among Independents that (in the absence of special usage, rules, or agreement) all appointments as pastor to such a congregation were for life, so long as the pastor should abstain from preaching unorthodox doctrines, and should not be guilty of immorality or other similar gross misconduct, and that, excepting in those cases, there did not exist in any person or body a power to dismiss such pastor.

The defendant Christie, who was one of the trustees, declined to concur with the plaintiffs in the institution of the suit, upon the ground that he considered such suit uncalled for.

The bill prayed for a declaration that Mr. Gordon had been duly dismissed from his office of co-pastor, and that he might be restrained from preaching or officiating in the chapel referred to; and that both he and the defendant Pike might be restrained from collecting or receiving the pew-rents; and for an account.

Hardy, Q.C., and *Higgins*, for the plaintiffs, contended that in the absence of any special rules, the case must be governed by the invariable practice of the body, which was that a majority of the congregation had a right to dismiss their minister. Without such a power, a congregation might be saddled for an indefinite time with a minister who was unacceptable to them.

Greene, Q.C., and *Yate Lee*, appeared for the defendants Gordon and Pike, and on behalf of the former contended, that in the absence of any rules or agreement with Mr. Gordon on the subject, he was entitled upon his acceptance of the office to hold it for life, excepting he were guilty of immorality or heterodoxy, neither of which, however, had been imputed to him. It was also contended that he was *cestui que trust* under the settlement, and had a life interest in the endowment. They cited Lewin on Trusts, 402, s. 17; *Doe d. Jones* v. *Jones*, 10 B. & C. 718; *Doe d. Nicholl and Others* v. *McKaeg*, 10 B. & C. 721; *Attorney-General* v. *Pearson*, 3 Mer. 354, 357, 402; *Foley* v. *Wontner*, 2 J. & W. 246; *Daugars* v. *Rivaz*, 8 W. R. 225; 28 Beav. 233; *Attorney-General* v. *Drummond*, 1 Dr & War. 353.

Whitbread appeared for the defendant Christie, and submitting that he ought not to have been made a defendant, asked for his costs.

Greene, Q.C., for the defendant Pike, urged that he ought not be made a party to the suit; that he was only agent of the defendant Gordon, and that he was entitled to his costs. He cited *Pove* v. *Everard*, 1 Russ. & M. 231; Calvert's Parties to Suits, 301.

Hardy, Q.C., in reply, urged that at law the defendant Gordon was a mere tenant-at-will to the trustees, and was removable by a majority either of such trustees or of the congregation. He cited *Perry* v. *Shipway*, 1 Gif. 1; *Attorney-General* v. *Aked*, 7 Sim. 321; *Doe d. Earl Thanet* v. *Gartham*, 1 Bing. 357; *Rex.* v. *Gaskin*, 8 T. R. 209; *Porter* v. *Clarke*, 2 Sim. 520; *Davis* v. *Jenkins*, 3 Ves. & B. 151.

At the conclusion of the arguments his Honour said that he would not deliver judgment until next term. He strongly exhorted the parties to come to some arrangement in the interval.

May 28—Stuart, V.C., said:—On a careful re consideration of the evidence and the arguments in this case, I find no just grounds for the claim of the defendant, the Rev. William Gordon, to continue to perform the duties and enjoy the emoluments of minister against the will of the trustees and the majority of the congregation. There is nothing in any of the written instruments to countenance the notion, that the choice of a minister by the trustees of a congregation is an irrevocable choice, or that he is to continue officiating for life, or during his good behaviour. Indeed, considering the nature of the duties, the purpose of the choice, and the constitution of the congregation, they are inconsistent with any such irrevocable appointment. If a minister has a right to continue in that situation against the will of the majority of the congregation and of the trustees, and to enjoy the emoluments for his life, the number and proportion of the majority could make no difference, and, instead of being the minister of the congregation, he might be the minister of a minority of ten or of one. Such a position would certainly not be that of the minister or pastor of the congregation described in the declaration of trust of 1808.

As to the argument that this congregation is not a society existing by voluntary subscription, but is endowed with property held upon certain trusts, and that the minister is a *cestui que trust* under the deed, it in no degree supports Mr. Gordon's claim to continue minister during his life or good behaviour. By the deed he is a *cestui que trust* only "so long as he shall continue minister or pastor of the society or congregation, and officiate as such, and no longer." The endowment is for the benefit of the congregation and that they may be benefited by the services of a proper minister. The declaration of trust as to the rents and profits which the minister is to receive, creates a trust for the benefit of the congregation and a remuneration for those services by which they are to be benefited. There is no trust or purpose for the personal benefit of the minister, except to reward the services he performs for the congregation. In his answer, Mr. Gordon says, that in the absence of any special usage or rules the will of every such congregation is in all cases ascertained and their powers exercised by the votes of the majority; and he adds this qualification—that the minority are bound by the majority on all points, only so long as such majority act consistenly with the fundamental doctrines and principles held by the whole body. Such a qualification is futile, because as soon as the fundamental doctrines are contravened by the majority they cease to be the fundamental doctrines of the whole body, and unless the minority submit, there is no longer a united body held together by fundamental doctrines and principles. No doubt, the trustees and the congregation by the unanimous vote which appointed Mr. Gordon to be minister might have, at the same time contracted that he should enjoy all the emoluments for his lifetime. It may, however, well be doubted whether such a contract would be valid or binding on the property, or justified by the terms of the trust deed, or the purposes for which the trust is created. That reasonable degree of harmony which is secured by the submission or complete separation of the minority, seems essential to the endurance