

therefore binding upon them . . . Taylor on Evidence, 8th ed., sec. 760 et seq. I have examined all the cases cited by the learned author, and other cases. In my opinion, they do not support plaintiff's position, with which I find myself unable to agree. There was here no reference by consent of all parties, nor was there any agreement to submit the matter in dispute to a referee. There was nothing more than a determination by a body of trustees to take and act upon the opinion of their legal adviser. That opinion . . . bound nobody. It was in no sense an adjudication or award. . . . It cannot be considered as in any sense disposing of the rights of the parties.

Neither am I able to find such acquiescence or laches on the part of defendant Spencer as precludes him from advancing the claim which he now makes.

For defendants it is argued that, upon the true construction of the canon of 1894, plaintiff is, on the undisputed facts, "junior on the pay list" to defendant Spencer; and also that the "decision" to this effect of the present chancellor is conclusive against plaintiff.

It will have been noted that the provision which plaintiff accepted in May, 1898, in settlement of his claims, was expressly made "subject to the conditions of the by-law." Whatever rights he then acquired are, therefore, clearly governed and restricted by the terms of the by-law.

That by-law in clause II. declared and defined three classes of charges upon the trust fund: 1st. The payment to original commutants of their stipulated annuities. 2nd. The expenses of management. 3rd. The payment to such other annuitants as have been, or may from time to time be, added to the list, of the amounts to which under this by-law they have been or may become entitled, subject to the provisions of clause V. (c).

By clause III., those eligible under sub-clause (3) of clause II., being clergy of the diocese, in order of seniority in priests' orders, are divided into two classes, viz.:

(a) Incumbents of endowed livings yielding less than \$400, for an amount sufficient to raise such net income to \$400.

(b) Clergy not holding the incumbency of a church or parish yielding in all \$1,200 per annum.

Clause V. governs the amounts of the payments to be made to charges under sub-clause (b).