14th February, 1922

JAMES SHORUNKEH PAUL - *Appellant.*

v.

OBADIAH J. SAMUELS and
JOCELYN H. THORPE - *Respondents.*

Action for damages for ejectment from a pew—Appropriation of pews by churchwardens under the direction of Parochial Committee—Section 13 of the Constitution of the Sierra Leone Native Pastorate Church.

The facts of this case are sufficiently set out in the judgments.

Case reserved and stated by Purcell, C.J., in the Supreme Court of the Colony of Sierra Leone for the opinion of Full Court of Appeal.

CASE STATED.

The Plaintiff's claim in this action reads as follows:—The Plaintiff's claim is for damages for assault, £120, and for an injunction to restrain the Defendants from repetition of the said injury or molesting or obstructing him in the free use and enjoyment of his Pew at the Parish Church of Saint Patrick, in the village of Kissy.

The facts of this case may be thus briefly summarised. In consequence of a refusal by the Defendant (Thorpe) to pay his pew rent for a pew (No. 9) in Kissy Parish Church some time during 1918, the pew in question was allotted to the Plaintiff (Paul). Subsequently this pew (No. 9) was re-allotted to Thorpe, as from January 1st, 1921, and notice was served on the Plaintiff to that effect. Notwithstanding such notice Plaintiff occupied this pew (No. 9) on Sunday, January 9th, 1921, and remained in it during the service, although invited to move out by both Defendants, and it is alleged that on this occasion they both attempted unsuccessfully to pull him out of this pew, which constituted the assault complained of.

The question at issue here is in reality a very simple one, and it is this. What construction is to be placed on the following words in Article 13 of the Constitution of the Native Pastorate Church? "*They*" (meaning the churchwardens) "*shall, under the directions of the Parochial Com-*

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"*mittee, appropriate pews and collect the pew rents.*" It is, as I think, to give the churchwardens and Parochial Committee an unfettered discretion, and this interpretation of the words of Article 13 is strengthened by the analogy of the rights of churchwardens in England. It is clear that in England churchwardens may, in their discretion, direct persons where to sit, either at a particular service, or for an indefinite period (Halsbury, Vol. XI., p. 470, Corven's case, 1612, 12 Co. Rep. 105; Pettman *v.* Bridger, 1811; 1 Phillimore 316, 323), and that churchwardens cannot make an irrevocable assignment of a pew, or divest themselves of the right to re-arrange sittings when desirable (Halsbury, Vol. XI., pp. 470, 471; Corven's case, Pettman *v.* Bridger). But it has been argued in this case that a custom existed to allot a pew year after year in perpetuity to individuals and their next-of-kin. The evidence did not support the contention that a binding custom existed, for the Plaintiff's witnesses could go no further than to say that, except in one case, they had never known a person who paid his pew rent regularly to be deprived of his pew, and this evidence is consistent with the Defendants' contention that there was no binding custom, but only a practice binding upon no one. Further, such a custom, if existing, is not binding, because it has not existed from time immemorial. The Church of England was established in Sierra Leone, and the Colony itself founded, only within comparatively recent years. There can be no binding custom unless it has existed from time immemorial.

Again, such a custom as alleged by the Plaintiff would be unreasonable, for it would prevent the Churchwardens from exercising their functions at all, once a pew has been allotted to a person, the Plaintiff's witnesses going so far as to say that whatever a man did, so long as he paid his pew rent, he could insist on having his pew. The case of Reynolds *v.* Monkton, 1841, 2 Moody and R. 384, is clear authority that a churchwarden may use sufficient force to remove a parishioner who intrudes on a pew assigned to another. In this case, whatever degree of force was used it was not sufficient to remove the Plaintiff from the pew, for he remained in it throughout the service on that Sunday morning, January 9th, 1921.

The evidence as to the force used by the Defendants given by the different witnesses for the Plaintiff even differed very greatly, and was not consistent. The witnesses for the defence denied that there was anything more than a gentle touch. But in any case all agreed that the force used was not sufficient to remove the Plaintiff from the pew, and in my opinion the

Defendant (Samuels), who was a churchwarden, was within his strict legal rights in the course he adopted, and from the evidence it is clear that if Thorpe did touch the Plaintiff, he acted in a merely subsidiary manner, and under Samuels' direction. Although personally I entertain no doubt whatever on this particular matter, I have been much pressed to state a case under the provisions of section 12 of Ordinance No. 14 of 1912,[1] and I have decided to take that course, inasmuch as the Plaintiff is a poor man, and an appeal in the ordinary course is beyond his pocket. I therefore reserved the following question for the decision of the Court of Appeal. " Is the appro-" priation of pews by the churchwardens under the direction of " the Parochial Committee, as set forth in Article 13 of the Con-" stitution of the Sierra Leone Church, an absolute appropriation " subject only to the due payment of the pew rent? " If the Court of Appeal answer this question in the affirmative, then this case must be remitted to the Court below to be dealt with accordingly, but if otherwise (as I have held in this judgment) then the claim in this action will be dismissed, with costs.

(Sgd.) G. K. T. PURCELL,
Chief Justice.

Graham for the Appellant cites:—

Phillimore's Eccleciastical Law, Chapter III., section 2, p. 1779.
Constitution of the Sierra Leone Church, Article X.
Reynolds *v.* Monkton, 2 M. and Rob., p. 384.
Worth *v.* Terrington, 13 M. and W., p. 795.

Wright and *Betts* for the Respondents cite:—

Halsbury's Laws of England, Vol. II., p. 470.
Claverley *v.* Claverley (1909), Probate Division, p. 195.
Fuller *v.* Leigh, Vol. 162, Eng. Reports, p. 348.
Halsbury's Laws of England, Vol. X., p. 286.

Graham in reply cites:—

23 and 24 Victoria, Cap. 22.

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The question at issue here has been very fully set out in the special case, and therefore need not at any length be recapitulated.

[1] Now Cap. 205, sec. 93, Vol. II, p. 1437.

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The question on which this Court is invited to give its decision is " *whether the appropriation of pews by the church-* " *wardens under the direction of the Parochial Committee, as* " *set forth in Article* 13 *of the Constitution of the Sierra Leone* " *Church, is an absolute appropriation, subject only to due pay-* " *ment of pew rent?* "

That is to say, when once the churchwardens have allocated a seat to a person, and such person duly pays his pew rent, can the churchwardens, under the direction of the Parochial Committee, give such person notice that they have appropriated the seat in question to another person?

That is what has happened in the present case.

Thorpe originally had the pew allocated to him—but in consequence of non-payment of the pew rent, the pew was allocated to Paul, who made no default in payment of pew rent. Subsequently, in spite of this fact, the churchwardens, under the directions of the Parochial Committee, re-allocated the seat to Thorpe, and gave Paul notice to that effect—but Paul persisted in still occupying the pew, and it was an ineffectual attempt to eject him from it that has led to the present litigation. In my opinion, and for the reasons very fully stated in the special case, I think the question should be answered in the negative—that is to say, such appropriation is not an absolute one, and that—as a matter of law—the Churchwardens have the power to re-appropriate the pews in the Church whenever they may consider it necessary to do so.

SAWREY COOKSON, J.

I agree, and only wish to add that I have no doubt at all that the Plaintiff's claim for damages here should be dismissed upon the only construction possible to put upon Article 13 of the Constitution of the Native Pastorate Church. The learned Chief Justice has held that the words of that article give the wardens an unfettered discretion in the matter of allotting pews, and I should agree that by themselves those words could not reasonably bear any other construction; but when it is also seen that, from the earlier part of that article, the churchwardens are elected once in each year, it becomes more than ever impossible to construe those words in any other sense. To do so would also be to run counter to what has long ago been decided, viz., that " churchwardens cannot make an irrevocable assignment, " or divest themselves or their successors of the power of making

"a fresh arrangement whenever circumstances render it desir-
"able." (See Halsbury's Laws of England, Vol. II., pp. 470-471.) In support of that pronouncement of the well-established law on the subject, among others the case of Asher *v.* Calcraft (1887, 18 Q.B.D., p. 607) is cited as authority for the proposition that churchwardens are competent to direct where persons shall sit, even in a Church where certain of the seats or pews are free. *A fortiori*, therefore, where it is specifically made part of the annually elected wardens' prerogative to allot seats or pews in return for a rent therefor, it is manifest that any intruder or trespasser in a pew or seat so allotted may, by the use of a not unreasonable amount of force for the purpose, be removed therefrom. As I have already said, therefore, the question must be answered in the negative and the claim dismissed with costs.

McDONNELL, Acting J.

I agree.