

(No. 55.)



1865.

T A S M A N I A.

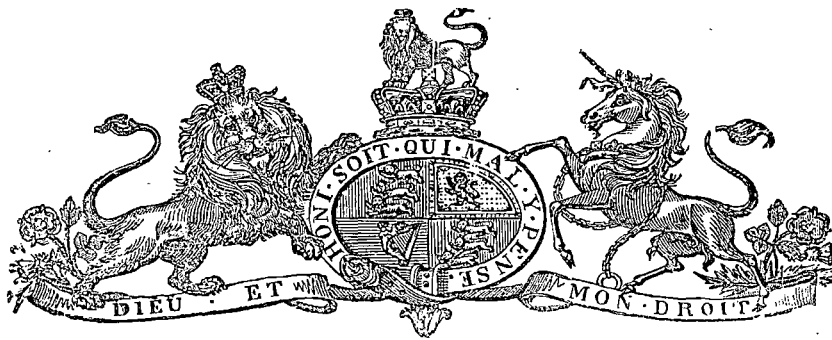
LEGISLATIVE COUNCIL.

CASE OF "STORIE *v.* SIMSON AND OTHERS."

CORRESPONDENCE.

Return to an Order of the Council of September 5, 1865. (Mr. Kissock.)

Laid upon the Table by Mr. Whyte, and ordered by the Council to be printed,
September 8, 1865.



O'Brien's Bridge, 29th April, 1864.

SIR,

I do myself the honor of enclosing a Sentence passed by the Presbytery of Tasmania on the Rev. John Storie, Minister of St. Andrew's Church, Hobart Town, to be laid before His Excellency the Governor.

As this is the first instance of a Minister being deponed by the Presbytery, and as the Ministers are very peculiarly situated in reference to their salaries, it may be necessary to explain—1. That if it can be shown that the decision of the Presbytery was wrong, the Presbytery would feel themselves bound to reverse it. And I am sure that in such a case the Government would not only restore a deponed Minister to the enjoyment of his salary, but pay to him whatever had been temporarily withheld. But—2. In whatever terms a Sentence may be pronounced, it is no business of a Church Court under ordinary circumstances to shut a man up in impenitence. And in the event of there being satisfactory evidence of repentance, there is no reason why a deponed Minister may not be reponed. And in the event of such an occurrence, it would only be just to the Church that the salary of a Minister whose name is on the first Schedule of the State Aid Distribution Act should be restored to him, for—1. Had that Act not been passed, by being reponed in the Ministry he would have become entitled to the salary attached to any Church of which he might be made the Minister; and—2. Although as an act of courtesy I communicate the deposition of Mr. Storie to His Excellency, there is no injunction in the State Aid Distribution Act to communicate to the Governor that a Minister has been deponed; and by such communication simply being withheld, the enjoyment of his salary by a deponed Minister might at any time be revived.

I have, &c.,

C. SIMSON, *Convener of Presbytery.*

To the Hon. JAMES WHYTE, Esquire, Colonial Secretary.

SENTENCE passed by the Presbytery of Tasmania on the Rev. JOHN STORIE, Minister of St. Andrew's Church, Hobart Town.

In the name and by authority of the LORD JESUS CHRIST, the sole King and Head of the Church. THE Reverend John Storie, Minister of St. Andrew's Church, Hobart Town, having been regularly called and appeared before this Presbytery; and having been found guilty of the sin of slander and wilful misrepresentation after careful trial; and having contumaciously withdrawn himself;—The Presbytery of Tasmania by their vote have deponed, and hereby do depon, by virtue of the power and authority committed to them, the said John Storie from the Office of the Holy Ministry; prohibiting and discharging him to exercise the same or any part thereof in all time coming in connection with this Presbytery.

Sentence passed 19th April, 1864.

The above is a copy of an Extract from the Minutes of Presbytery, signed John Mackersey, Presbytery Clerk, dated 21 April, 1864.

C. SIMSON, *Moderator of Presbytery.*

O'Brien's Bridge, 10th August, 1864.

SIR,

I BEG leave to state that I have received notice from Mr. Adams, Solicitor for Mr. Storie, that a Suit in Equity against myself and the other Members of Presbytery is to be commenced for the payment of Mr. Storie's salary.

I therefore request that the assistance of the Law Officers of the Crown may be afforded, as it is only as receiving and distributing the public money that Mr. Storie can have any Suit against either the Presbytery or myself, as the Presbytery has only done what it believed to be a duty imposed upon it both by the principles of the Church, and by Acts of the Legislature, and as the Government alone is pecuniarily interested in the result of the action.

I have, &c.,

C. SIMSON, *Convener of Presbytery.*

The Hon. Colonial Secretary.

Hobart Town, 8th August, 1864.

REVEREND SIR,

I AM instructed by the Rev. John Storie, of St. Andrew's, Hobart Town, to commence a Suit in Equity against yourself and the other Members of the Presbytery for the time being whose duty it is to receive and pay the monies provided by "The State Aid Distribution Act," to compel payment of the arrears of his salary and its due payment for the future. Before commencing proceedings, I am desirous of saving you any expense that fairly can be averted, and therefore have to request you will be good enough to name your Solicitor in Hobart Town whom I may serve with process on your behalf; for I have to acquaint you that, in the event of your not naming a legal adviser by Friday next, I shall have the proceedings served on you at your own residence.

I am, &c.,

ROBT. P. ADAMS.

Rev. C. SIMSON, O'Brien's Bridge.

Colonial Secretary's Office, 19th August, 1864.

SIR,

I AM in receipt of your Letter of the 10th instant, informing me that you have received a notice from Mr. Adams, Solicitor for Mr. Storie, that a Suit in Equity against yourself and the other Members of the Presbytery is to be commenced for the payment of Mr. Storie's salary, and requesting that the assistance of the Law Officers of the Crown may be afforded you in the case.

In reply, I have the honor to inform you that after considering your application the Government are not prepared to grant the request; the original question between the Presbytery and the Reverend Mr. Storie being one affecting the internal discipline of the Scotch Church, the Crown cannot afford its support to either side.

I have, &c.,

JAMES MILNE WILSON,
Pro Colonial Secretary.

The Rev. C. SIMSON, O'Brien's Bridge.

O'Brien's Bridge, 20th October, 1864.

SIR,

I HAD the honor of applying to you for the assistance of the Crown Lawyers in a case to be commenced against Members of the Presbytery by Mr. Storie for the payment of his salary from the 19th of April. That application was refused.

I now beg leave to enquire whether, if I applied for the payment of Mr. Storie's salary from the 19th of April, the application would be granted; and if not, for what reason it would be refused.

As the ordinary meeting of Presbytery takes place on the 2nd day of November, an early answer will oblige.

I have, &c.,

C. SIMSON, *Convener of Presbytery.*

The Hon. JAMES WHYTE, Esquire, Colonial Secretary.

Colonial Treasury, 10th November, 1864.

SIR,

YOUR Letter of the 20th October last, addressed to the Honorable the Colonial Secretary, enquiring whether payment of Mr. Storie's salary from the 19th April would be granted, and if not, for what reason it would be refused, has been referred to this Department.

I have now, in reply, the honor of informing you that your Letter has been referred to the Honorable the Attorney-General, who is of opinion that "if the Presbytery apply for Mr. Storie's salary, (or rather the equivalent amount of such salary), as being due to the Presbytery under 26 Vict. No. 17, providing that the Moderator will attend and satisfy the Auditor (under the *Audit Act*, Secs. 13 and 14) that the amount is payable, the Government will authorise the payment; but unless the Moderator is prepared to admit that the deprivation of Mr. Storie was made in error, the Auditor looking at Sec. 7 of 26 Vict. No. 17, will not be able to allow such payment." On this view, as taken by the learned gentleman, it is the intention of the Government to act.

I have, &c.,

CHARLES MEREDITH.

The Rev. C. SIMSON.

I CERTIFY that the Revs. Robert Russell, Charles Simson, Thomas Dove, James Garrett, Robert Maclean, Robert Kirkwood Ewing, and Adam Turnbull, persons named in the Schedule (1) of "The State Aid Distribution Act," have been acting as Members of the Church of Scotland during the Month of December, 1864, with the exception of Mr. Russell during such time as he was absent on leave. I have not heard of the Rev. John Robertson since the beginning of August.

I again apply for the amount necessary to pay Mr. Storie's salary and arrears from 19th April. The Supreme Court has not yet assented to the stoppage thereof, and I am instructed by the Presbytery, that (if the recent decision of the Judges that the Presbytery is not a Court and has no power to carry out its sentences, be the correct rendering of the two Acts 1 Vict. No. 16, and 26 Vict. No. 17, which the Presbytery, being neither competent nor bound to be a judge in such matters, is not prepared to dispute,) my previous non-applications were in error.

C. SIMSON, *Convener of Presbytery.*

Colonial Treasury, 17th January, 1865.

REVEREND SIR,

I BEG to acknowledge the receipt of a Certificate signed by yourself, as Convener of Presbytery, in which you again apply for the amount necessary to pay Mr. Storie's salary and arrears from the 19th April; and to inform you, in reply, that your application was referred by me to the Auditor, to say whether, in the event of my paying the amount of arrears to Mr. Storie, he, the Auditor, would feel justified in passing the account. That Officer, in reply, states as follows:—"that he would not feel justified in passing the payment of the enclosed demand of arrears of pay to the Rev. John Storie upon this Certificate, which is hypothetical only, instead of being positive, upon points which are deemed essential to meet the requirements of the 6th and 7th Sections of the State Aid Act. The Auditor must be satisfied that Mr. Storie was deprived in error of his situation and emoluments, and that he has been, and still is, acting as Minister of St. Andrew's Church. This can be effected by the Moderator's making oath to the facts indicated before the Auditor, under the 14th Section of the Audit Act.

I have, &c.,

CHARLES MEREDITH.

The Rev. C. SIMSON.

O'Brien's Bridge, 13th August, 1865.

SIR,

I HAVE the honor of calling your attention to the Decree of the Judges in the case of *Storie v. Simson* and others. It is decreed that, on or before the 8th of September next, the Presbytery shall pay to Mr. Storie all Arrears of Salary and Allowances due to him under "The State Aid Distribution Act," from the 19th April, 1864, to the 31st of last month, and do continue to pay to him such Salary and Allowances until his right shall cease in due course of law.

I have therefore to inquire whether, since the Judges have made such a Decree, such Arrears as are at present due, and such Salary as may hereafter become due, will be paid without further hindrance on application at the Treasury.

2. The Judges have, in the course of the proceedings, declared that the Presbytery is not required by law to certify that an individual whose name is on the Schedule (1) of "The State Aid Distribution Act" has been acting as a Minister of the Church of Scotland.

I beg leave to enquire whether Salaries will henceforth be paid without such Certificate.

3. Since the passing of "The State Aid Distribution Act," Salaries have been paid to us as the Church of Scotland Department; and I believe that, for the purposes of that Act, we were a Government Department, and that we would not be subjected to any expenses arising out of the conscientious discharge of our duty. But we have been declared to be Trustees, and as such have been subjected to all the heavy expenses of a Suit in Equity; although it is not denied that we have acted in the conscientious discharge of our duty. I have therefore to request that Government will relieve the Presbytery from the present and all future expenses incurred in the discharge of duty. It is too much to expect that the Presbytery will act even in the case of the most flagrant offences, and thereby incur the risk of punishing itself instead of the guilty.

"The State Aid Distribution Act" professed to place us in no worse position than we formerly occupied; and if this profession cannot be implemented, it is only reasonable that some equitable provision be made for Ministers retiring from a position that must subject them to loss or to discredit.

I have, &c.,

C. SIMSON.

The Honorable the Colonial Secretary.

Colonial Treasury, 29th August, 1865.

SIR,

I HAVE the honor of acknowledging your Letter of the 13th instant, addressed to the Honorable Colonial Secretary, which has been referred to me.

You are pleased to call my attention to the Decree of the Judges in the case of *Storie v. Simson* and others, and you enquire whether such arrears as are at present due will be paid without further hindrance.

In reply to this portion of your Letter, I beg to refer you to my communication to you of the 10th December, 1864, containing the opinion of the Honorable the Attorney-General as to the necessity of satisfying the Auditor, so as to enable that Officer to pass the account.

I cannot view the Decree of the Judges as intended in any way to interfere with the functions of the Auditor, as prescribed by "The Audit Act" and Audit Regulations.

With regard to the third paragraph of your Letter, in which you argue that for the purposes of "The State Aid Distribution Act" you believe you were a Government Department, I ask leave to point out, that were it so, no Head of a Department can dismiss an Officer without the sanction of the Executive; and as the Executive have not in any way been a party to the dismissal of Mr. *Storie*, they do not hold themselves in any manner responsible.

I have, &c.,

CHARLES MEREDITH, *Colonial Treasurer.*

The Rev. C. SIMSON.

Hobart Town, 28th August, 1865.

SIR,

From the tone and temper evinced towards myself and the majority of the Presbytery by the Judges of the Supreme Court during the hearing of the case *Storie v. Simson* and others, to which I have already directed your attention, I deem it useless for me to make any Appeal to them against their Decree.

As, however, the question is one involving the interests of the Crown, and as you may consider it necessary to take further steps in the matter for the protection of the Revenue and the promotion of justice, I beg to transmit an Affidavit made by myself, from which it will appear that the Rev. John *Storie* stated upon oath that which was contrary to fact, and that he knowingly perpetrated and took full advantage of his wrong act until Decree was given in his favour.

I have, &c.,

C. SIMSON.

The Hon. the Colonial Secretary.

IN THE SUPREME COURT }
OF TASMANIA. }

STORIE *v.* SIMSON & OTHERS.

I, CHARLES SIMSON, of O'Brien's Bridge, in the Island of Tasmania, do hereby make oath and say,—

That I am one of the Defendants against whom a Decree has been issued by the Supreme Court of this Colony at the instance of the Rev. John Storie, Plaintiff.

That the said John Storie did in his Affidavit filed in the said Supreme Court, in the above cause, allege, that he "never signed any formula or agreement;" and that when the case was progressing, the Minutes of the Presbytery were produced taken at the time of his induction into and to be Minister of St. Andrew's Church, Hobart Town, and taken, moreover, in his own handwriting, yet he persisted in alleging as his belief that he never signed any formula.

That, on or about the 22nd day of July last, I communicated to the said John Storie that the formula referred to in the Minutes of the Presbytery as having been signed by him had been put into my hands by the Clerk of the Presbytery; but he, the said John Storie, took no steps towards remedying the wrong he had committed, but continued to perpetuate and take the benefit of his wrong act until Decree was given in his favour.

And I further say, that the formula above referred to is in the handwriting of the said John Storie, and signed by him, and that it was put by me into the hands of the Honorable the Attorney-General some time since.

C. SIMSON.

Sworn before me at Hobart Town, in the Island of Tasmania, this twenty-eighth day of August, in the year one thousand eight hundred and sixty-five.

GEO. HULL, *J.P.*

Colonial Secretary's Office, 31st August, 1865.

SIR,

I HAVE the honor, by direction of the Colonial Secretary, to acknowledge the receipt of your Letter of the 28th instant, referring to the case of Storie *v.* Simson and others; and in reply, to inform you that, upon reference to the Attorney-General, that Officer has stated that the circumstances set forth by you do not in any way affect the interests or the liability of the Government.

I have the honor to be,
Sir,

Your very obedient Servant,

B. TRAVERS SOLLY.

The Rev. C. SIMSON, O'Brien's Bridge.