[HEARD 22*nd February*—JUDGMENT 15*th May*, 1849.]

The Rev. ARCHIBALD LIVINGSTONE, Minister of the parish of Cambusnethan, *Appellant.*

The Rev. WILLIAM PROUDFOOT, Minister of the parish of Avondale, and others, *Respondents.*

Church—Courts—Corporation.—The sentence of a Church Court is not void because some of the persons who sat and voted as members were not qualified.

IN the year 1834 the General Assembly of the Church of Scotland passed an Act of Assembly, by which, of their own authority, they declared, that all ministers of chapels of ease should be constituent members of the presbyteries and synods within whose bounds their chapels were respectively situated, and should enjoy every right and privilege of parish ministers; and enjoined the church courts within whose bounds the chapels were situated, to receive and enrol the ministers as members of their bodies, and put them in all respects upon a footing of presbyterian equality with the parish minister.

In the year 1843, in the case of the parish of Stewarton, the Court of Session found that this Act of Assembly was illegal, and *ultra vires* of the General Assembly, as the sole power of disjoining and erecting parishes was vested in the Court of Commission of Teinds.

The Appellant, as minister of the parish of Cambusnethan, was a member of the presbytery of Hamilton in the year 1834, and continued to be a member until the proceedings were adopted against him, which will be presently noticed. After the passing of the Act of Assembly of 1834, several ministers

of chapels of ease within the presbytery of Hamilton were admitted members of that presbytery, and sat and voted as members in all the deliberations of the body, which by this addition was increased from fourteen members (its original number) to twenty-four.

In the month of March, 1840, the presbytery of Hamilton, thus constituted, served a libel upon the Appellant, charging him with various acts of theft. The libel, which was signed by the minister of one of the chapels of ease, acting as moderator of the presbytery, was followed out by judicial procedure, in which the Appellant appeared as party defendant.

On the 29th October, 1840, the presbytery found certain of the acts of theft charged against the Appellant to be proven. Several ministers of chapels of ease were present and voted at the sitting of the presbytery at which this finding was made.

On the 27th May, 1841, the Appellant presented a note to the Court of Session, praying suspension and interdict of the proceedings of the presbytery, and obtained the prayer of the note for want of answers or appearance.

On the 23rd April, 1842, the Appellant likewise raised a summons, concluding for reduction of the proceedings of the presbytery and declarator, that the presbytery as a church court was composed exclusively of ministers of parishes within the bounds of the presbytery, and of elders from the Kirk Session, and that no ministers of chapels of ease or of districts, or churches attempted to be erected into parishes and parish churches by ecclesiastical authority alone, whether *quoad sacra* or *quoad omnia*, had any title to vote or act as members of the presbytery, and that the collective body of the presbytery, including the ministers of chapels of ease, had no jurisdiction *quoad* the Appellant, in any matter or cause ecclesiastical.

Notwithstanding these steps of procedure, the presbytery of Glasgow, on the 26th April, 1842, referred the Appellant's case to the General Assembly, before which it cited him to

appear. On the 27th May, 1842, the General Assembly pronounced sentence of deposition against the Appellant, who, by his counsel, declined their jurisdiction, or to appear before them.

The processes of suspension, and reduction, and declarator, were afterwards conjoined, and on the 14th January, 1846, the Lord Ordinary (*Cunninghame*) pronounced the following interlocutor:—"Finds that the judgment of the presbytery of "Hamilton in 1841, which the Pursuer now seeks to have "suspended and reduced, proceeded on a libel raised before "the presbytery in 1840, charging the Pursuer with very grave "offences: Finds that the charges thus preferred against the "Pursuer were prosecuted solely as ecclesiastical delicts, and "the libel concluded against the Pursuer only for such censure "and punishment as an ecclesiastical court could inflict: Finds "that the said presbytery, as the only local ecclesiastical court "acting in the district for the time, entertained the case and "sustained the libel—and the Pursuer, without objecting to "the court, or to any of the members thereof, joined issue on "the merits before the presbytery—and, after a long probation, "and much discussion on the proof, he was, in October, 1840, "found guilty by the said presbytery, unanimously, of a large "portion of the offences charged against him: Finds that the "said presbytery of Hamilton, both at the date of the said "libel and sentence, was composed in part of ministers of "chapels and of churches, having a certain territory annexed "to them *quoad sacra*, who had been admitted members of "presbytery, and of the other church courts, in terms of the "authority of the General Assembly of the Church: Finds "that neither the Pursuer nor any other party stated the "objection now urged to the constitution of the presbytery "till May 1841, when the Pursuer, after judgment of con-"viction had passed against him, as aforesaid, presented the "note of suspension now in dependence: Finds that nothing

" relevant is averred by the Pursuer to show, that the pres-
" bytery of Hamilton, as constituted in 1840 and 1841, did not
" act in *bonâ fide* and legitimately throughout the proceedings
" which took place against him, or that he is now entitled to
" object to the jurisdiction and proceedings of the presbytery,
" as constituted when he pleaded before them: Therefore, in
" the suspension, repels the reason of suspension: Finds the
" letters orderly proceeded, and decerns: and in the reduction,
" finds the reasons of reduction incompetent and irrelevant,
" and therefore dismisses the action, and decerns."

On the 27th June, 1846, the Court adhered to this interlocutor. The Appeal was against the interlocutors of the Lord Ordinary and of the Court.

Mr. Bethell and *Mr. Anderson* for the Appellant.—The legality of the proceeding against the Appellant must depend on the legality of the body by whom they were instituted and followed out to sentence. The libel was at the instance of the presbytery of Hamilton, a body which by law could consist of only fourteen members, but which at the time did consist of twenty-four members. The additional ten persons who took part in the proceedings were entire strangers to the whole matter, and had no more right to join in it than any humble parishioner. Rex *v.* Gudridge, 5 *Bar.* and *Cres.*, 459; Rex *v.* Justices of Hertford, 2 *Qns. B. Rep.*, 753; Graham *v.* Lafitte, 3 *Moore*, 382, establish the proposition that the act of a joint body is regarded throughout as a joint act which cannot be severed so as to ascertain the amount of influence of each of the body. The whole procedure, in the present case, therefore, must be void, by reason of the part taken in it by those members who had no right to join. But even if it were allowable to inquire as to the part taken by each member, it would be impossible to ascertain whether the result was not procured by the votes of the foreign members; the necessary consequence

is, that the procedure being carried on at the instance of a body not legally constituted, the whole must be void.

It is no doubt true, that if one having lawful authority to confer a judicial office, appoint another to it, the party appointed is the bearer of the lawful authority, although from some personal reason he may not be qualified; he is so until the defect of qualification is ascertained, and for the sake of general convenience his acts are recognised. Thus, if the Crown appoint a judge, what is done by the judge is held as emanating from lawful authority, although it may afterwards be found that the party was not competent to assume the office. But the General Assembly had no authority to reconstruct presbyteries or introduce these new members into the presbyteries. Its act in this respect was assumption of a power which it did not possess. The jurisdiction, therefore, which the presbytery exercised cannot be held as having emanated from lawful authority. The case was likened in the Court below to that of Barbarius Phillippus, which occurs in the *Digest*, i. 14, 2, where the acts of a pretor were sustained although he was disqualified from holding the office by being a slave, a fact which was not known to the people at the time of his election; but that case is no way different from the one already put. In Rome the people were the sovereign authority and elected the pretor, and in the Digest what was done is expressly rested upon this, that the pretor was appointed by and for the benefit of the people, and therefore his acts should be maintained for their benefit, and that the people, as the sovereign power, might confirm as well as appoint; and so is the comment of *Voet*, p. 62. Here the General Assembly did not bear the same relation to the presbytery that the Roman people did to the pretor. They possessed neither sovereign nor subordinate authority for the erection of parishes or the introduction of members to presbyteries.

It cannot, therefore, be said that the act of the Assembly

should be sustained as the act of a body *de facto* exercising a public office; for the act of the foreign members of the presbytery in voting in this procedure was not the act of parties *de facto* holding the office of presbyters, inasmuch as the number of fourteen presbyters was already full before these persons were appointed by the illegal act of the General Assembly; they were, therefore, presbyters neither *de facto* nor *de jure*, but persons assuming to hold and exercise an office already filled by persons legally appointed. Not only so, but the libel upon which they proceeded was signed not by one of the persons duly appointed, but by one of these strangers who was acting as moderator for the time. On this ground alone the whole proceeding is *funditus* void.

The cases in the law of Scotland fully support the Appellant's proposition. In Cumming *v.* Munro, 12 *Sh.* 61, the proceedings upon a summons signed by the substitute of a sheriff clerk depute were declared to be void, because such an officer had no power to appoint a substitute: and in Forrest *v.* Harvie, 4 *Bell's App. Ca.* 197, proceedings before magistrates of a burgh acting as justices of the peace were declared to be illegal, because the warrant of citation had been signed by the clerk of the magistrates instead of the clerk of the peace. In that case an opinion was expressed, that the procedure might have been legal if the party had been *de facto* clerk of the peace, although he was not so *de jure*. But here, as already observed, the ten foreign members of the presbytery were so neither *de facto* nor *de jure*. And Russell *v.* Lang, 2 *Bro.* 211, shows that participation in the duties of a judicial office by one not duly qualified vitiates the acts of another, though duly qualified: there, a sentence pronounced by two justices was declared to be void, because one of them had not been present at a previous diet at which the proof was taken, although by the statute only one justice was required. The presence and vote of the one who was not qualified to act was treated as nullifying the

sentence, though concurred in by the other who was qualified to make it by himself alone—a case which is precisely analogous to the present.

The decree below, furthermore, is rested on the *bonâ fides* of the Assembly in the proceedings against the Appellant. But it is not very apparent in what manner the conviction of a Judge that he has authority, in however good faith that conviction may be founded, can confer the authority upon him if he has it not otherwise.

Again, it is said that the Assembly was holden and repute a legally constituted Court. That doctrine can only apply to an authority grown grey with age: here, the Act of the Assembly which admitted *quoad sacra* ministers, was protested against at the time by members of the Assembly itself, and thenceforth, until the invalidity of the Act was declared, was the continual subject of discussion among the members of the Church Court. It is impossible, therefore, to say that the Assembly had ever acquired by habit and repute the character of a legally constituted body. The decree is also rested on homologation by the Appellant in appearing before the Assembly and taking part in the proceedings; but jurisdiction otherwise awanting cannot be conferred by the consent of the litigant.

Mr. Rolt and *Mr. R. Palmer* for the Respondents, cited *Pand.* i. 14, 2; *Stair* iv. 42, 12; *Ersk.* iv. 2, 6; Douglas *v.* Chiesly, *Mor.* 3092.

LORD CHANCELLOR.—My Lords, the appeal in this case presents a question of very great importance; seeing that if your Lordships should be of opinion that the Judgment of the Court of Session is wrong, it raises the question,—whether any proceeding in any of the Ecclesiastical Courts, where *quoad sacra* ministers have been admitted as members from the year 1834, when the General Assembly first declared that they were

properly members of the presbytery, up to the year 1843, when it was finally established that they were not, have any legal validity whatever?

This cannot be more strongly exemplified than in the language of the summons, which, after stating that ministers of chapels, or *quoad sacra* parishes, had been received and admitted, and had acted as members of presbyteries, and among others of the presbytery of Hamilton, during that period, states the consequence in these words—"which collective body has "henceforth, and in consequence thereof, illegally usurped, and "attempted to exercise, the functions of the presbytery of "Hamilton; that, accordingly, from and after the period when "this illegal and unwarrantable attempt was made to introduce "into, and incorporate with, the presbytery of Hamilton, "chapel ministers, not members of the said presbytery, no "meeting of the presbytery of Hamilton has taken place legally "and validly constituted to any effect whatever; but in place "of the said presbytery of Hamilton, the anomalous and self-"constituted body aforesaid, composed partly of the members "of the said presbytery, and partly of the chapel ministers "above mentioned, have convened and attempted to exercise "jurisdiction, as if they had been the presbytery of Hamilton."

Now, my Lords, if the presbytery of Hamilton be held incapacitated from performing any of the functions of a presbytery, in consequence of those *quoad sacra* ministers having, during that period, been considered as properly members of the presbytery, the same observation, and of course the same infirmity, applies to all other presbyteries into which *quoad sacra* ministers had been admitted; and applies, of course, to all those bodies which derived their authority in any way from those presbyteries. It applies to all ecclesiastical authorities in Scotland, not excepting the General Assembly itself. The consequence of which would be, that during the period from the year 1834 to the year 1843, there would not only have been

no law capable of being exercised by any of those functionaries, but every thing they did, and which was supposed, therefore, to bind the parties, would be established to be absolutely and entirely void. No minister ordained by them would, in fact, be a minister: no licence granted would be valid, during the whole of that period: and Scotland would be in a much worse situation than if it had had no law, and had possessed no ecclesiastical authority; because, the public was told that there was a law. But this house, if it were not to affirm the interlocutor of the Court below, would be establishing that the parties were all deceived; and that, in point of fact, all the transactions of those bodies were void.

It is however, my Lords, fortunate, that in looking into the authorities there does not appear to be any danger of any such result; for I apprehend, that if your Lordships consider what the authorities are that were brought under your notice in the course of the argument, you will be of opinion that there is no question that the Judgment of the Court of Session is correct.

My Lords, the general proposition which is here set up, is, that with respect to any body constituted of a variety of persons, or of more persons than one, although the collective body be the authority upon which the law imposes certain duties, it does not become a body authorized by law to perform those duties, if there be amongst it some members, or one member (because this applies if to many, to one), who is not a properly constituted member of the body.

My Lords, the question whether there was a majority of what are now established to be correctly constituted members, or not, is a matter which, in many cases, it may be impossible to investigate; and, moreover, the objection before your Lordships, in fact, goes to the body itself, as having been contaminated by the presence of an individual not properly qualified to act as a member of the body so constituted.

Now, my Lords, the particular case under your Lordships' consideration is also peculiar on another ground, namely, that the party raising this objection, being a minister of a parish within the bounds of the presbytery, was himself a member of this presbytery, and acted as such, during the period in question. Unfortunately, however, for him, though he was a member of this presbytery, he was a party against whom the presbytery thought it their duty to proceed for the very disgraceful offence, not in one, but in several instances, of direct and palpable theft, and of which offence he was found to be guilty by the presbytery. He afterwards carried this decision to the General Assembly, and there it was confirmed that he had been guilty of the offence for which he had been prosecuted by the presbytery, of which he himself was a member. That took place in the years 1839 and 1841, during which period those *quoad sacra* chapel ministers were members of this presbytery. But in the year 1842, after this Judgment against him had been confirmed, he discovered or alleged that the presbytery by which he had been accused, and by which he had been adjudged, in point of fact, had no jurisdiction whatever, upon the ground I have stated, namely, on account of those chapel ministers being elected and acting as members of this presbytery; alleging that all their acts were void, and, amongst others, those acts which they had adopted, and by which they had proceeded against himself. And he proceeded by summons of declaration and reduction, praying that this proceeding should be considered null and void, as having taken place *coram non judice*. It remains, therefore, for your Lordships to consider (for that raises the general question), whether the presence of one unqualified party makes the whole of the acts of the collective body inoperative and void.

My Lords, this point more frequently occurs in the case of corporations, where the members of a corporation, incidentally exercising judicial functions in the office of magistrates, grow-

ing out of their position as members of the corporation, are not well founded in the position which they hold in that corporation. Now, I do not find that the point is distinctly raised here, that the acts of a corporation, although some of its members be afterwards found not to have been legitimately members of that corporation, are null and void, because there were amongst them some whose title could not be supported by any legitimate means—one cannot distinguish, or see why the acts of a corporation should be valid under those circumstances, if the general proposition be maintainable that the acts of a collective body are to become void, because some one or two or three members of it have not a strict legal title to the position which they profess to hold. But, however, it is so obvious, and so palpable, that that rule could not be applied to the acts of corporations; that very little was said upon that point in the argument; and very little is said about it in the papers: and if there had been any question about it, the case which has been referred to, of the burgh of Culross, would have been quite conclusive upon that point.

Now, my Lords, if there be no doubt, and indeed it is almost admitted, that the rule contended for by the Appellant would not apply to a corporation, that will go a great way to decide this question. It remains then to be considered, whether to such collective bodies as presbyteries, any such rule applies, as that which has been contended for by the Appellant.

My Lords, for this purpose, we look in the first place to the foundation of the law of Scotland; and first, to the civil law, where the contrary is most distinctly laid down by most competent authorities.

Then we come to those who have treated of the law of Scotland, and we find Lord Stair entertaining no doubt upon this question, but laying down the law with perfect clearness and in a manner quite devoid of all uncertainty, for he says; there is no relevant objection by denying that the Judge had

authority; "and if the same be alleged by way of reduction, " *holden* and *reputed* will be a sufficient defence," (Mr. Erskine also lays down this rule, not in the very same words, but to the same effect,) by which Lord Stair means, not the case of a stranger unquestionably assuming to himself a position which does not belong to him; but that if a party be exercising the duties of an office, and be holden and reputed the holder of that office, the acts which he does and which are within the power and jurisdiction of that office, are to be held good, although it may afterwards turn out that he had no title to the office he so professed to hold.

My Lords, a case was also referred to, the case of Douglas, in Morrison, 3092, which establishes the same rule as being the recognised law of Scotland. In an action pursued by George Douglas against Chiesley, "the Lords repel the exception " founded upon the Act of Parliament, 1567, anent sasines to " be given in within burgh by the town clerk." There, the objection was, that the party acting, although performing the duties of town clerk, was not in fact the town clerk, the Act requiring the duties to be performed by the town clerk. The question, therefore, was, whether the act done was good, or failed on account of the failure of the title of the party professing to be town clerk. It is stated, that the Act was sustained " in respect of the reply, that it was offered to be proven that " Mr. George Douglas was reputed and holden to be town " clerk; and that, notwithstanding, they offered them to prove " that there was another town clerk." That affords a strong illustration of the rule that, in the case of a party professing to hold an office, and holden and reputed to hold that office, of which he was exercising the duties, the acts done by him shall be valid; although upon investigation it turn out, that he had no right to the office of which he thus performed the duties.

My Lords, one looks with some anxiety to what the rule in this country is; and we find that all the earlier writers lay

down the same rule as that which is applicable to Scotland. My Lords, in Croke, Elizabeth, we find this case stated as the ordinary rule: "Acts done by an officer *de facto*, and not *de jure*, " are good, as 9th Edward IV, Parliament 1; acts done by a King, " an usurper are good; so if one being created a bishop, the " former bishop not being deprived or removed, admits one to " a benefice upon a presentation, or collates by lapse, these are " good and not avoidable—*quod curia concessit*—for the law " favours acts of one in a reputed authority, and the inferior " shall never inquire if his authority be lawful." That is of the date of Croke, Elizabeth.

We now come to the same rule laid down by Lord Chief Justice Abbot, in the case of the Margate Pier Company against Hanman, 3 *B.* & *Ald.* 266, where he observes: "Many " persons acting as Justices of the Peace, in virtue of offices in " corporations, have been ousted of their offices from some " defect in their election or appointment; and, although all acts " properly corporate and official done by such persons are void, " yet acts done by them as Justices, or in a judicial character, " have in no instance been thought invalid. This distinction is " well known. The interest of the public at large requires that " the acts done should be sustained."

We therefore find, that according to the law of Scotland, as established by the authorities to which I have referred; and the law of England, as established in like manner by the authorities, and which authorities concur, and most reasonably and rationally concur; the rule is, that as to those who are known and "holden and reputed," according to the language of the cases, to be the proper possessors of and exercising the duties of an office, their acts shall be good so long as they hold and exercise the duties of those offices; although, in point of fact, they may not have, upon investigation, any title to the offices of which they were so exercising the duties.

There were some cases relied upon by the counsel for the

Appellant, which raise a proposition contrary to that which the cases I have already referred to seem to establish; and particularly the cases of Cumming *v.* Munro, and Forest *v.* Harvey. But your Lordships will find, that both those cases fall under a very different description; they were both cases of offices and authorities assumed, but which had no existence in law; and not, therefore, cases of disqualified persons exercising known offices and authorities.

My Lords, in the case of Cumming *v.* Munro it was a process, not by the sheriff-depute, nor by the sheriff-substitute, but by a person appointed by the sheriff-depute; whereas the Act which authorized and directed the act to be done, specified that it should be done by the sheriff or by his depute, and went no further. Therefore, there was an act done by a party not claiming an office, or professing to be the holder of the office, but by a person, who, by the Act of Parliament under which he was professing to act, had no authority at all for that which he did.

Other cases were referred to, which are also clearly distinguishable from the present. Those were cases in which a superior Court exercised its authority over an inferior Court, for not having acted in the due execution of the jurisdiction given to it. As, for instance, where a jurisdiction had been given, by an Act of Parliament, to an inferior Court to perform certain duties, prescribing the mode in which those duties were to be performed, and it appeared that the inferior Court had not performed them, or had exercised them in a manner different from which the Act prescribed, and where the sole authority was derived from the Act of Parliament; it was clearly competent for the superior Court to interfere there; or, if the inferior Court, subject to the jurisdiction of the superior Court, had improperly conducted itself in the execution of an acknowledged authority; there, of course, the superior Court would interfere to set aside the act.

LIVINGSTONE *v.* PROUDFOOT.—15th May, 1849.

But your Lordships observe, that in those cases it is not a question of jurisdiction, but a question of interference by a superior Court in the case of an inferior Court having acted in a manner not authorized by law. And the same distinction applies to several modern English cases that were referred to, as the King *v.* Gutteridge, and the Queen *v.* the Justices of Hertfordshire. In those cases there was no question as to the jurisdiction of the justices, but the Court of Queen's Bench held that they had not properly exercised it. In the present case, the jurisdiction of the presbytery as constituted is disputed.

My Lords, it appears to me, therefore, that these cases do not interfere with the authorities directly applicable to this case; and that the interest of the public, legal principle, and the highest authorities, all concur in showing that the decision of the Court of Session ought to be affirmed.

LORD BROUGHAM.—My Lords, I entirely concur in the view expressed of this case by my noble and learned friend. I had no doubt, indeed, from the moment that I could apprehend fully the facts of the case, and the grounds on either side upon which the arguments were rested. My Lords, I consider that if any other decision were come to than this, a door would be opened for the admission of most perilous consequences to the due and regular and valid proceedings of all bodies whatsoever. For I can see no difference whatever between the case of a presbytery, as far as regards those *quoad sacra* ministers being a part of the presbytery, and the case of any other public body acting by persons whom they have acknowledged as members of their body, which persons are made members of their body by a particular qualification of any sort, or by a particular mode of appointment of any sort; as for instance, by election, or by selection by a superior authority. By popular election we will say, as representatives, or by selection by a superior authority. If the presence at any one of its deliberations or decisions of

persons who, at the time, were supposed to have a title, but who, by the result of an inquiry, were found not to have a valid title—if their presence at the time, afterwards found to have been illegal, or we will say invalid, should be held sufficient to make null and void and of non-effect all the steps taken, and all the proceedings had by that body of which they had been improperly members, or had been irregular members, or with a void qualification—if, because they were so void of qualification, the whole steps which were taken, and the decisions come to, or the acts done by that body were, therefore, to be rescinded as void in themselves, I consider that consequences of the most grievous nature, entailing the highest possible confusion and public inconvenience, would result. It therefore gave me great satisfaction to find, upon looking into the authorities,—whether of the Civil Law or of the Scotch text-writers, or of the decided cases,—that whatever doubt might arise upon the first imperfect or vague statement of the purport of these authorities, when we came to sift those authorities, there was no ground whatever for maintaining that negative proposition, namely, the invalidity of the acts done, and that those authorities were of no force and effect against the judgment under your Lordships' consideration.

My Lords, perhaps the authority that would make most impression upon your Lordships was one of the decisions in the Court of Queen's Bench in this country—the case of the Queen *v.* the Justices of Hertfordshire. Now, my Lords, there was in that case one of the most extraordinary circumstances that could well arise for the purpose of invalidating, or at least of taking away all respect from, a judicial proceeding, apart from the matter in dispute—for there, one of the justices was an interested party. If such a thing as that takes places, it almost partakes of the character of fraud; and the Court in that case viewed the proceeding as positively corrupt, and set it aside. But I do not intend to quarrel with that decision. It suffices

for my present purpose to say, that that case is not this case; and that it does not bear upon it, to the effect of ruling this case. And, therefore, I am in no manner governed by it in forming my opinion upon the merits of this case, or induced to advise your Lordships to take a course which would be against the sense and reason of the thing, by giving a decision contrary to that of the Court below.

My Lords, upon the whole, therefore, I certainly concur with my noble and learned friend, and agree in supporting his proposition to your Lordships, that you should dismiss this appeal, and affirm the decision of the Court below, as usual, with costs.

LORD CAMPBELL.—My Lords, this seems to me to be a very clear case. However disastrous the consequences might be, if by law all the proceedings of the Ecclesiastical Courts of Scotland, for a great number of years, were found to be void; yet if the authorities were sufficient to establish that point, your Lordships would doubtless feel bound to pronounce judgment to that effect. But it seems to me, that neither upon principle, nor upon authority, is it necessary to come to a conclusion in favour of such a proposition.

Your Lordships will always bear in mind, that this is not the case of the act of a single person; and, therefore, you are not driven to any nicety with regard to the different distinctions that have been taken with reference to acts that are void or voidable. This is the act of a community, where there was an assemblage of gentlemen; and it is admitted, that if these *quoad sacra* ministers had not been present, all the proceedings of the presbytery would have been regular and valid. My Lords, I am clearly of opinion, that their presence does not invalidate what took place, and upon two grounds: first, that the *quoad sacra* ministers had a *primâ facie* title, and were there acting *bonâ fide*, and were believed to have a right to be there as much

as the ministers of the different parishes that belonged to the bounds of the presbytery; and secondly, that if they had been strangers, as there was still clearly a majority in the community in favour of the act done, the act was a valid act.

My Lords, I am very glad that there is neither decision nor dictum that at all supports the monstrous proposition contended for on the part of the Appellant. The only case having any analogy in principle to the present, is that to which my noble and learned friend who last addressed your Lordships has referred, the Queen *v.* the Justices of Hertfordshire, which, however, proceeded wholly on the ground of fraud; and if it had proceeded on any other ground than that of fraud, I myself should not at all concur in the judgment that was given in it. Therefore, setting the consideration of that authority aside as not applicable, or not to be supported, there is no authority that can be adduced at all to support the proposition that has been contended for by the Appellant.

I have, therefore, my Lords, no hesitation at all in concurring with the opinion of the noble and learned Lord on the woolsack, that the judgment of the Court below ought to be affirmed.

Ordered and Adjudged, That the petition and appeal be dismissed this House, and that the interlocutors therein complained of be affirmed with costs.

DEANS, DUNLOP and HOPE—SPOTTISWOODE and ROBERTSON.