

missal in this case an improper dealing with or perversion of the trust estate. He, in my opinion, to ground the jurisdiction, must show that, as regards some portion of the fund, he is *cestui que trust*, and the defendants trustees for him.

If there were a Visitor named under the charter, it would seem that it would be his province to arrange such a difficulty as has occurred in this case, following, as it seems, within the definition given above of the visitorial power.

The jurisdiction and duty of the court, where there is a misappropriation of trust funds, is explained by the Master of Rolls in the well-known case, *Attorney General v. St. Cross Hospital*. (17 Beav., 266.) There the funds had been actually perverted from their proper purpose. He says:—"Where there is a clear and distinct trust, this court administers and enforces it as much where there is a Visitor as where there is none. This is clear both in principle and authority. The Visitor has a common law office, and common law duties to perform, and does not superintend the performance of the trust which belongs to the various officers, which he may take care to see are properly kept up and appointed."

No Visitor is named here, and the further difficulty arises from the fact that the Crown gave no endowment, although creating the corporation for the public purposes of a University.

In the ordinary case of a royal foundation, the Crown would be the Visitor, and would, through the Lord Chancellor sitting in camera, act as such, as Lord Eldon did in 1821, sitting for the King in the case of *Queen's College (Jacobs 1)*, directing what persons were duly elected as Principal and Fellows. Lord Hardwicke, in *Green v. Rutherford* (a case frequently quoted), says:—"The original of all such powers is the property of donor, and the power every one has to dispose, direct and regulate his own property, like the case of patronage. If the charity is not vested in the persons who are to partake, but in trustees, for their benefit, no Visitor can arise by implication; but the trustees have that power." And it was held that there being a subsequent gift of property, under particular trust, by a third person not the founder, the Visitor had not jurisdiction to interfere as to it.

Again, in *Attorney General v. Dedham School* (23 Beaven, 256), the Master of the Rolls takes a similar view.

Sir James Wigram says, in *Whiston's case*, "where there is no Visitor the Court of Queen's Bench may be the proper court to redress the wrong."

On this branch of the case, I am of opinion that, if the

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