

may have been the case in England. We are told that there have been at least three decisions, two of them pronounced by a very able and experienced arbitrator in the years 1910 and 1917, and a later one in the Sheriff Court at Stirling, probably following the two decisions to which I have referred. In one of these decisions by Sheriff Shennan, in a portion of his opinion which was read to us, he points out that in his view compensation under the Act is not for a man's injury but for his incapacity, that that incapacity is one and indivisible, and that it can never be more than total incapacity however many injuries by accident the man may have suffered from. I think that is the key to the whole problem. I agree with Sheriff Shennan's view and also with the view which is expressed by the Sheriff in this case. I therefore think that we must answer the first question put to us in the affirmative, and if that is done the parties were agreed that we need not answer the second question.

LORD SALVESEN—I agree with your Lordship in the chair and for the same reasons.

LORD GUTHRIE—So do I.

The LORD JUSTICE-CLERK was absent.

The Court answered the first question of law in the affirmative and found it unnecessary to answer the second question.

Counsel for the Appellant—Brown, K.C.—Crawford. Agents—W. & W. Finlay, W.S.

Counsel for the Respondent—Hon. Wm. Watson, K.C.—Marshall. Agents—W. & J. Burness, W.S.

COURT OF TEINDS.

Friday, November 28.

TRUSTEES OF PATHHEAD CHURCH, MINUTERS.

Church—Church Lands—Sale—Investment of Proceeds—Government Annuities.

Lands were held by trustees as part of the endowment of a church and parish *quoad sacra*. During the whole of the period they had been held by the trustees they had produced a rent of £50. The trustees proposed to sell the land at a price of £2000, and to invest the proceeds in the purchase of 2½ per cent. Government annuities, which they alleged were gilt-edged securities of a permanent character, and would produce a return of about £100 a-year. The Court approved of the sale and sanctioned the change of security.

The Hon. William Watson, K.C., Procurator for the Church of Scotland, and others, the trustees acting under the Deed of Constitution of the Church of Pathhead, granted by the General Assembly of the Church of Scotland on 1st June 1857,

lodge a minute in a petition by Daniel Fraser and others for disjunction and erection of the church and parish *quoad sacra* of Pathhead, in which petition decree of erection had been granted on 16th March 1859. The minute craved the approval of the Court to the sale of lands which formed part of the endowment of the church and the investment of the proceeds in the purchase of Government annuities.

The minute set forth—"In the course of the proceedings in connection with the petition the Clerk of Teinds lodged a report, *inter alia*, as follows:—'*Second.—Endowment and maintenance of fabrics.* (1st) in the year 1849 a portion of the lands of Easter Smeiton was acquired by Dr Brewster, minister of Scoonie, and others, for the purpose of holding the same in trust for behoof of the minister of the church in Sinclairtown, in aid of his stipend, he remaining always in connection with the Church of Scotland. The subjects are at present under lease for fifteen years from 1st January 1856, at a rent of £50 sterling, and they have now been conveyed to the trustees for the proposed parish in the customary manner. The feu-duty and composition are illusory. There is a certified valuation of these subjects to the effect that at the expiry of the present lease they will be worth £60 of annual rent.' He further summarised a state of the proposed endowment as follows:—

'Rent payable for ground under lease,	£ 50 0 0
Stipend to minister,	120 0 0

Balance of stipend to be provided, £70 0 0	
Ground annual of £86, 4s. 4d., applicable first to stipend, thereafter to support of fabrics to the extent of	80 0 0

Balance applicable to fabrics, ...	£10 0 0
Estimated sum for support of them,	5 0 0

Surplus £5 0 0

Independent of church revenues.'

"The portion of the lands of Easter Smeiton conveyed to the trustees for the parish and church of Pathhead has continued to be, and still is, held by the said trustees; the rent has remained throughout at the original figure of £50 per annum; and the lands are at present under lease at that rent to Messrs D. S. Honeyman & Son, yarn merchants and bleachers, Denburn Bleachfield, Kirkcaldy.

"Having in view the present favourable condition of the market for lands situated in the neighbourhood, the minuters took under consideration the question whether notwithstanding the said lease it might not be possible to effect a sale of the said lands under advantageous terms. Informal negotiations were thereupon opened up with Messrs D. S. Honeyman & Son, and it was ascertained that they were prepared to pay a price for the said land considerably in excess of the capital sum required to produce a return of £50 per annum. As a result of these negotiations the minuters have now sold the said lands to Messrs D. S. Honeyman & Son, with entry at Martinmas

1919, for the price of £2000, to account of which a sum of £500 has already been paid. In respect, however, that the said lands are held by the minuters in trust for the purposes of the foresaid deed of constitution, and that they form part of the security for the endowment of the church in view of which the foresaid petition for disjunction and erection was granted, the minuters are under the necessity of applying to the Court of Teinds for authority to sell the lands on the terms above stated, granting all usual and necessary deeds for that purpose, and for approval of the securities in which the minuters propose to invest the proceeds of sale. The price of £2000 is sufficient if invested in first-class moveable securities, in which trustees are by law entitled to invest, to produce an annual return of about £100. The transaction will therefore be highly advantageous, inasmuch as it will augment the sum available for the minister's stipend by about £50 per annum without detrimentally affecting the security of the capital involved. The minuters propose, subject to the approval of the Court, to invest the proceeds of sale in trust securities. In their opinion the most suitable investment would be one which is not likely to be redeemed, and also one in which there is least trouble in changing the title in connection with changes in the trustees registered as holders in the security. The present War Loan issues are all redeemable at an earlier or later date, but Government annuities, although the Government have power to redeem, are in all probability perpetual securities, being at such a low rate of interest. Accordingly the minuters, if the Court approve, propose to purchase 2½ per cent. Government annuities, and to take the title to these in name of . . . the *ex officio* trustees under said deed of constitution. The minuters will when the securities are purchased pass a minute to the effect that they are held for the purpose of paying the income to the minister of the parish of Pathhead for the time being as part of the endowment of the parish and to the parties entitled thereto during a vacancy. They will also grant a mandate authorising payment of the dividend to their account with a suitable local bank, and will instruct such bank on receiving the dividends to credit them to the minister for the time being of the parish of Pathhead. With regard to the certificate for the security, the minuters propose that it should be deposited with the said bank to be given up only on the signature of all the trustees for the time being acting under the constitution *ex officio* and local. They accordingly crave that the present minute be intimated to such extent as your Lordships may think proper, and that thereafter your Lordships will be pleased to sanction the change of security set forth in the foregoing minute, and to approve of the sale of the said lands on the terms above stated and the purchase of Government annuities proposed to be made with the proceeds of sale, or of such other first-class trust securities as your Lordships may decide, and to authorise and empower the minuters to sell the said subjects and pur-

chase said investments accordingly, and to apply the free revenue received from the said investments in paying and augmenting the stipend of the minister for the time being of the said *quoad sacra* parish and those entitled thereto during a vacancy, and to deposit the certificate of such security, if any, with the Pathhead-Kirkcaldy branch of the Commercial Bank of Scotland, Limited, to be held by it subject to the signature of the whole trustees under the said constitution *ex officio* and local; and further, to authorise the minuters to grant and subscribe such conveyances or other deeds containing all usual and necessary clauses, and a clause binding them in warrandice from fact and deed only, as may be necessary for carrying through the sale of the said subjects, and to authorise the Clerk of Teinds to deliver the titles of the said subjects to the minuters for delivery to the purchasers, or to do further or otherwise in the premises as to your Lordships may seem proper."

At the hearing counsel for the minuters referred to the following:—Elliot on Teinds, p. 214; Elliot on the Erection of Parishes *Quoad Sacra*, p. 83; *Minister v. Heritors of Tranent*, 1909 S.C. 1242, 46 S.L.R. 863.

The Court, without delivering opinions, granted decree in terms of the crave of the minute approving of the sale and sanctioning the change of security.

Counsel for the Minuters—T. Graham Robertson. Agents—Mackenzie & Dunn, S.S.C.

COURT OF SESSION.

Wednesday, December 3.

SECOND DIVISION.

[Sheriff Court at Inverness.

STEWART v. ADAMS.

Reparation—Principal and Agent—Negligence—Vicarious Responsibility—Contractor—Liability of Principal for Result of Contractor's Operations.

The owner of certain boats on an inland loch gave instructions to a man for the repair of the boats, which were drawn up on grazing land on which a neighbouring shepherd had a right of pasture for his cow. In the course of the operations quantities of old paint scrapings containing white lead fell on the grass and were consumed by the shepherd's cow, in consequence of which the animal died. In an action of damages at the instance of the shepherd against the owner of the boats for the loss of the cow the latter pleaded that he was not liable in respect that he had employed an independent contractor. Held that even if the man employed was a contractor and not a servant of the boat owner the latter was liable.

Per Lord Salvesen—"If a man employs another, whether by contract or as his