

where the abuse or excess of definite powers is not involved, a court of equity will not examine into the right of such a functionary to be retained in his position, unless his interest in the money which constitutes his appointed stipend is of such a nature as to render him the *cestui que trust* of the body controlling the school and the fund from which that stipend is derived².

that the word "trusts" in the clause quoted above was added to the word "powers," for the purpose of keeping in view, that it was a trust for the execution of which the court was providing, and that the employment of the word "trust," especially when viewed with reference to the direction to preserve a statement of the grounds of removal, had the effect of restricting the large meaning of the word "discretion," contained in the earlier part of the clause. He distinguished two earlier cases. In one, *R. v. Darlington School* (1844) 6 Q.B. 682, where the governors had power to remove the master and appoint another, "according to their sound discretion," it was held, that the trustees might remove the master as they pleased, and that their discretion was not to be restricted by any opinion which the court might form of the reasons on which they might have been induced to exert it. In the other, *In re Fremington School* (1846) 10 Jur. 512, where the trustees were empowered by the will of the founder of the School, to displace the master, "upon any neglect or misbehaviour in such master or other just cause, for which they or the greater number of them should agree upon and think fit to displace such master," and place another there, Knight Bruce, V.C., held, that the court was to consider, whether there was neglect, misbehaviour or other just cause; that it was not enough for them to say that there was some cause or reason for which they might agree upon and think fit.

² In *Whiston v. Dean, etc., of Rochester* (1849) 7 Hare 532, it was held that the person appointed by the Dean and Chapter of a Cathedral Church to the mastership of a grammar school which, by the statutes imposed by the founder, was directed to be established and maintained from the endowments of such church which were held in frankalmoigne, was not a *cestui que trust* of the stipend and emolument of the office, but only an officer of the Cathedral Church, appointed to perform one of the duties imposed upon it by the statutes, and that, in such a case, whoever might be visitor—whatever might be the interest of such visitor in the matter in dispute,—or whatever might be the right of the schoolmaster to a mandamus or prohibition at law,—the Court of Chancery could not, in the exercise of its ordinary jurisdiction by bill, try the right of the schoolmaster to his office. Wigram, V.C., said: "If the appointment of the plaintiff as schoolmaster gave him a right to the stipends prescribed by the statutes as a *cestui que trust* against his trustees, there is no question whatever that the mere circumstance of the Dean and Chapter being a corporation or an ecclesiastical body would not remove the case from the jurisdiction of the court. . . . For the purpose of the argument, the founder is considered as saying, that there shall be certain funds, and certain officers payable out of those funds, such as a schoolmaster, choristers, and others, who fill various offices, and perform various duties. All these persons apparently fall within the same category in point of description, although they are unequally paid, and their duties are not of equal importance. Unless it is to be argued that the janitor, for instance, on being discharged, may come to this court and allege a trust in his favour, and call upon the court to decree