

High Court of Justice
Chancery Division

Before the Master of the Rolls

Scarbrough

vs
Podwell

Judgment

20th November 1876

High Court of Justice.
Chancery Division.

Rolls Court
Chancery Lane.

Monday 30th November 1876

Before The Master of the Rolls.

Scarborough
v
Dodwell

Transcript of the Shorthand Notes of
Mess^{rs} Hurst & Hurst of the
Judgment

The Master of the Rolls did not determine
whether the defendant really obtained
legal advice or not because it was
impossible to decide anything on the facts
on his present pleadings. He was
chosen to exhibit his evidence at the
first instance to a solicitor who

to have neglected them altogether, and
to have allowed judgment to go by
default. He then obtained from
me, as matter of indulgence, leave
to put in a Statement of Defence—
whether or not he has taken legal
assistance in framing his Statement
of Defence I cannot tell. I should
think that he has not.

Mr. Lovell: No, my Lord.

The Master of the Rolls: Not being versed
in law, he has not stated, in such
a form as to be of any value to him.
It is my duty to decide on the Pleadings
before me.

The Case made by the Statement
of claim is a very simple one. They
allege that there is a governing
body of this School, consisting of the
Bishops and twenty men of the
University. They say that they may be,
and that the majority of the Bishops
and twenty men have acted
as a governing body, apparently
in a regular manner. They bid me
to give judgment. I have no right

to notice it. The words of the Indenture
by itself might be open to argument,
though I think that is the natural
meaning of them. A certain sum out
of the rents is to be bestowed in
maintaining and keeping up a school
in the town of Colyton, the Schoolmaster
of the same to be from time to time
chosen and upon all lawful occasion
dismissed by the Feoffes and twenty
men of the said parish or the more
part of them" Now it is to be
observed that the "more part" seems
to refer to both, because otherwise
if the Feoffes stood alone, you must
have all the Feoffes, and the majority
of the twenty men, which does not
appear to be the natural meaning.
The natural meaning appears to be
the majority of the Feoffes, and
that this group may name the school
what they will, and the school
which consisted of the twenty
body of the Feoffes and the

According to the reading it is a single
chamber, consisting of both. If that
is so, and that is correct in law,
you do not require any one member
of either body to be present. This
like the Lords Spiritual and Temporal
in the House of Lords, and a majority
will do. If that is the right
interpretation this was a proper
meeting, and a proper body. It
appears to me that that should be
taken to be the correct interpretation
by a Court of Justice. Therefore I do
not think that there would have
been anything in the objection if
it had been pleaded, but the
defendant only says that he gave
the writ to the Solicitor, not
that he relied on it. I am therefore
of opinion that in either way it
will be found that the writ
is valid. I am therefore
of opinion that the writ is valid.

The other part of the Statement of Defence
is this, that the meeting of the Governing
body was wrong upon the merits. On
that point I am precluded from
entering at all. On that point it is
quite clear that where Statutes have
given to a governing body, the power
of the dismissal of the Master, and they
give him proper notice, and allow him
to enter into his defence and make an
investigation, not corruptly, (and they
are not accused here of corruption)
an investigation fairly, and to the
best of their ability, though they
are entirely wrong in every one of the
conclusions at which they arrive, and
the charges against the Master being
substantiated, or entirely
with reference to the matter in dispute
as cause for the dismissal of the Master
even supposing them to be correct
the Court cannot interfere
if Justice is not in support
the discretion of the Court
in the exercise of its power

in dismissing the Master, and I am
very glad that it is not so, because
there could be no more troublesome
office than the exercise of the discretion
by an Appellate Court. As to questions
of discretion, the governing body must be
as a domestic Tribunal, like Courts
Martial. They know more about it,
and they may have charges brought
before them which may appear insufficient,
standing alone, to authorise the dismissal
of the Master, which still they may deem
to be sufficient, knowing what they do
of the matter, and what has been
the success of the Master in conducting
his business, and therefore they might
properly act upon evidence which a
Court of Justice, standing alone, and
not being not here of the matter,
might think to be insufficient.
as regards the proof of the
charges, the Court is a
domestic Tribunal. The governing body
may see the evidence on oath. They
know the habits and
habits of life

and veracity they are acquainted, and
whose testimony they may take, and
probably safely take, in a way which
a Court of Justice would not be
allowed to take it. These Governing
bodies, being a part of domestic Tribunal,
as I said before, knowing a great deal
of the people who come before them,
have opportunities of deciding on the
truth of the witnesses who come before
them, which a Judge has not. Here
again a domestic Tribunal may properly
come to a conclusion upon the evidence,
which perhaps a legal Tribunal would
not be justified in doing. Here again
I am in no condition to investigate the
truth of the charges, and I have no
means of investigating
had jurisdiction, and therefore
of the case, which is upon the
proof of the charges, and the
examined in the same manner
the case. I have no opinion
statement of the charges
of real defence.

the Remover, and direct the Judgment
to be carried into execution.

Mr. Slaney: - The Judgment will stand,
and your Lordship will allow the
Remover, with costs - I suppose.

The Master of the Rolls: - They always follow

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