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FOREWORD

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**VOLUME III
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ECCLESIASTICAL LEGISLATION.

THE CARRIDEN CASE.

Of the many cases of disputed settlement which have occurred since the passing of Lord Aberdeen's Act, there has been none perhaps possessing more interest for a lawyer, or presenting more peculiar features, than the Carriden Case.

The facts may be stated in few words. The Rev. Roger Hall was licensed by the Presbytery of Hamilton in the year 1854, and shortly afterwards he was appointed assistant to Dr Dunbar, in the parish of Applegarth. In that situation he continued till 1858, discharging, so far as was competent for a licentiate, all the duties of a parish minister to the entire satisfaction of the parishioners, by whom he was presented, on his leaving them, with a handsome testimonial as a token of their esteem. In the autumn of 1858 Mr Hall was invited to become the pastor of a Scotch church established at Hurst, in the neighbourhood of London, where he officiated till the spring of 1860; and here also he appears to have acted in all respects as a zealous and faithful minister. Early in 1860 he resigned his charge at Hurst, and in the month of May following he was presented, by the Duke of Hamilton, to the church and parish of Carriden. It should be mentioned that this was not a presentation made without consulting the parishioners. The Duke allowed the people to have a list of candidates, and to vote upon them, reserving only to himself to select either of the two who should have the greatest number of votes. The people acquiesced in this arrangement. Mr Hall and another were selected, and submitted to the decision of his Grace, and the Duke gave the presentation to Mr Hall. Here, if ever, was a case where a harmonious settlement might be expected.

But the decision of the General Assembly in the Soonic Case has apparently given the people quite a relish for ecclesiastical litigation. Under Lord Aberdeen's Act they are beginning to dis-

cover that they have an extent of liberty which is likely to run into license, and a crop of "cases" is already springing up which promises to give the General Assembly enough to do for some time to come. Be that as it may, when the Presbytery of Lindlithgow met to induct Mr Hall, a paper was presented, signed by some fifty of the parishioners, objecting to the settlement. Whether the list comprehended any of those who had voted for Mr Hall, or, if it did, why they now objected, we do not know. But it would appear that, after the presentation, rumours had been spread in regard to the health of Mr Hall, and as the parish had for many years been much neglected, owing to the bad health of the last incumbent, the people would seem to have been sensitive on that point, and naturally so. As it was, objections were lodged. Against the sermons of the presentee, or his prayers, or his character in any respect, nothing was objected. Indeed, on all hands, it appears to have been conceded that on these points nothing could be said but what was to the honour and credit of the presentee. The objections resolved into these, (1) that his appearance in the pulpit on the occasion of the two trial sermons "led the objectors to the conclusion that he had a weak constitution;" and (2) that his voice was weak, so as to be "inaudible to the aged, and to many of us who occupy seats remote from the pulpit."

These objections were held to be relevant. Mr Hall gave in defences pointedly denying the averments both as to his health and to his audibility, and the Presbytery allowed a proof, "in terms of the Overture and Interim Act of the last General Assembly." Both parties appear to have made a very full precognition, and the eminent counsel for the presentee, in an opinion which was read to the Presbytery, and which became, as will be seen, one of the documents in the case, stated, on his professional re-

sponsibility, that the result of the precognition, made on behalf of his client, was, "in the highest degree, favourable to Mr Hall," and that the objections as to his health and to his voice could be disproved by an overwhelming mass of evidence. Yet, when the Presbytery met on the 10th of December last, to proceed with the proof, the presentee abandoned his case, and this, as he publicly stated, on the advice of his counsel, Mr Logan, as expressed in the opinion referred to—the same opinion in which Mr Logan states, as his deliberate conclusion, drawn from a precognition taken "with great fulness and apparent accuracy"—that Mr Hall must have been successful had the case proceeded, and been tried in a legal and constitutional manner. It is this which forms the distinctive feature of this very curious case, and which invests it with an interest and importance not to professional men only—as a mere abstract point of law—but to the country at large, as affecting the position and the power of the Church Courts. For what remains of the facts it will be sufficient to quote the opinion. It is a very able document expressed in the close, clear, and logical style which is characteristic of the learned counsel, and not the less cautiously expressed, it may be believed, that it was to become part of the records of the Presbytery, and was to form the grounds of the important step to be taken by the presentee. We now turn to the opinion.

After stating his grounds for coming to the conclusion, that as regards health and all other points, "the result of the fullest inquiry could not be otherwise than in the highest degree favourable to Mr Hall," and that the objections "will after investigation resolve into this single matter—that the voice of the presentee is weak, and that he was imperfectly heard," and after referring to the causes which had contributed to prejudice the minds of the people on this point, the learned Sheriff proceeds as follows:—

"With pre-possessions thus arising and thus fostered, it is not unnatural to suppose that those parishioners who heard the trial discourses listened with little desire to hear, or that they, perhaps unconsciously to themselves, ascribed to a want of power on Mr Hall's part, what was truly attributable to their own want of attention. One objector, indeed, after stating that he could not hear distinctly, seems candidly to have admitted that this might arise from his not paying attention. But, be it as it may, it is clear from the precognitions that a large proportion of those who heard the two trial discourses have made up their minds to stand by their objections, and to depone before the Presbytery that Mr Hall's voice is so weak that they could not hear him distinctly. Now, if it be proved that the presentee has a weak voice, the Church Courts must give effect to the objection. If it be disproved, there will be an end of the opposition; for it appears to me to be the only objection on which the presentee could be excluded.

"In this state of matters, it becomes the duty of the presentee, and of his friends, carefully and at once to consider his present position and probable prospects.

"That the objection of inaudibility is without any real

foundation, I cannot, judging from the precognitions before me, entertain a doubt. First of all, there is the evidence of several individuals who were present in church, some of them aged, and one even dull of hearing, who state that they heard every word at all the services, which could not possibly have been the case if Mr Hall's voice was so weak and inaudible as the objectors represent it. Again, there is a mass of evidence establishing the uniform clearness of voice and audibility of Mr Hall, on numerous occasions since his ordination in 1854 down to the present time. Every one at Hurst who attended the Scotch church there appears to have heard Mr Hall clearly and without difficulty during all the period of his ministrations. There is evidence that he has repeatedly preached in the parish of Cambuslang—a church, as I understand, twice as large as that at Carriden, and that he was heard there with ease by all. He is proved also to have preached with like result in a chapel at Strone, a building described as difficult for hearing; also in the parish churches of Old and New Monkland and East Kilbride, churches, it is said, more than twice as large as Carriden; by all in these congregations who have been precognosed, including many poor and aged persons, he appears to have been heard with ease. He has likewise preached on numerous occasions in the church of Applegarth, where for four years he officiated as assistant to Dr Dunbar; and there also he was heard with ease, and so in many other churches. The testimony is thus extensive, as well as decided, that, wherever Mr Hall has officiated, he has been well and clearly heard; whilst there is no evidence of his having been otherwise than in good health during the whole of the time since he was licensed.

"In any of the ordinary courts of law and justice in this country, a mass of such testimony would not fail at once to annihilate any objection to the presentee founded on his alleged inaudibility. But, unfortunately, the Courts of the Church of Scotland are at present not like other courts; inasmuch as the rules of so-called evidence, by which the General Assembly has resolved that she herself and her inferior judicatories shall be guided in cases like the present, are different from those which prevail in all other courts in this kingdom, whether civil or ecclesiastical.

"By section 10 of the interim Act of Assembly, entitled 'Overture and Interim Act of Regulations to be observed in the induction of ministers,' it is enacted, 'as to objections to the utterance or manner of the presentee in the pulpit, the evidence to be led shall have regard exclusively to the services conducted by him in the church of the vacant parish by appointment of the Presbytery; and no evidence shall be competent in proof or refutation of such objections, except from members of the congregation who were present on one or both of the occasions referred to.'

"By this piece of ecclesiastical legislation, which I do not characterize too strongly if I shall call it unreasonable, and unjust, and absurd, there is cut down at a stroke almost the entire mass of the evidence by which alone the objection of the objecting parishioners could be refuted. It does more. It deprives the presentee of the evidence of those members of the Presbytery who heard him preach those very trial discourses; as also of the evidence of several witnesses among the common people, who, although they heard these discourses, and heard them without difficulty, happen not to be members of the congregation. Nay, further, it deprives him also of important evidence from among the objectors themselves; for, though several of them admit on precognition that they heard Mr Hall perfectly well on the occasion on which he preached as a candidate, this testimony will be of no avail, since the Presbytery must exclude it, because the Act of Assembly compels them to disallow as evidence all that does not refer to the services