

(3) that Mr. Kirkby refused to vacate and carry out the proposed exchange until it was agreed that his claim for repairs and improvements should be paid, the amount to be determined by arbitration, as provided in the submission agreement.

If the churchwardens as a corporation, with the approval of the vestry, have the power to make such an agreement as that found by the arbitrator, it seems to me *Daw v. Ackerill* can have no application. The agreement to pay what might be awarded was not in any sense provisional or dependent upon the goodwill offerings of the parish, as it was found to be as a fact in the *Daw* case, but it was an agreement to pay the sum awarded absolutely and without any limitation or condition.

Mr. Kirkby had expended his money for the benefit of the parish, and, although his vestry might successfully resist payment of any stipend to him, he had a right to remain in possession of the rectory and church indefinitely, for there was no suggestion of any legal ground for his deprivation or deposition.

The consideration of the money expended by Mr. Kirkby and his consent to vacate the parish at the request of his vestry and churchwardens was ample to support an agreement to pay him whatever an arbitrator might determine in respect of money so expended.

I think therefore that, assuming the churchwardens have the power to make such an agreement, the principle of such cases as *Frontenac v. Kingston*, 31 U. R. C. at 595-6, and *Elderslie v. Paisley*, 8 O. R. 270, applies, and that plaintiff is entitled to a judgment against the churchwardens as a corporation, notwithstanding there may be at present no property or fund out of which it can be satisfied.

Then, was it within the power of the churchwardens as a corporation to make the agreement found by the arbitrator to have been made, including the agreement to arbitrate?

By 47 Vict. ch. 89, it is enacted that "the churchwardens of any church in the diocese of Toronto . . . shall, whether they be churchwardens of pew or of free churches, besides possessing the powers and authorities conferred upon such churchwardens by any Act of the Legislature now in force, be a corporation with perpetual succession under the name of 'The Churchwardens of the Church of                      in the                      ' to represent the interests of the church of which they are so elected or appointed and of the members