

the ordinary course of justice. Such cases as the present are of very rare occurrence, and though the general principles which ought to guide the Court may to a certain extent be extracted from the few preceding cases, yet there are not, and there cannot be, any institutional writers to whose authority, as in ordinary legal questions, the Court could with confidence appeal; nor are there any decided cases as to the actual construction which ought to be put upon the Articles. True it is that there are a multitude of the most learned works by the most eminent divines as to the meaning of those Articles. But the Court cannot venture to make much use of such assistance, and for this reason, that such works naturally and properly constantly refer to the Holy Scriptures. The Court, however, ought not to venture into so wide a field of investigation, except so far as may be absolutely necessary to the discharge of its proper duty—viz., the ascertainment of the plain grammatical meaning of the Book of Common Prayer and the Articles. The construction which the Court must put upon the Book of Common Prayer and the Articles is a judicial construction. I should not presume to adopt any authority, however high, even though in my own most fallible opinion supported by scriptural quotations, unless such authority concurred with the plain grammatical meaning.

The principles governing this case were distinctly laid down in his judgment delivered by Lord Langdale in the celebrated *Gorham* case, *Lords Campbell, Wensleydale, Kingsdown, the two Archbishops, and Dr. Lushington* assenting. It was then laid down—

"This question must be decided by the Article and the Liturgy, and we must apply to the construction of those books the same rules which have been long established, and are by law applicable to the construction of all written instruments. We must endeavour to attain for ourselves the true meaning of the language employed, assisted only by the consideration of such external or historical facts as we may find necessary to enable us to understand the subject-matter to which the instruments relate, and the meaning of the words employed. In our endeavour to ascertain the true meaning and effect of the Articles, Formularies, and Rubrics, we must by no means intentionally swerve from the old-established rules of construction, or depart from the principles which have received the sanction and approbation of the most learned persons in times past, as being, on the whole, the best calculated to determine the true meaning of the documents to be examined. If these principles were not adhered to, all the rights, both spiritual and temporal, of her Majesty's subjects would be endangered."

These principles must guide the present case, always bearing in mind that it was a criminal case, and the defendant entitled to any doubt. The case was of that importance that he had taken the long vacation to consider his judgment.

In considering how the principles laid down by the Privy Council were applicable to this case, he apprehended that the course to be followed was, first, to endeavour to ascertain the plain grammatical sense of the Article of Religion said to be contravened, and if that article admitted of several meanings without any violation of the ordinary rules of construction or the plain grammatical sense, then the Court ought to hold that any such opinion might be lawfully avowed and maintained. If, indeed, any controversy arose whether any given meaning was within the plain grammatical construction, the Court must form the best judgment it could, with this assistance—that, if the doctrine in question had been held without offence by eminent divines of the Church,

then, though perhaps difficult to be reconciled with the plain meaning of the Articles of Religion, still a Judge in his position ought not to impute blame to those who held it. That which had been allowed or tolerated in the church ought not to be questioned by that Court. In construing Mr. Heath's sermons, however, the Court was not absolutely bound down by the same strict rules which applied to the construction of the Articles or the Book of Common Prayer, and therefore it might be that a greater latitude of interpretation should be allowed, and the fullest possible means should be permitted for showing that Mr. Heath did not intend to contravene the statute of Elizabeth, or promulgate doctrines inconsistent with the Book of Common Prayer.

This was the course he was bound to follow, but there were also things to be avoided—

The Court must never assume for the purposes of this case that any thing was done, or intended to be done, by the authority of the Legislature, or of the Church of England, which it did not find within the four corners of the Articles of Religion and the Book of Common Prayer; and, on the other hand, it must never assume that any thing therein said was not intended to have its full effect and operation. It was contrary to all probability, as well as irreconcilable with the ordinary rules of construction in so solemn a proceeding as the establishment of the Articles of Religion or Book of Common Prayer, to presume that any thing was inserted to be inoperative or rejected. For caution's sake, he would say that he fully recognised the position of the Judicial Committee, that there were many matters of doctrine *dehors* both the Articles of Religion and the Book of Common Prayer, and as to which entire freedom of opinion was allowed. It must, however, be assumed, as a matter admitting of no doubt, and respecting which the Court could hear no discussion, that the Thirty-nine Articles and the Book of Common Prayer, being established by the highest authority in this realm, must be taken by all who subscribed thereto to contain the doctrines of the Church of England, and, so far as therein set forth, to be accordant to Scripture; these were nearly the words which were used in the "*Bath case*," and to which he adhered.

His Lordship then read the terms of the 18th Elizabeth, and the construction which he had put on the word "*advisedly*" in that statute in giving judgment in the "*Bath case*."

One meaning of the word was "*deliberately*," as contrasted with inadvertently. Another meaning was "*intentionally*," with an express and avowed purpose. But there was a great difficulty in putting the second construction on the word, for it was hardly possible that a clergyman who had signed the Articles would preach or publish any thing with the avowed intention of contradicting them. The question of intention was of the last importance, but this Court could only arrive at the conclusion upon that question by an examination of the acts complained of; for in all the transactions of life a man must be judged by the consequences of his acts, and he must be taken to intend that which was the effect of what he had deliberately done. He must apply these same principles to the present case, and hold that the printing and publishing a set of sermons was an act done "*advisedly*."

With these observations the learned Judge proceeded to examine each of the four accusing Articles—

The sixth Article alleged that certain passages in Mr. Heath's sermons contained doctrines contrary and repugnant to the Eleventh Article of Religion. He must compare the passages with that Article. He felt this to be an arduous duty,

and he should take especial care not to travel beyond the necessity which the law imposed upon him; but he must in some part of this judgment, to a certain and limited extent, express a judicial construction of the Eleventh Article; for how could he compare the passages in the sermons without so doing? The judicial construction was the plain grammatical sense of the Article. It was no part of his province, and he distinctly disclaimed any attempt to affix any meaning to this Article by any reference of his own to the Holy Scriptures; but he apprehended that, in case of doubt and absolute necessity, he should be justified in having recourse to the opinions of learned divines of the Church. The first difficulty he had to encounter was that, in ascertaining the plain grammatical meaning of the Article, he had to affix a meaning to words which had not by any commanding authority had any precise meaning affixed to them, and which words might, if Bishop Burnet were right, have been used in the New Testament in different senses. He was then, by the necessity of the case, coerced to give his own construction of the 11th Article of Religion. First, he held, with Bishop Burnet, that by justification was meant being received into the favour of God; secondly, that the merit of our Saviour was the great cause of that reception; thirdly—and what on the present occasion was perhaps most important—that the person so to be received must have faith in the redemption of mankind through Jesus Christ. He did not enter into the consideration how far a very extended meaning might be given to the expression "*by faith*;" it sufficed for the present purpose to say, "*faith in the redemption through Jesus Christ*," and that it must be faith in the person to be justified. As to the latter part of the interpretation, he thought he was confirmed by the grammatical construction; the words which followed were, "*and not for our own works or deserving*," the necessary inference was that "*our own faith*" was contemplated as well as "*our own works*." The 13th Article supported this construction, for there faith in Jesus Christ appeared to him clearly to denote faith in Jesus Christ in the person to be justified. If it were necessary to construe the remaining part he should say that the words "*we are justified by faith only*" might mean that faith was indispensable, and without it there could be no justification. The essence of this Article was merits in the Redeemer, faith in the person to be justified.

His Lordship then referred to the voluminous extracts from Mr. Heath's sermons set out in the Articles, and said that the charges against them, compressed, were that Mr. Heath affirmed that justification meant the doing strict justice to all, both good and bad, and that justification by faith meant justification by the faith of our Saviour in his own Gospel, or our Saviour's trust in the future:—

He had duly considered these extracts, and he was of opinion that the doctrines maintained by Mr. Heath in the extract from pages 22 and 28, did not contain the legal and correct explanation of the meaning of the word "*justification*." He thought there was a misuse of words, and that an erroneous meaning, not permitted by law, had been attached to the word "*justification*," as used in the 11th Article. He thought that every clergyman of the Established Church was bound to bear in mind the Articles of Religion in every sermon which he preached and published. He thought that if in such sermons he maintained a doctrine contrariant and repugnant to the Articles it was no excuse for him to allege that he did not bear in mind the Articles, and had no intention of contravening them. But, although he deemed this position undoubtedly true, he was also of