

of Pastor and people, a mutual council should be proposed, and on this being refused, he says, an *ex parte* council should be called, whose decision would have equal force in dissolving the connection between the contending parties.

But Mr. Hendebourek says, this church is an *Independent Church, having its own rules, doctrines, and discipline.*

Without going more at large into this Mr. Punchard's work, or others on Congregationalism, which I have looked into, it is plain that it is impossible to predicate any rules, upon which a Court of justice can proceed, upon any opinions in those books, or upon such as Jno. McLeod gives, for the usages of the Congregational Churches of different countries and of different portions of the same countries, vary from each other.

In the North of Ireland, for instance, entire unanimity is required; in some parts of New England synods or general councils have much greater power than in other parts; while in England and Wales the church government is different in important particulars from that of Scotland, and other countries. So in some few (Punchard states that he knew of one Church) female church members have a share in church government, in others all power of the people over the Pastor is denied.

In short, although those works will enable us to form some general ideas on the subject, I repeat that they can give a Court of justice no reliable data on which to determine the rights of parties.

Therefore, whether the Complainant be or be not now a member of the Congregational Union of Nova Scotia and New Brunswick, is quite immaterial; and he ceased to be so only in 1848; nor in this connection is Mr. Heudebourek's testimony, regarding the formation of new churches, by the withdrawal of a part of an existing church of any moment. And as to the witness Jno. McLeod's opinion: that the election of a Clerk and Deacons at Herring Cove, *ipso facto*, dissolved the Complainant's connexion with the Liverpool Church, it is plain that the object of that meeting *was not to dissolve, but to continue* that relation, by substituting other officers for those who refused to continue in the performance of their duty.

So far from this being their intention, the Complainant continued to do his ministerial duties, at all the stations, as he had done from the first, except only that he did not

preach (because he was not permitted to preach) in the meeting house at Liverpool.

The impression which the whole of the evidence has made upon my mind, is that at the time of the meetings in October and in February, a majority of the church members and congregation adhered to the Complainant; although, in the view which I take of the case, this is not material; that a large portion of both are supporters of the Complainant, is incontrovertible.

I regret that the Defendants instructed their Counsel to prefer imputations upon the moral character of the Complainant; from which I am sure had he been left to his own discretion, he would have refrained.

As regards these, his alleged laxity in discipline and heterodoxy in doctrine, nothing but the ability with which the learned Counsel dealt with them, prevented them from being offensive alike to the feelings and judgment of the Court.

I do not acquiesce in his suggestion that the Defendants have dealt leniently with the Complainant. If they know him to be guilty of incontinence, to have taught Universalist doctrines, or to have been lax in discipline, it was their duty to have proved these charges. But they could not have believed them, for on the 16th October, 1847, he was furnished with a certificate of character, as a passport to another ministerial charge; yet they have loaded the testimony with all the gossip that could be gathered, to insinuate what they could not prove. It is due to the Complainant's character to say, that there is no proof of a single immoral act committed by him, nor of a single instance of his teaching Universalist doctrines, or circulating Universalist tracts. And as to the idle tales of deficient discipline, what is to be thought of a case, in which, one of the witnesses when called upon to testify to it, makes it a charge against his Minister that he thought "he didn't fix up things quite right."

It may be true (its truth, however, depends on the credit of a witness whose memory seems to be somewhat defective) that in a moment of irritation, the Complainant said if he left Liverpool he would preach Universalist doctrines to their full extent. I do not sit here to palliate rash words, but neither is it my office to bring a man to judgment for what he intends only to do.

As regards the objection, that the Complainant did not take back his wife, in pursuance of the resolution of the meeting of November, 1847, the fact is, as I have stated, against the Defendants. It is satisfactorily established that she was living with him at the time of the council meeting. That