

[Eng. Rep.]

COOPER V. GORDON—SUTCLIFFE V. HOWARD.

[Eng. Rep.]

of an association founded for the sacred purposes which united this congregation.

In the case of *Perry v. Shipway* 7 W. R. 406, I notice the authorities which establish these two main points—first, that the minister of a Dissenting congregation at law, is merely the tenant-at-will of the trustees; secondly, that in such bodies the decision of the majority of the trustees binds the minority. Indeed, unless the law were so settled, nothing could follow but confusion and defeat of the very purposes for which these congregations are formed. The submission of the minority is the principle upon which civil society is founded. It is a principle essential for that reasonable harmony which is necessary for the coherence of all societies, great or small, civil or religious. In the case of the *Attorney-General v. Auld*, it was decided that the minister of a body of Dissenters has no equity to hold his office against the legal right of the majority to dismiss him. The judgment leaves open the question whether in case of a capricious or improper dismissal the court might interfere. That is not very important, because of the improbability that anything done by the majority of the congregation, concurring with the majority of the trustees, would be capricious or improper. This court would be very slow to interfere, and more probably would not interfere at all, with the discretion of the majority. In the present case there is nothing capricious in the decision of the majority of the trustees and of the congregation. It is in vain to try to confound Mr. Gordon's position as to permanence of tenure with that of a public officer, of the rector of a parish, or a parish clerk. The permanence of their tenure is established by the law of the land for public purpose, and for the public benefit. The minister of a Dissenting congregation has a position which the law respects, and will protect as that of one chosen by a voluntary association of private persons, associated for sacred purposes, and entitled to choose a minister suitable to their own particular opinions, whose services are to be rewarded out of their own private funds. He is engaged upon a contract which is merely a private contract, and is to be construed with the same regard to the rights of each of the contracting parties as any other private contract. His position as to tenure under the trustees is clearly defined by the law. There is nothing to show that in equity he can have any position higher than he has at law, nor is there any equity to control that power in the majority of the trustees which is established at law. The power of the majority of the congregation seems to me to rest on the same principle. When the minority refuses to submit, peace is maintained by their seceding and forming themselves, if they can, into another harmonious congregation. This seems more suitable to the purpose for which such religious bodies are formed. It is better than that a contentious and recusant minority should continue members of a congregation which would thereby be disturbed by feelings and passions which should not prevail among persons meeting together for public worship.

It is scarcely necessary to notice the argument that the tenure of his ministry for life must be implied from the terms of the invitation and acceptance mentioning no shorter period. Nothing

that involves an absurdity can by mere implication be made part of a contract. If it is to be implied that he was made minister for his lifetime, even the unanimous vote of the congregation would not displace him; and, if he could not be displaced, there would be the absurdity of his being the officiating minister of a congregation unanimously recusant of his services.

There must be a decree declaring that the defendant, Mr. Samuel Clarke Gordon, is not entitled to officiate or preach in the chapel in the pleadings mentioned against the will of the majority of the society or congregation in the pleadings mentioned, and an order for an injunction against him and the defendant Pike, according to the third paragraph of the prayer of the bill.

It is unnecessary to direct any account; indeed, it has not been pressed for.

The plaintiffs are entitled to the costs of the suit against the defendant, Mr. Gordon, and also against the defendant Pike, notwithstanding the allegations in the answer of the latter, and the argument that he was merely the agent of Mr. Gordon. The evidence proves his interference as to pew rents, and he was properly made a defendant. The defendant Christie, having refused to join as a plaintiff, must bear his own costs.

SUTCLIFFE V. HOWARD.

Will—Joint tenancy or tenancy in common.

A gift to several persons "during their respective lives, and subject thereto, in trust for their respective children."

Held, that it created a joint tenancy for life, and that the children took their parents' shares *per stirpes* as tenants in common.

[V. C. M., 17 W. R. 819.]

The testator in this cause devised real estate to trustees in trust to apply the rents and profits for the benefit of his brothers, James and Samuel Howard, and his sister, Lucy North, during their respective lives in such manner as the trustees should think fit; and, subject thereto, in trust for the respective children of his said brothers and sister as tenants in common. The testator died in July, 1848. James Howard died in October, 1848, leaving several children. Lucy North died in 1867, also leaving children. Samuel Howard was still living, and had several children.

The bill was filed by the trustees of the will to obtain the decision of the Court as to whether James and Samuel Howard and Lucy North took as joint tenants during their joint lives and the life of the survivors and survivor of them, or whether upon the death of each of them one-third of the rents and profits was given over to his or her children.

Dunning, for the plaintiffs, the trustees.

Glaspe, Q. C., and *Humphrey*, for Samuel Howard, the surviving brother, contended that the gift to the brothers and sister during their respective lives was a gift in joint tenancy. After the death of Samuel Howard the children of all three would take *per capita*. It was a gift to three persons during the lives and life of all the three. The word "respective" meant "as each belongs to each." All the authorities inclined towards a joint tenancy. They cited *Woodstock v. Skillico*, 6 Sim 416; *Armstrong v. Elbridge*, 3 B. C. C. 215; *Cranwick v. Pearson*, 31 Beav.