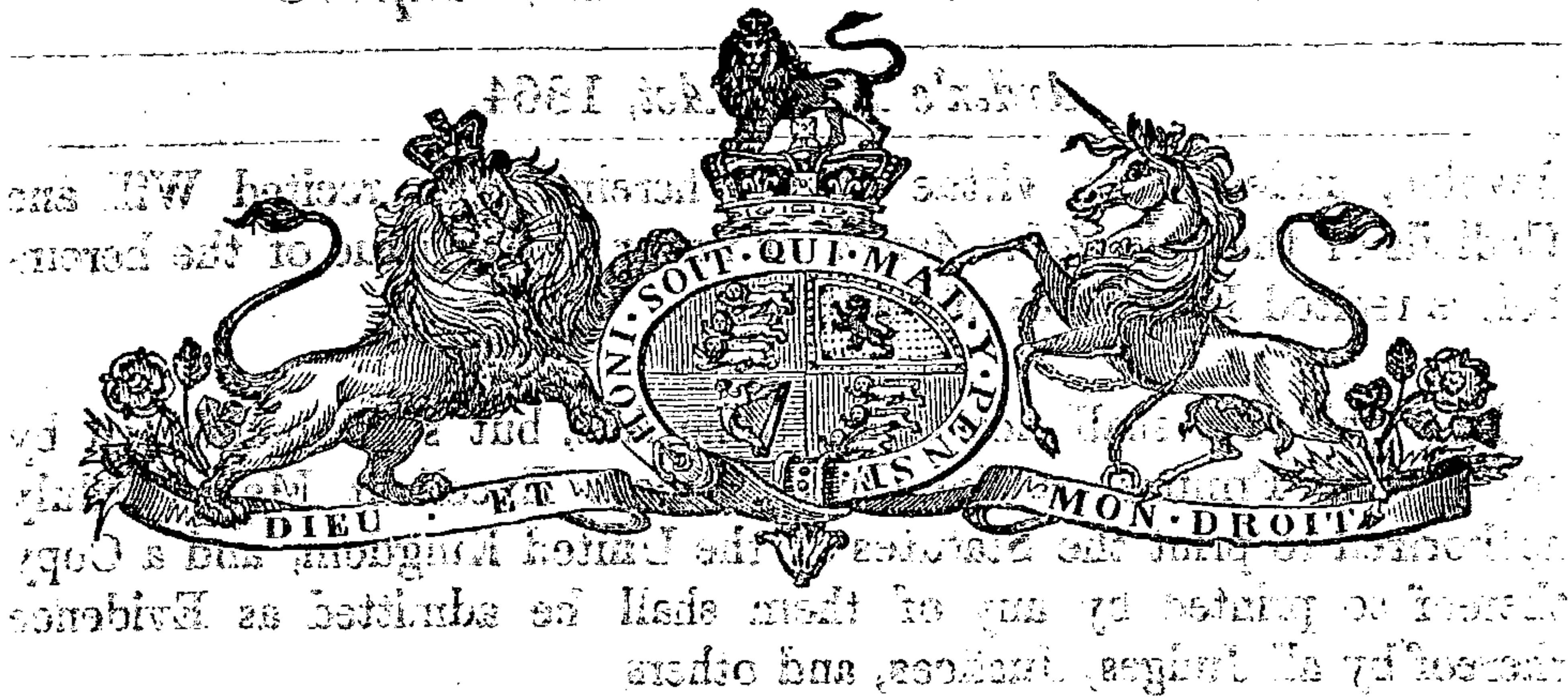


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ANNO VICESIMO SEPTIMO & VICESIMO OCTAVO

LONDON

VICTORIÆ REGINÆ.

Cap. 14.

An Act to confirm Agreements between the Magistrates and Town Council of the Royal Burgh of *Dundee* and the Presbytery and Ministers of *Dundee* with respect to the Churches and Hospital of the said Burgh, and for other Purposes. [29th July 1864.]

WHEREAS at the Reformation of Religion in *Scotland* there existed within the Royal Burgh of *Dundee* an Hospital of the *Trinity* or *Red Friars*, for the Reception of poor People, besides other Conventual Establishments, the Possessions of all or most of which, along with those of the Regular Clergy, lapsed to the Crown: And whereas by Royal Charter under the Great Seal of *Scotland* dated in *April* Fifteen hundred and sixty-seven, *Mary* Queen of *Scots*, on the Narrative, *inter alia*, that it was incumbent on Her, in virtue of Her Office, by all honest Means to provide for the Ministers of God's Word, and that Hospitals be kept for poor, maimed, and miserable Persons, or Orphans and Children deprived of their Parents, within the said Burgh, after Her perfect Age, with Advice of the Lords of Her Privy Council, ordained, granted, [Private.]

Charter by Mary Queen of Scots, dated April 1567.

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disponed, and for Her and Her Successors for ever confirmed to the Provost, Bailies, Council, and Community of the said Burgh, and to their Successors for ever, all and sundry Lands, Houses, Churches, Chapels, Gardens, and other Property, Duties, Profits, and Emoluments which in any way pertained or were known to pertain to whatever Chaplainries, Altarages, Prebends, in whatever Church, Chapel, or College within the Liberty of the said Burgh, founded by whatever Patron, in possession of which the Chaplains and Prebendaries of the same had been, wherever the aforesaid Houses, Tenements, and other Property, Profits, and Emoluments lie or formerly had been levied respectively, with the Manor Places, Orchards, Lands, Annual Rents, Emoluments, and Duties whatsoever which pertained formerly to the *Dominican* or Preaching Friars, Minorites or *Franciscans*, and Nuns commonly called *Grey Sisters*, of the said Burgh, together with all and sundry Lands, Houses, and Tenements lying within the said Burgh and Liberty of the same, with all Annual Rents levied from whatever Houses, Lands, or Tenements within the said Burgh, given, granted, and founded in favour of whatever Chaplainries, Altarages, Churches, Mortifications, or Anniversaries whatever they might be, within the said Kingdom, and also all and sundry Annual Rents and other Duties accustomed, or which could be demanded by whatever Church without the said Burgh, from the Provost and Bailies of the same, out of the Common Rent of the same, for the Celebration of Prayers, with the Pertinents; and Her said Majesty, with Consent as aforesaid, united and incorporated all and sundry the Lands, Tenements, Houses, Churches, Chapels, Gardens, and other Property, Duties, Profits, and Emoluments, with their Pertinents, into One Body, to be called in future "Our Foundation of the Ministry and Hospital of *Dundee*." And whereas by Royal Charter under the Great Seal of *Scotland*, dated the Sixteenth Day of *January* Sixteen hundred and one, King *James* the Sixth, among other things, ratified and confirmed the foresaid Charter of Queen *Mary*, and further gave, granted, and disponed to the said Provost, Bailies, Council, and Community of the said Burgh, and their Successors for ever, all and whole the Vicarage of the Church and Parish of *Dundee*, with all and singular the Teinds, Fruits, Rents, Profits, and Emoluments whatsoever pertaining to the said Vicarage, to be uplifted, levied, and received by the said Provost, Bailies, Council, and Community, and their Successors, and their Factors and Chamberlains, of the Crop and Year Sixteen hundred, and so forth yearly and termly in all future Time, and to be applied for the Sustentation of the Ministers serving the Cure of the said Burgh, and the Support of the Poor residing within the Hospital of the same: And whereas by Royal Charter under the Great Seal of *Scotland*, dated the Fourteenth Day of *September* Sixteen hundred and forty-one, and written to the Seal and sealed the Third Day of *February* Sixteen

Charter by
King James
the Sixth,
dated 16th
Jan. 1601.

Charter
by King
Charles the
First, dated

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Sixteen hundred and forty-two, King *Charles* the First, among other things, ratified and confirmed, *inter alia*, the earlier Charters of the said Burgh, and among others the Charters above recited, and of new gave, granted, disponed, and confirmed to the said Provost, Bailies, Council, and Community of the said Burgh, and their Successors, all and whole the said Burgh of *Dundee*, with the several Rights, Privileges, Lands, and other Property therein generally and specially described and referred to, and, *inter alia*, the foresaid Vicarage of the Church and Parish of *Dundee*, with the Teinds, Fruits, Rents, and Emoluments pertaining thereto, which it is thereby provided are to be applied for the Sustentation of the Ministers serving the Cure of the said Church of *Dundee*, other than and besides the Rector, who it is set forth had his Stipend and Sustentation from the Parsonage Teinds of the said Church and Parish, and for the Support of the Poor residing within the said Hospital: And whereas the Funds of the foresaid Foundation, which came to be generally known as the Hospital of *Dundee*, were from Time to Time augmented by the Bequests of charitable Persons, and by Investments made by the Magistrates and Council, and by the general Accumulation of surplus Revenues: And whereas, besides other Bequests received by the Magistrates and Council, and massed with the general Funds of the Hospital, the special Destination of which is unknown, the following Bequests were made: (1.) A Bequest of Three hundred Merks *Scots* left by Sir *Thomas Moodie* of *Kinnettles*, Knight, Provost of *Dundee*, to the Hospital of *Dundee*, for the Use of the Poor thereof, by his last Will, dated on or about the Twenty-eighth Day of *February* Sixteen hundred and sixty; (2.) A Bequest of Two thousand Merks *Scots* left by Mr. *Thomas Halliburton*, Indweller, *Dundee*, to the Hospital and Eleemosynary of *Dundee*, by his Will, dated the Fifth Day of *October* Sixteen hundred and seventy-two; (3.) A Bequest of One thousand Merks *Scots* left by Mrs. *Janet Mylne* of *Mylnefield* to the Poor in the Hospital of the Burgh of *Dundee*, by her Will, dated the Sixteenth Day of *February* Sixteen hundred and sixty-eight; (4.) A Bequest of One thousand Merks *Scots* left by the Reverend *James Paton*, Minister of *Kettins*, to the Patrons and Overseers of the Hospital of *Dundee*, for the Use and Behoof of the Poor maintained therein, by his Will, dated the Twenty-ninth Day of *October* Seventeen hundred and thirty-six; (5.) Certain Houses in the Overgate of *Dundee* disponed by *Alexander Fraser* for the Use of the Poor in the Hospital, and which Houses having been sold realized a net Price, after paying off sundry Debts affecting the same, of Seven hundred and seventy-nine Pounds Thirteen Shillings and Fourpence *Scots*; (6.) An Annual Rent of Ten Merks *Scots* payable out of a certain Tenement and Yard in the *Cowgate* of *Dundee*, bequeathed by *Thomas Wighton* to the Hospital Master of the said Burgh (who was a Member of the Town Council in use to be

14th Sept.
1641.

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be appointed annually by them to manage the Affairs of the Hospital, and his Successors, to the Use and Profit of the poor People residing in the Hospital, by his Deed of Provision, dated the Twenty-third Day of *September* Sixteen hundred and fifty-seven; and (7.) A Bequest of One thousand Pounds Sterling left by *Robert Johnston* of the Parish of *St. Ann's, Blackfriars, London*, to the Provost and Bailiffs of *Dundee*, to be employed in a Stock or Wadset of Land in perpetuity, for the yearly Maintenance of the aged and impotent People of the Town of *Dundee*, by his last Will and Testament, dated the Thirtieth Day of *September* Sixteen hundred and thirty-nine: And whereas Part of the aforesaid Bequest by *Robert Johnston* was laid out in the Purchase of a Property called *Monorgan's Croft*, and subsequently known as the Hospital Ward (herein-after called *Monorgan's Croft*), and the surplus Funds of the Hospital, including the foresaid Bequests, were from Time to Time laid out in the Purchase of Lands and in other Investments, and, *inter alia*, the following Lands were so purchased; namely, (1.) A Property consisting of Seven Acres or thereby, with certain Feu Duties or Ground Annuals, purchased from *Margaret Stibbles* (herein-after called *Stibbles Acres*); (2.) A Property consisting of Four Acres or thereby, in the *Westfield* of *Dundee* (herein-after called *Westfield Acres*); (3.) Certain Portions of the Barony of the *Hilltown* of *Dundee* (herein-after called *Hilltown Acres*), consisting of Nine Acres and Two Roods *Scots*, or thereby, called the *Langland Acres*, Nine Acres *Scots* or thereby, called the *Backside Acres*, and Four Acres *Scots* or thereby, called *Butcharts Acres*; and (4.) Another Portion of the said Barony of the *Hilltown*, consisting of Nine Acres or thereby (herein-after called *Stirlings Park*): And whereas in these and other Cases the Titles of the Properties were taken in favour of the Hospital Master of *Dundee* for the Time, and his Successors in Office, Masters of the Hospital of *Dundee*, for behoof of the Hospital, and, in the Case of *Monorgan's Croft* and some other Cases, for behoof of the Poor of the Hospital, and *Monorgan's Croft* and some of the other Properties above mentioned have been feued to a large Extent, and a considerable Revenue is now derived therefrom, and more especially from *Monorgan's Croft*: And whereas, in the Administration of the Hospital Fund, the Magistrates and Town Council were in use to apply the Income thereof in part towards the Stipends of the Ministers of the Town Churches, other than the Parish Minister, and in part towards the Support of poor Burgesses of the Town and their near Connexions, besides making Payments of small Amount to the Teacher of the Grammar School, and for providing Communion Elements at the Dispensation of the Sacrament in the Town Churches: And whereas for a long Period of Years the Poor were lodged and maintained in the ancient Building of the Hospital, and, after that was burned down, in a new Building which was erected on the same Site: And whereas during the Seven-

teenth

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teenth Century a Practice commenced of bestowing a Portion of the Revenue in Pensions of small Amount granted by the Magistrates and Town Council for Periods of short Duration to deserving Poor, and, finally, after the passing of the Act of Twentieth *George* the Second, herein-after recited, the System of indoor Support to the Poor was wholly discontinued, and the Poor's Share of the Hospital Revenue came to be applied wholly in the Shape of Pensions: And whereas down to near the Close of the Eighteenth Century the Ecclesiastical Establishment of the said Burgh consisted of Three Ministers officiating in Two Churches, namely, the *Old* or *East Church* and the *South Church*, both being Portions of the ancient Church of *Saint Mary*, commonly called the *Lady Kirk*, and One of these Ministers was the Rector or Minister of the Parish of *Dundee*, whose Stipend was wholly payable out of the Teinds of the Parish, and the other Two Ministers were Stipendiaries whose Stipends or Salaries were paid by the Magistrates and Town Council in part from the ordinary Revenue of the said Burgh and in part from the Revenue of the Hospital Fund, with Contributions of small Amount from the Corporations of the Guildry, the Seamen's Fraternity, and other incorporated Trades of the said Burgh: And whereas by an Act passed in the Fourth Year of the Reign of King *George* the Second, intituled *An Act for continuing the Duty of Two Pennies Scots, or One Sixth Part of a Penny Sterling, upon every Scots Pint of Ale and Beer that shall be vended or sold within the Town of Dundee and Privileges thereof, for paying the public Debts of the said Town, repairing the Harbour there, and for other Purposes therein mentioned*, the Power of levying the said Duty (which had been conferred by an Act of the Parliament of *Scotland* passed in the Year Seventeen hundred and seven) was extended for a further Term of Years, and the Magistrates and Council were empowered and required, out of the Money to arise by the Duty so continued, to pay to each of the Three then existing Ministers of the said Burgh, and their Successors for the Time being, yearly during the Continuance of the said Act, the Sum of Sixteen Pounds Thirteen Shillings and Fourpence Sterling, as an additional Provision to each of the said Ministers: And whereas another Act was passed in the Twentieth Year of the Reign of King *George* the Second, intituled *An Act for enlarging the Term and Powers granted by Two Acts of Parliament for laying a Duty of Two Pennies Scots upon every Pint of Ale and Beer brewed and vended within the Town of Dundee and the Liberties and Suburbs thereof, for the Purposes in the said Acts and this present Act mentioned*, in the Preamble of which it is recited that it had been found proper and necessary that the Hospital, then used for the Reception of the decayed Burghers, should be converted into and made use of as a Workhouse for employing and setting to work the poor Inhabitants of the Town, and that the Revenue appointed for the Support and Maintenance of the decayed Burghers

4 G. 2. c. 11.

20 G. 2. c. 17.

should

[*Private.*]

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16 G. 3. c. 16.
42 G. 3. c. 27.
7 & 8 G. 4.
c. 93.

Decree of
the Teind
Court, dated
23d July
1788.

should be applied for and towards paying Pensions constantly to them for the Time being for their Support and Maintenance; and it was by the said Act, among other things, enacted, that the said Duty should be continued for a further Term of Years, and applied as therein mentioned; and forasmuch as the annual Revenue applicable for the Relief of the poor Burghers of the Town might in some Years amount to more than what would be necessary to pay to such poor Burghers for their Support and Maintenance, it was further enacted, that in case any overplus Money should at any Time remain in the Hands of the Magistrates and Town Council after the Pensions should be paid to such Burghers, it should be lawful for the Magistrates and Town Council from Time to Time to lay out and apply such overplus Money for and towards the repairing of the said Workhouse and maintaining the Poor therein: And whereas the said Duty on Ale and Beer was thereafter continued for several successive Terms of Years by the following Acts, namely, Sixteenth *George* the Third, Chapter Sixteen, Forty-second *George* the Third, Chapter Twenty-seven, and Seventh and Eighth *George* the Fourth, Chapter Ninety-three, by which last-mentioned Act the said Duty was continued for a Term of Years ending with Eighteen hundred and forty-seven, and the said Duty has not been renewed by any subsequent Act, and the Payments made out of the same to the Ministers of *Dundee* ceased with the Year Eighteen hundred and forty-seven: And whereas by Decree of the Lords of Council and Session, Commissioners appointed for Plantation of Kirks and Valuation of Teinds, dated the Twenty-third Day of *July* Seventeen hundred and eighty-eight, obtained, at the Instance of the Magistrates and Council, for themselves and as representing the whole Body of the Community of *Dundee*, against the Officers of State, as representing His Majesty, the Members of the Presbytery of *Dundee*, the Members of the Kirk Session of *Dundee*, the Heritors of the Parish of *Dundee*, and certain other Parties, it was found and declared that Two new or additional Churches be planted, erected, and established within the said Burgh for Divine Worship, the one whereof to be called the *Steeple Church* and the other the *Cross Church*, and that a Minister be settled in each of the said Two Churches for serving the Cure thereat, who should have such a Division or District of the Town and Parish under their immediate and particular Charge and Ministry as should be settled and agreed upon by the Magistrates and Council and the then existing Ministers of the said Burgh, with the Approbation of the Kirk Session, and that the Magistrates and Council and their Successors in Office had the sole and undoubted Right of Patronage of the said Two Churches, and of presenting qualified Ministers to serve the Cure thereat and to the Benefices allocated for them, sicklike and as freely in all respects as might be competent by Law to any other Patron, and also the Right and Property of the said Two Churches, with the Power of setting

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setting and disposing of the Seats thereof and whole Bounds within the same, and of uplifting the Rents of the Seats, and also of appointing Readers and Precentors to the said Churches, from Time to Time as they should think fit, and likewise of disposing of the Fund that should be provided for a Stipend to the Ministers of the said Churches or for Communion Elements during a Vacancy as often as the same should happen, under the Condition that the Magistrates and Council and their Successors in Office should bear all the Burdens, Charges, and Expenses to be incurred by or on account of the planting, building, and erecting or upholding and repairing the said Two Churches, and presenting, calling, supporting, and maintaining the Ministers serving the Cure thereat, and also the Readers and Precentors to be appointed thereto, and of furnishing Communion Elements to the said Churches, and should also furnish and provide each of the Ministers of the said Two Churches with a competent and legal Stipend out of the Revenue of the said Burgh, not under the Sum of One thousand Pounds *Scots* yearly; and it was provided that the Interest of Five thousand Merks *Scots* theretofore in use to be paid to the Catechist in *Dundee* (and which Sum of Five thousand Merks had many Years previously been mortified in the Hands of the Magistrates and Council for that Purpose) should in all Time thereafter make a Part of the foresaid Stipend payable to the Minister of the *Cross Church* thereby erected: And whereas by another Decree of the said Lords of Council and Session, Commissioners foresaid, dated the Eighteenth Day of *June* Eighteen hundred and twenty-three, obtained at the Instance of the Magistrates and Council against the Officers of State and others, it was found and declared, that it was necessary that a new or additional Church be planted, erected, and established within the said Burgh for Divine Worship, and that a Building in *North Tay Street*, therein referred to, and formerly called the *Tabernacle*, be erected into such additional Church, to be called in all Time coming *Saint David's Church*, and that a Minister be settled therein for serving the Cure thereat, who should have such a Division or District of the Town and Parish under his immediate and particular Charge and Ministry as should be settled and agreed upon by the Magistrates and Council or their Successors in Office and the present Ministers of the said Burgh, with the Approbation of the Kirk Session of *Dundee*, and that the Magistrates and Council and their Successors in Office had then and should have in all Time coming the sole and undoubted Right of Patronage of the said Church, and of presenting qualified Ministers to serve the Cure thereat, and to the Benefice allocated for him, and also the Right and Property of the said Church, with the Power of setting and disposing of the Seats, and also of appointing Readers and Precentors to the said Church from Time to Time as they should think fit, and likewise of disposing of the Stipend provided to the Minister

Decree of
the Teind
Court, dated
18th June
1823.

of

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of the said Church, or for Communion Elements, during a Vacancy, as oft as the same should happen, but with and under this Condition always, that the Magistrates and Council and their Successors in Office should bear all the Burdens, Charges, and Expenses to be incurred by or on account of the planting, purchasing, and erecting, or upholding and repairing the said Church, and of presenting, calling, supporting, and maintaining the Minister serving the Cure thereat, and also the Readers or Precentors to be appointed thereto, and of furnishing Communion Elements to the said Church, and should also furnish and provide the Minister to be settled in the said new Church, and his Successors in Office, serving the Cure in the said Church in all Time coming, with a yearly Stipend of Two hundred Pounds Sterling, to be paid out of the ordinary Revenue of the said Burgh at *Whitsunday* and *Martinmas* yearly, beginning the First Term's Payment at the First of these Terms after the Settlement of the First Incumbent in the said Church, and yearly and termly to him and his Successors in all Time coming thereafter, but that only in Terms of the Reservations and under the Resolutions, Provisions, and Declarations contained in an Act of the Town Council of *Dundee* passed on the Twenty-third Day of *January* Eighteen hundred and twenty-three, and not otherwise; and the said Lords of Council and Session, as Commissioners foresaid, interponed their Decree and Authority to the said Act of Council, and in Terms thereof found and declared that upon the Death, Resignation, Translation, or lawful Removal in any Form of the Three Ministers who then served the Cure of the foresaid Two Churches called the *Old or East Church* and the *South Church*, namely, the Reverend Doctor *Archibald Maclachlan*, the Reverend Doctor *David Davidson*, and the Reverend *Patrick McVicar*, there should only be One Minister elected in future to each of the said Two Churches, namely, the Parish or First Minister, and One Stipendiary Minister, who should have a separate Church for preaching the Word and administering the Sacraments, and a separate District of the Town and Parish under his immediate and particular Charge and Ministry, and that whenever Vacancies should occur in the said Two Churches by the Death, Resignation, Translation, or Deprivation of the then Incumbents, the Magistrates and Council or their Successors in Office should have full Power and Liberty to suppress One of the Two Stipendiary Ministers of the said Two Churches, and to present, call, and support to and in the Cure of the said Two Churches only One Minister to each, namely, the Parish or First Minister and One Stipendiary Minister, and it was further found and declared by the said Decree, that the Right of appointing Beadles and other Session Officers of the said Church to be called *Saint David's Church* was and should be vested in and pertain and belong to the Kirk Session of *Dundee* then and in all Time coming, but under the Condition that the said Kirk Session should

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should bear all the Burdens, Charges, and Expenses to be incurred by or on account of the appointing, supporting, and maintaining the said Beadles and other Session Officers; and it was also found and declared that the Magistrates and Council and their Successors in Office should be bound and obliged to erect a Sixth Church within the Town and Parish of *Dundee*, and to grant a suitable Stipend for the Support of a Minister to serve the Cure thereof, and that within Three Years after the Death or lawful Removal as aforesaid of all the Three Ministers above mentioned holding the Collegiate Charges of the foresaid Two Churches called the *Old or East Church* and the *South Church*, and that it should be competent to the Kirk Session of *Dundee* or to the Presbytery of *Dundee* or either of them, to pursue all legal Measures necessary for compelling Implement of the said Obligation: And whereas in implement of the Obligations incumbent on them under the foresaid Decrees of Election the Magistrates and Council erected the said Churches called the *Cross Church*, *Steeple Church*, and *Saint David's Church*, and provided Stipends for the Ministers serving the Cures thereat, payable out of the ordinary Revenues of the said Burgh: And whereas the Reverend Doctor *Maclachlan*, the last Survivor of the Three Ministers referred to in the Decree of Election of Eighteen hundred and twenty-three as holding the Collegiate Charges of the foresaid Two Churches called the *Old or East Church* and the *South Church*, died in or about the Year Eighteen hundred and forty-eight, but the Obligation contained in the said Decree to erect a Sixth Charge or Church within the Town and Parish of *Dundee* has not yet been fulfilled, and the Ecclesiastical Establishment of the said Town and Parish now consists of the Parish or First Minister, whose Stipend is payable as aforesaid out of the Teinds, and the Ministers of the *South Church*, *Cross Church*, *Steeple Church*, and *Saint David's Church*, whose Stipends are all payable by the Magistrates and Council: And whereas the Share of the Revenue of the Hospital Fund appropriated to the Stipends of the Clergy in the Year Eighteen hundred and fifty-one, and for many Years previous to that Date, was much less than the Sum appropriated to the Support of the Poor, and on the Nineteenth Day of *November* Eighteen hundred and fifty-one an Action was raised in the Court of Session at the Instance of the Reverend the Presbytery of *Dundee*, against the Magistrates and Town Council, concluding to have it found and declared that the Funds and Property held and enjoyed by the said Burgh under and in virtue of the foresaid Charter granted by Queen *Mary*, and subsequent Charters and Acts of Ratification confirming the same, commonly known as the Hospital Fund, were applicable to the Sustentation of the Ministry of the Word of God, and the Support and Maintenance of the Clergy of the Established Church of *Scotland* within the said Burgh, and further, that the

[*Private.*]

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Magistrates

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Magistrates and Council, as the Holders and Administrators of the said Fund, were bound out of the Revenues thence arising to provide suitable and adequate Stipends to the Ministers of the Established Churches within the said Burgh, other than the Rector or First Minister of the Parish, who is otherwise provided for: And whereas Defences to the said Action having been lodged by the Magistrates and Council a Record was made up and closed, and on the Eighth Day of *March* Eighteen hundred and fifty-five the Second Division of the Court of Session, before whom the Action came to depend, pronounced the following Interlocutor:—“The Lords, of Consent
 “ of Parties, and before Answer, remit to Mr. *C. Innes*, Advocate,
 “ to examine the Documents and Books in Process, to receive any
 “ written Statements or Explanations by the Parties, and to hear
 “ them thereon, and thereafter to report: (1.) What Properties or
 “ Funds were conveyed to the Magistrates and Town Council by
 “ Queen *Mary's* Grant, and whether the same or any Part thereof,
 “ and if so what Part, is now held by the Defenders: (2.) What
 “ are the Funds and Properties at present belonging to the Hospital,
 “ and known as the Hospital Fund, and how acquired; and parti-
 “ cularly whether acquired with Savings from the Funds or the
 “ Revenue of Property conveyed by Queen *Mary's* Grant, or with
 “ the Prices or Proceeds of any Part of the said Property, or
 “ whether they were acquired with Funds legated or mortified to
 “ the said Hospital, and the Savings thereof: (3.) To report the
 “ Amount of the past and present Revenue under Queen *Mary's*
 “ Grant, and of the Funds and Properties known as the Hospital
 “ Fund, and Sources from whence the said Funds and Properties
 “ have been derived, and the Amount of the past and present
 “ Stipends paid to the Stipendiary Clergymen by the Town Council,
 “ and how much thereof was and is now paid out of the Revenue of
 “ the Burgh, and how much out of the Hospital Funds, and the
 “ Amount of all other Payments out of said Hospital Funds for
 “ Ecclesiastical Purposes: Grant Commission to Mr. *Innes*, and
 “ Diligence against Havers to both Parties, to recover all Deeds
 “ and Writings which may instruct their Averments; with Power
 “ to Mr. *Innes* to inquire and report upon any other Matters which
 “ may appear to him to be of Importance, or which may emerge in
 “ the course of the Investigation.” And whereas the said *Cosmo Innes*
 having made an interim Report, the Second Division of the said
 Court, on the Eighteenth Day of *July* Eighteen hundred and fifty-
 six, pronounced an Interlocutor repelling certain Pleas stated for
 the Magistrates and Council in Defence, and finding, *inter alia*, that
 by the Charter of Queen *Mary*, before recited, a Trust had been
 validly and effectually constituted in the Town of *Dundee* and its
 Administrators in order to execute the Purposes of the Grant thereby
 made, that the said Grant had been confirmed and ratified and
 enlarged

Interlocutor
 of the Court,
 dated 18th
 July 1856.

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enlarged on different Occasions by Royal Charters, that the said Trust had never been altered or modified by any subsequent Royal Grant or by any competent Authority, that the Objects of the Grant were set forth in the said Charter by Queen *Mary* in the Terms therein and herein-before recited, that to the Foundation thereby established an important Addition was made by the Charter issued by King *James* the Sixth on Sixteenth *January* Sixteen hundred and one, granting the whole Vicarage Property for the Purposes of the Foundation in the Terms therein quoted and herein-before shortly recited, and further, “ that in the Circumstances stated and proved
 “ as to the Stipends previously paid to the Ministers of *Dundee*
 “ other than the First Minister, who is provided for out of the Teinds,
 “ and as to the Stipends now paid to them, a Case has been put on
 “ Record sufficient to warrant the Interference of the Court, if the
 “ Ministers of *Dundee* have a Claim which can be enforced in a
 “ Court of Law against Funds belonging to the Foundation ;”
 “ that according to the sound Construction of the said Grant the
 “ Funds and Property held and enjoyed by the Burgh of *Dundee*
 “ under and in virtue of the Charter granted by Queen *Mary*
 “ bearing Date Fifteenth *April* Fifteen hundred and sixty-seven,
 “ and subsequent Charters and Acts of Ratification confirming the
 “ same, now commonly known as the Hospital Fund, are by the
 “ Terms of the Trust so created to be applied to the Sustentation
 “ of the Ministry of the Word of God and the Support and Main-
 “ tenance of the Clergy of the Established Church of *Scotland*
 “ within the Burgh of *Dundee* ;” “ that until the Amount of the
 “ Funds belonging to the Foundation is ascertained it would be
 “ premature to decide whether the Ministers of *Dundee* (other than
 “ the First Minister) have a preferable Claim on the same to the
 “ Extent of obtaining suitable Stipends therefrom, but with this
 “ Explanation, that the Funds of the Foundation are to be
 “ applied in providing adequate Stipends to the said Ministers, so
 “ far as not otherwise provided for them ; and that the Defenders,
 “ in the due Execution of the Trust committed to them, are under
 “ Obligation to apply the same accordingly, in so far as the same
 “ are not exhausted, as is averred by the Payments already made
 “ to such Ministers, or in so far as it can be made out that the same
 “ are not exhausted by other and legal Application to another
 “ Purpose of the Trust ; reserving for after Consideration any
 “ Questions which may be raised as to the special Conditions on
 “ which the Cures of any of these Ministers may have been created,
 “ or the Limitations, if any, of the Claims of the Ministers serving
 “ the same, or any of them, to Stipend out of particular Funds as
 “ their only Source of Payment ; and in regard to the Defence
 “ stated in the Fifth Plea in Law for the Defenders, *viz.*, that
 “ ‘ the Ministers of *Dundee* being now in Receipt from the Hospital
 “ ‘ of

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“ ‘ of Sums which exhaust the Revenue derived under the Charter
 “ ‘ founded on by the Pursuers, as far as known or traceable, have
 “ ‘ no further Claim on the Hospital Funds,’ ” the Court by the said
 Interlocutor renewed the Remit to the said *Cosmo Innes* that he
 might make a further Report on all the Points mentioned in the
 former Remit, and in regard to the other Matters therein specified ;
 and in order to complete and bring out the Investigations then and
 previously directed, the Court remitted to *George Auldjo Jamieson*
 to act as Accountant under and in aid of the said *Cosmo Innes*, and
 to make a full Examination of all Accounts, Minutes, and other
 Documents, in order to exhaust the whole Matters specified in that
 and the former Remit : And whereas One of the main Points of
 Investigation under the said Remits regarded the Application of the
 different Bequests and Mortifications which had been massed along
 with the Funds of the Hospital, and the Source whence the different
 Properties and Investments belonging to the Foundation were derived,
 and in particular as to the foresaid Property called *Monorgan's Croft*,
 the greater Part of which having been feued out then yielded a
 Revenue equal to about One Half of the whole Revenue of the
 Hospital; and whether the same had been purchased with a Part of
 the Legacy above mentioned left by *Robert Johnston of London* to
 the aged and impotent People of *Dundee*, and so was applicable
 exclusively to the Support of the Poor : And whereas in the course
 of the Proceedings under the said Remits the Presbytery also called
 in question the Legality of a Transaction by which in the Year
 Eighteen hundred and thirty-five the Magistrates and Council, as
 Trustees or Patrons of the Hospital Fund, had purchased from them-
 selves, as representing the Town and Community of *Dundee*, a Field
 on the West Side of *Constitution Road, Dundee*, at the Price of
 Six thousand four hundred and eighty-two Pounds Ten Shillings,
 and laid out a Portion thereof as a Cemetery or Burying Ground,
 and the Presbytery likewise alleged that certain Property of con-
 siderable Value to the North of *Meadow Road, Dundee*, and which
 had been regarded and dealt with as Part of the Town's Property
 or Common Good, was truly Part of the Hospital Property, held
 under Queen *Mary's* Charter : And whereas the said *Cosmo Innes*
 and *George Auldjo Jamieson*, having made interim Reports, the
 Second Division of the said Court, on the Eighteenth Day of
March Eighteen hundred and fifty-eight, pronounced the following
 Interlocutor : — “ The Lords, having heard Parties Procurators at
 “ great Length on the interim Report by Mr. *Innes*, and that of the
 “ Accountant acting along with him, and no further Evidence being
 “ offered on either Side, find that the Claim of the Ministers of
 “ *Dundee* (other than the First Minister) to have suitable and
 “ adequate Stipends provided for them out of the Funds and Estate
 “ of the Foundation, already sustained by the Interlocutor of
 Eighteenth

Interlocutor
 of the Court,
 18th March
 1858.

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“ Eighteenth *July* Eighteen hundred and fifty six, is One of the
 “ primary Claims on the Foundation, and that no Application of
 “ the said Funds and Estate has been condescended on by the
 “ Defenders which can be allowed to encroach on the same to the
 “ Effect of diminishing the annual Proceeds of the same in com-
 “ petition with the said Claim for suitable and adequate Stipends
 “ hereby declared to be a primary Purpose of the Foundation:
 “ (2.) Find that the Purchases and Investments made by the
 “ Hospital Managers in the course of the Period which has elapsed
 “ since the Date of Queen *Mary's* Grant have been consolidated
 “ with the original Estate of the Foundation under the Terms of
 “ the Trust thereby created, and form Part of the common Estate
 “ belonging to the same, applicable to the Purposes of the Founda-
 “ tion: (3.) Find that Property or Funds bequeathed or mortified
 “ to ‘the Hospital’ generally, or to the Hospital and Eleemosynary
 “ of *Dundee*, without any special Limitation of Purpose, belong to
 “ and form Part of the Estate of the Foundation, and are applicable
 “ generally to the Purposes of the same: (4.) Find that the
 “ Defenders have referred to no separate Title to the old Hospital
 “ and its Property, and have not been able to show in what Way or
 “ when they acquired any Right to the same, and that the Manage-
 “ ment of the same having been assumed by the Town Council after
 “ the Abolition of the Papal Establishment which had previously
 “ administered it, the same fell within the Scope of the general
 “ Terms of Queen *Mary's* Grant, and became Part thereof, and has
 “ been so administered and managed since 1567: (5.) Find that
 “ the Ground called *Monorgan's Croft* was purchased out of the
 “ Accumulations and Savings of the general Funds of the Hospital,
 “ and belongs to the Foundation; but find that the Hospital at
 “ different Times received the whole Legacy left by *Robert Johnston*
 “ of *London*, amounting to One thousand Pounds Sterling, to be
 “ employed by the Provost and Bailies of *Dundee* in the ‘yearly
 “ Maintenance of the aged and impotent People’ of the said Town,
 “ and that the annual Interest of One thousand Pounds must be
 “ held applicable to that Purpose in framing a final State of
 “ Accounts; and that as to past Administration, as the Interest
 “ of that Sum was to be strictly so appropriated, it must be held
 “ that it was fully accounted for by the Charities to which the
 “ Funds generally of the Foundation were applied: (6.) Find that
 “ the Ground called the *Howff* belonged to and fell under the
 “ Foundation Trust, and direct the Accountant to exhibit what
 “ Difference in the final Account the Repayment of the Sum em-
 “ ployed out of the Hospital Funds to obtain a new Cemetery would
 “ ultimately make: (7.) Find that any Sums which may be shown
 “ to have been received under the Will of Sir *T. Moodie*, or of the
 “ Reverend *James Paton*, and which hitherto have been applied

[*Private.*]5 *h*

“ indis-

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“ indiscriminately along with the general Funds of the Foundation,
 “ are to be taken in the future Administration to be Debts due by
 “ the Hospital, the Interest of which is to be accounted for and
 “ applied to the Objects of the said Bequests, the Interest for the
 “ past having been fully accounted for in the Relief of the Poor:
 “ And, further, find that in regard to such Funds held by the
 “ Hospital specially for the Poor, they are to be taken to relieve
 “ *pro tanto* the general Funds of the Foundation, to the Effect of
 “ thereby leaving an ampler Income for the Fulfilment of the other
 “ Purposes of the Trust: (8.) Find that the Views taken by
 “ Mr. *Jamieson* in framing the Accounts for the Period to which
 “ his Report specially applies are correct so far as relates to the
 “ Savings and Accumulations from the Hospital Funds, and to the
 “ Charges applicable to Capital and Revenue, and to the Results
 “ stated by the Accountant: Repel the whole Objections stated by
 “ the Defenders in their Note of Objections to the Accountant’s
 “ Report, and approve of the said Report: Of new Remit to
 “ Mr. *Innes* and the Accountant to complete a final Report in
 “ Terms of the Remit contained in the Interlocutor of Eighteenth
 “ *July* Eighteen hundred and fifty-six, and of the foregoing Findings,
 “ so that the Court may have an adjusted Account of the whole
 “ Income of the Foundation applicable to the Purposes of the Trust,
 “ and exhibiting the Funds out of which the Obligations imposed
 “ on the Defenders by the original Trust, and embodied in the
 “ Findings of the Court, may be discharged: Find the Pursuers
 “ entitled to the whole Expenses incurred by them since the closing
 “ of the Record, and allow an Account to be given in, and remit
 “ the same to be now taxed by the Auditor, that interim Decree
 “ may issue for the same: Find the Defenders in the first instance
 “ liable in Two Thirds of the Accountant’s Fee and of the Fee to
 “ Mr. *Innes*, which the Lords fix at Four hundred Guineas, and
 “ discern *ad interim*, and reserve all other Questions of Expenses:”

Appeal to
 the House of
 Lords, and
 Judgment
 dated 24th
 July 1861.

And whereas the Magistrates and Council brought an Appeal to the
 House of Lords against the aforesaid Interlocutors of the Second
 Division of the Court of Session, and by the Judgment pronounced
 by the House of Lords on the Twenty-fourth Day of *July* Eighteen
 hundred and sixty-one it was ordered and adjudged that the said
 Interlocutor of the Court of Session of Eighteenth *July* Eighteen
 hundred and fifty-six should be affirmed, and the Appeal, so far as
 relating to the said Interlocutor, should be dismissed, and that the
 said Interlocutor of Eighteenth *March* Eighteen hundred and fifty-
 eight, “ except so much thereof as finds that the Ground called
 “ *Monorgan’s Croft* was purchased out of the Accumulations and
 “ Savings of the general Funds of the Hospital, and belongs to the
 “ Foundation, and finds that the Hospital at different Times received
 “ the whole Legacy left by *Robert Johnston* of *London*, amounting to
 “ One

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“ One thousand Pounds Sterling, to be employed by the Provost and
 “ Bailies of *Dundee* in the ‘yearly Maintenance of the aged and
 “ impotent People of the said Town,’ and that the annual Interest of
 “ One thousand Pounds must be held applicable to that Purpose in
 “ framing a final State of Accounts, and that as to past Administration,
 “ as the Interest of that Sum was to be strictly so appropriated, it
 “ must be held that it was fully accounted for by the Charities to
 “ which the Funds generally of the Foundation were applied, be and
 “ the same is hereby also affirmed, with the Declaration that the
 “ Ground called *Monorgan’s Croft* must be deemed to have been
 “ purchased in the Year Sixteen hundred and forty-six with Part of
 “ the Legacy of One thousand Pounds bequeathed by the Will of
 “ *Robert Johnston*, in order that the same might thenceforth be held
 “ upon the Trusts by the said Will declared concerning the said
 “ Legacy;” and by the said Judgment it was further ordered, “ that
 “ the Appellants do pay or cause to be paid to the said Respondents
 “ the Costs incurred by them in respect of so much of the said
 “ Petition and Appeal as stands dismissed as aforesaid, the Amount
 “ thereof to be certified by the Clerk of the Parliaments; and it is
 “ further ordered, that the Cause be remitted back to the Court of
 “ Session in *Scotland*, to do therein as shall be just, and consistent
 “ with this Declaration and this Judgment:” And whereas the said
 Judgment having been applied by the Second Division of the said
 Court on the Thirteenth Day of *November* Eighteen hundred and
 sixty-one, the said Second Division, by Interlocutor dated the Four-
 teenth Day of *December* Eighteen hundred and sixty-one, renewed
 the Remit to the said *Cosmo Innes* and the Accountant contained in
 the Interlocutors of Eighteenth *July* Eighteen hundred and fifty-six
 and Eighteenth *March* Eighteen hundred and fifty-eight, with Instruc-
 tions to them to proceed with and complete their Investigations, and
 to report *quam primum*: And whereas the Points chiefly investigated
 and discussed under this renewed Remit were, (1.) A Question
 raised by the Presbytery as to *Monorgan’s Croft*, which they now
 contended was much more limited than was originally supposed, (2.)
 As to the Application and Disposal of the Balance of *Robert Johnston’s*
 Legacy, after deducting the Sum paid for *Monorgan’s Croft*, which
 Balance it was supposed had been expended, in part at least, in the
 Purchase of other Land and Property of considerable Value, and
 forming Part of or at all events managed along with other Property
 belonging to the Hospital Fund; (3.) As to the Propriety of the
 Expenditure of certain Sums by the Magistrates and Council in
 fitting up as a Place of public Recreation a Field near *Dundee* called
 the *Barrack Park*: (4.) The Question before mentioned as to the
 Property to the North of *Meadow Road*: And (5.) the Question
 as to the Legality of the Expenditure in purchasing and laying out the
 new Cemetery at *Constitution Road*: And whereas the Reporters
 having

Further
 Proceedings
 in the Court
 of Session.

The Dundee Churches and Hospital Act, 1864.

Interlocutor
of Court,
dated 26th
Feb. 1863.

having made final Reports, the Second Division of the said Court, on the Twenty-sixth Day of *February* Eighteen hundred and sixty-three, pronounced the following Interlocutor:—“ The Lords having resumed
“ Consideration of the Cause, with the former Interlocutors of this
“ Court and the Judgment of the House of Lords, the Reports of
“ Mr. *Innes* and of the Accountant, Number Two hundred and
“ twenty-eight of Process, and the Objections stated thereto by both
“ Parties, Numbers Three hundred and forty-three and Three hun-
“ dred and forty-four, and having heard Counsel, (First) Find that
“ the Ground called *Monorgan’s Croft* must, in Terms of the
“ Declaration and Judgment of the House of Lords, be separated
“ from the Property and Estate belonging to the Hospital Foundation,
“ which alone are embraced in the Conclusions of the Summons:
“ (Second) Find (1.) That the Subjects to be held and administered
“ upon the Trusts declared by the Will of the deceased *Robert*
“ *Johnston* are the Subjects composing *Monorgan’s Croft* in its now
“ existing State, and comprehend the Subjects yielding ‘ Rents of
“ Lands,’ ‘ Feu Duties,’ and ‘ Feu Duty of *Culloden*,’ stated in the
“ Account set forth in Appendix Number Six to the Accountant’s
“ Report as producing a gross Income for the Year Eighteen hundred
“ and fifty-eight—fifty-nine of Seven hundred and seventy-one Pounds
“ Fifteen Shillings and One Penny; but reserving to the Pursuers and
“ all others whom it may concern a Claim to have that Portion of
“ Ground described as ‘ by-Wast the *Burial Wynd Head*’ (which is
“ alleged to be embraced in the Subjects composing *Monorgan’s*
“ *Croft* as aforesaid) declared to belong to the Hospital in any com-
“ petent Action, and to the Defenders and all others interested their
“ Answers thereto as accords; (2.) That the Capital of the Legacy
“ bequeathed by the said *Robert Johnston* remaining after Deduction
“ of the Price paid for *Monorgan’s Croft* must be held to have been
“ applied in defraying *pro tanto* the Expenditure made by the De-
“ fenders in the permanent Improvement of the Subjects forming
“ *Monorgan’s Croft*, and that the Balance of such Expenditure, in so
“ far as not by this Means extinguished, must be held to have been
“ defrayed out of the accruing Revenues of the said Subjects; (3.)
“ That in the past Administration of the Defenders and their Pre-
“ decessors the Income derived from the Property and Funds to be
“ administered under the Will of the said *Robert Johnston* having
“ been administered along with the Income of the Hospital Estate as
“ One undivided Fund, must (except in so far as held to have been
“ expended in permanent Improvements, in Terms of the preceding
“ Finding,) be held to have been fully accounted for in its Application
“ to the Charities to which the Funds generally of both Foundations
“ were applied: (Third) Find that the Expenditure laid out in the
“ Improvement of the *Barrack Park* held under Lease by the Town
“ of *Dundee*, amounting to Six hundred and eighty Pounds Five
“ Shillings

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“ Shillings and Tenpence, was defrayed out of the Hospital Funds,
 “ and was an illegal and unwarrantable Application of these Funds,
 “ and that the said Sum must be accounted for, with Interest, by
 “ the Defenders, as forming Part of the Funds and Estate held by
 “ them as Trustees of the Hospital Foundation: (Fourth) Find that
 “ the Claim of the Pursuers to have a Portion of the *Town's Meadows*
 “ declared and adjudged to be Part of the Subjects forming the
 “ Hospital Foundation cannot be competently entertained in the
 “ Action, but reserve this Claim to be disposed of in any competent
 “ Proceedings to be hereafter instituted for the Purpose: (Fifth)
 “ Find that the Transaction by which the Defenders, as Administrators
 “ of the Hospital, purchased from themselves, as the Municipal Cor-
 “ poration of the Town, representing the Community, certain Ground
 “ for the Formation of a new Cemetery, and under which they
 “ applied the Funds of the Hospital Foundation in paying the Price
 “ of the said Ground, and adapting it to the Purposes of a Cemetery,
 “ and otherwise in improving or altering the said Ground, was an
 “ illegal Transaction, in breach of the Trust vested in the Defenders
 “ as Administrators of the Hospital, and that the Sum so expended
 “ out of the Hospital Funds, being Ten thousand and eighteen
 “ Pounds Nine Shillings and Ninepence, with the Balance of pro-
 “ gressive Interest thereon, after deducting Returns from the Property,
 “ amounting as at *Thirty-first October* Eighteen hundred and fifty-
 “ nine to Eight thousand three hundred and fifty-eight Pounds Seven-
 “ teen Shillings and Eightpence, together Eighteen thousand three
 “ hundred and seventy-seven Pounds Seven Shillings and Fivepence,
 “ must be accounted for by the Defenders to the Hospital Foundation,
 “ and held and administered by them in Time coming as Part of the
 “ Hospital Estate, the Defenders being entitled, on restoring the said
 “ aggregate Sum of Eighteen thousand three hundred and seventy-
 “ seven Pounds Seven shillings and Fivepence, with additional Interest
 “ from the said *Thirty-first October* Eighteen hundred and fifty-nine
 “ on the said Sum of Ten thousand and eighteen Pounds Nine Shillings
 “ and Ninepence, to the Hospital Foundation, to reconvey to them-
 “ selves, as representing the Community, the whole Property pur-
 “ chased for the said new Cemetery in its present Condition: (Sixth)
 “ Find that, in ascertaining the Property and Funds belonging to the
 “ Hospital Foundation, with a view to pronouncing Decree under
 “ the Conclusions of the Summons, no Charge can be allowed to be
 “ stated against the Hospital for any Sums which the Defenders have
 “ paid as Expenses to the Pursuers under Decrees pronounced against
 “ them in this Action, or which they have paid to their own Agents
 “ for the Expense of conducting their Defence: Therefore find that
 “ the Balance of One thousand six hundred and eighty-one Pounds
 “ Thirteen Shillings and Fivepence, brought out on the State of Ac-
 “ counts between the Hospital and the Defenders, in favour of the
 “ Hospital,

[*Private.*]

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“ Hospital, at Thirty-first *October* Eighteen hundred and fifty-nine,
 “ must be increased by the Sum of Two thousand nine hundred and
 “ twenty-two Pounds Seventeen Shillings, being the Amount proposed
 “ to be charged by the Defenders as the Amount of said Expenses,
 “ with Interest from the Date of the Expenditure: (Seventh)
 “ Find that, giving Effect to these several Findings, the Funds,
 “ Property, and Estate held and administered by the Defenders,
 “ under and by virtue of the Royal Grants constituting the
 “ Hospital Foundation, comprehend the following Subjects, as at
 “ Thirty-first *October* Eighteen hundred and fifty-nine: (1.) The
 “ Ground Annuals, Dues, Feu Duties, and other Properties which
 “ during the Year preceding Thirty-first *October* Eighteen hundred
 “ and fifty-nine yielded the gross Revenue of Seven hundred and
 “ twelve Pounds Eleven Shillings and Sixpence, reported by the
 “ Accountant to have been derived from Properties admitted to
 “ belong to the Hospital Fund, but excluding therefrom any Pro-
 “ perty that the Defenders may be entitled to reconvey under the
 “ Fifth Finding hereof; (2.) The old Burying Ground or *Howff*;
 “ (3.) The Sum of Two hundred and thirty Pounds Five Shillings
 “ and Fourpence due to the Hospital under Bond by the Town of
 “ *Dundee*; (4.) The said Sum of One thousand six hundred and
 “ eighty-one Pounds Thirteen Shillings and Fivepence, being the
 “ Balance in favour of the Hospital in account with the Defenders
 “ as Administrators on Thirty-first *October* Eighteen hundred and
 “ fifty-nine, and the Sum of One Pound Eighteen Shillings and
 “ Ninepence, being the Amount of Arrears of Income then due to
 “ the Hospital, with the Addition of the Sum of Two thousand
 “ nine hundred and twenty-two Pounds Seventeen Shillings, with
 “ Interest, in Terms of the Sixth Finding hereof, but under
 “ Deduction of One Year’s net Revenue of the Subjects held
 “ under the Trust of *Johnston’s* Will, to be held by the Defenders
 “ for Behoof of the said Trust, in respect the Payments to the
 “ Poor were suspended during the Year Eighteen hundred and
 “ fifty-eight—fifty-nine; (5.) The said Sum of Six hundred and
 “ eighty Pounds Five Shillings and Tenpence laid out on the
 “ *Barrack Park*, with Interest thereon; and (6.) The said Sum of
 “ Ten thousand and eighteen Pounds Nine Shillings and Nine-
 “ pence, and the said Sum of Eight thousand three hundred and
 “ fifty-eight Pounds Seventeen Shillings and Eightpence, mentioned
 “ in the Fifth Finding hereof: (Eighth) Find that in the Pro-
 “ perties and Funds held by the Defenders as Administrators of
 “ the Hospital Foundation are comprehended the Sums bequeathed
 “ by Sir *Thomas Moodie*, *Janet Milne*, *James Paton*, and *Alex-
 “ ander Fraser*, amounting to One hundred and ninety-two Pounds
 “ Fifteen Shillings, besides an Annual Rent of Eleven Shillings
 “ and One Penny bequeathed by *Wichton*, and that to the Extent
 “ of

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“ of the said Sums of One hundred and ninety-two Pounds Fifteen
 “ Shillings and Eleven Shillings and One Penny of Annual Rent
 “ the Funds and Property in the Hands of the Defenders as
 “ above found are to be managed by them exclusively for the
 “ Benefit of the Poor: Repel the whole Objections for both Parties
 “ to the Report of the Accountant, in so far as they have not
 “ been given Effect to by this or previous Interlocutors: Repel the
 “ Fifth Plea in Law for the Defenders, and the whole other Pleas
 “ stated in Defence, so far as not disposed of by previous Inter-
 “ locutors: Find that there is thus an Estate in the Hands of the
 “ Defenders, as Administrators of the Hospital Foundation, existing
 “ and available to provide suitable and adequate Stipends to the
 “ Ministers of *Dundee*: Therefore decern and declare in Terms
 “ of the Conclusions of the Summons: Find the Pursuers entitled
 “ to the whole Expenses of Process, so far as these have not been
 “ already awarded or disallowed: Find the Defenders further
 “ liable in the Fee due to Mr. *Innes* for his additional Report,
 “ which the Lords fix at One hundred Guineas, and decern
 “ therefor: Allow an Account of the Pursuers Expenses to be
 “ given in, and remit to the Auditor to tax the same, and report:”

And whereas after the said Interlocutors of Eighteenth *July*
 Eighteen hundred and fifty-six and Eighteenth *March* Eighteen
 hundred and fifty-eight were pronounced a Negotiation was
 commenced for a Compromise and Settlement of all Matters in
 dispute between the Magistrates and Council and the Presbytery
 and Ministers of *Dundee*, and pending that Negotiation another
 Action was raised in the Court of Session on the Seventeenth
 Day of *May* Eighteen hundred and sixty, at the Instance of
John Baird, Alexander Abbot, Peter Dron, and Patrick Martin,
 against the Magistrates and Council, for themselves and in their
 corporate Capacity, and as representing the Community of the
 said Burgh, and also against the then Provost and Bailies of
 the said Burgh, “ as Provost and Bailies of the said Town of
 “ *Dundee* for the Time being, and as such Trustees under the
 “ Will of the late *Robert Johnston*,” before mentioned, and also
 against the Hospital Master of the Town of *Dundee* and others,
 concluding that it should be found and declared that the yearly
 Rents or Proceeds arising out of the Legacy bequeathed by the
 said *Robert Johnston* fell to be applied exclusively for the Main-
 tenance of the aged and impotent People of the Town of *Dundee*,
 and that in particular the Rents or Proceeds and Ground Annuals
 or Feu Duties of *Monorgan's Croft* (alleged to have been pur-
 chased with the said Bequest or a Portion thereof) fell to be
 applied exclusively for the Use and Behoof of aged and impotent
 People of the said Town; and further, that any Application of
 the said Rents and other Proceeds of the said *Croft* in discon-
 formity

Action in
 the Court of
 Session by
 Baird and
 others
 against the
 Town Coun-
 cil, 1860.

The Dundee Churches and Hospital Act, 1864.

formity with the specific Directions of the said *Robert Johnston's* Will was illegal; and further, that the Trustees under the said Will, to whom and to whose Successors the said Sum was bequeathed in order to its Application as aforesaid, were the Provost and Bailies of the Town of *Dundee* for the Time being, and that the Town Council or Corporation of *Dundee*, or Members of the Town Council, *qua* such, or as representing the Community of the said Burgh, were not constituted Trustees under the said Will, nor entitled to act as such, and had no Right to interfere with or administer the said Trust, or to give Instructions or Directions touching the Application of the Funds thereof, and specially that the Town Council had no Right or Title to direct, consent, or agree to or sanction any Application of the said Rents or Proceeds or any Part thereof to Purposes other than the Maintenance of the aged and impotent People in the Town of *Dundee*, and also concluding for Interdict against the Magistrates and Council interfering with the said Rents and Proceeds, or directing or consenting to the Appropriation thereof in any way whereby the Purposes of the Testator's Will might be frustrated, and in particular from "diverting or causing" or consenting to any Diversion of the Proceeds or any Part thereof "to Purposes other than the Support of aged and impotent People of the Town of *Dundee*;" and further, that it should be found and declared that *Monorgan's Croft* was held by the Hospital Master of *Dundee* subject to the exclusive Control of the said Provost and Bailies as Trustees under the Bequest aforesaid, and that the same was not held by him under the Control or subject to the Directions of the Town Council of *Dundee* thereanent, or otherwise, and that the Hospital Master should be decerned and ordained to convey over the said Property to the Provost and Bailies as Trustees of the Bequest, in order to the same being held by them and administered in trust for the Purposes of the said Trust, or in the event of the Refusal of the Trust by the then Provost and Bailies, to such Party or Parties as might be appointed by the Court to administer the Trust; and further, that it should be declared that the Pursuers of the Action, with the other aged and impotent People of the Town, were entitled to an annual Maintenance out of the Revenue of the said Property, and that the Managers of the Charity should be ordained to make Payment annually to each of the Pursuers of the Sum of Twelve Pounds, or such other Sum as the Revenues of the Charity, having regard to the Number of Recipients, would admit of being paid: And whereas the Magistrates and Council lodged Defences to the said Action, and a Record having been made up and closed, the Lord Ordinary before whom the Action came to depend pronounced an Interlocutor on the Twentieth Day of *March* Eighteen hundred and sixty-one, which was taken to Review of the First Division of the said Court, who, on the Fifth Day of *February* Eighteen hundred and

Interlocutors
of the Lord
Ordinary,
dated 20th
March 1861,
and of the
Court, dated
5th Feb.
1862.

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and sixty-two, pronounced the following Interlocutor :—“ The Lords
 “ having advised the Reclaiming Note for *John Baird* and others,
 “ No. 51. of Process, and the Reclaiming Note for the Magistrates
 “ and Town Council and the Hospital Master of *Dundee*, No. 52.
 “ of Process, and whole Process, and heard Counsel for the Parties
 “ thereon, recall the Interlocutor of the Lord Ordinary reclaimed
 “ against, and in place thereof find that Mr. *Robert Johnston* of
 “ *St. Anne, Blackfriars, London*, by his last Will and Testament,
 “ dated Thirtieth *September* Sixteen hundred and thirty-nine, gave
 “ and bequeathed to ‘ the Provost and Bailifes of *Dundee* in the
 “ ‘ said Realme of *Scotland*, upon their putting in of sufficient
 “ ‘ Securitie unto my said Executors and Supervisor, the Sum of
 “ ‘ One thousand Pounds of lawful Money of *England*, to be em-
 “ ‘ ployed in a Stocke or Wadset of Lands in perpetuities for y^e
 “ ‘ yearly Maintenance of the aged and impotent People of the said
 “ ‘ Town of *Dundee*.’ Find that after the Death of Mr. *Johnston*
 “ the said Sum of One thousand Pounds was uplifted and received
 “ by the Provost and Bailies, or by the Provost, Magistrates, and
 “ Town Council of the Burgh of *Dundee*, and came into the Posses-
 “ sion of the said Provost, Magistrates, and Council: Find that in or
 “ about the Year Sixteen hundred and forty-five the Subjects known
 “ as *Monorgan’s Croft* were purchased by the Provost, Magistrates,
 “ and Council of *Dundee* with Part of the said Sum of One thou-
 “ sand Pounds: Find that the said Subjects appear to have been
 “ acquired and that the Title to them was taken not for *Johnston’s*
 “ Trust, but in Name of the Hospital Master of *Dundee*, ‘ for the
 “ ‘ special Use, Behoof, Utilitie, and Profite of the Poor of the said
 “ ‘ Hospital.’ Find that at the Date of the said Purchase certain
 “ Lands and others were vested in the Provost, Magistrates, and
 “ Council of *Dundee*, under a Charter granted by Queen *Mary* in
 “ Fifteen hundred and sixty-seven, incorporating them into one
 “ Body known by the Name of the Hospital of *Dundee*, for the
 “ Benefit, *inter alia*, of certain Poor, described as ‘ poor, maimed,
 “ ‘ and miserable Persons, Orphans, and Children deprived of their
 “ ‘ Parents, within our said Burgh of *Dundee*.’ Find that for a very
 “ long Period, far exceeding the Years of Prescription, the Admi-
 “ nistration and Management of the Funds derived from *Johnston’s*
 “ Will, including the said Subjects called *Monorgan’s Croft*, have
 “ been vested, not in the Provost and Bailies, but in the Provost,
 “ Magistrates, and Council of *Dundee*, and that the Poor for whose
 “ Behoof the same have been administered have been the Poor of the
 “ Hospital of *Dundee*: Find that the present Action seeks to have
 “ it found and declared that the said Funds fall to be applied, not in
 “ any respect for Behoof of the Poor of the said Hospital, but ex-
 “ clusively for the Use and Behoof of aged and impotent People of
 “ the said Town of *Dundee*, and that the Trustees constituted by

[*Private.*]5 *k*Mr. *John-*

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“ Mr. *Johnston's* Will were not the Provost, Magistrates, and Council,
 “ but the Provost and Bailies only, and that the Town Council, or
 “ Members thereof, are not entitled to act as Trustees, or to interfere
 “ with or administer the Trust, or give Instructions or Directions
 “ touching the Application of the said Funds; and further seeks to
 “ have it found and declared that the said Subjects are held by the
 “ Hospital Master subject to the exclusive Control of the Provost
 “ and Bailies, and are not held by him under the Control or subject
 “ to the Directions of the Town Council of *Dundee*, or otherwise to
 “ have the Hospital Master ordained to convey over the said Sub-
 “ jects to the Provost and Bailies, in order to the same being held
 “ and administered by them alone, and also concludes against the
 “ Provost and Bailies that in the event of their being put in possession
 “ of the said Subjects and Funds they should be ordained to pay to
 “ each of the Pursuers the Sum of Twelve Pounds Sterling or such
 “ other Sum as the Funds may admit of; but there is no Conclusion
 “ against the Provost, Magistrates, and Council to have them
 “ ordained to pay any Sum to the Pursuers, or to administer the
 “ Trust in any particular Manner: Find that the present Action,
 “ in so far as it contains Conclusions directed against the Provost,
 “ Magistrates, and Council of *Dundee*, and the Hospital Master of
 “ *Dundee*, is excluded by Lapse of Time, and in so far as it contains
 “ Conclusions directed against the Provost and Bailies of *Dundee*, as
 “ Trustees constituted by the Will of Mr. *Johnston*, such Con-
 “ clusions are made contingent on the Result of the Conclusions
 “ directed against the other Defenders: Therefore sustain the Plea of
 “ the Negative Prescription, and dismiss the Action, and decern;
 “ Find the Defenders entitled to Expenses; allow an Account thereof
 “ to be given in, and remit to the Auditor to tax the same when
 “ lodged, and to report:” And whereas the said *John Baird* and
 “ *Peter Dron* brought an Appeal to the House of Lords against the
 said Interlocutor of the First Division of the Court of Session, and
 the Interlocutor of the Lord Ordinary therein referred to, in so far as
 it was thereby found that their Claims, as made in their Summons, at
 least so far as it was sought to have it declared that the yearly Rent
 and Proceeds of *Johnston's* Bequest, and in particular the Rent and
 Proceeds of *Monorgan's Croft*, fell to be applied exclusively for the
 Maintenance of the aged and impotent People of the Town of
Dundee, were not so stated as to enable or warrant the Court to
 pronounce in Terms thereof, and were excluded by the Lapse of
 Time, and the Plea of the Negative Prescription was thereby sus-
 tained, and the Action dismissed, and the Defenders assoilzied and
 found entitled to Expenses: And whereas on the Eighth Day of
October Eighteen hundred and sixty-one, before the said Appeal
 came to be heard, and before the said Interlocutor of the Court had
 been pronounced, another Action was raised before the Court of
 Session,

Appeal to
the House of
Lords.

Second
Action by
Baird and
others
against the
Town Coun-
cil, 1861.

The Dundee Churches and Hospital Act, 1864.

Session, at the Instance of the said *John Baird* and *Peter Dron* and of *Francis Watson* and *Ann Smith*, against the Magistrates and Council, for themselves and in their corporate Capacity, and as representing the Community of the said Burgh, and as Intromitters with the Monies left and bequeathed by the said *Robert Johnston*, and the Income and Produce thereof, and against the Provost and Bailies of the said Burgh, as Trustees of the Will of the said *Robert Johnston* for managing his said Legacy, and against the Hospital Master of the said Town, and also against the whole of the said Parties named in the Summons, and certain other Parties also therein named, formerly Bailies or Councillors of the said Burgh, as Individuals, for any Right or Interest they might have, or any Liability they have incurred or might occur in the Premises, and concluding that the Defenders should be decerned and ordained to hold Count and Reckoning with the Pursuers in respect of the whole Intromissions held by them or their Predecessors in Office with the Capital Monies or Sums of Principal of and arising from the Bequest made by the said *Robert Johnston*, whereby the true Balance due in respect thereof might be ascertained, and that the Defenders should be decerned and ordained, conjunctly and severally, or in such Shares and Proportions as might be determined in the course of the Process, to pay to the Pursuers, or to such Person or Persons as might be appointed by the Court, or to pay, make up, and contribute and consign in Court, or hold and retain, the Sum of Three thousand Pounds, or such other Sum, less or more, as should appear and be ascertained to be the Balance due and owing upon the Intromissions of the Defenders or their Predecessors in Office with the Monies foresaid, in order to the same being applied for the Purposes of the said Bequest; or in the event of the Defenders failing to produce an Account, that they should be decerned and ordained, conjunctly and severally, to make Payment to the Pursuers, in order to the same being applied by them to the Purposes of the said Bequest, of the Sum of Four thousand Pounds, which should in that Event be held to be the Balance of the said Intromissions, with Interest as therein mentioned; and further that it should be found and declared that the whole of the Properties purchased with the said Bequest, and the Produce or Income thereof, and at least the several Properties therein particularly described, and being the Properties herein-before referred to as the *West Ward*, *Stibbles Acres*, *Westfield*, and *Hilltown Acres*, were “held by the Hospital Master of *Dundee* for the Purposes of the Bequest of the said *Robert Johnston*, and in order that the Proceeds thereof may be employed in the yearly Maintenance of the aged and impotent People of *Dundee* ;” or otherwise that the Hospital Master should be decerned and ordained to make up a Title to and convey the said Properties to the Provost and Bailies of the said Burgh, or to such Person or Persons as might be appointed by the Court, in order to

the

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the House of
Lords in Ap-
peal Baird
and others
against the
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cil.

the same being held and administered in trust for the yearly Maintenance of the aged and impotent People of *Dundee*; and further, that the Court should decern and ordain that a Scheme or Schemes for the Application and Disposal of the Funds and Properties aforesaid, and of any other Funds and Properties belonging to the said Bequest, should be prepared, in order that by the Authority of the Court a Scheme might be made and fixed for the Application and Disposal of the said Funds and Properties, in fulfilment of the Testamentary Intentions of the said *Robert Johnston*: And whereas the final Report made by the said *Cosmo Innes* and *George Auldjo Jamieson* in the Action at the Instance of the Presbytery of *Dundee* contained the Result of their Investigations with respect to the said Properties called the *West Ward*, *Stibbles Acres*, *Westfield*, and *Hilltown Acres*, which was to the Effect that there was no Evidence of the said Properties having been purchased with any Part of *Johnston's* Bequest, and the Second Division of the Court by their Interlocutor of Twenty-sixth *February* Eighteen hundred and sixty-three, before recited, had given Effect to that View: And whereas the said Appeal at the Instance of the said *John Baird* and *Peter Dron* against the Interlocutors pronounced in the First Action at their Instance came to be heard before the House of Lords on the Third Day of *March* Eighteen hundred and sixty-three, when the House was informed by the Counsel for the Magistrates and Council of the aforesaid Interlocutor of the Second Division of the Court dated the Twenty-sixth Day of *February* Eighteen hundred and sixty-three, in the Action at the Instance of the Presbytery of *Dundee*, and the Appellants consenting that that Interlocutor should be read to the House as if it had been in Process in the Cause in the Court of Session, the House of Lords by their Judgment in the said Appeal ordered and adjudged “ that the said Interlocutors of the Twentieth
“ of *March* Eighteen hundred and sixty-one and Fifth (signed
“ Eighth) *February* Eighteen hundred and sixty-two, in so far as
“ complained of in the said Appeal, be and the same are hereby
“ reversed: And this House doth declare, that, having regard to the
“ Length of Time during which the Provost, Bailies, and Council
“ of the Town of *Dundee* have had the Administration as Trustees
“ of the Property arising from *Johnston's* Legacy, they the Provost,
“ Bailies, and Town Council ought to be taken and declared to be
“ the lawfully constituted Trustees of the Charity provided by the
“ said Legacy: And this House doth further declare, that the Lands
“ known as *Monorgan's Croft*, and the Buildings thereon, and the
“ Revenue arising therefrom, subject to the Question of Boundary
“ mentioned in the said Interlocutor of the Twenty-sixth of *February*
“ last, and any other Property or Funds that may be found to have
“ been produced from the Legacy of One thousand Pounds bequeathed
“ by the Will of *Robert Johnston*, are subject to and ought to be
“ applied

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“ applied for the yearly Maintenance of the aged and impotent
 “ People of the Town of *Dundee* : And it is further ordered, that the
 “ said Cause be, and the same is hereby remitted back to the Court
 “ of Session in *Scotland*, with Directions to inquire whether there be
 “ any other Property or Funds produced by or resulting from the
 “ said Legacy : And this House doth also direct, that the Court of
 “ Session do settle a Scheme or Plan for the Application of the
 “ Revenue and Income arising from *Monorgan’s Croft* and the
 “ Buildings thereon, and from any other Property or Funds as afore-
 “ said, for the Benefit of the aged and impotent People of the Town
 “ of *Dundee*, in such Manner and with such Directions, and having
 “ such regard to the past Administration of the Charity, and to any
 “ Enactments affecting the same, as to the Court of Session shall
 “ appear to be just : And this House doth further declare, that the
 “ Expenses of the Appellants and Respondents of this Action, and
 “ their Costs respectively of this Appeal (the Amount of such last-
 “ mentioned Costs to be certified by the Clerk of the Parliaments),
 “ ought to be defrayed and paid out of the Charity Property ; and
 “ doth remit to the Court of Session to give Effect to these
 “ Declarations, Directions, and this Judgment :” And whereas the
 Court of Session by their Interlocutor dated the Second Day of
June Eighteen hundred and sixty-three applied the Judgment
 of the House of Lords, and appointed the Pursuers to lodge in
 Process a State of the Property and Funds alleged to have been
 produced by or resulted from *Johnston’s Legacy* ; and that State
 having been lodged, the said Court, with a view to the Inquiry
 directed by the House of Lords, thereafter, on the Twenty-third Day
 of *June* Eighteen hundred and sixty-three, made a Remit to *John*
Hunter, Writer to the Signet, as an Accountant and Conveyancer,
 to inquire whether the Property and Funds specified in the said State,
 or any or which Part thereof, had been produced by or resulted from
 the said Legacy, and sundry Procedure under that Remit took place
 before the said *John Hunter*, but no Report was made by him : And
 whereas in the Second Action at the Instance of the said *John Baird*
 and others a Record was made up and closed, but no Judgment was
 pronounced therein, and the Process was sisted, pending the Prose-
 cution of the Inquiry directed by the Judgment of the House of
 Lords, which involved the Consideration of the same Questions as
 were raised in the Second Action : And whereas the Pursuers of the
 said Two Actions having all died, except the said *John Baird*, the
 Persons after named were sisted by the Court as Pursuers thereof
 respectively along with the said *John Baird*, namely, *Euphemia*
Smith or *Anderson*, *Ann Smith* or *Craig*, *Grace Kidd* or *Wallace*,
 and *Jane M’Lean* or *Mitchell*, all Widows residing in *Dundee* : And
 whereas the Affairs of the Town of *Dundee* having become embar-
 rassed, the Magistrates and Council, in the Year Eighteen hundred

Further Pro-
 ceedings in
 Court of
 Session in
 Baird’s First
 Action.

Trust Deed
 by the Town
 Council,
 1842.

[Private.]

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and

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Sale of Properties, and Payment of Dividends to Creditors.

Suspension and Interdict by the Presbytery of Dundee, 1862.

and forty-two, executed a Trust Deed or Conveyance of several Heritable Properties situate in the Town and Neighbourhood in favour of Trustees, for Behoof of the Creditors of the Town, and in Security of the Debts held by such Creditors, One of the Properties so conveyed being the Property to the North of *Meadow Road* which had been made the Subject of Investigation under the Remit to the said *Cosmo Innes* and *George Auldjo Jamieson*, and the Claim of the Presbytery to which was reserved by the said Interlocutor of the Second Division of Twenty-sixth *February* Eighteen hundred and sixty-three: And whereas previous to the Year Eighteen hundred and sixty-two considerable Portions of the Properties held under the said Trust had been realized by the Magistrates and Council, with Consent of the Trustees, and the Prices applied in Payment of Dividends to the Creditors ranked on the Trust, and, among others, certain Portions of the said Property to the North of the *Meadow Road* had been feued out and otherwise realized, and the Prices and Feu Duties received were applied, with the other Trust Monies, in Payment of Debts owing to the said Creditors of the Town; and in Eighteen hundred and sixty-two a considerable Sum had accumulated in the Hands of the Trustees as the Result of their general Management, and it was proposed to make a further Division among the said Creditors: And whereas on the Twenty-sixth Day of *August* Eighteen hundred and sixty-two a Note of Suspension and Interdict was presented to the Court of Session by the Presbytery of *Dundee*, against (First) *William Thoms*, Insurance Agent, *Dundee*, *Andrew Davidson*, Writer, *Perth*, and *George Clement Boase*, Banker, *Dundee*, the surviving and accepting Trustees, original and assumed, acting under the said Trust Deed, and (Second) the Magistrates and Council, for themselves and as representing the whole Body of the Community of the said Burgh, and their Successors in Office, and also as Administrators of the Hospital Fund, and praying the Court to interdict, prohibit, and discharge the Respondents from selling, alienating, and disposing the whole or any Part of the Property therein particularly described, and being the aforesaid Portion of the *Town's Meadows* to the North of the *Meadow Road*, and, further, to interdict, prohibit, and discharge the Respondents or any of them from distributing the Funds still in their Hands as Trustees among the said Creditors, or paying them away to any other Person or Persons whatever, till a sufficient Sum should be consigned or laid aside to meet the Claim of the Hospital Fund for the Sums already received by the Respondents or some of them, for or in respect of Alienations of Portions of the said Meadows Property, or of Feu Duties or other Annual Proceeds thereof, with Interest of the said Sums, or till Caution should be found that the same should be made forthcoming to the Hospital Administrators or other Party or Parties who might be in the Management of the Hospital Fund, to the Extent or Amount to which it might

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might be found in the Action of Declarator then in dependence before the Court, and above referred to, at the Instance of the said Presbytery, or in any other competent Process, that the said Piece of Ground formed Part of the Property belonging to the Hospital Foundation: And whereas Answers for the said Trustees and the Magistrates and Council were lodged to the said Note of Suspension and Interdict, and the Case having been reported to the Second Division of the Court, the Judges of the Second Division, on the Tenth Day of *December* Eighteen hundred and sixty-two, after hearing Counsel for the Parties, superseded Consideration of so much of the said Note as prayed for Interdict against Sales or Feus of the Meadows Property therein described, that the Suspenders might have an Opportunity of instituting a Process of Declarator for the Trial of the Questions in dispute, and, *quoad ultra*, refused the Note: And whereas on the Twentieth Day of *December* Eighteen hundred and sixty-two an Action of Reduction and Declarator was raised before the Court of Session at the Instance of the Presbytery of *Dundee*, against (First) the said Trustees for the Creditors of the Town, and (Second) the Magistrates and Council, for themselves and as representing the whole Body of the Community of the said Burgh, and also as Administrators of the said Hospital Fund, concluding for Reduction, of the said Trust Deed, and Two Instruments of Sasine following thereon, and a relative Deed of Assumption of additional Trustees into the Trust, in so far as the same related to, contained, or conveyed the whole or any Portion of the foresaid Part of the *Town's Meadows* situated to the North of *Meadow Road* as therein described, or any Portion of the Land sometime belonging to the *Franciscan* Friars, and afterwards forming Part of the Property of the Hospital, situated to the North of the *Meadow Road*, which was not conveyed to the Magistrates and Council for the Use of the Town by a Disposition granted by *John Milne*, then Master of the Hospital, on the Twenty-seventh Day of *April* Seventeen hundred and fifty-two, as the Boundaries of such Portion not so conveyed might be ascertained and determined in the course of the Process, and concluding further that the Property above mentioned, and every Part of the said *Franciscan* Lands situated as aforesaid, and not conveyed by the said Disposition of Seventeen hundred and fifty-two, were heritably and feudally vested in the Magistrates and Council, as Administrators of the Hospital Fund, by virtue of the Charter of *Queen Mary*, and other Charters, Writs, and Instruments therein specified, and further that it should be found and declared that the said Trustees and the Magistrates and Council as representing the Community had no Right or Title to the Property therein described, or to any Portion of the said *Franciscan* Lands not conveyed as aforesaid, and that the Magistrates and Council, as Administrators of the Hospital Fund, had the only good and undoubted Right to the said Property, and to possess the same, and to uplift the Rents and Duties thereof,

Proceedings
in Suspension and
Interdict.

Action of
Declarator
by the Pres-
bytery, 1862.

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thereof, and that the said Trustees and the Magistrates and Council as representing the Community should be ordained to cede to the Magistrates and Council, as Administrators of the Hospital Fund, Possession of the said Property, in order that the Magistrates and Council as such Administrators might enter thereto, and possess and enjoy the same as Part of the Property of the Hospital in all Time coming, and further, that the said Trustees and the Magistrates and Council as representing the Community should be interdicted, prohibited, and discharged from selling or alienating the whole or any Part of the said Property, and from disposing of or renouncing the Feu Duties or Ground Annuals payable for the whole or any Part thereof, or taking Grassums therefor, or uplifting and discharging the said Feu Duties and Ground Annuals before the Periods at which the same should respectively fall due, and further, that the said Trustees and the Magistrates and Council as representing the Community should be decerned and ordained to hold Count and Reckoning as to the whole Sums received by them or any of them for or in respect of the said Property, whether by way of absolute Sales for Prices, or Redemption of Feu Duties or Ground Annuals, or by way of Feu Duties or other annual Proceeds thereof, and make Payment to the said Magistrates and Council as representing the Hospital of the Sum of Five thousand Pounds, or such other Sum, more or less, as should on a just Accounting be ascertained to be due in respect of their Intromissions, and in the event of their failing to hold just Count and Reckoning that they should be decerned and ordained to make Payment to the Magistrates and Council, as Administrators of the Hospital, of the said Sum of Five thousand Pounds, as the Balance due in respect of such Intromissions, with Interest as therein specified : And whereas Defences to the said Action were lodged by the said Trustees and the Magistrates and Council, and certain Proceedings took place therein : And whereas on the Twenty-fourth Day of *June* Eighteen hundred and sixty-three an Action of Multiplepoinding, Declarator, and Exoneration was raised before the Court of Session by the said *John Baird, Euphemia Smith or Anderson, Ann Smith or Craig, and Grace Kidd or Wallace*, in the Name of the Magistrates and Council, as Pursuers and nominal Raisers, against the Magistrates and Council, as Trustees of the foresaid Bequest left by the Will of *Robert Johnston*, and also against the said *John Baird*, and others, real Raisers of the said Action, as being
 “ all aged and impotent People of the said Town of *Dundee*, and now
 “ or lately Recipients of Pensions as such from the said *Johnston’s*
 “ Bequest, and also now or lately Recipients of Pensions from the
 “ Funds and Property held by the said Provost, Bailies, and Town
 “ Council of *Dundee* as the Administrators and Trustees of the
 “ Funds held under Queen *Mary’s* Charter,” and also against the Magistrates and Council as the Administrators and Trustees of the said Incorporation of Queen *Mary*, and the Presbytery of *Dundee* for
 and

Proceedings
in Action of
Declarator.

Action of
Multiple-
poinding by
Baird and
others, 1863.

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any Right or Interest they might have or claim in the Premises, and the individual Members thereof, and *Henry Jack*, Inspector of the Poor of the Parish of *Dundee*, as representing and on behalf of the Parochial Board of the Parish of *Dundee*, for any Right or Interest the said Board might have or claim in the Premises, and *William Mackenzie*, Inspector of the Poor of the United Parish of *Liff and Benvie*, as representing and on behalf of the Parochial Board of the Parish of *Liff and Benvie*, for any Right or Interest the said Board might have or claim in the Premises, and the Magistrates and Council as representing the Community and Burgesses of the said Burgh, and in particular the poor Burgesses thereof; and the Conclusions of the Summons in the said Action were: (1.) To have it found that the Magistrates and Council, Pursuers and nominal Raisers thereof, were only liable in once and single Payment of the Rents, Profits, Interest, and Produce of the Property described therein, being the Properties hereinbefore referred to as *Monorgan's Croft, West Ward, Stibbles Acres* and Feu Duties, *Hilltown Acres*, and *Westfield*, or the Balance of *Johnston's Bequest* over and beyond the Portion thereof invested in *Monorgan's Croft*, and any other Heritable Properties, so far as the said Rents, Profits, Interest, and Produce had been or might be received by the Magistrates and Council, or under the Authority of the Court, and that such Payment should be made to the Persons who might have just Right thereto, and that the Magistrates and Council should be decerned and ordained to make Payment, under Deduction of the Expenses of raising and bringing the said Process, of the said Rents, Profits, Interest, and Produce, as the Amount thereof should be ascertained and fixed in the Process, to such of the Defenders or others as might be found to have best Right thereto; (2.) To have it found and declared that the several Properties above mentioned, called *West Ward, Stibbles Acres* and Feu Duties, *Hilltown Acres*, and Acres in *Westfield*, were held by the Hospital Master of *Dundee*, or by the Magistrates and Council, for the Purpose of the Bequest of the said *Robert Johnston*, and in order that the Proceeds thereof might be employed by the Magistrates and Council in the yearly Maintenance of the aged and impotent People of *Dundee*, and further or otherwise that it should be found and declared that the Properties above mentioned, or One or more of them, were held by the said Hospital Master for behoof of the said Incorporation of *Queen Mary*, and in order that the Proceeds thereof might be employed by the Magistrates and Council for the Purposes of the said Charter by *Queen Mary*; (3.) To have a Scheme or Schemes prepared for the Application and Disposal of the said Funds and Properties and of any other Funds and Properties belonging to the said Incorporation, in order that the Proceeds thereof might be employed for the Purposes of the said Charter by *Queen Mary*, or otherwise according to Law, and for that Purpose to have States of all the Funds and Property of

[*Private.*]

The Dundee Churches and Hospital Act, 1864.

Action by
Rev. Peter
Grant
against the
Town Coun-
cil, 1860.

the said Incorporation of Queen *Mary* produced in Process; and (4.) To have a Scheme or Schemes prepared for the Application of the said Funds and Properties, and any other Funds and Property belonging to the Bequest of the said *Robert Johnston*, in order that the Proceeds thereof might be employed for the Purposes of the said Bequest, and that States of all the Funds and Property of the said Bequest should be produced in Process; and the said Summons was called in Court and enrolled, but no further Procedure took place thereon: And whereas on the Fourth Day of *December* Eighteen hundred and sixty an Action was raised before the Court of Session at the Instance of the Reverend *Peter Grant*, One of the Ministers of the Gospel of the Burgh of *Dundee*, against the Magistrates and Council, for themselves and as representing the Community, and their Successors in Office, concluding that the Pursuer, as the Minister serving the Cure of the *Cross Church* and District thereof within the said Burgh, was entitled to be provided by the Magistrates and Council with a competent and legal Stipend, to be paid out of the Revenue of the said Burgh, or out of the other Funds, Property, and Revenues held and enjoyed by the Magistrates and Council for the special Use and Behoof of the Ministers of the Established Church in *Dundee* (reserving to them, in Terms of the Decree of Erection of the Pursuer's Charge, the Right to retain the Interest of the Sum of Five thousand Merks, formerly paid to the Catechist *pro tanto* of the said Stipend), from the Date of his Ordination and Induction to the said Cure, and in all Time coming during his Lifetime and serving the said Cure, and that the Magistrates and Council should be decerned and ordained to make Payment to the Pursuer, as the Minister serving the Cure of the said *Cross Church* and District thereof, of the Sum of Two hundred and seventy-five Pounds *per Annum* (reserving as aforesaid), from the Time of his Ordination and Induction to the said Cure till the Term of *Martinmas* Eighteen hundred and sixty, beginning the First half-yearly Payment at the Term of *Martinmas* Eighteen hundred and fifty-one, being the First Term after the Pursuer's Ordination and Induction to the said Cure, but under Deduction of all Payments made by the Magistrates and Council to the Pursuer to account of the said Stipend, as the same should appear from an Account thereof to be produced in Process, and that the Magistrates and Council should be further decerned and ordained to make Payment to the Pursuer, as the Minister serving the said Cure, of the Sum of Three hundred and fifty Pounds *per Annum* (reserving as aforesaid), as a competent and legal Stipend, from and after the said Term of *Martinmas* Eighteen hundred and sixty, or of such other Sum, less or more, as in the Circumstances should appear to the Court a competent and legal Stipend, from and after the said Term, but reserving the Right of the Pursuer and his Successors in the said Cure to apply for an Increase of the said Stipend

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Stipend in the event of the Stipend to be decerned for in the said Process at any Time ceasing to be a competent and legal Stipend: And whereas on the Eighth Day of *December* Eighteen hundred and sixty an Action was raised before the Court of Session at the Instance of the Reverend *Andrew Taylor*, One of the Ministers of the Gospel of the said Burgh of *Dundee*, against the Magistrates and Council, for themselves and as representing the Community, and their Successors in Office; concluding that it should be found and declared that the Magistrates and Council were bound to provide the Pursuer, as the Minister serving the Cure of the *South Church* and District thereof within the said Burgh, with a competent and legal Stipend, to be paid out of the Revenue of the said Burgh, or out of the other Funds, Property, and Revenue held and enjoyed by the Magistrates and Council for the special Use and Behoof of the Ministers of the Established Church in *Dundee*, from the Date of his Ordination and Induction to the said Cure, and in all Time coming during his Lifetime and serving the said Cure; and that the Magistrates and Council should be decerned and ordained to make Payment to the Pursuer, as the Minister serving the Cure of the said *South Church* and District thereof, of the Sum of Two hundred and seventy-five Pounds *per Annum*, from the Time of his Ordination and Induction to the said Cure till the Term of *Martinmas* Eighteen hundred and sixty, but under Deduction of all Payments made by the Magistrates and Council to the Pursuer to account of the said Stipend, as the same should appear from an Account thereof to be produced in Process; and that the Magistrates and Council should be further decerned and ordained to make Payment to the Pursuer, as the Minister serving the said Cure, of the Sum of Three hundred and fifty Pounds *per Annum* as a competent and legal Stipend, from and after the said Term of *Martinmas* Eighteen hundred and sixty, or of such other Sum, less or more, as in the Circumstances should appear to the Court a competent and legal Stipend, from and after the said Term, but reserving the Right of the Pursuer and his Successors in the said Cure to apply for an Increase of the said Stipend in the event of the Stipend to be decerned for in the said Process at any Time ceasing to be a competent and legal Stipend: And whereas Defences were lodged by the Magistrates and Town Council to the Two last-mentioned Actions, and sundry Procedure took place therein: And whereas the Magistrates and Council were advised and intended to appeal to the House of Lords against the said Interlocutor of the Court of Session dated the Twenty-sixth Day of *February* Eighteen hundred and sixty-three, and pronounced in the first-recited Action at the Instance of the Presbytery of *Dundee*; but with the view of preventing such Appeal and all further Litigation with respect to the Hospital Fund and *Johnston's* Charity, Negotiations were entered into for the Settlement

Action by
Rev. Andrew
Taylor
against the
Town Council,
1860.

Proceedings
in Actions by
Ministers.
Negotia-
tions for a
Settlement
of all the
Actions.

The Dundee Churches and Hospital Act, 1864.

Agreement
between
Town Coun-
cil and Pres-
bytery and
Ministers,
11th Dec.
1863.

Settlement of the whole depending Actions and Matters of Dispute :
And whereas an Agreement, dated the Eleventh and recorded in the Books of Council and Session at *Edinburgh* the Seventeenth Days of *December* Eighteen hundred and sixty-three (a Copy of which is contained in the Schedule to this Act annexed) has been entered into between the Magistrates and Council, as representing the Common Good and Community of *Dundee*, on the First Part, the Magistrates and Council, as Patrons or Trustees representing the Hospital of *Dundee*, on the Second Part, the Magistrates and Council, as Patrons or Trustees representing *Johnston's* Charity, on the Third Part, the Presbytery of *Dundee* on the Fourth Part, the said *Andrew Taylor* on the Fifth Part, and the said *Peter Grant* on the Sixth Part, by which Agreement the Rights and Interests of the Magistrates and Council and of the said Burgh of *Dundee*, of the Presbytery and Ministers of *Dundee*, and of the Hospital Foundation and *Johnston's* Charity, as respects the Funds and Properties forming the Subject of Discussion in the several Actions before mentioned, are settled and adjusted, and Provision is made for the due Administration of the Funds and Revenues of the said Charities, and also for the Payment of suitable and adequate Stipends to the Ministers of *Dundee* : And whereas the said First and Second Actions at the Instance of the said *John Baird* and others having been conjoined, the Judges of the First Division of the Court of Session on the Fourth Day of *December* Eighteen hundred and sixty-three pronounced an Interlocutor in Terms of a joint Minute by the Parties, finding and declaring that *Monorgan's Croft*, as described in the Summons of Declarator and Interdict, and the Buildings thereon, and the Revenues thenceforth arising therefrom, and the Sum of One thousand Pounds as mentioned in the joint Minute, were held by the Provost, Bailies, and Town Council of *Dundee* as Trustees of *Johnston's* Charity, and were subject to and ought to be applied for the yearly Maintenance of the aged and impotent People of the Town of *Dundee*, and decerned accordingly, and further decerned and ordained the Defenders the Provost, Bailies, and Town Council, as Trustees foresaid, to make Payment to the Pursuers, out of the Funds of the said Charity, of the Sum of One hundred Pounds in full of their Claim for Arrears of Pensions from the said Charity up to the Date of the said Interlocutor, and to pay to each of the Pursuers the Sum of One Pound *per* Month during his or her Life in Time coming, and found the Pursuers and Defenders entitled to Expenses out of the Funds of the said Charity, and *quoad ultra* assoilzied the Defenders from the Conclusions of the Summonses in both Actions : And whereas all the said Actions between the Presbytery and Ministers of *Dundee* and the Magistrates and Council have been taken out of Court by Decrees of Consent pronounced therein in Terms of joint Minutes lodged for the Parties, giving Effect to the

Interlocutor
of the Court
of Session in
Actions by
Baird and
others, dated
4th Dec.
1863.

Actions of
Presbytery
and Minis-
ters taken
out of Court.

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the Terms of the said Agreement so far as regards the Matter of the said Actions: And whereas the Magistrates and Council and the Presbytery of *Dundee*, and the said *Peter Grant* and *Andrew Taylor*, have consented to the passing of this Act: And whereas it is expedient that the said Agreement should be ratified and confirmed, and that all Rights and Title Deeds granted by the Magistrates and Council in any of their Characters or Capacities aforesaid should be declared to be valid and effectual, and not subject to Challenge on the Ground of the same having been granted by them in a Character or Capacity different from that in which by the said Agreement they are declared to have Right to the Property or Funds to which the said Rights and Title Deeds relate, and that Provision should be made for vesting in the Magistrates and Council, in their respective Characters and Capacities aforesaid, the several Properties and Funds to which they are by the said Agreement declared to have Right, and that Provision should be made for carrying the said Agreement into effect; but these Objects cannot be attained without the Authority of Parliament: May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Parties
consenting
to this Act.
Expedient
that Agree-
ment should
be confirmed
and carried
into effect.

1. This Act may be cited for all Purposes as "The *Dundee Churches and Hospital Act, 1864.*" Short Title.

2. In this Act the Expression "Town Council" shall mean the Provost, Magistrates, and Town Council of the Royal Burgh of *Dundee* for the Time being; the Word "Presbytery" shall mean the Presbytery of *Dundee* for the Time being; the Word "Hospital" shall mean the Foundation of the Ministry and Hospital of *Dundee* established under the Charter of Queen *Mary*, before recited; and the Expression "*Johnston's Charity*" shall mean the Charity established under the Will of *Robert Johnston*, before recited.

Interpreta-
tion of
Terms.

3. Subject to the Provisions of this Act, the Agreement before recited, and of which a Copy is contained in the Schedule to this Act annexed, shall be and the same is hereby ratified and confirmed, with the Exception of Article Ninth thereof.

Agreement
confirmed.

4. The several Rights, Powers, and Privileges conferred and the several Burdens and Obligations undertaken or imposed by or under the said Agreement shall be valid and effectual, not only in favour of and against the several Persons and Corporations Parties thereto respectively, but also in favour of and against all Persons and Corporations who may hereafter be interested in the Provisions of the said Agreement, or in the Foundation, Bequests, Charities, Lands,

Rights and
Powers con-
ferred by
Agreement
to be valid.

[*Private.*]

Properties,

The Dundee Churches and Hospital Act, 1864.

Properties, Funds, and Rights regulated, extinguished, or in any way affected by the said Agreement.

Settlement
of Actions
to be final.

5. Subject to the Provisions of this Act, the Settlement of the several Actions before recited is hereby confirmed, and all Judgments of the House of Lords and Interlocutors of the Court of Session pronounced therein are hereby declared to be final and binding, not only on the several Persons and Corporations Parties thereto, but on all other Persons and Corporations who may hereafter be interested in the several Rights and Properties, Matters and Things, which formed the Subject of the said Actions respectively.

Town Council may grant Bonds and make Payments provided for by Agreement and Act.

6. It shall be lawful for the Town Council and the several other Persons and Corporations Parties to or affected by the said Agreement to grant the several Bonds, Conveyances, and other Deeds and make the several Payments provided for by the said Agreement and this Act, and otherwise to carry the said Agreement into effect, so far as not already done.

Payment by Town Council to Trustees of the Hospital on account of Barrack Park.

7. The Town Council shall, from and out of the Common Good or Funds of the Burgh of *Dundee*, pay to the said Magistrates and Town Council, as Patrons or Trustees of the Hospital, the Sums expended out of the Hospital Fund on or in connexion with the *Barrack Park*, as referred to in the Judgment of the Second Division of the Court of Session, dated Twenty-sixth *February* Eighteen hundred and sixty-three, with Interest at the Rate of Four Pounds *per Centum per Annum* from the Time of Payment out of the Hospital Fund until Repayment, and from and after the Date of the said Agreement all Payments for Rent or otherwise in connexion with the said Park shall be borne by the Town Council, and shall not be charged against either the Hospital or *Johnston's* Charity.

Sum to be paid or to be contained in Bond by Town Council to the Trustees of the Hospital.

8. The Sum which the Town Council are to pay to the Trustees or Patrons of the Hospital, or for which they are to grant a sufficient Bond to the said Trustees or Patrons, as provided by Article Eighth of the said Agreement, shall be Eighteen thousand five hundred Pounds, with Interest thereon from the Date of the passing of this Act at the Rate of Four Pounds *per Centum per Annum*, payable half-yearly, and the Town Council shall either pay the said Sum or grant the said Bond within Three Months after the passing of this Act: Provided always, that the Payment of the said Sum or the granting of the said Bond shall not prejudice the Obligations contained in Article Thirteenth of the said Agreement; provided also, that the Sums secured and payable under the said Article to the Ministers of the *South, Cross, Steeple*, and *Saint David's* Churches of *Dundee* respectively, amounting in all to Six hundred and eighty-five

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five Pounds *per Annum*, shall be a First Charge on the Hospital Fund, and that the Sums payable to the said Ministers out of the Hospital Fund shall not in any Year exceed the said Amount of Six hundred and eighty-five Pounds.

9. In the event of the said Sum of Eighteen thousand five hundred Pounds or any Part thereof being paid up by the Town Council, the same shall be invested by the Trustees or Patrons of the Hospital on Heritable Security, or in the Purchase of Lands, Feu Duties, or Ground Annuals, as the said Trustees or Patrons may think fit; and the Securities, Lands, Feu Duties, or Ground Annuals in or upon which the said Sum or any Part thereof may be invested shall be held and the Revenue or Income arising therefrom shall be applied by the said Trustees or Patrons to and for the same Uses and Purposes as the said Sum and the Interest thereof are respectively to be held and applied under the said Agreement and this Act.

Investment of Sum payable by Town Council if paid up.

10. The Share or Proportion of the Costs mentioned in Article Seventh of the said Agreement to be paid and borne by *Johnston's* Charity is hereby fixed at Three thousand Pounds, and that Sum shall be paid by the Trustees of *Johnston's* Charity to the Trustees or Patrons of the Hospital, and shall be and be accepted by the last-mentioned Trustees or Patrons in full of the Obligations on *Johnston's* Charity contained in Article Seventh of the said Agreement.

Proportion of Costs to be paid by *Johnston's* Charity.

11. The Sum of One thousand Pounds, mentioned in Article Tenth of the said Agreement, shall be paid by the Town Council to the Trustees of *Johnston's* Charity out of the Common Good or Funds of the Burgh of *Dundee*, and in consideration of such Payment the Town Council shall be and are hereby discharged of and from all Liability to account for the Revenue of *Johnston's* Charity prior to the Fourth Day of *December* Eighteen hundred and sixty-three.

Payment by Town Council to *Johnston's* Charity.

12. The Property called *Monorgan's Croft*, as described in Article First of the said Agreement, is hereby vested in the Town Council, as Trustees or Patrons of *Johnston's* Charity, but such vesting is and shall be subject to all Feu and other Rights granted or created, and all Obligations undertaken, by the Hospital Master of *Dundee*, or by the Town Council as Trustees or Patrons of the Hospital, or in any other Character or Capacity whatsoever, in connexion with the said Property so far as now subsisting, and all Rights reserved and Obligations undertaken to or in favour of the Hospital Master or the Town Council in any of their several Characters or Capacities, by the Deeds and Titles creating any such Rights as aforesaid, shall be valid and effectual to and enforceable by the Town Council as Trustees or Patrons of *Johnston's* Charity, and on behalf of that Charity.

Monorgan's Croft vested in Town Council as Trustees of *Johnston's* Charity.

13. The

The Dundee Churches and Hospital Act, 1864.

Properties
vested in
Town Coun-
cil as Trus-
tees of the
Hospital.

13. The several Lands and Properties herein-before referred to under the Names of *West Ward*, *Stibbles Acres*, *Westfield Acres*, *Hilltown Acres*, and *Stirling's Park*, are hereby vested in the Town Council as Trustees or Patrons of the Hospital, but such vesting is and shall be subject to all Feu and other Rights granted or created and all Obligations undertaken by the Hospital Master of *Dundee*, and by the Town Council, as Trustees or Patrons of the Hospital, or in any other Character or Capacity whatsoever, in connexion with the said Properties or any of them; so far as now subsisting; and all Rights reserved and Obligations undertaken to or in favour of the Hospital Master or the Town Council, in any of their several Characters or Capacities, by the Deeds and Titles creating any such Rights as aforesaid, shall be valid and effectual to and enforceable by the Town Council as Trustees or Patrons of the Hospital, and on behalf of the Hospital.

Cemetery
vested in
Town
Council.

14. The Property in *West Chapelshade, Dundee*, as described in the Disposition dated the Twenty-ninth Day of *October* Eighteen hundred and thirty-five, granted by the Town Council in their own Favour, as Trustees or Patrons of the Hospital, and in the Instrument of Sasine following thereon dated the Eleventh Day of *November* and recorded in the Particular Register of Sasines kept at *Dundee* for the County of *Forfar* the Ninth Day of *December* Eighteen hundred and thirty-five, and Part of which Property was laid out as a Cemetery, shall be and the same is hereby vested in the Town Council, for the Purposes specified in Article Eighth of the said Agreement, and subject to the Rights and Servitudes therein referred to.

Portion of
Meadows of
Dundee to be
the Property
of the Town
Council.

15. And whereas the foresaid Trust for the Creditors of the Town of *Dundee* has now been extinguished, and the Town Council has been re-invested in the several Properties and Funds held under the said Trust: The Portion of the Meadows of *Dundee* which formed the Subject of the Action of Reduction, Declarator, and Count and Reckoning, at the Instance of the Presbytery, against the Trustees for the Creditors of the Town and the Town Council, as herein-before recited, shall be held to have been, and, so far as not already sold or feued, to be hereafter the Property of the Town Council, as Part of the Common Good of the Burgh of *Dundee*, and held by them under the Charters of King *James* the Sixth and King *Charles* the First, herein-before recited, freed and disburdened of the said Trust, any thing in the said Agreement to the contrary notwithstanding.

Bequests
incorporated
with Hos-
pital Funds.

16. The Mortifications or Bequests of Sir *Thomas Moody*, *Thomas Halliburton*, Mrs. *Janet Mylne*, *Alexander Fraser*, the Reverend *James Paton*, and *Thomas Wichton*, herein-before mentioned, and all other Mortifications and Bequests heretofore managed and administered

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nistered by the Town Council, along with the Properties and Funds belonging to the Hospital, and all Properties and Funds acquired with the Monies of the said Mortification and Bequests, or now representing the same, shall be and the same are hereby incorporated with the Properties and Funds belonging to the Hospital, and the same, and the Revenues thereof, shall be applicable to the general Purposes of the Hospital, notwithstanding any special Destination thereof contained in the respective Wills or Deeds of Mortification of the said Sir *Thomas Moody*, *Thomas Halliburton*, *Janet Mylne*, *James Paton*, *Alexander Fraser*, and *Thomas Wichton*, or the Granters of any other such Mortifications or Bequests as aforesaid.

17. In respect of the Stipends provided by the Town Council for the Ministers of the *South Church* and *Cross Church* in *Dundee*, under the said Agreement, the Town Council shall be entitled to receive, and apply towards Payment of the said Stipends respectively, and in Relief *pro tanto* of their Obligations in respect thereof, the yearly Interest or Revenue derived from the Mortification for a Catechist in *Dundee*, herein-before mentioned, and all Monies heretofore in use to be contributed towards the Stipend of the Minister of the *South Church* by the Guildry Incorporation of *Dundee*, the *Seamen's Fraternity*, and all other Persons and Corporations who now are liable to make such Contributions; and all such Right as now belongs to the Ministers of the said *South Church* and *Cross Church* respectively to demand Payment of the Sums contributed from the said Mortification, Guildry Incorporation, and other Persons and Corporations, is hereby transferred to and vested in the Town Council.

Certain Revenues and Monies transferred to Town Council.

18. All Liability on the Part of the Town Council, in any of their Characters or Capacities of representing the Town and Community of the Burgh of *Dundee*, or of representing the Hospital, for the Payment of Stipends to the present Ministers of *Dundee* or any of them, or their Successors in Office, whether arising under the Decrees of Erection herein-before recited, or under any Contract, Grant, ancient Usage, or otherwise, is hereby discharged, and declared to be superseded by the Provisions made by the said Agreement and this Act for the Payment of Stipends to the Ministers of the said *South Church*, *Steeple Church*, *Cross Church*, and *Saint David's Church*; and in respect of such Provisions, and the Undertaking contained in Article Fifteenth of the said Agreement, the said Decrees of Erection, so far as respects the Obligations thereby laid on the Town Council for Payment of Stipends to the present Ministers of *Dundee* or any of them, or their Successors in Office, and also the Decree erecting *Saint David's Church*, so far as the Town Council are thereby laid under Obligation to erect and endow,

Liability of Town Council for Payment of Stipends superseded by Provisions of Agreements.

[Private.]

5 0

a Sixth

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a Sixth Charge in the Town of *Dundee*, are hereby cancelled and annulled, without Prejudice to the Provisions of the said several Decrees in other respects.

Saving
Rights of
Parish
Minister.

19. Nothing in this Act contained shall prejudice or affect the Right of the present or of any future Minister of the Parish of *Dundee* to Payment of Stipend out of the Teinds of the said Parish.

Effect of
Judgments
of Court of
Session in
Action of
Declarator.

20. The Interlocutors or Decrees of the Court of Session pronounced in the first-recited Action of Declarator at the Instance of the Presbytery against the Town Council shall not be held or construed to declare or impose on or against the Town Council any Obligation to grant Bond for or make Payment to the Hospital of any Sum or Sums of Money other than or beyond the Sums specially provided for by the said Agreement, or any other Obligations, Duties, or Liabilities which are inconsistent with the Provisions of the said Agreement or of this Act.

Power to
settle Scheme
for Applica-
tion of Re-
venues of
the Hospital.

21. It shall be lawful for the Town Council, with the Approval of the Lord President of the Court of Session, to settle a Scheme for the Application and Distribution of the Share of the yearly Revenue of the Hospital which shall be applicable, in Terms of the said Agreement, towards the Support of the Poor.

Town Coun-
cil may make
up Titles to
Properties.

22. It shall be lawful for the Town Council, in any of their several Characters or Capacities mentioned in the said Agreement, to make up and complete Titles to the several Heritable Properties referred to in the said Agreement, by applying for Warrants and otherwise adopting the Procedure authorized by the Twenty-first Section of "The Titles to Land (*Scotland*) Act, 1858," and by the Thirty-eighth Section of "The Titles to Land (*Scotland*) Act, 1860," in reference to the Case of Judicial Factors and Judicial Managers, and the Titles so made up and completed shall be valid and effectual to all Intents and Purposes.

Saving
Rights of
Ministers
Widows
Fund.

23. Nothing in this Act contained shall limit, prejudice, or affect the Claims, Rights, or Privileges of the Fund established by Act of Parliament for a Provision to the Widows and Children of the Ministers of the Church of *Scotland*, and of the Heads, Principals, and Masters in the Universities of *Saint Andrew's*, *Glasgow*, *Edinburgh*, and *Aberdeen*, or of the Trustees or General Collector or Receiver of the said Fund.

General
Saving of
Rights.

24. Saving and reserving always to the Queen's most Excellent Majesty, Her Heirs and Successors, and to all other Persons or Corporations, their Heirs and Successors, Executors, Administrators,
and

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and Assignees, (save and except the Persons or Corporations who have consented to the passing of this Act or may hereafter be specially affected by the Provisions of the said Agreement and of this Act,) all such Estate, Right, Title, Interest, Claim, and Demand whatsoever, as they or any of them had before the passing of this Act, or could claim or demand if this Act had not been passed.

25. The Expenses of applying for and obtaining this Act, and incidental thereto, shall be paid as follows: Two Third Parts thereof shall be paid out of the Funds or Revenues of the Hospital, and the remaining One Third Part thereof shall be paid by the Town Council out of the Common Good or Revenues of the Burgh of *Dundee*. Expenses of Act.

26. This Act shall not be a Public Act, but shall be printed by the several Printers to the Queen's most Excellent Majesty duly authorized to print the Statutes of the United Kingdom, and a Copy thereof so printed by any of them shall be admitted as Evidence thereof by all Judges, Justices, and others. Act as printed by Queen's Printers to be Evidence.

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SCHEDULE referred to in this Act.

AGREEMENT between the Magistrates and Town Council of Dundee, the Presbytery of Dundee, and the Reverend Andrew Taylor and the Reverend Peter Grant, Two of the Ministers of Dundee, dated Eleventh December Eighteen hundred and sixty-three, and recorded in the Books of Council and Session at Edinburgh, Seventeenth December Eighteen hundred and sixty-three.

Agreement among the Parties after named, videlicet, the Magistrates and Town Council of Dundee in their Character of representing the Common Good and Whole Community of Dundee on the First Part, the said Magistrates and Town Council in their Character of Patrons or Trustees representing the Hospital of Dundee on the Second Part, the said Magistrates and Town Council of Dundee in their Character of Patrons or Trustees representing Johnston's Charity of the Third Part, the Reverend the Presbytery of Dundee on the Fourth Part, the Reverend Andrew Taylor, One of the Ministers of Dundee, on the Fifth Part, and the Reverend Peter Grant, One of the Ministers of Dundee, on the Sixth Part.

The said several Parties, with a view to the final Adjustment of all the Litigation and Questions among them, have contracted and agreed, and do hereby contract and agree, to and with and among each other, to the Effect and in Manner following; videlicet,

First.—In the first place, the said Parties of the First, Second, Third, and Fourth Parts respectively, with the Consent of the said Parties of the Fifth and Sixth Parts, mutually consent and declare that Monorgan's Croft, which by the Judgments of the House of Lords is declared to be the Property of the said Party on the Third Part, is to be held to be that Enclosure known in modern Times as the Hospital Ward, bounded on the West by the Turnpike Road from Dundee to Coupar-Angus and Meigle, on the North by the Chapelshade Lands, on the South by the Road which runs between the ancient Lade or Burn and the Hospital Ward, commonly known as the South Ward Road, and on the East by the Constitution Road, but subject to all the Feu Rights already granted; and, on the other Part, that the West Ward, and all the other Subjects claimed in recent Years as belonging to Johnston's Charity, but hitherto accounted for as Portions of the Hospital Estate, do not belong to Johnston's Charity, but to the Hospital.

Second.—In the second place, the several Parties of the First, Second, Fourth, Fifth, and Sixth Parts respectively consent and declare that the Portion of the Meadows of Dundee which was claimed by the said Party of the Fourth Part in the Action of Reduction and Declarator raised and signeted at the Instance of the said Party of the Fourth Part against the said Party of the First Part, and the Trust Disponees of the Town of Dundee, on Twentieth December Eighteen hundred and sixty-two, and now depending in the Court of Session, be held and declared to have been and to be the Property of the

said

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said Party on the First Part, as Part of the Common Good or Common Estate of the Community of Dundee, but subject always to the Rights of the said Trust Disponees; and the said Party of the Fourth Part consent that Decree be pronounced in the said Action assoiling the Defenders from the Conclusions thereof; but the said Party of the First and Second Parts respectively undertake to bear all the Costs which have been incurred in the said Action, relieving the said Party of the Fourth Part in manner herein-after mentioned.

Third.—In the third place, the said Party of the Fourth Part, with the Concurrence of the said Parties of the Fifth and Sixth Parts, consent and contract and agree that the several Judgments and Decernitures pronounced in the Action of Declarator at the Instance of the Party of the Fourth Part against the Party of the First Part, the Summons in which is dated and signeted Nineteenth November Eighteen hundred and fifty-one, be modified and superseded by the Obligation herein-after imposed upon and undertaken by the said Party on the First and Second Part, and the other Arrangements herein-after expressed.

Fourth.—In the fourth place, the said Party of the First and Second Parts contract and undertake that there shall hereafter be paid in manner after-written, to each of the Four Stipendiary Ministers of Dundee, namely, the Minister of the South Church, the Minister of the Cross Church, the Minister of the Steeple Church, and the Minister of Saint David's Church, that is to say, to the present Ministers and to their respective Successors serving the said Cures in all Time to come, a Stipend or Salary for the Year from Martinmas Eighteen hundred and sixty-three to Martinmas Eighteen hundred and sixty-four of Two hundred and seventy-five Pounds Sterling, and for the Year from Martinmas Eighteen hundred and sixty-four to Martinmas Eighteen hundred and sixty-five, and all future Years, a Stipend or Salary of Three hundred Pounds (with the Provision for future Increase after expressed), payable the said Stipends by equal Portions half-yearly at Whitsunday and Martinmas in each Year, with a Fifth Part more of Penalty in case of Failure in the punctual Payment, and Interest at the Rate of Five per Cent. per Annum from the stipulated Terms for Payment during the Non-payment; and these Stipends are to be in full of all that the Ministers serving the Cure can ask or claim under the Decrees of Election of the several Charges when there are such, or by ancient Usage or Contract, or in any other Way; and in particular, in the Case of the South Church, the Stipend above named is to include as Part of it the several Sums, amounting together to Ten Pounds Three Shillings and Tenpence Halfpenny, in use to be contributed towards the said Stipend by the Guildry Incorporation, the Seamen's Fraternity, and other Corporations, all which Contributions are to be recoverable henceforth by the said Party of the First Part, or, if received by the Minister himself, are to be accounted for by him as so much received towards the stipulated Stipend; and in the Case of the Minister of the Cross Church the said Stipend is to include as so much towards the said stipulated Stipend the Sum in use to be paid to the Minister of the Cross Church as in the Place of the Catechist of former Times.

Fifth.—In the fifth place, the said Party of the Second Part shall pay out of the Stock of the Hospital Trust or Fund the Sum of Two thousand five hundred Pounds to the said Reverend Andrew Taylor, as in lieu and in full of all Compensation legally or equitably due to him in respect of the Stipend

[*Private.*]

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not having been enlarged in Time byegone ; but, towards making up the Sum, so to be paid, the said Party of the Second Part is to have Right to the several Sums (already mentioned) payable towards the Stipend of the Minister of the South Church by the Incorporations before mentioned, and amounting to Ten Pounds Three Shillings and Tenpence or thereby, yearly, but which have not been paid to the said Andrew Taylor during the Fourteen Years ending with Martinmas Eighteen hundred and sixty-three ; and in like Manner the said Party of the Second Part shall pay out of the Stock of the Hospital Trust or Fund the Sum of One thousand seven hundred and ten Pounds to the said Reverend Peter Grant, as in lieu of and in full of all Compensation legally or equitably due to him in respect of the Stipend not having been enlarged in Time byegone ; and the said Sums shall be paid to the said Reverend Andrew Taylor and Reverend Peter Grant respectively on the First Day of January Eighteen hundred and sixty-four, and shall bear Interest at the Rate of Four per Cent. per Annum during the Nonpayment.

Sixth.—In the sixth place, the said Reverend Andrew Taylor and Reverend Peter Grant respectively accept the Provisions herein contained in their Favour as full Satisfaction of all their Claims and Demands, and in consideration of the Obligation herein contained, consent to the Actions depending at the Instance of them respectively against the Magistrates and Town Council being closed by a concerted Decree on joint Minutes in pursuance and in Terms of this Deed ; but the said Parties of the Second Part specially engage to relieve the said Parties of all Costs of the said Actions in manner after mentioned.

Seventh.—In the seventh place, the said Parties of the First, Second, and Third Parts respectively, with the Assent of all the other Parties for their Interest, engage to pay out of the Stock of the Hospital Fund all the Costs incurred by the Parties Pursuers and Defenders in the several Actions after mentioned, in so far as the same have not been already paid ; videlicet,

(First.) The Action of Declarator at the Instance of the Party on the Fourth Part against the Magistrates and Town Council, dated and signeted Nineteenth November Eighteen hundred and fifty-one :

(Second.) The Action at the Instance of the Reverend Andrew Taylor against the same Defenders, dated and signeted Eighth December Eighteen hundred and sixty :

(Third.) The Action at the Instance of the Reverend Peter Grant against the same Defenders, dated and signeted Fourth December Eighteen hundred and sixty :

(Fourth.)—The Two Arrestments at the Instance of the Reverend Andrew Taylor and the Reverend Peter Grant respectively, and the Two Petitions by the Magistrates and Town Council against the Reverend Andrew Taylor and the Reverend Peter Grant, (with the Arrestments themselves to which such Petitions had reference,) presented on Fifth November Eighteen hundred and sixty-two for Recal of these Arrestments :

(Fifth.)—The Action of Reduction and Declarator at the Instance of the said Party on the Fourth Part against the said Party on the First Part, and also against the Trustees for the Town of Dundee and certain Creditors, dated and signeted Twentieth December Eighteen hundred and sixty-two, and the Process of Suspension and Interdict at the Instance of the said Pursuers against the same Defenders in relation to the same Matter :

(Sixth.)—

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(Sixth.)—The Application which was presented to the Court on November Eighteen hundred and sixty-three, at the Instance of the said Party on the Fourth Part, for the Appointment of a Judicial Factor :— And this Obligation is to include not only the taxed or proper judicial Costs, but also a further Sum not exceeding Two thousand Pounds for making up to the Parties of the Fourth, Fifth, and Sixth Parts the extra-judicial Costs incurred by them in the said Actions, and, in particular, the said Parties of the Second Part are also to pay out of the said Stock of the Hospital Fund the Sums found due to Mr. Jamieson, and Mr. Innes, but not yet paid, being Part of the Costs incurred in the First Action of Declarator, and also the Sums due to the Agents of the said Parties on the First and Second Parts, and to the Agents of the Town's Trustees, for the complete Relief of the said Trustees of extra-judicial as well as judicial Costs, in so far as these have not already been paid, and also the Cost of this Deed, and the other Costs incurred or to be incurred in carrying out the Arrangements ; and all such Payments made or to be made are declared and agreed by the Parties of the said First, Third, Fourth, Fifth, and Sixth Parts respectively to be lawful and just Payments out of the Hospital Fund in respect of the other Obligations and Arrangements herein contained ; but the Parties of the First Part, in respect of the Question affecting its own pecuniary Interest, and as a Compensation of all Claims in reference to Liability for Costs, undertake to pay to the Hospital Fund towards the Relief of that Fund from the Costs it is to bear the Sum of One thousand Pounds, which Sum is accepted by all the other Parties as in full of all the First Party's Liability in Law or in Equity for Expenses ; and the Party of the Third Part, in respect of the Costs incurred in the before-mentioned Actions in relation to Monorgan's Croft, and in separating the Johnston Charity from the Hospital, undertake to pay and bear as its Share of the said Costs such Proportion thereof as the Magistrates and Council shall think to be fair and reasonable, having regard to the Nature of the several Actions and the Value of the said respective Funds, which is to be paid by the said Party of the Third Part to the said Party of the Second Part.

Eighth.—In the eighth place, the said Party of the First Part binds and obliges itself and the whole Community and Common Good of the Town of Dundee to grant a sufficient Bond for or make Payment of a Sum of such Amount as will increase the Hospital Fund to such Amount that the Church's Half will be Six hundred and eighty-five Pounds per Annum, which with the Five hundred and fifteen Pounds presently payable out of the Common Good or guaranteed by the Town Council will make up One thousand two hundred Pounds for the Four Stipends of Three hundred Pounds each per Annum ; and the Sums so to be paid, with the other Obligations herein contained, are accepted of and by the Parties declared to be in full and in lieu of the Obligations declared against the Common Good by the Lords of Council and Session in their Judgment dated Twenty-sixth February Eighteen hundred and sixty-three ; and the said Bond, if granted, shall bear Interest at the Rate of Four per Cent. per Annum during the Non-payment, with the usual liquidate Penalty of One Fifth Part more of each Payment in case of Failure in the punctual Payment ; and, on the other Part, all the Lands in West Chapelshade which by Disposition dated Twenty-ninth October Eighteen hundred and thirty-five were conveyed by the said Party of the First to the said Party of the Second Part, or to the Hospital Master for behoof of the Hospital, shall, on the other hand, and in consideration of
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the said Sum so to be paid or secured, and the other Obligations now undertaken by the said Party of the First Part, be restored to the said Party of the First Part, in order that the same may be held and used or sold and disposed of by the said (First) Party of the First Part for the Relief or Benefit of the Community of Dundee, as if the same had never been sold or conveyed, saving only that whatever Rights or Servitudes have arisen through the Appropriation of Portions of the said Lands for Burial Purposes must be respected (so far at least as Law requires), without any Recourse on the Hospital Fund; and the said Party of the Second Part are empowered and shall be bound to give to the said Party of the First Part, at the mutual Expense of the Two Parties, whatever Conveyances or other Deeds are necessary for carrying what is above written into effect, and that without Repayment of the Price received or other Consideration, except to the Extent and with the Conditions and Obligations of this Contract above written.

Ninth.—In the ninth place, the Party of the Third Part agrees to pay to the Party of the Second Part the Sums expended out of the Hospital Fund on or in connexion with the Barrack Park, as referred to in the Judgment of the Second Division of the Court of Session, dated Twenty-sixth February Eighteen hundred and sixty-three, with Interest at the Rate of Four per Cent. per Annum from the Time of Payment out of the Hospital Fund until Repayment; but from and after the Date hereof all Payments for Rent or otherwise in connexion with the said Park shall be borne by the Party of the First Part, and not charged against either the Party of the Second Part or the Party of the Third Part.

Tenth.—In the tenth place, it shall be held and is contracted and declared by the Parties of the First, Second, and Third Parts, with Consent of the Parties of the Fourth, Fifth, and Sixth Parts, so far as they have any Interest, that the Stock of Johnson's Charity shall be held to be Monorgan's Croft, as already bounded and described, together with One thousand Pounds Sterling of Money taken out of the Income which has arisen from Monorgan's Croft since the Date of the Judgment of the House of Lords on Twenty-fourth July Eighteen hundred and sixty-one, and all that has arisen since the said Date beyond the said Sum, and that shall hereafter arise, shall be deemed and treated as Revenue of the Charity; but all Income which arose from Monorgan's Croft, or from unapplied Portions of the original Bequest, before the said Twenty-fourth July Eighteen hundred and sixty-one, shall be held as having been lawfully applied and expended along with and as Part of the Hospital Revenue, and all accounting for the Time prior to the said Date is hereby excluded and discharged; but the Stock of Johnson's Charity, and also the bygone Revenue, so far as accumulated and available, shall be subject to Reduction by the Payments made or to be made of Costs incurred or to be incurred in relation to the Affairs of that Charity itself (so far as the same have not been or shall not be taken from the Revenue which may yet arise), and the Stock shall also be subject to the Payments on account of Law Costs, and the Expenditure on or in connexion with the Barrack Park, hereinbefore contracted to be made by the Party of the Third Part to the Party of the Second Part.

Eleventh.—In the eleventh place, it shall be held and is contracted and declared by the Parties of the First, Second, Fourth, Fifth, and Sixth Parts, with the Consent of the said Party of the Third Part, that the Stock of the Hospital Fund shall be held as comprising all the Heritable Subjects and
Sources

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Sources of Revenue which have been in use to be regarded as the Hospital Stock, except what is excluded by the Provisions of this Deed, but subject to Reduction by Fulfilment of Obligations or Burdens imposed on the Hospital Fund by this Deed, and whatever other Debts and Obligations it may be under, and with the Additions contracted for by the Payments or Bonds to be made or granted by the said Parties of the First and Third Parts respectively in favour of the said Party of the Second Part, as expressed in the former Articles of this Deed.

Twelfth.—In the twelfth place, all the Parties of the First, Second, and Fourth Parts, with the Concurrence of the Parties of the Fifth and Sixth Parts, mutually contract and declare and agree that the Hospital Fund, subject to the Charges and Payments herein-before specified, shall henceforth be held by the said Parties of the Second Part in trust for the free Revenue of the Fund being applied (first) in Payment of the Sums which heretofore have been in use to be paid therefrom for the Support of the Grammar School and for Communion Elements, and (second) in order that the Balance of the free Income of the Fund may be yearly divided into Two equal Parts, one just and equal Half to be applied to making up the agreed on Stipends to the Four Stipendiary Ministers of Dundee, viz., the Minister of the South Church, the Cross Church, the Steeple Church, and Saint David's Church, set forth in the Fourth Article of this Deed, and the other just and equal Half to be applied in Pensions for the Support of poor Persons not being Objects of Parochial Relief according to ancient Usage, on a Scheme to be hereafter settled by the Parties of the First Part; and all the Parties hereto contract and agree that they will not oppose whatever Means are resorted to by any of them to make the Division into Two equal Parts perpetual and free from all Challenge.

Thirteenth.—In the thirteenth place, it is specially contracted and agreed by and among the Parties of the First, Second, and Fourth Parts, with Concurrence of the Parties of the Fifth and Sixth Parts, that the One Half of the Revenue of the Hospital Fund so set apart for the Ministers of the before-mentioned Churches shall not be of less Amount in any Year than Six hundred and eighty-five Pounds, so that such Sums may be paid out of the Hospital Fund to the several Ministers serving the Four Cures above named for all Years after Martinmas Eighteen hundred and sixty-four, as with the Sums otherwise payable to them respectively will make up to each of the Four Ministers serving the Cure of the said Four Churches the agreed-on Stipend of Three hundred Pounds; and accordingly the said Party of the First Part becomes bound to pay to the Minister of the South Church for the Time in all Time to come after Martinmas Eighteen hundred and sixty-four his annual Stipend of One hundred and five Pounds, and to the Ministers of the Cross and Steeple Churches respectively their respective Stipends of One hundred and five Pounds, and to the Minister of Saint David's Church the Stipend of Two hundred Pounds, and that in Terms of the Decrees of Erection; and the said Party of the Second Part become bound to pay, in addition to or supplement of these Stipends, out of the Hospital Fund, as before provided, to the Minister serving the Cure of the South Church the Sum of One hundred and ninety-five Pounds, to the Minister serving the Cure of the Cross Church the Sum of One hundred and ninety-five Pounds, to the Minister serving the Cure of the Steeple Church the Sum of One hundred and ninety-five Pounds, and to the Minister serving the Cure of Saint David's Church the

[*Private.*]

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Sum of One hundred Pounds, so making up in all a Stipend of Three hundred Pounds for each of the said Four Charges; and all these Payments are to be made at the Terms and with Interest and Penalty as before provided; and it is in like Manner agreed that all these Obligations shall extend to the Year now current, viz., from Martinmas Eighteen hundred and sixty-three to Martinmas Eighteen hundred and sixty-four, save and except that for that Year the Payments by the Parties of the Second Part shall be diminished to the Extent of Twenty-five Pounds for the whole Year for each of the Four Cures, making the Stipend for the Year Two hundred and seventy-five Pounds instead of Three hundred Pounds, all as before provided.

Fourteenth.—In the fourteenth place, in case by the Increase on the free Income of the Hospital Fund there shall be a Surplus of Income on the Clergy's Half, under the Provisions above written, over what is necessary for the Payment of the Stipends above mentioned, then from Time to Time the said Party of the Second Part shall make Additions to the said Stipends beyond the said Sum of Three hundred Pounds yearly, but this is not to be done in single Years from what is casual Income, such as may chance to be needed for Deficiencies in after Years, but only from Time to Time as it appears there is a real Increase promising to be permanent; and the Party of the First Part is to be the Judge of what is right, undertaking to do Justice to the Incumbents for the Time, with due Regard to the other Interests involved; and it is undertaken that the Party on the Second Part shall exhibit yearly Accounts of the Hospital Fund to all or any of the Parties interested desiring to have them; but the Party on the Second Part shall not be liable for strict Diligence, nor for Factors or Agents, but only for actual Intromissions; saving only that in all Cases the full Stipend must be made up and paid under and in Terms of this Deed, notwithstanding Losses or Misfortunes to the Hospital Fund.

Fifteenth.—The Party of the First Part undertakes, on or before the Eleventh of November Eighteen hundred and sixty-four, either to pay, or, in their Option, grant Bond for the Sum of Two thousand Pounds, bearing Interest at the Rate of Four per Cent. per Annum during the Nonpayment, to or in favour of the said Party of the Fourth Part, the said Sum to be paid, not out of the Hospital Fund, but from the Common Good of the Burgh; and in consideration of the said Payment the said Party of the Fourth Part undertakes to discharge the said Parties of the First and Second Parts of and from all Liability for the Obligation imposed on the said Party of the First Part or of the Second Part (one or other or both) by the Decrets of the Court for Plantation of Kirks and Valuation of Teinds, erecting Saint David's Church in the Year Eighteen hundred and twenty-three, for the Erection and Endowment of a Sixth Charge in Dundee; and the said Sum of Two thousand Pounds, and all the Interest to arise thereon, are to be set apart and accumulated by the said Party of the Fourth Part in order to the erecting and endowing of a Sixth Charge in Dundee, under the said Party's own Management and Care, in lieu of that which was intended and provided for by the said Decree of Erection of Saint David's Church; and the Minister of such Sixth Charge so to be erected by the Party of the Fourth Part is not to have any Portion of the Revenue from the Hospital Fund.

Sixteenth.—It is agreed by and among all the Parties hereto, that all or any of them who may have Interest in the special Matter shall concur in whatever Proceedings in Court may be found advisable, and in granting whatever

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whatever Deeds are found to be necessary or expedient, to or by or among the Parties, for carrying out this Contract, the Costs of all such Proceedings and Deeds to be borne as herein-before provided.

Seventeenth.—Should any Dispute or Difference arise as to the true Meaning or Interpretation of these Presents, the same shall be referred to the amicable Decision and Award Arbitral of James Moncreiff, Esquire, the present Lord Advocate for Scotland, whom failing, of the Lord Advocate for the Time being;

Lastly.—All the several Parties bind themselves each to the others to implement and fulfil this Contract in all its Parts, and they consent to the Registration hereof for Preservation and Execution.

In witness whereof these Presents, consisting of this and the Nine preceding Pages, together with Two marginal Additions, one on Page First and the other on Page Fifth hereof, all written by Peter Stewart, Clerk to Christopher Kerr, Town Clerk of Dundee, are (with and under the Declaration that the Words "a rateable Proportion thereof corresponding to," occurring partly on the Twelfth and partly on the Thirteenth Lines, both counting from the Top of said Page Fifth, are delete, and that the Word "of," occurring on the Twenty-fourth Line of the same Page; is written on Erasure,) subscribed as follows; viz., by the Magistrates and Town Council of Dundee, Parties hereto of the First, Second, and Third Parts, in their several Characters and as representing the several Interests herein-above specified, at a Meeting of the said Magistrates and Council duly convened on the Eleventh Day of December Eighteen hundred and sixty-three Years, before these Witnesses, the said Christopher Kerr and Donald Glassford, Writer in Dundee; that is to say, this Page is subscribed by Charles Parker, Esquire, Engineer in Dundee, Provost, George Ower, Glazier in Dundee, William Halley, Manufacturer in Dundee, James Yeaman, Fish-curer, Dundee, Bailies, James Kennedy, Merchant in Dundee, Dean of Guild, William Foggie, Joiner in Dundee, Treasurer, William Hean, Glazier, Dundee, Hospital Master, George Butchart, Baker, Dundee, Kirkmaster, James Allan, Perfumer, Dundee, George O'Farrell, Pawnbroker, Dundee, David James, Seedsman, Dundee, David Rollo, Writer, Dundee, John Melville, Corn Merchant, Dundee, William Nicol, formerly Boot-maker in Dundee, now residing in Broughty Ferry, William Hay, Writer, Dundee, John Ritchie, House Factor, Dundee, Andrew Greig junior, Shipowner, Dundee, and David Cooper, late Slater, now residing in Dundee, Common Councillors, all of the said Burgh; and the Nine preceding Pages, with the said Two marginal Additions, are subscribed in Presence of the Council by the said Charles Parker for himself and the other Members of the Council, and as duly authorized to sign the same on their Behalf; and these Presents are likewise subscribed by Archibald Watson, Doctor in Divinity, Minister of the Parish of Dundee, the Reverend Peter Grant, Minister of the Cross Church, Dundee, the Reverend Andrew Taylor Minister of the South Church, Dundee, and David Robertson, Draper in Dundee, all Members of the Presbytery of Dundee, Parties to this Agreement on the Fourth Part, for and on behalf of the said Presbytery, and duly authorized by them; and by the said Reverend Andrew Taylor and the Reverend Peter Grant, the Parties hereto of the Fifth and Sixth Parts, for their respective Rights and Interests, all at Dundee, on the said Eleventh Day of December and Year last mentioned, before these Witnesses, the said Christopher Kerr and the said Donald Glassford. (Signed) Charles Parker, Provost;

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Provost; Geo^e Ower, Bailie; Willm. Halley, Bailie; Jas. Yeaman, Bailie; James Kennedy, D.G.; William Foggie, Treasurer; Wm. Hean, H.M.; George Butchart, Councillor; James Allen, Councillor; Geo. O'Farrell, Councillor; David James, Councillor; Dav. Rollo, Councillor; John Melville, Councillor; William Nicoll, Councillor; William Hay, Councillor; John Ritchie, Councillor; Andrew Greig, jr., Councillor; David Cooper, Councillor; Archd. Watson; Peter Grant; Peter Grant; And. Taylor: And. Taylor; David Robertson; Chris. Kerr, Witness; D. Glassford, Witness; Chris. Kerr, Witness; D. Glassford, Witness.

LONDON:

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