

Thursday, March 20.

FIRST DIVISION.

[Lord Curriehill Ordinary.]

KENNEDY AND OTHERS v. MORRISON AND OTHERS (MANAGERS OF A REFORMED PRESBYTERIAN CONGREGATION IN GLASGOW).

Church—Right to Fabric of a Reformed Presbyterian Church where title to "Members of Congregation" has been Exchanged for one giving Power to two-thirds of Members, irrespective of distinctive Church principles.

The Reformed Presbyterian Church of West Campbell Street, Glasgow, was held by the congregation under a title dated 1836, which contained, *inter alia*, a conveyance of the subjects to trustees, with a declaration that they were to be held in trust for the behoof of those members of the congregation whose "names are duly registered in the session-books of the congregation, professing the terms of the ministerial and christian communion agreed upon by the Reformed Presbyterian Synod, said congregation assembling and worshipping in the church or chapel now erected on the area or piece of ground hereby disposed." In 1875 the congregation came to a resolution to dispose of the church built upon the piece of ground mentioned in the above trust-title, and to build another in a different situation. A congregational meeting was then called in in order that, *inter alia*, the terms of the title under which the new piece of ground and church were to be held should be submitted to the congregation. At the meeting, which was attended only by a small number of the members, a title containing, *inter alia*, the following terms was unanimously agreed to:—"In the event of there being at any time hereafter a split or schism in the Synod of said Church, or in the Synod or Superior Court of any Church with which said Synod or congregation may be hereafter united, the said subjects shall be held for behoof of that section of the members of said congregation who shall adhere to the majority of the Synod or other Superior Court; but declaring that if a majority of the members of the congregation shall determine not to adhere to the majority of Synod or other Superior Court at a meeting of the congregation duly called, and if such resolution shall be afterwards approved of and confirmed in writing by two-thirds of the members whose names shall have been twelve months on the communicants' roll of said congregation prior to said union, split, or schism, and who shall be in full communion at the time, and provided such resolution shall be so carried, approved of, and confirmed within three months of the date of said union, split, or schism, then and in such event the said subjects shall be held for behoof of such two-thirds on their relieving the other members of all liability in respect of said subjects."

In 1876 the Reformed Presbyterian Church joined the Free Church, and subsequently a motion was carried by a majority of the congregation to join the Established Church of Scotland. In these circumstances the minority brought an action to have it declared that the majority were not entitled to carry into the Established Church the money which was got for the sale (in 1875) of the old church building, or to hold the new church, as was now proposed, as a *quoad sacra* church in connection with the Establishment. The Court—affirming the decision of the Lord Ordinary (Curriehill)—held that considering the terms of the new title of 1875 were submitted to the congregation and assented to by them without objection, that that title was the regulating deed, and the one whose terms should alone be taken into account; that by that deed the church was to be held for behoof of the majority of two-thirds of the congregation there mentioned, and that, it being thus their absolute property, the majority were entitled either to retain the church or to hand it over, as they had done, to the Established Church, or any other ecclesiastical body.

Counsel for Pursuers (Reclaimers)—Balfour—Taylor Innes. Agent—John Galletly, S.S.C.

Counsel for Defenders (Respondents)—Lee—Kinnear—J. A. Reid. Agents—J. B. Mackintosh, S.S.C.

Thursday, March 20.*

OUTER HOUSE.

M'FARLAN v. PRESBYTERY OF CUPAR AND SCOLAR.

Church—Jus devolutum—Stat. 37 and 38 Vict. cap. 82 (Church Patronage (Scotland) Act)—Jurisdiction—Powers of Church Courts under Patronage Act.

Held by Lord Young (Ordinary), and acquiesced in, that under the Church Patronage (Scotland) Act 1874 the question whether in any particular case there is or is not a valid appointment by the proper party under the Act is a question of civil law, and for the determination of the Civil Court.

Circumstances under which it was held, notwithstanding the lapse of the statutory period of six months, that the right of appointment of a minister to a vacant parish had not fallen to the presbytery *jure devoluto*, there having been a miscarriage of justice owing to an erroneous ruling of the moderator appointed by the presbytery.

This was an action at the instance of the Rev. W. L. M'Farlan against the Presbytery of Cupar and the Rev. J. R. Scoular, which arose under the following circumstances—the following narrative of which is taken from the note to the interlocutor of the Lord Ordinary (Young):—

"The pursuer was formally appointed to the first charge of the parish of Cupar on 26th February 1878 by the presbytery of the bounds,

* Decided December 18, 1878.