are vested in the Attorney-General of the Colony, and in fact he is made a Defendant in this very suit in that character. He has apparently not considered it to be a case calling for his interference.

The individuals named as Plaintiffs upon this record appear to their Lordships to have no *locus standi*, either in respect of interest or of public authority.

But independently of this objection their Lordships entertain great doubt whether, having regard to the length of time during which the Plaintiffs have slept upon their rights, if they had any, they could call upon a Court of Equity to enforce them.

The sentence which is alleged to have created the vacancy of this church was pronounced on the 11th October, 1842, and this Bill is not filed till the 1st February, 1855, no explanation whatever being given of the cause of the delay.

Dr. Lang on the 1st March, 1842, had given distinct notice in writing to the Synod "that the Trustees, Elders, Committee of Management, and congregation were determined to maintain their exclusive right to the church at all hazards and against all claimants whatever, saving and excepting the rights of the parties to whom the church is still indebted for its erection."

With full notice of this resolution, and that Dr. Lang denied altogether their jurisdiction, they for twelve years after pronouncing this sentence of deposition permitted it to remain a dead letter without attempting to take any step of any kind to enforce it.

After this sentence, as before it, Dr. Lang remained in possession of the church and in possession (as far as can be collected from the evidence) of the confidence and attachment of his congregation. He had a right, and they had a right, to require that

if this relation between the Minister and his congregation was to be disturbed, the utmost diligence should be used in taking the necessary steps for that purpose. If upon a reasonable time allowed nothing was done, Dr. Lang might well assume that all further proceedings were abandoned, and would reasonably settle his plans for the remainder of his life upon that footing. He had determined, and had publicly declared that determination, to quit Australia and go to New Zealand with a view to settling there as a Minister, unless he were permitted to effect the separation from the Presbyterian Church government of Australia, which is mainly relied on as the act justifying his deposition. If the Synod had at that time sought to enforce their sentence, as they now attempt to do by this suit, and had succeeded in doing so, Dr. Lang might have carried his determination into effect, and established himself in a new country. It appears that the Synod at one time contemplated adopting this course, and actually had the present Bill prepared in 1842 or 1843, though they did not file it. But is it consistent with common justice to Dr. Lang that they should acquiesce for twelve years in his avowed denial of their authority, should lead him during that long period to suppose that all further proceedings against him were abandoned, and should suddenly, without the suggestion of any new fact calling them into activity, seek to deprive the Minister of his benefice, and the congregation of their Minister, on grounds which, if they exist at all, existed in the same force so many years ago?

It appears to their Lordships that this case calls very strongly for the application of the principles acted upon by the Master of the Rolls in the case of *Reimers v. Druce*, and by the House of Lords in the case of *Cairncross v. Lorimer*, and that it would be contrary alike to authority and to the principles of justice to permit such a suit to be maintained under such circumstances.

They must humbly advise Her Majesty to reverse the Decrees complained of, and to order the Bill to be dismissed, and to give to Dr. Lang the costs of the proceedings both in the Court below and on this Appeal.

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