SCOTLAND.

AN APPEAL FROM COURT OF SESSION.

CRAIGDALLIE AND OTHERS - - *Appellants.*
AIKMAN AND OTHERS - - *Respondents.*

In the year 1736, a meeting-house was built by contributions of materials, money and labour, and collections at the church door, of persons professing the principles of those who seceded at that time from the Church of Scotland. The meeting-house, and the ground on which it was built, were vested in certain persons, as trustees for the use of the society, and managers of the house of public worship for the Associate Congregation of Perth.

A schism took place in 1796 among the members of this religious community; and several of the members, including the representatives of some of the trustees, to whom the legal right of property had devolved, separated themselves from the rest of the community, and absolved themselves from the authority of the Associate Synod, which was the constituted authority for the government of the community. This separation took place on grounds of alleged difference of opinion, on a question as to the power of the civil magistrates in religious concerns, which the Court of Session pronounced to be unintelligible.

Held, that in a case where it was difficult to ascertain who were the legal owners, as representatives of the contributors, the use of the meeting-house belongs to those who adhere to the religious principles of those by whom it was erected; and those who had separated themselves from the Associate Synod, and declined their jurisdiction, were held to have forfeited their right to the property: although it had been judicially declared that there was no intelligible difference of opinion between them and the adherents of the Synod.

THE question in this case arose upon a dispute between the members of a congregation of seceders

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from the church of Scotland, respecting the right to the use of a meeting-house, built by contribution soon after the time of the secession, (1731,) on a piece of ground which was disponed to certain persons, who declared that they held the ground, and buildings to be erected, in trust for the use of the Society and Managers of the house of public worship, for the Associate Congregation of Perth. This was one of the bodies which seceded from the church of Scotland, in 1731, upon the question of patronage or appointment to vacant churches. The Seceders generally, and this congregation in particular, adhered to the doctrines and discipline of the church of Scotland. These consisted of the confession of faith, the larger and shorter catechisms, certain propositions respecting church government, the ordination of ministers, and the directory of worship, which had been agreed upon by the assembly of divines, at Westminster, soon after the revolution of 1688, approved of by the general assembly of the church of Scotland, and established by the fifth act of the second session of the first parliament of William and Mary. The church government then established was, by Kirk session *, presbyteries, synods, and

* Originally, by stat. 1597. By act 1606 Episcopacy was restored; Presbytery again 1638; Episcopacy again 1662; and, finally, Presbytery by stat. 1689. The Kirk Session is composed of the clergyman of the parish, and of certain persons called elders, selected from the congregation of each parish, and ordained by a clergyman. This is the lowest court in the church, having jurisdiction in spiritual matters only over its own parish.

A Presbytery is composed of the clergymen of a district, together with one elder from each of the Kirk Sessions within that district. This is the court next above the Kirk Session,

general assemblies, all which, except the last, were preserved by the Seceders.

In the confession of faith annexed to this act, one of the articles is in the following words: "The "civil magistrate may not assume to himself the "administration of the word and sacraments, or the "power of the keys of the kingdom of heaven; yet "he hath authority, and it is his duty to take order, "that unity and peace be preserved in the church; "that the truth of God be kept pure and entire; "that all blasphemies and heresies be suppressed; "all corruptions and abuses in worship and disci-"pline prevented or reformed; and all the ordi-"nances of God duly settled, administered, and "observed: for the better effecting whereof, he hath "power to call synods, to be present at them, and "provide that whatsoever is transacted in them be "according to the mind of God."

The national covenant of Scotland, and the solemn league and covenant of the three nations, which had been adopted by the first assembly of the church, were adopted also by the Seceders. These, as the standard principles of religious doctrine and discipline in their church, were recognized by the Seceders in their "act, declaration and testimony for the

exercising jurisdiction over the district from which the members are selected.

A Synod is formed by the union of a certain number of Presbyteries, over which its jurisdiction extends.

The General Assembly is composed of representatives from all the different Presbyteries, from the Universities and the Royal Burghs. This is the supreme ecclesiastical court. Its power extends over the whole kingdom in all ecclesiastical subjects, and there is no appeal against its judgments.

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"doctrine, worship, discipline and government of "the church of Scotland, issued at Perth in the "year 1736;" and by a formula or series of interrogatories, which were proposed to persons desirous to become members of the church of the Seceders, and to which their assent was required. By the second question of the formula, the candidate for admission was interrogated, "whether he sincerely "owned and believed the whole doctrines contained "in the confession of faith?" The fourth question "was in these words: Do you acknowledge the per-"petual obligation of the national covenant of Scot-"land, particularly as explained in 1638, to abjure "prelacy, and the five articles of Perth, and of the "solemn league and covenant? And do you ac-"knowledge that public covenanting is a moral duty "under the New Testament dispensation, to be per-"formed, when God, in his providence, calls for it?"

In the year 1795, upon the petition of a member of the Associate Synod, a committee was appointed to review the questions in the formula, and to bring in an overture (the heads of an act) for uniting the members in their sentiments, respecting the power ascribed in the confession of faith to the civil magistrate in matters of religion, and respecting the nature of the obligation of the national covenants upon posterity; in the mean time, allowing presbyteries to exercise forbearance as to licence and ordination, with respect to the articles in question. After a report had been made by the committee, proposing an act of forbearance, and various meetings and discussions upon the subject, that measure was abandoned.

At a meeting of the session, on the 13th of April 1797, a petition, on behalf of those who maintained the principles of the appellants, was presented against any alteration in the substance of the formula; but assenting, for the sake of peace, to prefatory explanation, as the following passage in the petition imports.

" At the same time, as certain expressions in the " said formula, or in other ecclesiastical standards, and " our national covenants, have been understood by " some as favouring persecution for conscience sake, " and ascribing an exorbitant power of religious in- " terference to the civil magistrate; we are far from " wishing the synod to request, from any candidate, " his licence or ordination, or approbation of any " such principles of which we disapprove; and, as " there is a diversity of opinion anent the obligation " of our covenants, national and solemn league, we " consider them as binding on posterity only, so far " as these covenants respect a solemn engagement of " adherence unto all the truths and ordinances of " the Lord Jesus Christ, as contained in our confes- " sion and catechisms. If the prefixing an explica- " tion of this nature to the old formula would satisfy " our brethren, who object to said formula, we will " agree thereto."

At a meeting of the synod, in April 1797, a resolution passed by a majority of voices, adopting the following preamble (as an explanation) to the formula: " Whereas some parts of the standard books " of this synod have been interpreted as favouring " compulsory measures in religion, the synod hereby " declare, that they do not require an approbation " of any such principle, from any candidate for

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" licence or ordination: And whereas a controversy " has arisen among us respecting the nature and " kind of the obligation of our solemn covenants on " posterity, whether it be entirely of the same kind " upon us as upon our ancestors, who swore them; " the synod hereby declare, that while they hold the " obligation of our covenants upon posterity, they " do not interfere with that controversy which hath " arisen respecting the nature and kind of it, and " recommend to all the members to suppress that " controversy, as tending to gender strife rather than " godly edifying."

Against the adoption of this preamble various petitions were presented to the synod, which, having been considered and rejected, the measure was finally approved, and the preamble retained, by a resolution of the synod in 1799.

This resolution was followed by a protest and declinature on the part of several ministers. In one of these, after reciting the points in dispute, his opinions upon the subject, and the measures adopted by the majority of the synod, the minister, " in his " own name, and in the name of all the members of " the congregation who should adhere to him, pro- " tests against the proceedings of the synod, relative " to, &c. and, until the preamble should be removed, " declines the authority and jurisdiction of the as- " sociated burgher synod, and of all presbyteries " subordinate to it," &c.

In consequence of this protest and declinature, the synod declared the minister, protesting, to be no longer a member of their body, and excluded him from the pulpit of their meeting-house, where he

had been accustomed to preach. Hereupon a complaint was preferred to the sheriff, and afterwards an action was brought in the court of session by the appellants; "to have it declared, that the meeting-"house, &c. belonged to them; &c. as adhering to "the original principles of the secession, and whose "ancestors contributed to the purchase," &c. A counter-action was raised by the respondents, to have it declared that the parties (protesting and declining the jurisdiction of the synod) had lost all interest in the subjects. These actions being conjoined, the court, by an interlocutor, dated the 1st of February 1804; found, "that the property of the subjects in "question is held in trust for a society of persons "who contributed their money, either by specific "subscriptions, or by contribution at the church "doors, for purchasing the ground, and building, "repairing, and upholding the house or houses "thereon, or of paying off the debt contracted for "these purposes, *such persons always by themselves,* "*or along with others, joining with them, forming* "*a congregation of Christians continuing in com-*"*munion with and subject to the ecclesiastical disci-*"*pline of a body of dissenting protestants, calling* "*themselves 'the Associate Presbytery and Synod* "*of Burgher Seceders*;' and remit to the lord "ordinary to proceed accordingly."

Judgment in D. P. 1813.

Against this judgment an appeal was presented to the House of Lords, which was argued in the year 1813, when, after a long hearing: The Lords, by their judgment, found, "as matter of fact, sufficiently esta-"blished by proof, that the ground and buildings in "question, were purchased and erected with intent

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" that the same should be used and enjoyed for the " purpose of religious worship, by a number of persons " agreeing at the time in their religious opinions and " persuasions, and therefore intending to continue in " communion with each other; and that the society " of such persons acceded to a body, termed in the " pleadings, 'The Associate Synod;' and find, that " it does not expressly appear as matter of fact, for " what purpose it was intended at the time such " purchase and erections were made, or at the time " such accession took place, that the ground and " buildings should be used and enjoyed, in case the " whole body of persons using and enjoying the " same should change their religious principles and " persuasions; or, if in consequence of the adherence " of some such persons to their original religious " principles and persuasions, and the non-adherence " of others of them thereto, such persons should " cease to agree in their original principles and per- " suasions, and should cease to continue in commu- " nion with each other, and should cease, either as to " the whole body, or as to any part of the members " composing the same, to adhere to the body, termed " in the pleadings, 'The Associate Synod;' and it " is therefore ordered and adjudged, that, with these " findings, the cause be remitted back to the Court of " Session in Scotland, to review all the interlocutors " complained of in the said appeal; and upon such " review, to do therein what shall appear to them to " be meet and just."

In prosecution of this judgment, the appellants presented a petition to the First Division of the Court of Session, praying them to apply the remit; and

after some steps of procedure, unnecessary to be here detailed, having appointed the appellants to give in a condescendence, stating the facts and circumstances they might consider necessary to be investigated, with a view to the application of the remit, a condescendence was accordingly lodged; and that being followed by answers, replies, and duplies, the Court, on advising the whole cause, pronounced the following interlocutor:

21st Feb. 1815. Interlocutor of the Court of Session appealed from.

" The Lords having resumed consideration of this " petition, with condescendence, answers, replies, " duplies, and whole cause, find, that the pursuers, " James Craigdallie and others, have failed to con- " descend upon any acts done, or opinions professed " by the associate synod, or by the defenders, " Jedidiah Aikman and others, from which this " Court, as far as they are capable of understand- " ing the subject, can infer, much less find, that " the said defenders have deviated from the original " principles and standards of the associate presby- " tery and synod. Farther find, that the pursuers " have failed in rendering intelligible to the Court, " on what ground it is that they aver, that there " does at this moment exist any *real* difference " between their principles and those of the defend- " ers; for the Lords further find, that the act of " forbearance, as it is termed, on which the pursuers " found, as proving the apostacy of the defenders " from the original principles of the secession, and " the new formula, were never adopted by the de- " fenders, but were either rejected or dismissed as " inexpedient; and that the preamble to the formula, " which was adopted by the associate synod in the

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" year 1797, is substantially and almost *verbatim* " the same, as the explication which the pursuers " proposed in their petition of the 13th April 1797, " to be prefixed to the formula; and to which, " if it would have satisfied their brethren, they " declared that they were willing to agree; there- " fore, on the whole, find it to be unnecessary " now to enter into any of the inquiries ordered by " the House of Lords, under the supposition, that " the defenders had departed from the original " standards and principles of the association, and that " the pursuers must be considered merely as so many " individuals, who have thought proper voluntarily to " separate themselves from the congregation to which " they belonged, without any assignable cause, and " without any fault on the part of the defenders, " and, therefore, have no right to disturb the de- " fenders in the possession of the place of worship " originally built for the profession of principles " from which the pursuers have not shown that the " defenders have deviated; therefore, sustain the " defences, and assoilzie; and in the counter-action " of declarator, at the instance of the defenders " Jedidiah Aikman and others, decern and declare " in terms of the libel; but find no expences due to " either party."

The appellants, conceiving themselves to be aggrieved by this interlocutor, again appealed to the House of Lords.

19th July, 1820.

The *Lord Chancellor*:—There is a cause which has been repeatedly before the House, and one of the most difficult and distressing which I ever met with;

I mean the cause of *Craigdallie* v. *Aikman*. This arose in a controversy, which seems to have very much engaged the feelings of the different parties. The question was, who were entitled to the use of a chapel, which had been built, partly by previous subscription, partly by money received at the doors of the chapel after it was built, and partly by money subscribed in several different ways? The history of the case may be stated without going at great length into the transactions. There having been a secession from the established church of Scotland, a question arose between these parties, who are seceders, whether this chapel, which had been erected for the use of one particular class of seceders from the established church, belonged to the one party or the other? And this suit was instituted for the purpose of having it determined, to whom the property in this chapel belonged, or rather who were to have the use of it; because the origin of the chapel, and the manner in which it was purchased, left it one of the most difficult things in the world to determine where the property vested.

When this matter was formerly before the House, we acted upon this principle, that if we could find out what were the religious principles of those who originally attended the chapel, we should hold the building appropriated to the use of persons who adhere to the same religious principles; and in that view, it became necessary to determine whether any, and if so, which of the persons, who were contending for the use of this place of worship, adhered to or had ceased to adhere to those which were originally the religious principles which led to the establishment of this place of worship, with a view to deter-

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mine what was to be done if the right principle was to appropriate the building to those who continued to hold those religious principles, and were in communion with those who did so. By the judgment of the House in 1813, it is found that the ground and buildings in question were purchased and erected, with intent that the same should be used and employed for the purposes of religious worship, by a number of persons agreeing at the time in their religious opinions and persuasions, and therefore intending to continue in communion with each other; and that the society of such persons acceded to a body, termed in the pleadings "the Associate Synod:" That it does not expressly appear as matter of fact, for what purposes it was intended, at the time such purchase and erections were made, or at the time such accession took place, that the said ground and buildings should be used and enjoyed, in case the whole body of persons using and enjoying the same should change their religious principles and persuasions; or if, in consequence of the adherence of some of such persons to their original religious principles and persuasions, and the non-adherence of others of them thereto, such persons should cease to agree in their religious principles and persuasions, and should cease to continue in communion with each other, and should cease either as the whole body, or as to any part of the members composing the same, to adhere to the body termed in the pleadings, "the Associate Synod." By this judgment it was intended, that the congregation originally, if I may so represent them, were persons who adhered to the doctrines of what is known in Scotland by the name of the Associate Synod. This place for

religious worship being built by the contributions of a great many persons, adhering to the doctrines of the Associate Synod. If the whole body of those who now frequent the place, no longer adhered to the doctrines held by the Associate Synod, then it became a question for whom, at present, this building should be held in trust, which was purchased by money originally subscribed by those who held the opinion of that synod. The question then would be, whether any of the members now desiring to have the use of this place of religious worship, could be considered as entitled to the use of a building purchased by persons adhering to those religious opinions? And supposing that there is a division of religious opinions in the persons at present wishing to enjoy this building, the question then would be, which of them adhered to the opinions of those who had built the place of worship, and which of them differed from those opinions? Those who still adhered to those religious principles being more properly to be considered as the *cestui que* trusts of those who held this place of worship in trust, than those who have departed altogether from the religious principles of those who founded this place, if I may so express it.

I cannot read this judgment of the House without your perceiving, that the House felt infinite difficulty how to proceed with a case so very singularly circumstanced as this was; but, however, it was remitted to the Court of Session: and being remitted to the Court of Session, the appellants presented a petition to the First Division of the Court, praying their Lordships to review the interlocutors having

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regard to the proceedings of this House; and in the mean time, to find that the petitioners, and those who adhered to them, should have exclusive possession of the meeting-house in question; or, at all events, to find that they were entitled to possession for the forenoon, and for the afternoon and evening of each Sunday, alternately; or to grant to the petitioners such other relief in the premises as the Court should think fit. The Court, however, found itself under the same difficulty as this House, in order to know what it should decree; and accordingly, they appointed the appellants to lodge a condescendence of such facts and circumstances as appeared to them right to be ascertained, in order to the application of the remit from the House of Lords.

The appellants accordingly gave in a condescendence, which was followed by different pleadings; and in those pleadings it was maintained, that a certain preamble, which has been very much heard of in the course of the cause, was in perfect harmony with the original, and the strictest principles of the association; and that, at all events, it was originally proposed by the appellants themselves, and was ultimately adopted merely in consequence of their zeal in its behalf.

The Court pronounced an interlocutor*, in which it describes the utter impossibility of seeing any thing like what was intelligible in the proceeding; and I do not know how this House is to relieve the

* The Lord Chancellor read the interlocutor, which is printed ante, p. 537.

parties from the consequence. The Court of Session, in Scotland, were full as likely to know what were the principles and standards of the Associate Presbytery and Synod of Scotland, as any of your Lordships; and are as well, if not better than your Lordships, able to decide whether any acts done, or opinions professed by the defenders, Jedidiah Aikman and others, were opinions and facts which were a deviation, on the part of the defenders, from the principles and standards of the Associate Presbytery and Synod. If they were obliged to qualify their finding, as they do, intimating that they doubt whether they understood the subject at all under the words, "as far as they are capable of understanding the subject;" I hope I may be permitted, without offence to you, to say that there may be some doubt whether we understand the subject, not only because the Court of Session was much more likely to understand the matter than we are; but because I have had the mortification, I know not how many times over, to endeavour myself to understand what these principles were, and whether they have, or have not, deviated from them; and I have made the attempt to understand it, till I find it, at least, on my part to be quite hopeless.

The questions, therefore, in this case are, whether the interlocutors by which the defences are sustained, and these parties assoilzied, are right? And, to be sure, if they cannot show that the defenders, or any of them, had departed from the original standard and principles of their association, and if the Court is satisfied that the pursuers have not departed from these principles, but have thought proper, volun-

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tarily, to separate from the congregation to which they belonged, the inquiries directed by the judgment of the House would be altogether unnecessary; for the inquiries directed by that judgment aimed at having it ascertained, whether the defenders and pursuers, or either, and if so, which of them, had departed from the original principles of the congregation? and according to what the Court of Session now tell us, they cannot find out, nor has either party enabled them to find out, that either the one or the other had departed from the original principles of their association; and the consequence of that is, that those who have not attended the meeting, but who are yet insisting that they have interests in the property in which the meeting is held, are to be considered as persons voluntarily separating themselves from the congregation without cause; and all I can say upon the subject is, that after racking my mind again and again upon the subject, I really do not know what more to make of it.

On the other part of the interlocutor I entertain a doubt, namely, upon that part of it whereby, "in the counter-action of declarator, at the instance "of the defenders Aikman and others, they decern "and declare in terms of the libel;" in which terms, among other things prayed, are, that those defenders may forfeit all their interest in the property. Now I can conceive that, consistently with the declaration contained in this interlocutor, there being no difference of religious opinion among those persons, as far as the Court of Session could understand the subject, that it might be right to decern in the terms of the libel; namely, that those who are now engaged in

the worship, according to these religious opinions and religious principles, the same in the judgment of the Court of Session should not be disturbed in that religious worship; but I doubt extremely, whether, on the other hand, if the parties had interest, I mean interest in the lands and buildings, you can go further than to say, that they shall permit the religious worship to proceed as it has hitherto proceeded; and that they shall not make use of the interest they have in the land and buildings to prevent that. But it would be going a great way to say, that because they have for the present separated from the rest of the congregation, and although this very interlocutor finds there is no difference of opinion between them, that you should take out of them, if they have in them, any interest in the lands and buildings, &c. You may direct that land and those buildings to be enjoyed for the purposes to which they were originally devoted; but if they have any interest in the land and buildings, I doubt very much the propriety of a declaration, that they have forfeited that interest. That does not appear to me at this moment necessary to make good the effect of the interlocutor; but I will take it into further consideration till Friday.

Friday, 21st July.

The *Lord Chancellor*.—In that case of Craigdallie and Aikman, there was one point which I reserved in some measure for further consideration; but in looking through the case again, my opinion is, that I shall act most properly in advising you to affirm that judgment generally.

Judgment affirmed.