

IRELAND.

IN ERROR FROM THE EXCHEQUER CHAMBER.

BISHOP OF KILDARE—*Plaintiff in error.*REV. T. SMYTH—*Defendant in error.*

UNDER the words of the charter of incorporation of the Dean and Chapter of the Cathedral Church of H. T., Dublin, ordaining that “the Archdeacon, &c. can and may enjoy a stall in the choir, and a voice and place in the chapter in all chapter acts,” &c.—he has a voice in all its corporate acts, and not merely in the acts of that chapter considered as the Archbishop’s council. And it seems he may vote by proxy.

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Though in a bill of exceptions to the directions of the Judge below, the evidence given at the trial upon which the allegation of error depended, was not set out at length; but parts of it, consisting of charters, entries, &c. were merely referred to, and the record appeared, on the transcript being brought up, to be so far defective; and though in strictness the House of Lords cannot proceed upon such a record, yet upon consent of the Counsel for both parties to select such parts as they meant to rely upon, the cause was heard and decided—the Lord Chancellor stating that a special entry should be made on the journals to guard against the mischief of such a precedent.

(N. B. The evidence was printed in an appendix to one of the cases.)

THIS was an action of trespass on the case brought in 1810, in the Exchequer (of Pleas), by Dr. Smyth, against the then Bishop of Kildare, for a false return to a writ of mandamus, and for damages on account of the injury sustained by him in consequence of the conduct of the Bishop, who was

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dean of the cathedral church of the Holy Trinity, Dublin, in refusing to admit Dr. Smyth to a prebendal stall of that chapter, to which he had, as he contended, been duly elected.

By a charter of 33 Hen. 8. and of 2 Jac. 1. reciting the previous charter, an ancient priory in the cathedral church of the Holy Trinity, Dublin, was changed into a dean and chapter; and by the latter charter the dean, precentor, chancellor, treasurer, and three canonical prebendaries (substituted for six vicars choral appointed by the previous charter), viz. of St. Michan's, St. Michael's, and St. John's, to each of which prebends were annexed the church and rectory of the same name, were incorporated by the name of "the dean and chapter of the cathedral church of the Holy Trinity, Dublin." It was ordained by the charters of Jac. 1. that when any of the prebends became vacant, the dean and chapter might elect any fit person to succeed, and in both charters it was ordained that "The Archdeacon of Dublin and his successors can and may enjoy a stall in the choir, and a voice and place in the chapter in all chapter acts in the aforesaid church of the Holy Trinity, Dublin, according to the honour and prerogative of his dignity."

Archdeacon
of Dublin to
have a voice
and place in
all chapter
acts.

In December, 1808 (Dr. Smyth being then prebendary of St. John's, admitted in 1803), the prebend of St. Michan's, the most valuable of the three, became vacant. And Dr. Smyth, and Dr. Graves (Prebendary of St. Michael's, admitted in 1801), being candidates, at a meeting of the dean and chapter, holden on the 16th February, 1809,

for the purpose of election, the dean and two others voted for Dr. Graves; and the Archdeacon (by proxy) and three others voted for Dr. Smyth, the Defendant in error. In the regular course he would have been immediately installed by the chapter, and presented, under the corporate seal, to the Archbishop of Dublin, to be by him admitted to the Rectory of St. Michan's. The Dean (Plaintiff in error) refused to admit him or to affix the corporate seal to the presentation; and Dr. Smyth having on the 18th May, 1809, obtained a writ of mandamus, directed to the dean and chapter to admit him, the Dean, without calling a meeting, returned that Dr. Smyth was not duly elected. The presentation then lapsed to the Archbishop, and, he having died, another person was presented by patent from the Crown, and admitted and instituted to the prebend and rectory of St. Michan's.

Dr. Smyth then brought his action laying his damages at 10,000*l.*: and the Defendant in error having pleaded the general issue, the cause was tried, and the charters, &c. were given in evidence. It was contended for the Dean, that it appeared on the evidence that the Archdeacon was not entitled to vote in the election of a prebend; that, if he had the right in person, he was not entitled to vote by proxy: and, that from the usage since 1594, the jury might presume that there was some ancient bye-law under which Dr. Graves, as the senior prebendary, was entitled to succeed to the vacant prebend. On all these points the opinion of the Judge was against the Dean, and under his directions the Jury found for Dr. Smyth, damages

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1,600*l.* A bill of exceptions was at the trial tendered to the directions of the Judge, and sealed by him.

Judgment having been given for Dr. Smyth in the Exchequer, and Exchequer Chamber, a writ of error was brought in Dom. Proc., and the directions given by the Judge at the trial, and excepted to, were assigned for error.

Bill of excep-
tions.

This bill of exceptions did not set out the evidence at length (and this is the chief reason for mentioning the case here); but, as it appeared on the transcript of the record, merely referred to the charters and other documents in this manner.

Evidence not
fully set out in
bill of excep-
tions.

“ And upon the trial of the issue so joined as afore-
“ said, the Counsel for the Plaintiff, to maintain and
“ prove his issue on his part, produced and gave in
“ evidence a charter of the tenth May, thirty-third
“ Henry the Eighth (*prout the charter*). A char-
“ ter of the twelfth June, second James the First
“ (*prout the charter*). An act of the ninth of
“ William the Third (*prout the act*), &c. And
“ the said counsel then and there further produced
“ and gave in evidence the books containing the
“ chapter acts of the said dean and chapter, &c.
“ and read therefrom the following entries (*prout*
“ *entries*),” &c. &c. The record, therefore, not
containing the evidence as it was given before the
Jury, a difficulty arose as to whether the House
could give judgment upon such a record. It was
contended for the Plaintiff in error, that as there
was no record except this before the Court below,
he could not allege diminution, nor bring the case
before their Lordships in a more regular way. For

Difficulty.

Diminution.

the Defendant in error it was contended that it was incumbent on the person tendering a bill of exceptions to take care that it should be regularly made up. He must show, that for matter appearing on the face of the record, the Defendant in error was not entitled; and if the record was not such as to enable him to show that, the judgment ought to be affirmed. It was stated, however, for both parties, that they were willing to settle by consent what parts of the evidence should be taken and relied upon.

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Consent.

Lord Eldon (C.) Strictly the House cannot proceed on such a record; but it may be explained by agreement between the parties. You may, therefore, agree as to what parts of the evidence you mean to take and rely upon; and a special entry may be made on the journals to prevent the mischief of such a precedent.

Strictly the House could not proceed on such a record, but it may be explained by agreement and consent of parties.

The cause was afterwards heard, and it was contended for the Plaintiff in error, that the meaning of the charters was, that 'the Archdeacon should have "a place and voice in the chapter in all chapter acts," only when the Chapter acted as the Archbishop's Council, and not when it acted as a corporate body: that the Archdeacon was not a member of the corporation, that he was neither prebendary nor canon, and had no share in the property; and could not vote in any corporate act, such as the election of a prebendary, either in person or by proxy: that he was himself only the delegate of the Archbishop, and could not vote by delegate.

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BYE LAW.
3 Burr. 1833.
— Butler v.
Palmer, Salk.
190.— Barber
v. Boulton,
1 Str. 314.—
The King v.
Castle, And.
119.— Tucker
v. the King,
4 Bro. P. C.
455.

PROXY.
Chichester
(Bishop) v.
Harward,
1 T. R. 652.
Judgment.
May 22, 1817.
Charter.

And then it was contended that the supposed by-law was legal and consistent with the charters. It is unnecessary to state the arguments on each of these points at length, as the judgment turned entirely upon the ground, that "*chapter acts*" in the charters, meant all chapter acts whatever: and the Lord Chancellor asked whether, if the King had said that the Archbishop himself should have a seat in the chapter, there could be any objection to it. The Counsel for the Defendant in error were not heard.

Lord Eldon (C.) The case has been as ably argued for the Plaintiff in error as it can possibly be. But the question does not depend upon whether the Archdeacon was or was not a corporator, but upon the particular clause of this charter; which ordains that "he can and may enjoy a stall in the choir, and a voice and place in the chapter *in all chapter acts.*"

Lord Redesdale. I concur in that opinion. In reading the charter, I find that the Archdeacon is to have a voice and place in all capitular acts, and this is a capitular act.

Judgment AFFIRMED.