take the tenant's interests in that area unless and until they require to interfere with these interests. Accordingly, it seems to me that the view which has been taken by the Lord Ordinary is erroneous, and I think that we should recal his interlocutor and refuse suspension.

LORD ADAM concurred.

LORD M'LAREN—I agree with your Lordship, and have very little to add. It is admitted that the question in dispute depends on the construction of the clauses of the Lands Clauses Consolidation Act, which empower public companies who obtain Special Acts to purchase and take lands. This may be either by agreement under section 6 or by compulsory purchase under the 17th section of the Act. Now, my view of the effect of these clauses is that the undertakers are empowered to acquire the aggregate of all the different rights in the lands, what is ordinarily called the surface, the minerals, fee and liferent, servitudes, tenants rights' and any others if there be such; and that it is a condition of their right to enter upon the lands—that is, under subsequent sections—that they shall have acquired all these interests, or shall have deposited money as a guarantee that they mean to acquire them, or so that they may be compelled to acquire them. But except for the purposes of the clauses relating to entry on lands I do not see any necessity for the simultaneous acquisition of all these separate interests. Indeed, unless they are all to be included in one notice and dealt with under one arbitration or judicial proceeding, I see great difficulty as to how Mr Campbell's argument should receive effect. Because if the parties having interest are not to be dealt with in one proceeding the company must treat with them *seriatim*, and the first man who receives a notice to treat would say, "You have not acquired the interests of the other persons having an interest in the land, and that is a condition of the acquisition of my interest." The true meaning of the Act of Parliament is that the undertakers are not entitled to enter on the lands until they acquire all the interests going to make up the aggregate, or provide by a deposit for their purchase. In dealing with the owner or possessor of any particular interest they deal with him as an independent person having no relation whatever to any other claims that may be made against them in respect of the same lands. And in this case it seems to me that the measure of the company's requirements in a question with the present defender is simply what they claim under their notice to treat with him. The larger interest they may have acquired from the proprietor or other persons is a matter with which he is in no way concerned, but which he will no doubt hear of by-and-by when the Railway Company come to make the contract of sale operative to the full extent. As to the argument which the Lord Ordinary founds on section 112, I think it is open to the observation I have made on the argument founded on the purchase clauses, because I think that the contemplation of section 112 is that a certain part of the tenant's interest is claimed by the company and it deals only with that interest. I see no warrant for the Lord Ordinary's supposition that there could not be successive claims by the same tenant as from time to time the company's requirements were notified. Indeed, I see no reason to doubt that in the present case, if the Railway Company should eventually wish to enter on the remaining part of the lands which they acquired from Mr Stirling of Keir, it will be open to the company to serve a second notice on the tenant in respect of his interest in the lands then in his possession. For these reasons I agree that the interlocutor reclaimed against should be recalled.

LORD KINNEAR concurred.

The Court pronounced this interlocutor:—

"Recal the said interlocutor: Refuse to grant the prayer of the note, and decern: Find the reclaimers entitled to expenses, and remit," &c.

Counsel for the Complainer and Respondent—Campbell, K.C. — Guy. Agents—Wylie & Robertson, W.S.

Counsel for the Respondents and Reclaimers—Lord Advocate, K.C.—Solicitor-General, K.C. — Cooper. Agent — James Watson, S.S.C.

Saturday, December 7.

FIRST DIVISION.

[Lord Low, Ordinary.

M'DOUGALL *v.* BROWN.

Church—Dissenting Church—Loosing of Minister from Pastoral Charge—Refusal to Discontinue Duties—Action by Trustees of Church Fabric — Interdict against Minister Officiating in Church Building — Model Trust-Deed of Free Church — Title to Sue.

By a trust-deed the conditions of which were incorporated in the titles of all the churches belonging to a voluntary religious body, it was provided that the trustees of the congregation in whom the church fabric was vested should hold it for the purposes of religious worship, and should "permit and suffer to preach . . . within the said building . . . such person or persons only as may or shall from time to time be authorised or appointed so to do by the said body or united body of Christians." The trustees were also given power to sue actions in a court of law where necessary "for the purpose of excluding any party from, or any use, possession, occupation, or enjoyment of the building."

A minister who had been inducted to a church was, in accordance with the laws of the religious body, and by

a decision which it was not proposed to reduce, "loosed from the pastoral charge," and the charge was declared vacant. He persisted, however, in continuing to conduct public worship in the church and to act as minister therein. In an action raised against him by, *inter alios*, the trustees of the congregation, for declarator that the defender was not entitled to retain possession of the church, and for interdict against his acting as minister therein, *held* (1) that the trustees had a good title to sue the action; and (2) that the defender, although he had not been deposed or suspended from the ministry, was not in terms of the trust-deed "a person authorised or appointed" to act as minister in the church, and interdict *granted* against his so acting.

The Rev. William Currie M'Dougall was inducted to the office of minister of the West Free Church, Coatbridge, in 1883. In 1892 the General Assembly of the Free Church passed an Act of Assembly entitled "Act anent Ministerial Inefficiency." By that Act it was provided that if a presbytery found the state of a congregation under their charge to be seriously unsatisfactory, and if they further found that the state of the congregation was due to defects or errors personal to the minister, they were empowered after certain procedure to dissolve the pastoral tie and declare the charge vacant.

The Free Church Presbytery of Hamilton having found the state of the Free Church congregation of West Coatbridge to be unsatisfactory, the Act was put in force, and on 19th October 1899 the Presbytery of Hamilton pronounced a judgment which bore that "the Presbytery now loose Mr William C. M'Dougall from the pastoral charge of Coatbridge, and declare said charge to be vacant."

Mr M'Dougall dissented, and appealed to the Free Synod of Glasgow and Ayr, who dismissed the appeal and affirmed the judgment of the Presbytery. Mr M'Dougall protested and appealed to the General Assembly of the Free Church, but on 26th May 1900 the General Assembly found that the Presbytery had acted according to the law of the Church, and afresh declared the charge to be vacant.

Notwithstanding the judgments of the Presbytery, Synod, and General Assembly, Mr M'Dougall persisted in continuing to conduct public worship in and to act as minister of West Coatbridge Church.

An action was raised against him, in which the pursuers were (1) certain persons described as "the whole existing and acting trustees for the congregation of the body of Christians called the Free Church of Scotland, at present worshipping in the West Free Church of Coatbridge," and (2) the moderator and clerks of the General Assembly of the Free Church held in May 1900, and the members of the Free Church Presbytery of Hamilton.

The pursuers concluded for declarator that "in terms of the provisions of the contract of feu particularly specified in the condescendence annexed hereto, the defender having ceased to be the minister of the West Free Church Congregation of Coatbridge, and having been loosed from the pastoral charge of the said West Free Church of Coatbridge by and in virtue of a sentence judicially pronounced by the said Free Church of Scotland, acting through the medium of the Free Church Presbytery of Hamilton, is not entitled to retain possession of the West Free Church of Coatbridge, and that the pursuers, or otherwise the pursuers John Brown, James Stirrat, and James Marshall (the trustees for the congregation), as trustees foresaid, are entitled to possession of the same for the purposes specified in the said contract of feu." They also concluded for interdict against the defender "from preaching and expounding the Holy Scriptures, or administering ordinances, or doing or performing any act of religious worship or other act or thing whatsoever within the said West Free Church of Coatbridge, and from interfering with the pursuers, and those deriving right from them, in the peaceable possession and enjoyment of their right to the said West Free Church of Coatbridge in all time coming."

There was a further conclusion that the defender should be ordained to hand over the keys of the church and of the buildings connected therewith.

The title upon which the church fabric in question was held was a feu-contract executed in 1845, by which the ground upon which the church was erected was disponed to "the then trustees for the congregation of the body of Christians called the Free Church of Scotland then worshipping in Coatbridge," and to such other person or persons as might from time to time be appointed by the said congregation in the way and manner provided by a disposition commonly known as "The Model Trust-Deed of the Free Church." All the conditions of that deed were incorporated by reference into the feu-contract. The first purpose set out in the model trust-deed was that any building or place of worship erected or to be erected upon the ground "shall in all time coming be used, occupied, and enjoyed as and for a place of religious worship by a congregation of the said body of Christians called the Free Church of Scotland, or of any united body of Christians composed of them, and of such other body or bodies of Christians as the said Free Church of Scotland may at any time hereafter associate with themselves under the said aforesaid name of the Free Church of Scotland, or under whatever name or designation they may assume." The trust-deed also provided as follows:—"*Secondly*, Upon trust that the said trustees or trustee acting for the time shall at all times, and from time to time hereafter, permit and suffer to preach and expound the Holy Scriptures, and administer ordinances, and perform the usual acts of religious worship, within the said building or place of worship erected or to be erected as said is, such person or persons, and such person or persons only, as may or

shall from time to time be authorised or appointed so to do by the said body or united body of Christians acting through the medium of its kirk-sessions, presbyteries, provincial synods, and general assemblies, or according to the form or forms in use with the said body, or united body, for the time; providing always, as it is hereby expressly provided and declared, that no person or person even holding such authority and appointment as aforesaid, nor any person or persons whatsoever, shall have any right or title to pursue the said trustees or trustee acting under these presents for the time in any court of law or justice for the purpose, or with the object and intent either of obtaining such permission and sufferance as said is, or the continuance thereof, or of obtaining, in any manner of way whatever, liberty, or the continuance of liberty, to preach and expound the Holy Scriptures, or administer ordinances, or to do or perform any act of religious worship or other act or thing whatsoever within the said building or place of worship erected or to be erected as said is, or with the object and intent of in any way controlling the said trustees or trustee in reference to the use, occupation, management, or disposal of such building or place of worship, unless with the express consent and concurrence of the General Assembly of the said body or united body of Christians, or of the Commission of such Assembly, previously had to such pursuit; . . . and providing further, as it is hereby further expressly provided and declared, that whensoever any person holding such authority or appointment as said is, and enjoying the permission and sufferance foresaid, shall by a sentence of the said body or united body of Christians, pronounced by one or other of its presbyteries, provincial synods, or by its General Assembly or Commission of such Assembly for the time being, or in any other way or manner in use in such matters for the time by the said body or united body of Christians, be deposed or suspended from office or cut off from the said body or united body of Christians, or declared no longer a minister thereof, his authority and appointment foresaid shall *ipso facto* cease and determine; and the said trustees or trustee acting for the time shall not only be no longer bound but be no longer entitled to permit or suffer him to preach and expound the Holy Scriptures, or administer ordinances, or do or perform any act of religious worship or other act or thing whatsoever within the said building or place of worship erected or to be erected as said is, and shall be bound and obliged to debar him therefrom aye and so long as he remain deposed or suspended or cut off as aforesaid. . . . *Fifthly*, It is hereby expressly provided and declared that the said trustees or trustee acting for the time shall always have full power and liberty to raise, prosecute, and follow forth whatever action, suit, or proceeding they may think proper, in whatever court or courts of law or justice, for the purpose or with the intent and object of excluding any party or parties whatsoever from all or any use, possession, occupation, or enjoyment of the building or place of worship erected or to be erected as said is, or any part thereof, or generally of the subjects hereby disponed or any part thereof, and that no party or parties whatsoever shall have any right or title whatsoever to defend such action, suit, or proceeding, either in virtue of these presents or otherwise, unless with the express consent and concurrence as aforesaid of the General Assembly of the said body or united body of Christians, or the Commission of such Assembly previously had to such defence."

The pursuers averred as follows:— . . . "A copy of the said model trust-deed, containing the whole clauses which are incorporated into the said contract of feu, is produced herewith and referred to. (The defender then referred specially, *inter alia*, to the purposes therein set forth which are quoted *supra*.) The defender has not obtained the express consent and concurrence of the General Assembly or Commission of Assembly of the Free Church, or of its successor in office, the General Assembly of the United Free Church, or the Commission of said Assembly, to defend this action."

The pursuers pleaded—"(1) The defender having no right or title to possess or use the subjects libelled, presently occupied and used by him, and the first-named pursuers, as trustees foresaid, being vested under the said contract of feu and relative minute in the subjects in question, the pursuers are entitled to have the free use and possession of the said subjects, and to have defender removed therefrom, and decree ought to be granted in terms of the conclusions of the summons. (2) The defender having been loosed and removed from the pastorate of the said West Free Church of Coatbridge, has forfeited all legal right and title to the said premises, and to the use or occupation of them, and is bound to remove therefrom, and he having refused to do so, the pursuers are entitled to have him removed and interdicted as craved, and to have decree pronounced in terms of the conclusions of the summons. (3) The defender is not entitled to defend the present action, in respect that he has not obtained the expressed consent and concurrence of the General Assembly of the Free Church, or the commission of said Assembly, or of their successors in office, the General Assembly of the United Free Church, or of the Commission of said Assembly, to do so."

The defender averred — "There is no longer such a body in existence as the Free Church Presbytery of Hamilton. The pursuers, who are designed as the Moderator of the General Assembly of said Free Church of Scotland, do not hold such offices, and the pursuers, who are designed as members of the said Free Church Presbytery of Hamilton, are no longer members thereof, and do not constitute said presbytery. The whole of said pursuers have withdrawn from the Free Church of Scotland, and have become members of a body known as the United Free Church of Scotland. The said United Free Church of

Scotland is a different body from, and does not represent, the Free Church of Scotland, and has no right to the property of the Free Church of Scotland. At all events, if the United Free Church of Scotland does represent the Free Church of Scotland, and if the moderator and clerks of Assembly and presbyteries of the new Church do represent the persons holding similar offices, and forming similar bodies, in the Free Church of Scotland, the new officers and bodies are not suing or represented in the present action. The pursuers are called upon to produce in process a mandate by each of them authorising the raising and prosecution of the present proceedings."

The date of the Union referred to was 31st October 1900.

The defender further averred that he continued to officiate with the consent and concurrence of the Kirk-Session. He denied that any consent by the General Assembly was necessary to enable him to defend the action, or that it was possible in the present circumstances of the Free Church to obtain such consent.

He pleaded—"(1) No title to sue. (2) All parties not called. (6) The defender not having been deposed, suspended, or cut off from the Free Church, and having the consent of the Kirk-Session of Coatbridge West Free Church to officiate in said church, interdict ought to be refused, with expenses."

The defender had not brought, and it was admitted that he did not intend to bring, an action for reduction of the judgment pronounced dissolving the pastoral tie between him and his congregation and declaring the charge vacant.

The Lord Ordinary (Low) on 9th March 1901 pronounced the following interlocutor:—"Finds, decerns, and declares in terms of the conclusions of the summons of declarator: Dismisses the conclusions for delivery of the keys of the West Free Church of Coatbridge mentioned therein, and decerns: And further interdicts, prohibits, and discharges the defender from preaching and expounding the Holy Scriptures or administering ordinances, or doing or performing any act of religious ordinances, or doing or performing any act of religious worship within the said West Free Church of Coatbridge, and from interfering with the pursuers and those deriving right from them in the peaceable possession and enjoyment of their right to the said West Free Church of Coatbridge in all time coming, and decerns," &c.

Opinion.—"The pursuers in this action are, in the first place, three gentlemen who are described as 'the whole existing and acting trustees for the congregation of the body of Christians called the Free Church of Scotland at present worshipping in the West Free Church of Coatbridge.' In the second place, the pursuers are Dr Taylor, moderator, and Drs Melville and Henderson, principal clerks, 'of the General Assembly of the Free Church of Scotland, held in Edinburgh in May 1900.' Finally, there are a number of gentlemen who are described as 'the whole members of the Free Church Presbytery of Hamilton.'

"The defender is the Rev. Mr M'Dougall, who is described as 'formerly minister of the West Free Church congregation of Coatbridge.'

"The object of the action is, in the first place, to have it declared that the defender having ceased to be the minister of the West Free Church congregation of Coatbridge, and having been loosed from the pastoral charge of that church, is not entitled to retain possession of the church, and that the pursuers, the trustees for the congregation, are entitled to possession thereof. There is also a conclusion to have the defender interdicted 'from preaching and expounding 'the Holy Scriptures or administering ordinances, or doing or performing any act of religious worship or other act or thing whatsoever within the West Free Church of Coatbridge, and from interfering with the pursuers and those deriving right from them in the peaceable possession and enjoyment of the said West Free Church of Coatbridge in all time coming.' [*His Lordship then stated the facts as narrated supra*].

"In his defences the defender averred that 'the whole procedure and sentences and judgments' whereby the charge was declared vacant 'were irregular and incompetent, and the defender is willing if necessary to set these aside by reduction,' and he pleaded that he ought to be assoilzied in respect that the proceedings were irregular and incompetent. That plea, however, was not insisted in, and the defender's counsel stated that he did not propose to bring an action of reduction. The case therefore must be dealt with upon the footing that in accordance with the laws of the Church of which the defender was a minister, a valid decree was pronounced dissolving his pastoral tie with the congregation of West Coatbridge Church, and declaring the charge of that church vacant.

"In these circumstances the argument was directed entirely to the questions (1) whether the pursuers have a title to sue; and (2) whether, if they have a title to sue, they can obtain decree in terms of the conclusions of the summons.

"On 31st October 1900 the Free Church of Scotland entered into a union with the United Presbyterian Church, the united body being called the United Free Church of Scotland. The defender contends that at the union the Free Church of Scotland ceased to exist, and that accordingly the pursuers, who sue as the moderator and clerks of the General Assembly of the Free Church of Scotland, and as the members of the Free Church Presbytery of Hamilton, can have no title to insist in the action. If these parties had been the only pursuers, the question might have been one of considerable nicety. I do not, however, think that it is necessary to determine the question, because in my opinion the leading pursuers, the trustees for the congregation, have an unimpeachable title, and if that is so, the concurrence of the

other pursuers can in no way prejudice the defender.

"The title upon which the church in question is held is a feu-contract executed in 1845, by which the ground upon which the church was erected was disponed to Joseph Wilson and others, as trustees for the congregation of the body of Christians called the Free Church of Scotland worshipping in Coatbridge, and to such other person or persons as might from time to time be appointed by the said congregation, in the way and manner provided by a disposition which is known as 'the model trust-deed' of the Free Church. All the conditions of that deed were incorporated by reference into the feu-contract. The leading pursuers were duly elected by the congregation in 1889 to hold the property of the congregation.

"The first purpose in terms of the model trust-deed for which the trustees hold the property is that any building or place of worship erected or to be erected upon the ground 'shall in all time coming be used, occupied, and enjoyed as and for a place of religious worship by a congregation of the said body of Christians called the Free Church of Scotland, or of any united body of Christians composed of them, and of such other body or bodies of Christians as the said Free Church of Scotland may at any time hereafter associate with themselves under the foresaid name of the Free Church of Scotland, or under whatever name or designation they may assume.'

"That appears to me to provide in terms for the case which has occurred, of the Free Church uniting with the United Presbyterian Church under the name of the United Free Church of Scotland.

"Further, prior to and in contemplation of the union the General Assembly of the Free Church passed an Act whereby it was, *inter alia*, enacted and declared 'that the whole property belonging to the Free Church of Scotland, or in which the said Free Church is interested, presently vested in or in any way held by the said Free Church of Scotland, . . . or in name of any persons as trustees for behoof of the Free Church of Scotland, or any object or schemes connected therewith, in whole or in part, shall belong to the United Free Church of Scotland, and shall be vested in and held for behoof of the United Free Church of Scotland, or any object or scheme connected therewith, by . . . the said trustees.'

"It cannot be disputed that the trustees in this case were vested in and held the church in question for an object connected with the Free Church of Scotland, and accordingly they are still entitled to hold the church, although they now hold it for behoof of the United Free Church instead of the Free Church.

"It therefore seems to me that the trustees have the same rights and powers in regard to the Coatbridge Church now as they had prior to the union.

"The next question is, whether, under the provisions of the model trust-deed, the trustees are entitled, in the circumstances which have occurred, to prevent the defender conducting divine service in, or otherwise using, the Coatbridge Church.

"The second purpose of the trust-deed provides that the trustees 'shall at all times, and from time to time hereafter, permit and suffer to preach and expound the Holy Scriptures, and administer ordinances, and perform the usual acts of religious worship within the said building or place of worship erected or to be erected as said is, such person or persons, and such person or persons only, as may or shall from time to time be authorised or appointed so to do by the said body or united body of Christians, acting through the medium of its kirk-sessions, presbyteries, provincial synods, and General Assemblies, and according to the form or forms in use with the said body or united body for the time.'

"The pursuers' argument is that the defender having, in consequence of the decrees of the Church courts, ceased to be minister of the Coatbridge Church, and the charge having been declared to be vacant, he is no longer a person authorised or appointed to conduct worship and administer ordinances 'within the said building or place of worship,' and that therefore they have power to prevent him making use of the church for these purposes.

"The defender, upon the other hand, contended that what was meant by a person authorised or appointed to conduct religious worship, was a person holding the status of a minister of the Free Church. If, he argued, the words were construed as being limited to the person who had been inducted to the office of minister of a particular church, then the trustees of that church would have power to prevent any other minister taking part in the service or conducting public worship in the absence of the minister of the church—a thing which was certainly not intended.

"It must be conceded that the framers of the trust-deed had not in view a case of the kind which has occurred here, because I understand that until the Act of Assembly of 1892 was passed the Church courts had no power to remove a minister from his charge except by deposing him from the ministry. The clause, however, in the trust-deed which I have quoted appears to me to have been designedly framed in general terms to meet the case of an alteration in the laws of the Free Church; and the defender having by competent authority been removed from the position of minister of the Coatbridge Church, I think that the trustees have power to refuse to permit or suffer him to continue to use the church for religious services, as if he still continued to hold the office of minister.

"The clause authorises the trustees to permit and suffer such person 'only' to conduct religious services 'within the said building or place of worship . . . as may from time to time be authorised or appointed so to do' by the Church courts, and 'according to the form or forms in use with the said body' (that is the Free Church) 'for the time.'

"Now, according to the forms in use in the Free Church in 1899, the defender was declared by a valid decree of the courts of that Church to be no longer minister of the West Coatbridge Church, and therefore to be no longer entitled as a matter of right to conduct religious services in that church. It therefore seems to me to be in vain for the defender to contend that he is still a person 'authorised and appointed' to conduct divine service and administer ordinances 'within the said building or place of worship.'

"The defender finally contended that the declarator asked was inappropriate, and the interdict too wide. The declarator asked is that it shall be found that he 'is not entitled to retain possession' of the church. He says that he has never had possession. He admits, however, that he claims to have right to preach, conduct worship, and dispense ordinances in the church. As it is mainly for the purpose of providing a building within which these sacred acts may be performed that a church is built, the person who has a right to perform, and does perform, the acts, may in a very practical sense be said to be in possession of the church.

"In regard to the interdict, the conclusion so far follows the words of the trust-deed, because the Court is asked to interdict the defender 'from preaching and expounding the Holy Scriptures, or administering ordinances, or doing or performing any acts of religious worship,' within the church. That is practically a repetition of the words of the trust-deed. The defender, however, argued that if interdict was pronounced in the terms concluded for, he could never hereafter assist in the service of the Coatbridge Church, or take a service at the request of the minister without being guilty of breach of interdict. The argument is ingenious, but I think that the answer to it is that, in the case supposed, nobody could suggest that a breach of interdict had been committed. The conclusion, however, after the words which I have quoted, proceeds 'or' (doing any) 'other act or thing whatsoever' within the church. I do not know what these words are intended to cover, and they appear to me to be too indefinite. Read strictly they would include the case of the defender being present in the church as a worshipper.

"There is also a conclusion asking that the defender should be ordained to hand over to the trustees the keys of the church and of the buildings connected therewith. The defender, however, says that he is not in possession of the keys, and it is not suggested that there should be a proof upon the point,

"I shall therefore grant decree in terms of the conclusions of the summons other than that for delivery of the keys, and omitting from the interdict the general words to which I have referred."

The defender reclaimed, and argued—The proceedings should have been directed against the congregation, who were quite satisfied with the defender and had no wish to interrupt his ministry. The pursuers had left the church with no minister, and raised the present action to prevent his being re-elected. Their construction of the second purpose of the model trust-deed was not correct. The defender was precisely in the position of the person who was to be permitted to preach, if he was a person holding the status of a minister of the Free Church. That was the real meaning of the qualifications prescribed by the second purpose. To limit the words to a person appointed minister of a particular church was not intended, and would give the trustees power to exclude any other minister from conducting public worship in the absence of the minister of the church. Nor did the proviso in the fifth article as to the consent of the General Assembly apply, because the defender was not suing but merely defending his rights. (2) The title of the pursuers was bad. The Free Church ceased to exist at the union with the United Presbyterian Church, and accordingly the pursuers, suing as moderator and clerk of the General Assembly of the Free Church of Scotland and members of the Free Church Presbytery of Hamilton, had no title. At any rate the action should be sisted till the effect of the union had been judicially determined. (3) The conclusions of the summons were faulty; the declarator was inappropriate, for he had never had possession of the church; and the interdict was too wide. At any rate it should be qualified by adding the words "as of right."

Argued for the pursuers—(1) There was nothing in the case which was in any way affected by the question of the validity or effect of the union. In any event, however, the trustees for the congregation, who were the leading pursuers, had an unimpeachable title. (2) The defender was no longer the incumbent of the church, the pastoral tie having been severed in 1899, and the charge having been declared vacant. He was accordingly no longer a person authorised in terms of purpose 2 of the model trust-deed to conduct worship therein. That was the plain meaning of the words. The permission to conduct services was committed to the trustees and nobody else, and they accordingly had power to prevent an unauthorised person from doing so.

LORD PRESIDENT — After hearing the whole argument I am confirmed in the impression which I formed when the case was formerly before us, that no question raised in it at all depends upon the validity of the union between the Free Church and the United Presbyterian Church. If there had been any such contingency we would have remitted the case to the Second Division, who are seised of that important question. What we have to decide is a comparatively simple point. The action is at the instance of the trustees for the congregation of the West Free Church, Coatbridge, who have a well-known status in the constitution of the Church, which is defined in the model trust-deed. The

Moderator and principal clerks of the General Assembly, and the Presbytery, are also pursuers, but the Lord Ordinary thinks it is unnecessary to decide whether these parties have a title to sue, and I concur with him in this view. It is enough that the trustees for the congregation are pursuers.

The second purpose of the model trust-deed declares that the trustees shall "permit and suffer to preach and expound the Holy Scriptures, and administer ordinances, and perform the usual acts of religious worship within the said building . . . such person or persons, and such person or persons only, as may from time to time be authorised or appointed so to do by the said body or united body of Christians acting through the medium of its kirk-sessions, presbyteries, provincial synods, and general assemblies," and that no person even holding such authority or appointment shall have any right or title to pursue the trustees in any court of law or justice for the purpose of obtaining such permission or sufferance or the continuance of it, or with the object of in any way controlling the trustees in reference to the use, management, or disposal of the building, "unless with the express consent and concurrence of the General Assembly."

The defender in the action was formerly minister of this church, but by the appropriate proceedings under an Act of Assembly for removing inefficient ministers the pastoral tie between him and the congregation was loosed before the union of the Churches, and it seems to me that the effect of these proceedings was to place the defender in the same position as if he never had been minister of the West Free Church, Coatbridge. But he has nevertheless persisted in continuing to preach in it, and this must make it very difficult for anyone to accept the cure or for the proper authorities to fill the vacancy in the church. The defender is attempting to remain in the *de facto* possession of the status of minister of the church while that status has in law been brought to an end.

In these circumstances the trustees under the model trust-deed have raised the present action. The church is vested in them, and they have to perform certain well-ascertained duties with regard to it. Their powers and duties involve the right to have the use of the church secured for the purposes of the model trust-deed, and to defend it against intrusion by a person who is not under the constitution of the church entitled to persist in acting as a minister of that church.

That is, shortly stated, the position of matters, and it seems to me that the Lord Ordinary, who has evidently considered the case with great care, has arrived at a sound conclusion. It would be impossible to conduct the affairs of the church if it were so much without government that an intrusion of this kind could not be prevented. Accordingly it is sufficient, without going through the clauses of the trust-deed in detail, to say that I am of opinion that the reclaiming-note should be refused, and that the judgment of the Lord Ordinary should be affirmed.

LORD KINNEAR—I concur. I think the defender's counsel was quite right in saying that the question really depends upon the true effect and meaning of the trust, which is constituted in the persons of the pursuers, as that trust is defined in the second of the trust purposes. That purpose is that the trustees shall hold the building for the purpose of its being used as a place of worship by a congregation of the Free Church, and they are to permit to preach and expound the Holy Scriptures within the building such persons only as shall from time to time be authorised or appointed so to do by the Free Church, which is described as a body of Christians acting through the medium of its kirk-sessions, presbyteries, provincial synods, and General Assemblies. The question therefore, according to the proposition with which the defender's argument started, is whether the defender is or is not such a person. Is he a person appointed by the Church Courts of the Free Church to administer ordinances and to perform the usual acts of religious worship within that building? If we were deciding that question without aid from any other part of the trust-deed, I should have no hesitation in saying that he was not, because the pastoral tie which at one time subsisted between the defender and the congregation has now been severed by what is not now disputed to be the lawful sentence of the proper Church Courts having authority in that matter. But I do not think we have to consider the question on its merits for ourselves, because it is decided for the purposes of this action by the one body whose decision seems to me to be final, according to the constitution of the trust, and under the terms of the trust-deed, and that body is the General Assembly of the Free Church. The trust-deed sets out in the first place that the building is to be used by ministers of the Free Church under the conditions I have stated, and then that such ministers are not to sue the trustees for the purpose either of obtaining or maintaining possession except with the consent of the General Assembly. Then there are to be certain elders and deacons who are to have the charge in regard to certain matters in the management of the building, but they are not to interfere with the trustees by any suit or action at law except with the consent of the General Assembly or its Commission. Then it is provided that the trustees are to be subject at all times and in all things to the regulation and direction of the General Assembly for the time being, that they are to have power to sue actions in a court of law where it is necessary, and that no defence is to be maintained against such action except with the consent of the General Assembly. These conditions would probably have been altogether ineffectual to prejudice a defence founded on grounds extrinsic to the trust. But they are conclusive against a person

whose title is vested upon the trust-deed alone. Now this is an action brought by the trustees on the allegation that the pastoral tie between the defender and the congregation having been severed, he was no longer entitled to the use or occupation of the church building as minister of the congregation, and it is not only brought with the consent of the General Assembly, but the General Assembly is a party to the action.

The only answer put in is by the defender, the minister whose connection with the congregation has been brought to an end, and he is not defending with the consent of the General Assembly. The question therefore we have to consider is whether upon the terms of the trust-deed the present possession of the buildings is to be vindicated by the trustees, with the concurrence of the body to whom they are subject in terms of the trust. I quite agree that that really raises no question which can be seriously disputed, and that the Lord Ordinary's interlocutor should be affirmed.

LORD ADAM and LORD M'LAREN concurred.

The Court adhered.

Counsel for the Pursuers and Respondents — Guthrie, K.C. — Orr. Agents— Cowan & Dalmahoy, W.S.

Counsel for the Defender and Reclaimer — Guy — W. Thomson. Agent — John Veitch, Solicitor.

Saturday, December 7.

SECOND DIVISION.

[Lord Pearson, Ordinary.

BROWNE'S TRUSTEE *v.* ANDERSON.

Assignation — Intimation — Sufficiency of Intimation — Spes successionis — Bankruptcy—Intimation of Assignation to One of Two Trustees who afterwards became Sole Trustee.

In April 1888 A, for onerous causes, assigned to B a *spes successionis* which he had in the estate of his late father, which was then in the possession of A himself and another as testamentary trustees. The assignation was intimated to the law-agents of the trust, and was acknowledged by them, but it was not acknowledged by the trustees themselves. In 1892 A's co-trustee died, and he became sole trustee. In June 1888 A was sequestrated. In 1897 the *spes successionis* in question became a right of property in A. In a competition between the assignee under the assignation of April 1888 and the trustee in A's sequestration, who maintained that the assignation was not effectual as against him, because it had not been sufficiently intimated — *held* that the claim of the assignee was preferable, in respect that intimation or its equivalent had at latest been effectually operated when A became sole trustee in 1892, at which date the subject of the assignation, being merely a *spes successionis* had not passed to the trustee in the sequestration.

Assignation—Intimation of Assignation—Intimation of Assignation to Law-Agent of Trust

Opinion (*per* Lord Justice-Clerk and Lord Moncreiff) that as a general rule an assignation of rights in a trust estate is sufficiently intimated to trustees by intimation to their law-agents—Lord Trayner *reserving* his opinion on this question, but *observing* that it is difficult *prima facie* to see why, if intimation of an assignation to a factor managing an estate is sufficient as intimation to his principal, intimation to the law-agents of a trust should not be held sufficient as intimation to the trustees for whom they act.

By assignation dated 11th April 1888 Robert Bennett Browne, marine insurance broker, Glasgow, assigned to Henry David Anderson and Colin Dunlop Donald, and the survivor of them, as trustees for certain purposes, his whole right and interest, present, future, or contingent, in the estate of his father the deceased James Browne under his trust-disposition and settlement dated 25th January 1842. This included a *spes successionis* to a share of the residue of James Browne's estate which was held by Robert Bennett Browne and Duncan C. Brown, who was also in business in Glasgow, as trustees under the settlement, in trust for the truster's daughter Isabella for her liferent allenarly and her issue in fee, and failing such issue for the survivors of the truster's children.

On 20th April the assignation was sent by the assignees' agents to Messrs Andersons & Pattison, writers in Glasgow, as agents for James Browne's trustees, with a request that they should "get an acknowledgment of intimation by Mr James Browne's trustees endorsed thereon, and thereafter return it to us." They also enclosed a copy of the assignation for the trustees' use. The deed was returned on 24th April, having endorsed thereon an acknowledgment in the following terms:—"*Glasgow, 20th April* 1888.—As agents for the trustees of the deceased James Browne, insurance broker in Glasgow, we acknowledge to have received of this date intimation of the foregoing assignation.—ANDERSONS & PATTISON, Agents for Mr Browne's trustees." The assignation and docquet were entered by the agents in the sederunt-book of the trust prior to the next ensuing meeting of the trustees.

In May 1888 Robert Bennett Browne stopped payment, and his estates were sequestrated on 28th June, Andrew Simpson M'Clelland, C.A., Glasgow, being appointed trustee.

In August 1892 Duncan C. Brown died and Robert Bennett Browne became the sole trustee on his father James Browne's trust estate. He remained sole trustee till