

FERGUSSON APPELLANT.
SKIRVING AND OTHERS RESPONDENTS (a).

1852.
27th May.

Under the Act of 1686, c. 4, it is not indispensable that the interlocutors of Courts of Justice shall be signed at the time when they are pronounced.

Semble—that the Act does not apply to ecclesiastical tribunals.

Censure on the prolixity of the Appellant's printed Case prepared for the Lords.

THE Appellant was master of a parish school in Dumfriesshire. The Respondents were heritors, or landowners, of the same parish, and the object of the action by the Appellant against the Respondents was to reduce and set aside a certain sentence pronounced by the Reverend the Presbytery of Dumfries, whereby the Appellant had been deposed from his office.

The main ground forming the basis of the action of reduction, was an allegation that the sentence in question, as well as other proceedings of the Presbytery, had not been authenticated as required by the Act of 1686, c. 4; the Appellant contending that the minutes of the Court must be signed *at the time*, whereas they appeared to have been signed *ex intervallo*.

The Respondents urged that the Act did not apply to ecclesiastical tribunals, whose proceedings upon the principle *credendum est clericis* were above technical formalities.

The *Lord Ordinary (Ivory)* made “*great avizandum*” to the lords of the first division of the Court of Session. And on the 26th of June, 1850, their lordships repelled the reasons of reduction, and found the Appellant liable in expenses.

Mr. *Bovill* was heard for the Appellant, Mr. *Anderson* for the Respondents.

The points disposed of by the House sufficiently appear from the following opinion of

(a) See Court of Session Cases, Second Series, vol. xii. p. 1145.

The LORD CHANCELLOR (*a*):

My Lords, this case is one of form, not of substance. The Act of 1686, c. 4, does not appear to have been held applicable to the decisions of Presbyteries. One of the judges in *Dickson's case* (*b*) expressly states this to have been the general opinion. The Act does not declare that the judgment, if not signed, shall be void, but that extracts from it shall be void and null unless the interlocutors, which are the warrants thereof, be signed. Experience shows that interlocutors, properly so called, are but rarely signed when they are pronounced, and to require such extreme particularity would often be inconvenient in courts of justice. The Act accordingly does not say that interlocutors shall be signed *at the time*, but simply that they shall be signed, and subsequent signature has always been deemed sufficient.

I must take an ancient statute like this to operate according to the uniform construction which it has received in Scotland from the time of its passing. Now, how do we arrive at a knowledge of that construction? Why, by the Acts of Courts of Presbytery themselves; and by the submission which has been paid to them. And what would be the effect if your Lordships were now to decide according to the Appellant's contention? That every Act of Presbytery done during the period of nearly two centuries would be subjected to challenge, and brought into Court in order to be set aside on grounds of informality.

I may observe, my Lords, that the word "Interlocutor" is a technical expression, not very likely at the date of the statute to have been applied to Acts of Presbyteries.

Take the case of one of the Lords Ordinary of the Court below. When he makes an interlocutor, a

(*a*) Lord St. Leonards.

(*b*) Court of Session Cases, Second Series, vol. xii. 1153.

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minute is usually prepared, from which the order is drawn up and formally considered. The signature, peradventure, may not take place till a subsequent day ; and yet no one can dispute that, according to the uniform practice in Scotland, this is a full satisfaction and compliance with the Act of Parliament.

The judges in Scotland have very properly considered themselves bound to look to the usage which has prevailed in Courts of Presbytery, in order to ascertain whether or not by law these proceedings were duly authenticated. Accordingly, the Court below directed a reference to the Very Reverend Principal Lee and to the Procurator of the Church of Scotland, to inquire into and report upon the practice of ecclesiastical judicatories in regard to the authentication of their proceedings. From the elaborate report before your Lordships, it appears that a very sensible rule is laid down in these tribunals. And, my Lords, I must own I was quite surprised when I called for the original proceedings in the very case now under consideration ; for I venture to say that there is no judicial body whatever whose minutes exhibit greater regularity, and care, and precision. My humble advice, therefore, to your Lordships will be, that there has been here a due compliance with the Act of Parliament.

There was another objection made, namely, that the Court of Presbytery had cancelled certain portions of their own minutes ; but it is perfectly clear that this proceeding was acquiesced in by the Appellant, who had the option of preventing it if he had chosen, but he kept obstinately silent, expressing no opposition to the cancellation, so that he cannot now be heard to impeach it.

My Lords, a point was indeed raised in the opening by the Appellant's counsel, but very properly not insisted upon in the reply, as to the Act of the 43 Geo. III.

c. 54, s. 21. That Act, however, does not provide any particular mode of giving or signing sentences by Courts of Presbytery; and, therefore, if the Legislature, knowing, as it must have done, what was the actual practice of those tribunals, directed no change, the circumstance furnishes an argument to show that the existing practice was intended to be confirmed. I propose, therefore, my Lords, that this appeal be dismissed with costs.

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Ordered accordingly (a).

(a) The Lord Chancellor, in course of the hearing, remarked that the Appellant's case extended to 109 printed quarto pages. His Lordship hoped that the Appellant's school had been a good one, and that he could afford such costly litigation.

WILLIAM ROGERS.—GRAHAME, WEEMS, & GRAHAME.