English Ecclesiastical Intelligence.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL. Saturday, Feb. 6.

(*Before the Bishop of* London, *Lord Justice* Knight Bruce, *Lord Justice* Turner, *Mr.* Pemberton Leigh,—*and Sir* E. Ryan.)

THE CASE OF ARCHDEACON DENISON. DITCHER *v.* DENISON.

This was an appeal from a decree of the Court of Arches pronounced on the 23rd of April, 1857, reversing a sentence of deprivation against Archdeacon Denison passed by the Diocesan Court of Bath and Wells. The proceedings had been originally instituted by the Rev. Joseph Ditcher, vicar of South Brent, under the *Church Discipline* Act, 3rd and 4th of Victoria, chap. 86, on the ground that certain sermons preached by the Archdeacon in 1853 maintained doctrine contrary to the articles of the Church of England. A commission was issued, and various steps taken under that Act, and in October, 1856, the Diocesan Court, presided over by the Archbishop of Canterbury, assisted by Dr. Lushington, having come to the conclusion that the archdeacon's doctrine was unsound, required him to recant, and upon his refusal pronounced sentence of deprivation. This sentence was reversed by the Court of Arches on the ground that Mr. Ditcher was barred by the 20th section of the act, which provides "that every suit or proceeding against any such clerk in holy orders for any offence against the laws ecclesiastical shall be commenced within two years after the commission of the offence in respect of which the suit or proceeding shall be instituted, and not afterwards." The only question raised by the appeal therefore was whether the construction put by the Court of Arches upon that section was correct. The case was argued in December last: see "Ecclesiastical Gazette" of Dec. 8.

Lord Justice Knight Bruce this morning delivered judgment. His lordship stated at length the various *proceedings which had been taken* since October, 1854, when Mr. Ditcher first made his complaint to the Archbishop of Canterbury. It is, however, unnecessary to give more than the dates of some of those proceedings. The commission to inquire into the allegations in the complaint was issued in November, 1854; notice was given to the archdeacon in December, 1854; the commissioners sat and made their report in January, 1855; articles of accusation were drawn up by Mr. Ditcher and served upon the archdeacon in August, 1855; but articles of accusation were not exhibited against him in the court at Bath until June, 1856, and sentence of deprivation was pronounced by that court in October, 1856. His lordship said that the whole of the Act had received from their lordships great and prolonged, he had almost added painful attention, for probably no writing ever in a stronger degree required that not any portion should be judicially construed without weighing the whole. It could not, in the first place, escape observation that the word "suit" was of less extent than the word "proceeding" and that in the section upon which this question turned the word "proceeding" came after the word "suit." Having weighed the whole of the statute, their lordships had come to the conclusion that the phrase "every suit or proceeding" in that section, unless the phrase meant every suit merely and nothing else, "meant every suit and every proceeding" nor less nor more. Before entering on the next question it might be well to observe that, notwithstanding the loose and inaccurate language in the Act, the Legislature had made a sufficient distinction between a suit, properly so called, and the preliminary inquiries out of which a suit might arise. A clerk might, indeed, obviate the necessity of a suit by submitting to a sentence as a result of the preliminary inquiries; but unless he did so he had a right to have the case against him decided *secundum allegata et probata*, in a suit regularly constituted. They then came to the question whether the "suit" in which was pronounced the decree of deprivation at Bath in 1856 was "commenced within two years after" the offence in respect of which the "suit" was instituted, and not afterwards. In considering that question their lordships dismissed from consideration every, if any, such offence as had taken place on the part of the archdeacon since 1853. If, therefore, the suit was not commenced before 1856 it was ill commenced, and the sentence of deprivation must fail. *Now*, it was not until April, 1856, or later, that there was any citation of the archdeacon, or any requisition for him to appear before any judge or any where. Mr. Ditcher's learned counsel, however, had ably contended that the archdeacon was deprived, in a "suit or proceeding" which was commenced by the commission, or by what took place between the commission and report, or by the report or its registration, or by the filing of the "articles" in August, 1855, or by the service in that month of a copy of those articles on the archdeacon. Their lordships, however, were of opinion, with Sir John Dodson, that this proposition was untenable. The Report was not, the inquisition or investigation under the commission was not, nor was the commission, nor was Mr. Ditcher's application to the archbishop for a commission, a suit, or the commencement of any part of a suit. The commission and the inquisition or investigation under it were merely steps for obtaining the opinion, and the report was merely the opinion so obtained, of five clerical gentlemen, in the selection of not one of whom had the proposed *reus* a voice, whether there was ground *primâ facie* for instituting a suit. Neither the report made, nor any report capable of being made, under the commission amounted, or could have amounted to an adjudication of heresy or error of any kind against Mr. Denison. He could not lawfully, before the year 1856, have been deprived, punished, or censured without his consent; nor in nor after the year 1856 was it, independently of what took place in April, 1856, or the following month, possible without his consent to deprive, punish, or censure him. Then, as to the filing of the articles in August, 1855, and the service in the same month of a copy of them on the archdeacon, each of these steps he was entitled to disregard until served with a citation or requisition under the 9th section of the Act, in the manner directed by the 10th; as long as there was no such service the articles (though preventing letters of request) were in truth, as against him, a nullity. They did not cite, command, require, or invite his attendence or appearance in any court, or at any place or time. The rule or maxim, "*Semper in dubiis benigniora præferenda*," was as true in the law of England as in the Roman law, and the statute before them was at once a law of criminal procedure as to the offences to which it related, and a Statute of Limitations as to penal prosecutions. With reference to that character, the presumption or inclination ought to be in favour of the person charged with an offence, and sued penally under it. And their lordships were of opinion that they construed the 20th section consistently with the rules and idiom of the English language, and, *omni consideratâ scripturâ*, agreeably to the spirit and general intention of the Act of Parliament, by holding, with the learned Dean of the Arches, that a suit was not constituted by the application for the commission, or by the commission, report, and articles, or by any one or more of them, or by the service of the articles on the archdeacon; that the suit, consequently, in which the Bath judgment was pronounced was not commenced, was not a "proceeding" begun, before April, 1856; that the archdeacon having not been proved to have committed any offence after 1853, there was accordingly not a suit commenced within the time prescribed by the 20th section; that the commission and report fell to the ground, therefore, and became wholly worthless; that every such proceeding, if any, as existed before April, 1856, having thus, before April, 1856, failed and become extinct, no such proceeding was capable of supporting or assisting any thing done in or after April, 1856; and that, as the necessary result of such a state of things, the proceedings against him subsequent to the year 1855 were altogether groundless and bad. Their lordships were not unaware of the inconvenience possible to arise from unavoidable delay between the issuing of a commission and the making of a report under it according to their reading of the Act; but neither could they avoid seeing the mischief, equal or greater, likely to arise from holding that a penal suit might be instituted against a clergyman, founded on a report made 20 years before it. Their lordships felt somewhat less diffidence than they otherwise should do in differing from so high an authority as the learned Judge of the Consistory Court (Dr. Lushington), by the reason of the probability that he was precluded from taking time for deliberation, and of the weighty judgment of that experienced ecclesiastical lawyer, the Dean of the Arches (Sir J. Dodson), and the previous judicial opinions (to be found in 3 and 4, *Notes of Cases*; and 2 Rob.) with which that judgment agreed. For the reasons that had been now stated, it was their lordships' intention to report to Her Majesty that, in their judgment, the present appeal should be dismissed, but without costs. Of course it was understood that upon the question of heterodoxy, the question whether the respondent had at any time uttered heretical doctrine or committed any ecclesiastical offence, their lordships had intimated no opinion.

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