[LOCAL LAW.]

JOHN MASON, *Appellant*,
v.
JOHN MUNCASTER, survivor of George Deneale and John Muncaster, CHURCH-WARDENS OF CHRIST CHURCH, FAIRFAX PARISH, ALEXANDRIA, and the said JOHN MUNCASTER and EDMUND J. LEE, PRESENT CHURCH-WARDENS OF THE SAID CHURCH, and others, *Respondents*.

A bill in equity, brought to rescind a purchase made under the decree of this Court, in *Terrett v. Taylor*, (9 *Cranch*, 43.) upon the ground that the title to the property was defective, and could not be made good by the Vestry and other persons, who were parties to the former suit. Bill dismissed.

The Vestry of the Episcopal Church of Alexandria, now known by the name of *Christ's Church*, is the regular Vestry, in succession, of the parish of Fairfax, and, in connexion with the Minister, has the care and management of all the temporalities of the parish within the scope of their authority. A sale by them of the Church lands, with the assent of the Minister, under the former decree of this Court, conveys a good title to the purchaser.

Although the *Church-Wardens* of a parish are not capable of holding *lands*, and a deed to them and their successors in office, for ever, cannot operate by way of *grant*; yet, where it contains a covenant of general warranty, binding the grantors and their heirs for ever, it may operate *by way of estoppel*, to confirm to the church and its privies the perpetual and beneficial estate in the land.

The parishioners have, individually, no right or title to the glebe lands; they are the property of the parish in its aggregate or corporate capacity, to be disposed of, for parochial purposes, by the Vestry, who are the legal agents and representatives of the parish.

APPEAL from the Circuit Court for the District of Columbia.

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This was a bill brought by the appellant, Mason, to rescind a purchase made by him, jointly with W. Jones, of a part of the glebe land which was sold under the decree of this Court, in the case of *Terrett v. Taylor*, reported in the 9th vol. of Mr. *Cranch's Reports*, p. 43. After a confirmation by the Court below, of the report of the sale made by the commissioners for this purpose, and after various intermediate negotiations, the appellant gave his promissory notes to John Muncaster, one of the respondents, and George Deneale, since deceased, who were at the time Church-Wardens of the Episcopal Church of Alexandria, in payment of part of the purchase money; and judgment having been obtained against the appellant, upon these notes, in the Circuit Court for the District of Columbia, the appellant also sought by his bill a perpetual injunction of this judgment. The grounds of the prayer of the bill were, that the title of the property was substantially defective, and could not be made good by the Vestry, and other persons, who were parties to the bill in the former suit; that the same bill contained a material misrepresentation of the facts respecting the title, of which the appellant was, at the time of the purchase, wholly ignorant, and of which he had but recently acquired full knowledge.[a]

Upon the final hearing in the Court below, the bill was dismissed, and the cause was brought by appeal to this Court.

a The essential parts of the pleadings and evidence will be found fully stated in the opinion of the Court.

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The cause was argued by the *Attorney-General* and Mr. *Key* for the appellant, and by Mr. *Swann* and Mr. *Lee* for the respondents.

On the part of the appellant it was contended, (1.) That the respondents had no title, legal or equitable. It was admitted to be the rule of equity, that where a *vendor* comes in for a specific execution, he is bound to show a title free from all doubt; but where the vendee is the plaintiff, and comes in to rescind the sale, he must show the title to be bad. The *onus probandi* was, therefore, on the appellant, and the counsel argued at large, to show that the conveyance from Daniel Jennings and wife to the Church-Wardens, in 1770, was insufficient to pass his title in fee for the benefit of the parish. The exposition of this deed, in the former case of *Terrett v. Taylor*,[a] merely establishes, that inasmuch as the Church-Wardens were not a body corporate capable of holding lands, this deed did not operate by way of grant to convey the title: that its only legal operation results from the covenant of warranty, which creates an *estoppel* in favour of the church and its privies; *i. e.* that the legal title still remains in Jennings and his heirs, but that they are *estopped* by the warranty from the assertion of that title against the church and its privies. Now suppose that the respondents are the regular successors of the Vestry and Church-Wardens of Fairfax, still they have no title to the land; all that they hold is an estoppel against Jennings and

a 9 *Cranch*, 52, 53.

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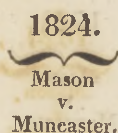
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those claiming under him. What title have they which they could assert against a disseizor, or one claiming under a title foreign to that of Jennings? A mere estoppel against a particular grantor and and his heirs, constitutes neither a legal nor an equitable title to lands. This Court declares that the deed conveys *no title*, but merely an estoppel by force of the clause of warranty. But, even admitting that this estoppel is a title, it belongs to all the episcopal members of the parish of Fairfax, whose rights are precisely the same as if no part of the parish had ever been separated from Virginia. It is quite clear, that the former decision of the Court proceeded on the ground of the plaintiffs in that suit being considered as the regular successors of the original *cestui que trusts;* and that, if it had appeared otherwise, and that there was another church in the parish, or other parishioners who were not represented by them, the decree would have been different.[a] To connect themselves with this deed, therefore, the parties are bound to show that they are the successors. If they are not, the connexion between them is broken, and they have no title under it. The parish of Fairfax forms about one half of the county, which is equally divided into the parishes of Fairfax and Truro; the former comprehending the northern half, the latter the southern. This parish had but one Vestry, but it was the Vestry of the whole parish, elected by the whole body of the parishioners, charged with the common interests of the whole parish,

a 9 *Cranch*, 52, 53.

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and of both the churches equally. The funds with which the glebe was bought were levied from the whole parish, and consequently belonged to the whole parish; and in the case of a vacancy of the parsonage, this Court say, the parish was entitled to the profits of the glebe. It therefore follows, that previous to the separation of a part of this parish from the State of Virginia, its interests were one and identical throughout. No part of the parishioners could, by themselves, do any act affecting the interests of the whole, without giving the whole a voice in the measure, either by themselves or their representative agents. It is laid down, that although the Church of England, in its aggregate description, is not deemed a corporation, yet the Church of England, of a particular parish, is a corporation for certain purposes, although incapable of asserting its rights and powers, except through its parson regularly inducted.[a] And in the judgment of this Court in the former case, it is strongly intimated, that the corporate character conferred on the Vestries in 1784, could be taken away at pleasure, without any fault in the corporation.[b] If then the parish of Fairfax was a corporation, its name becomes a part of its identity, and those who call themselves successors, must have the same name. If it was a corporation, all the corporators have equal rights, and no part of them could exercise the rights which belong to the whole. But, suppose

a Town of Pawlet v. Clark, 9 *Cranch*, 292. 325.
b Terrett v. Taylor, 9 *Cranch*, 51, 52.

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it not to have been a corporation, it was a definite body; it had a unity and identity which separated it from all others. It had a technical identity.[a] It consisted of all the Episcopal members within the territorial limits. It was represented by a Vestry chosen by the voice of the whole of that parish, in which election no other parish could interfere. Those who claimed to be their successors, must, before the separation of the District of Columbia from the State of Virginia, have shown these qualifications; and it is determined that the separation has produced no change in the unity and identity of the parish, so far as the rights of property are concerned.[b] The Vestry and Church-Wardens of the Episcopal Church of Alexandria, cannot be the regular successors of the Vestry and Church-Wardens of the parish of Fairfax, because they have a distinct name, which it would have been needless to assume, unless from a consciousness of a distinct origin and nature. In fact, they have a different origin, different powers, and different duties. In the period which intervened from 1796 to 1803, there was no incumbent. What then were the rights of the parties? This Court has answered, that "the fee remained in abeyance, and the profits of the parsonage were to be taken by the parish for their own use."[c] What parish? Most certainly the

a 2 *Henn. Stat. at large*, 218.

b Terrett v. Taylor, 9 *Cranch*, 53.

c Terrett v. Taylor, 9 *Cranch*, 47. Weston v. Hunt, 2 *Mass. Rep.* 502. See also, 1 *Tuck. Bl. Com.* Part 2. App. 113.

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parish of Fairfax, to which it belonged. The Vestries chosen in 1804, and subsequently, cannot be deemed the Vestries of the parish of Fairfax, but must be considered as the Vestries of the Episcopal Church of Alexandria, because, in the parish books, the entries constantly style them the Vestry of the Protestant Episcopal Church *at*, or *in*, or *of*, Alexandria, and not the Vestry of the parish of Fairfax. The congregation of Christ's Church actually separated themselves, in 1803, from the parish of Fairfax, and formed a distinct Episcopal Church; and the elections were made by subscribers and contributors to the Episcopal Church in Alexandria, and not by the parishioners at large of the parish of Fairfax.

2. This defect in the title being thus made out, it follows that the appellant has a right to require that the contract should be rescinded, unless there be some special objection to preclude him. As to the sale being under a decree, the English practice on this subject relates to objections arising on the abstract which is presented to the purchaser. But defects subsequently discovered, may be objected, and if it appears that the vendor can make no title, the bill will be entertained.

As to notice, there is no proof of actual notice; and the circumstances are not sufficient to infer constructive notice. Nor has the objection to the title been varied by taking possession. The doctrine is, that if the vendee has knowledge of the defects before he takes possession, it is considered as a waiver of the objection, and it will be found that all the cases turn upon this distinction.

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On the part of the respondents, it was insisted, 1. That the appellant had full notice, either actual or constructive, at the time of the sale, of all the facts and circumstances of which he now seeks to avail himself, in order to rescind the sale. The proceedings in the former case were alone sufficient to charge him with notice.

2. This being a judicial sale, under a decree, the party was bound to have applied to the Court below, either before confirmation of the sale, or afterwards, to rescind the sale, and cannot now maintain an independent bill for that purpose, the effect of which would be, collaterally, to set aside the sale, as it stands confirmed by the report.[a]

3. The contract has been executed on the part of the appellant, by taking possession of the land, and it is now too late for him to make any objection to the sufficiency of the title.[b]

4. But a careful examination would show that there was not any defect in the title. The former decision of this Court had put at rest the question as to the sufficiency of the deed from Jennings, to pass his title to the Church-Wardens, for the benefit of the parish. It was there determined that the conveyance could not operate by way of grant, but might operate by way of estoppel, to confirm to the church, and those claiming under it, the perpetual estate in the land.

a 1 *Fonbl. Eq.* 371. Note 6. 1 *Atk.* 489. 3 *Ves.jr.* 333. 3 *P. Wms.* 220. 306. 1 *Rev. Code,* 80. s. 34.

b 1 *Ves.jr.* 221. 226. 3 *P. Wms.* 191. 4 *Dess. Ch. Rep.* 134. 12 *Ves.* 25.

c Terrett v. Taylor, 9 *Cranch,* 53.

The present Vestry of the Episcopal Church at Alexandria, called Christ's Church, are the legal successors of the Vestry of the parish of Fairfax. From the year 1765 until 1801, the town of Alexandria was a part of the county of Fairfax, and the parish of Fairfax. After the year 1792, the Vestry met exclusively in Alexandria; the congregation at the Falls Church, by degrees became extinct; and the Vestry of the parish, with the church at Alexandria, has been constantly kept up, whilst the congregation that used to assemble at the *Falls Church* has ceased to exist. The consequence is, that the glebe land belongs to the Alexandria congregation, as much as if the two congregations had agreed to meet in the church at Alexandria, and had disposed of the other. There never was, and there never could be, two Vestries in the parish, that is, one for each church. Since the year 1776, there have been no compulsory means used for the support of the church, and it has rested on the voluntary contributions of the parishioners; yet every thing that has been done in respect to the property of the church, shows conclusively the regular succession of this Church and Vestry, as the Church and Vestry of the parish of Fairfax. The Vestry has been elected by the members and contributors to the church, but the right of voting did not belong to the parishioners generally, it was confined to those members and contributors. At the same time, no inhabitant of the parish has been denied the privilege of becoming a contributor, with its consequent right of voting. All parties who had

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any title to the property, were before the Court in the former case, in which the sale was decreed.[a] It was unnecessary to make the whole body of parishioners parties to that suit. They have not individually any right or title to the property. It is the property of the parish, and the Vestry are the legal agents and representatives of the parishioners, with authority to administer and dispose of it.

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Mr. Justice STORY delivered the opinion of the Court.

Upon the very voluminous pleadings in this case, assuming more the shape of elaborate arguments, than the simple and precise allegation of facts, which belong to Chancery proceedings, the principal questions discussed have been, 1. Whether the Vestry of the Episcopal Church of Alexandria, now known by the name of *Christ's Church*, is the regular Vestry in succession of the parish of Fairfax. 2. Whether the existence of another parish church, called the *Falls Church*, within the same parish, has any material bearing upon the title, either as to making parties, or settling the right to the glebe. 3. Whether the appellant had full notice of the true nature of the title before the purchase, and so took it with its infirmities, if any such existed. 4. Whether, this being the case of a judicial sale under a decree, the party was not bound to have applied to the Court below, before confirmation of the sale, or

a 3 *Ves. jr.* 505.

afterwards, to rescind the sale; and can now maintain an independent bill for that purpose, the effect of such bill being collaterally to set aside the sale, as it stands confirmed by the report. Another point was made at the bar, as to the sufficiency of the conveyance by Jennings to the Church-Wardens, in 1770, to pass his title in fee for the benefit of the parish. But that point was put at rest, in the case of *Terrett v. Taylor*, and is not now open for discussion.[a]

a Upon this point, the Court says, in the former case, "Upon inspecting the deed, which is made a part of the bill, and bears date in 1770, the land appears to have been conveyed to the grantees, as Church-Wardens of Fairfax, and to their successors in that office, for ever. It is also averred in the bill, that the plaintiffs, together with two of the defendants, (who are Church-Wardens,) are the Vestfy of the Protestant Episcopal Church, commonly called the Episcopal Church of Alexandria, in the parish of Fairfax, and that the purchase was made by the Vestry of said parish and church, to whom the present Vestry are the legal and regular successors in the said Vestry; and that the purchase was made for the use and benefit of the said church in the said parish. No statute of Virginia has been cited, which creates Church-Wardens a corporation for the purpose of holding lands; and at common law, their capacity was limited to personal estate. (1 *Bl. Com.* 394. *Bro. Abr. Corp.* 76. 84. 1 *Roll. Abr.* 393. 4. 10. *Com. Dig. tit. Esglise,* F. 3. 12 *Hen.* VII. 27. *b.* 13 *Hen.* VII. 7. 9. *b.* 37 *Hen.* VI. 6. 30. 1 *Burns' Eccles. Law,* 290. *Gibs.* 215.) It would seem, therefore, that the present deed did not operate by way of *grant*, to convey a fee to the Church-Wardens and their successors; for their successors, as such, could not take: nor to the Church-Wardens in their natural capacity; for 'heirs' is not in the deed. But the covenant of general warranty in the deed, binding the grantors and their heirs for ever, and warranting the lands to the Church-Wardens and their successors for ever, may well operate, by way of *estoppel*, to confirm to the church and its privies the perpetual and beneficial estate in the land." 9 *Cranch*, 52, 53.

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If the first question is decided against the plaintiff, it will be unnecessary to consider the other question, for it is not denied, that the Vestry of the parish of Fairfax sufficiently represent the whole parish for all the purposes of the original bill, and that both by the former laws of Virginia and the canons of the Episcopal Church, they, in connexion with the Minister, have the care and management of all the temporalities of the parish within the scope of their authority. To the consideration of this question, the attention of the Court has been mainly directed; and it is now my duty to explain the grounds upon which we have come to the conclusion, that the Vestry of the Episcopal Church of Alexandria is the regular Vestry in succession of the parish of Fairfax; and being so at the commencement of the former suit, the main objection to the title to the glebe falls, and the bill of the plaintiff ought to be dismissed.

By the laws of Virginia, passed antecedent to the revolution, each parish was authorized to elect a Vestry of twelve persons, to manage their parochial concerns; and however many distinct Episcopal Churches, or places of public worship, there were within the parish, the same Vestry had the superintendance and direction of them all. In point of fact, there were two such places of worship within the parish of Fairfax, the church at Alexandria, and the Falls Church; but the cure of both belonged to the same Minister, who was the rector of the whole of the parish, and the parochial concerns were managed by a single Vestry. Not the least trace can be found of any other Vestry

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until the year 1819, when a Vestry was chosen *de facto*, by persons purporting to belong to the Falls Church, and that portion of the parish of Fairfax which is not included within the District of Columbia. Up to the year 1796, it is not disputed that a Vestry was regularly chosen for the whole parish; and the place of the choice of the Vestry, as well as the Vestry meetings, appears to have been usually, but not universally, at Alexandria. In April, 1796, a Vestry was chosen for the parish, to serve for the usual period of three years, who continued to hold meetings until April, 1799; and from that time, there seems to have been an interregnum, so far as the minutes in the parish books afford information, until April, 1804, when a Vestry was chosen, for the usual term of three years; and there has been a continuation of Vestries from that election down to the present time. The validity of these elections, from 1804, as elections of the Vestry of the parish of Fairfax, forms the point in controversy, and will be presently considered. Since the year 1800, the Falls Church has fallen into a state of dilapidation and decay, and public worship has not been celebrated there by the Minister of the Episcopal Church, on account of its deserted state; but there has been a regularly inducted Minister at the parish church in Alexandria, where divine services have been constantly performed.

The counsel of the plaintiff contend, that the Vestries chosen in 1804, and subsequently, are not to be deemed the Vestries of the parish of Fairfax, but of the Episcopal Church, (that is, of Christ's

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Church,) in Alexandria; and they support their argument upon the following grounds: 1. That in the parish books the entries constantly style them the Vestry of the Protestant Episcopal Church, *at*, or *in*, or *of*, Alexandria, and not the Vestry of the Parish of Fairfax. 2. That, in point of fact, the congregation of Christ's Church, in 1803, separated themselves from the parish of Fairfax, and formed a distinct Episcopal Church. 3. That the elections were made by subscribers and contributors to the Episcopal Church in Alexandria, and not by the parishioners at large of the parish of Fairfax.

Under some one of these heads, all the objections urged at the argument may be arranged.

As to the first point. It is true, that in general the style of the entries of the Vestry meetings, since 1804, is as the plaintiff stated it to be. But it will scarcely be contended, that the errors of a recording clerk, in description, will change the nature or character of the Vestry proceedings, or devest them of their authority, if, in point of fact, they constituted the Vestry of the parish of Fairfax. The irregularities of merely ministerial officers, and especially of parish clerks, whose records are generally kept in a loose and inaccurate manner, have never been, hitherto, supposed to have such a controlling authority. Courts of justice will examine into the proceedings of ecclesiastical bodies with indulgence; and if, upon the whole, a consistent construction can be given to them, in conformity to existing rights, they will suppose them to be done in the exercise of those rights, ra-

ther than in gross usurpations of authority. Now, there is no pretence to say, that there existed any right on the part of the congregation of the Episcopal Church at Alexandria, to choose a Vestry of its own, which should not be the Vestry of the parish. The church itself, with the church-yard and appurtenances, belonged to the parish of Fairfax. It was the parish church. The Vestry, which had a right to govern and manage its temporal concerns, was the parish Vestry. It was an Episcopal Church, under the direction and authority of the General Episcopal Church of Virginia; and by the canons of that church, made in conformity with the laws of Virginia, and never repealed, the Vestry were to be elected for the parish. It is not lightly to be presumed, therefore, that an election of a Vestry was intended to be made in any other manner than the canons of the Episcopal Church and the rights of the parishioners would justify. The very fact of a total silence, and absence of any objection, through so long a period, would authorize the conclusion that the Vestry was understood to be a parish Vestry, and its acts were for the benefit of the whole, and not for the part connected with the Alexandria Church. It should also be recollected, that the Falls Church had fallen into decay, and was no longer used for purposes of public worship. It was considered in the same light as if totally destroyed; and then, as the Alexandria Church was the only worshipping church in the parish, nothing could be more natural than, in common parlance, and in parochial records, to designate the Vestry as the Vestry of the Episcopal Church *of*,

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in, or *at*, Alexandria. It was so in a strict sense, not because it was not the parish Vestry, but because the church at Alexandria was the parish church, and its congregation, in an ecclesiastical sense, consisted of the Episcopalian parishioners of Fairfax. If we advert to the history of the Virginia legislation on this subject, there will be found a natural reason for this apparent change of style, without any intended change of character. That legislation is referred to, somewhat at large, in the case of *Terrett v. Taylor*, and need not here be minutely examined. The act of 1784, ch. 88. created the Minister and Vestry of every parish a corporation, by the name of the Protestant Episcopal Church, in the parish where they respectively resided. When, by the subsequent act of 1786, ch. 12. this act was repealed, there was provision made, that all religious societies might, according to the rules of their sect, appoint, from time to time, trustees to manage their property, which trustees were, by the subsequent act of 1788, ch. 47. declared to be the successors to the former Vestries. The general Episcopal Church of Virginia, in convention, adopted general regulations on this subject, conforming, in substance, to the act of 1784, and providing for the regular appointment of Vestries, who should be trustees, for every Episcopal Church in every parish. Under such circumstances, the natural denomination of the Vestry would be, the Vestry of the Episcopal Church in the particular parish. And when, in consequence of the separation of the county of Alexandria from the State of Vir-

ginia, by the cession to the United States, the parish church fell within the boundaries of Alexandria, the embarrassment arising from this new state of things, might well create doubts as to the proper designation, and introduce the new appellation. Whether this description was right or wrong, is of no consequence; for if there has been no legal change of character, in contemplation of law, the regular Vestry of this church remains the Vestry of the parish. It appears in proof, that a number of the congregation of the church at Alexandria, are persons residing without the boundaries of the District of Columbia, and in the Virginia part of the parish; and there is not the slightest evidence that, in the election of Vestries since 1804, a single parishioner of Fairfax has ever been refused his vote at any election, on account of his residence. We think, then, that the circumstance of a change of style in the parish records, furnishes no proof of the asserted change of character. In the election, however, of 1810, the entry in the books is, that the Vestry were elected "to serve the parish as Vestrymen;" and, immediately afterwards, in subscribing the test, they speak of themselves as the Vestry "of the Protestant Episcopal Church of Alexandria." Now, what parish is here spoken of? Plainly the parish of Fairfax, for no other parish is pretended to exist. And when the Vestry subscribed the test, as Vestry of the church of Alexandria, it is as plain that they understood that the parish and the church of Alexandria meant the same thing. If then the books of the

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church are to furnish evidence against the defendants, they are entitled to the benefit of the same records, by way of explanation.

The second ground is, that the congregation of the church at Alexandria has separated itself from the parish, and formed a distinct society, and can no longer be deemed the parish church of Fairfax. This is principally attempted to be sustained by an agreement made in 1803, which is found fastened, by wafers, to the vestry book. That agreement, after reciting that a committee was appointed by "the Protestant Episcopal Church of Alexandria," to adopt measures for insuring a competent salary for a Minister, &c. and that the committee so appointed had reported, as an advisable mode, to rent out the pews to occupiers and others, at a fixed annual rent, amounting in the aggregate to 1186 dollars, and further proposed soliciting a voluntary subscription to supply any deficiency; then proceeds to state, that the subscribers agree to rent the pews, and to pay to the Rev. Thomas Davis, (then the Rector of the parish,) the sums annexed to their names, in quarterly payments, &c. &c. reserving a right to surrender up their pews at the end of a year. Such is the substance of the agreement; and it is extremely difficult to perceive how it conduces to prove, in any shape, the establishment of a new society. It is to be considered, that the church, whose pews were to be disposed of, was the parish church of Fairfax; and it cannot be pretended that the parish could be deprived of it, except by its own consent through its authorized

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agents. A new society, composed partly of the parishioners, had no more right or power to dispose of the pews than utter strangers. It would be as gross a usurpation, and as tortious an act, in the one case as in the other. But there can be no doubt, that a parish may regulate the sale or renting of the pews of the church, in such manner as may conduce to the general benefit. The parish is not the less the owner of the church, because the pews in it are rented or sold to others; for the right to the exclusive use of the pews, is very different from the right to the freehold in the church itself. The agreement, in the present case, was nothing more, and purports to be nothing more, than a mere agreement for renting the pews. It is made with persons who are the committee of the church, and who claim the right to use it. It is an act which might be done by authority of the parish, without in any respect transcending its rights or duties. How then is it to be deemed an act which indicates the creation of a new society, or a separation from the parish? What authority could any new society claim to the parish property? If such a claim had been made, it would have been resisted; and the very circumstance, that no resistance was made, is conclusive that the agreement was made in the exercise of ordinary parochial rights, and indicated no severance of interests. In point of fact, an agreement, in substance like the present, was made, respecting the pews in this very church, in the year 1785; and yet no one supposed that the church ceased to be the parish church, or that the

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subscribers constituted a new society. There is another circumstance, which is too significant to be passed over in silence; it is, that the Rev. Mr. Davis, to whom the agreement in question refers, was regularly inducted, in the year 1792, as Rector of the parish of Fairfax, and continued to officiate as such, in this very church, down to the year 1806, three years after this agreement was made. During all this period, the freehold of the glebe was vested in him, as *persona ecclesiæ*. How then is it possible to maintain, that the support of the Rector of the parish in the exercise of his parochial rights and duties, and the continuance of the Rector in possession of the glebe and the church, can be construed as an abandonment of all connexion with the parish, and a renunciation of its privileges? It is a fact, also, corroborative of the view that has been already taken by the Court of this agreement, that the possession and management of the temporalities of the church, have always been in the Vestries of the Alexandria Church, since 1804. They have exercised the sole and exclusive control over them. They have never disclaimed, in any ecclesiastical assembly, their former connexion. They have not applied to the Bishop, or other proper authority, to be formed into a new and distinct society, separate from the parish. And yet it is not denied that, by the rules and customs of the sect, new Episcopal societies are not admitted to be formed within the bounds of existing parishes, without the consent of the proper ecclesiastical authority. In the act of consecration of the

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church in 1814, the Vestry expressly declare the church to be the parish church of Fairfax, and in virtue of their authority, as the Vestry thereof, they dedicate it to the public worship of God; and the Bishop of the diocess then acknowledged and consecrated it as such. In the year 1807, the Rev. Mr. Gibson was elected Rector of the parish, upon the resignation of the Rev. Mr. Davis; and on that occasion, the Vestry resolved, that he should be inducted *as Rector of the parish;* and in the succeeding election of the Vestry, in the same year, the Vestry are stated in the records to be chosen "to serve the parish." So that, if in the records there are single expressions which, standing alone, might be of doubtful interpretation, the solemn acts of the Vestry in consecrating the church, in choosing the Minister, and in managing the temporalities, all point to their character as representatives of the whole parish. It may be added, that in the bill of *Terrett v. Taylor,* the Vestry assume to be the parish Vestry in succession; and that in the answer to the present bill, by the defendants, who are the existing Vestry of the Church of Alexandria, they assert, in the most positive and solemn manner, the same character, and utterly deny the allegations of the defendant's bill on this point. So that, unless the Court were prepared to divert the clear purport of the evidence, and the solemn acts of the Church, for a series of years, and the presumptions arising from long and undisputed possession of the property, and exercise of parochial authority, on account of some irregularities, which may occur in the trans-

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actions of most public bodies, the conclusion cannot be arrived at, that the church at Alexandria has ceased to be the parish church of Fairfax, or that its congregation has become a distinct society.

The third ground of objection is, that the Vestry were chosen, not by the parishioners of Fairfax, but by subscribers and contributors to the Episcopal Church at Alexandria. This objection proceeds upon the supposition, that if the Vestry is *de facto* the Vestry of the parish, the very mode of choice demonstrates that it cannot be the Vestry *de jure*. Whether, in a case like that before the Court, the inquiry can properly be gone into as to the mode and regularity of the choice of a Vestry actually in office and exercising the duties thereof; and if the inquiry be proper, whether the legal distinction between a Vestry *de jure* and *de facto*, could avail the plaintiff, are questions upon which it is not necessary for the Court to express any opinion. We think a short examination of the subject will put the objection at rest, whatever might be the conclusion drawn from such a legal distinction.

Before the revolution, the Episcopal Church was the established church of Virginia, and all the parishioners were liable to be rated for parish taxes, and were entitled to vote in the choice of the Vestry. But the church establishment fell with the revolution, and the compulsive power of taxation ceased; and as no person could be compelled to worship in the Episcopal Church, or pay taxes for its support, the parishioners of the Episcopal Church, in the ecclesiastical sense of the term, af-

terwards consisted only of the Episcopalian contributors and members. The act of 1784, ch. 88. provided that, at all future elections of Vestries, no person should be allowed to vote, who did "not profess himself a member of the Protestant Episcopal Church, and actually contribute towards its support." Although this act was repealed by the act of 1786, ch. 12. yet the same act saved the management of their property and regulation of their discipline, according to the rules of their own sect, to all religious societies. By the canons of the Episcopal Church, subsequently passed, the right to elect Vestries is confined to the "freeholders and housekeepers, who are members of the Protestant Episcopal Church within the parish, and regularly contribute towards the support of the Minister, and to the common exigencies of the church within the parish." These canons being assented to by the various parishes which they govern, and not being inconsistent with the laws of Virginia, are not denied to be in force for parochial purposes. Now, there is not in this record the slightest proof, that any election of the Vestry has been made in any other manner, than that pointed out by the canons of the church; and the answer of the defendants expressly avers, that the choice has been constantly made according to the canons of the church, and that no person belonging to the Falls Church, has ever been a contributor, or ever offered to vote at any election. It seems to the Court, therefore, that, the elections being regularly made, by persons qualified according to the canons, the whole foundation of the objection is removed.

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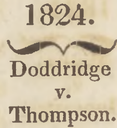
No inference can be deduced from this circumstance, in proof of the Alexandria Church having separated itself from the parish, and become a distinct and independent society.

It has been said, that the parishioners of the whole parish are the *cestuis que trust* of the glebe and other parochial property, and ought to be parties to any bill to dispose of it. But in an accurate and legal sense, the parishioners are not the *cestuis que trust*, for they have, individually, no right or title to the property. It is the property of the parish, in its corporate or aggregate capacity, to be applied and disposed of for parochial purposes, under the authority of the Vestry, who are its legal agents and representatives. Upon the sale of the glebe, the proceeds become parochial property, and must be applied for the common benefit, the maintenance of the Minister, the repairs of the churches, and other parochial expenses, by the Vestry, in good faith. But the mode, and extent, and circumstances, under which the fund is to be applied, are necessarily left to the discretion of the Vestries, from time to time chosen. An abuse of their trust, or duty, is not to be presumed; and if it should occur, the same remedy will belong to the parishioners as in other cases, where money is wantonly misapplied to wrong purposes, which constitute a common fund for the benefit of the whole parish, and not for the benefit of a part. It will be sufficient to decide upon such a case when it shall arise in judgment. But the individual parishioners residing out of Alexandria county, were no more necessary to be made



parties to the bill praying a sale of the glebe, than the individuals residing within the county. Both were represented in the only way known to the laws, by the Vestry duly appointed to manage parochial concerns.

These are some of the reasons which have led the Court to the conclusion that has been already stated, to wit, that the Vestry of the church in Alexandria is, in succession, the regular Vestry of the parish of Fairfax.

This decision renders it unnecessary to consider the other points raised at the argument; and it remains only to declare, that the judgment of this Court is, that the decree of the Circuit Court dismissing the bill, be affirmed with costs.

[Local Law.]

Doddridge v. Thompson and others.

Under the reserve contained in the cession act of Virginia, and under the acts of Congress of August 10th, 1790, ch. 67. [xl.] and of June 9th, 1794, ch. 238. [lxii.] the whole country *lying between the Scioto and Little Miami rivers*, was subjected to the military warrants, to satisfy which the reserve was made.

The territory lying between two rivers, is the whole country from their sources to their mouths; and if no branch of either of them has acquired the name, exclusive of another, the main branch, to its source, must be considered as the true river.

The act of June 26th, 1812, ch. 432. [cix.] to ascertain the western boundary of the tract reserved for the military warrants, and which provisionally designate *Ludlow's line* as the western boundary, did