Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Rev. A. Poole against the Lord Bishop of London, from a Sentence of His Grace the Archbishop of Canterbury, pronounced at Lambeth Palace; delivered 13th March, 1861.

Present:

THE ARCHBISHOP OF YORK.
LORD CRANWORTH.
LORD CHELMSFORD.
LORD KINGSDOWN.
SIR EDWARD RYAN.
SIR JOHN T. COLERIDGE.

THE only question on which we have to pronounce an opinion in this case is, as to the right of Mr. Poole to appeal to Her Majesty from a sentence of the Archbishop of Canterbury, dated March 23, 1859, by which His Grace confirmed the Revocation by the Respondent of the Appellant's license as an Assistant Stipendiary Curate in the Church of St. Barnabas, in the Diocese of London.

The case was argued before us with great learning and ability; and our attention was directed to numerous ancient ecclesiastical authorities supposed to bear on the question. But after giving the most careful attention to all which was addressed to us, we have come to the conclusion that the question turns, not on ancient ecclesiastical law, but on the true construction of, at most, two modern Acts of Parliament.

It is not necessary to decide whether there were or were not in our Church before the Reformation functionaries corresponding precisely to the Stipen-

diary Curate of the present day. It is sufficient for the purpose of enabling us to come to a satisfactory conclusion, that we should see how far they have existed, and to what extent their rights have been recognized in more modern times.

That such a class of persons existed at the beginning of the seventeenth century, is plain from the Canons of 1603.

The 47th Canon provides that every beneficed Clergyman licensed not to reside on his benefice, shall cause the Cure to be supplied by a Curate, that is, a sufficient and licensed Preacher; and the next Canon, the 48th, goes on to say that no Curate shall be permitted to serve in any place without examination and admission of the Bishop in writing under his hand and seal.

Though, doubtless, there was by no means the same number of Curates then as in modern times, yet it seems certain from these Canons that such an order of ecclesiastics then existed; and this is made more plain by subsequent Acts of the Legislature.

I am not aware of any Statute bearing directly on the point prior to the 12th of Anne, sec. 2, cap. 12. By that Statute it was enacted that if any Rector or Vicar should present any Curate to the Bishop to be licensed or admitted to serve the Cure in his absence, the Bishop should fix his stipend at an annual sum not exceeding 50*l.* And in case of any dispute as to payment, the Bishop should summarily hear and determine the same, and in case of non-payment he might sequester the profits of the living.

This Statute shows clearly that in the reign of Queen Anne, Curates, according to the modern acceptation of the word, were a class of ecclesiastical functionaries commonly known and recognized in the Church.

The next Statute to which it is necessary to refer is, the 36th of Geo. III, cap. 83. The 1st section of that Statute, after reciting the Statute of Queen Anne, and that in many places the stipend thereby authorized was inadequate, authorizes the Bishop, in cases where the Incumbent is non-resident, to fix the stipend at any sum not exceeding 75*l.* per annum, and to allow the Curate to occupy the rectory-house. There are then some clauses putting, for certain purposes, perpetual curacies, and churches augmented under Queen Anne's Bounty, on the

same footing as ordinary benefices. And then the 6th section proceeds thus:—

Sec. 6. "And whereas it is expedient that the authority of Ordinaries to license Curates, and to remove licensed Curates, should be further explained, enlarged, and confirmed, be it enacted and declared that it shall be lawful for the Ordinary to license any Curate who is or shall be actually employed by the Rector, Vicar, or other Incumbent of any parish church or chapel, although no express nomination of such Curate shall have been made, either in words or in writing, to the Ordinary by the said Rector, Vicar, or other Incumbent; and that the Ordinary shall have power to revoke, summarily and without process, any license granted to any Curate employed within his jurisdiction, and to remove such Curate for such good and reasonable cause as he shall approve; subject, nevertheless, to an appeal, as well in the case of a grant of a license to a Curate who has not been nominated, as in the revocation of a license granted to a Curate; such appeal to be made in either case to the Archbishop of the Province, and to be determined in a summary manner."

By 57 Geo. III, cap. 99, so much of the Act of Queen Anne and of the 36 Geo. III, cap. 83, as relates to the maintanance of Curates and to the fixing of their stipends is repealed, together with the whole of an intermediate Act, namely, the 53 of Geo. III, cap. 149, which had contained provisions further extending the amount of stipend which might be assigned to them. This repeal does not touch the 6th section of the 36 Geo. III, inasmuch as that does not relate to the maintenance of curates or the fixing of their stipend. This last statute, the 57 Geo. III, cap. 99, is wholly repealed by the 1 & 2 Vict., cap. 106, except so far as it had repealed former enactments; so that the enactments now in force appear to be the 6th section of the 36 Geo. III, cap. 83, and the whole of the 1 & 2 Vict., cap. 106.

It is under this last statute that the present appeal was presented, and it is necessary, therefore, to look closely to its provisions.

The first seventy-four sections relate to matters foreign to our present inquiry; the 75th and 76th sections give power to the Bishop, when an Incumbent is non-resident, to appoint a Curate, and fix within certain limits the amount of his stipend.

Sections 77 and 78 enable the Bishop, in certain cases, to appoint a Curate even when the Incumbent is resident, and does not consent to the appointment.

Sections 81 and 82 point out the steps to be taken by any Curate, in order to obtain the Bishop's licence, whether the Incumbent be resident or not.

Section 83 provides that, whether the Incumbent is or is not resident, the licence shall state the amount of the stipend; and if any dispute arises concerning the stipend or its payment, the Bishop shall summarily hear and determine it without appeal, and may, if necessary, sequester the profits of the living.

Sections 84 to 94, both inclusive, point out the amount of the stipend to be allowed in different cases.

Sections 95 and 96 regulate the mode in which a Curate is to give up his cure and the rectory-house when a new Incumbent is appointed, and in certain other cases.

Section 97 forbids a Curate to give up his curacy without a certain notice.

And then comes section 98, on which the present question arises :—

Sec. 98. "And be it enacted that it shall be lawful for the Bishop to license any Curate who is or shall be actually employed by any non-resident Incumbent of any benefice within his Diocese, although no express nomination of such Curate shall have been made to such Bishop by the Incumbent, and that the Bishop shall have power, after having given to the Curate sufficient opportunity of showing reason to the contrary, to revoke, summarily, and without further process, any license granted to any Curate, and to remove such Curate, for any cause which shall appear to such Bishop to be good and reasonable, provided always that any such Curate may within one month after service upon him of such revocation, appeal to the Archbishop of the province, who shall confirm or annul such revocation as to him shall appear just and proper."

Acting on the authority conferred, or supposed to be conferred, by this section, the Bishop revoked the licence which had been granted by his predecessor to Mr. Poole. Mr. Poole duly appealed to the Archbishop, who confirmed the revocation.

Does any appeal lie from this decision of the Archbishop? We think not.

The argument on behalf of Mr. Poole was, that by the ancient law of the Church, as finally altered and settled by the statutes 24 Hen. VIII, cap. 12, and 25 Hen. VIII, cap. 19, there lay, of common right, an appeal from every decision of an Arch-

bishop to the King in his Court of Chancery; and that by the recent statutes of 2 & 3 Wm IV, cap. 92, and 3 & 4 Wm. IV, cap. 41, sec. 3, that appeal has been now transferred to the Judicial Committee of the Privy Council.

By the 2nd section of 24 Hen. VIII, cap. 12, it is enacted that all causes testamentary, causes matrimonial, and causes relating to tithes, should from thenceforth be finally determined within this realm.

And, then, by sections 5 and 6, it is enacted that in all such causes, *i.e.*, causes relating to testaments, marriage, or tithes, any of the parties grieved may appeal from the Archdeacon (if the matter or cause be there begun) to the Bishop; and if commenced before the Bishop, then from him to the Archbishop, there to be definitively determined.

In the next year was passed the celebrated Act commonly called "The Act of the Submission of the Clergy," 25 Hen. VIII, cap. 25, and by the 3rd section of that Act it is enacted that no appeals whatever should be had to any authority out of the realm in any causes or matters whatever, but that all appeals, what cause or matter soever they might concern, should be had and prosecuted by the parties aggrieved after such manner as had been limited by the preceding statute in regard to causes of matrimony and tithes; and then by the 4th section it is provided that parties grieved by any act of justice in any of the Courts of the Archbishop might appeal to the King in Chancery, who should thereupon direct his Commission to the delegates to hear and determine the same in the same way as in appeals from the Court of Admiralty.

The power thus conferred on the Crown was, by the Acts of the last reign, transferred to the King in Council, and is now exercised upon the advice of the Judicial Committee of the Privy Council.

The argument of the Appellant was that his case comes within the purview of these statutes. The statute 1 & 2 Vict., cap. 106, gives him, he contends, a right of appeal to the Archbishop, and from him the statutes of Hen. VIII and Wm. IV give him a right of appeal to Her Majesty in Council and to the Judicial Committee.

But we are of opinion that the provisions of the statutes of Hen. VIII cannot be thus engrafted on those of the modern statute.

The appeals given by the statutes of Hen. VIII were appeals in matters and causes in contest, in which complaint was made of some violated right, where there was, in the ordinary acceptation of the word, litigation. But the case is very different in the appeals given by the statute under which the present question arises. The object of that statute evidently is to authorize and compel the Bishop, for the benefit of the community, to exercise his discretion in a summary way on various matters in which it is necessary or expedient that a discretionary power should be lodged somewhere.

Thus it may be reasonable, under special circumstances, to permit an Incumbent to be non-resident. Circumstances may arise which may make it expedient to put an end to such a permission. It may be necessary to fix the stipend of a Curate. Additional Curates may be required for the sake of the parish.

In these, and very many similar cases to which the Act extends, it is absolutely necessary that a discretion should be lodged somewhere, and the Legislature has confided that discretion to the Bishop. He is to determine whether there are circumstances which will justify the non-residence of an Incumbent, or which make it expedient that a license given to him for that purpose shall be revoked, or what amount of salary a Curate ought to receive, or whether in certain cases additional Curates ought to be appointed. He is to exercise, in these and the numerous other cases which the Act embraces, his discretion as to what ought, in the interests of the Church and of the public, to be done. But then the Legislature, seeing that, in the exercise of that discretion the Bishop may err, has given to the party affected by what has been done or refused to be done, a right to appeal to the Archbishop, whose duty it still is to exercise his discretion, as it had been the duty of the Bishop.

In a solitary instance, namely, the refusal by the Archbishop to grant a dispensation to hold two livings, a right of appeal is given to the Queen in Council by section 6. But in that case the original discretion is exercised by the Archbishop and not by the Bishop, so that, unless there had been such an appeal given, there would have been no control over the discretion first exercised. The circumstance

that in this one case an appeal is expressly given to the Queen in Council, is strong to show that where no such appeal is expressly given, it cannot be implied.

The appeal given by the Statute from the Bishop to the Archbishop, and in the case mentioned from the Archbishop to the Queen in Council, is not an appeal as between litigant parties. It is a reasonable safeguard provided by the Legislature to prevent hardship from a hasty or erroneous exercise of discretion, and even if there were nothing in the Act excluding further appeal, we might reasonably have inferred that no such further appeal was contemplated; but all question on this subject seems to us to be excluded by the positive provisions of the Legislature. The 109th section is as follows:—

> Sec. 109. "And be it enacted, that in every case in which jurisdiction is given to the Bishop of the Diocese or to any Archbishop under the provisions of this Act, and for the purposes thereof, and the enforcing of the due execution of the provisions thereof, all other and concurrent jurisdiction in respect thereof shall, except as herein otherwise provided, wholly cease, and no other jurisdiction in relation to the provisions of this Act shall be used, exercised, or enforced, save and except such jurisdiction of the Bishop and Archbishop under this Act; anything in any Act or Acts of Parliament, or law or laws, or usage or custom, to the contrary notwithstanding."

This section appears to us decisive on the subject; it excludes all proceedings not expressly authorised by the Act, and thus relieves us from all obligation of considering the numerous ancient authorities and principles to which we were referred.

We will only add, with reference to the doubt suggested whether the 98th section of the Act extends to the case of the Appellant, he having been the Curate of a resident, not of a non-resident Incumbent, that it is a point not material to be considered; for if the Appellant does not come within that clause he certainly comes within the 6th section of 36 Geo. III, cap. 83, to which the same principles apply.

Their Lordships will therefore humbly report to Her Majesty that the appeal must be dismissed, no such appeal lying from the decision of the Archbishop, and we see no reason for departing from the ordinary rule that it must be dismissed with costs.