Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sheppard v. Phillimore and Bennett, from the Court of Arches; delivered 30th June, 1869.

Present:

LORD CHANCELLOR.
ARCHBISHOP OF YORK.
BISHOP OF LONDON.
SIR WILLIAM ERLE.
SIR JOSEPH NAPIER.

UPON this Appeal the question has been, whether the Official Principal of the Arches Court was right in declining to accept Letters of Request from the Bishop of Bath and Wells, at least in their present shape, upon the grounds set forth in his Judgment in the Court below.

The Letters of Request appear to their Lordships to have been in all respects valid and sufficient under the provisions of the Church Discipline Act, 3 & 4 Vict., cap. 86, to bring the case within the cognizance of the Official Principal, if he had chosen to accept them and to act upon them; and the case depends upon the construction of that part of the 13th section of that statute therein referred to whereby it is enacted, in respect of the offences there named, that the Bishop of the diocese wherein the party accused holds any preferment may, if he shall think fit, send the case by Letters of Request to the Court of Appeal of the Province, to be there heard and determined according to the law and practice of such Court.

This 13th clause contains one of several provisions made by the Legislature for the purpose of establishing a course for the trial of offences under the statute, and appears to us to comprise both an enabling and an obligatory purpose.

There is no dispute about the enabling power conferred thereby. For all parties agree that it creates a power for the Bishop to send by Letters of Request every case within his cognizance under this statute, to the Judge of the Court of the Province, if he shall think fit so to do; and further that it creates a power for the Judge of that Court to accept such Letters of Request, and to hear and determine, according to the law and practice of his Court, every case which shall be so sent: but the parties differ in respect of the obligatory effect of the Clause upon the Judge of the Provincial Court, that is to say, whether it operates to create the duty alleged by this Appeal to have been imposed thereby upon him, of accepting the Letters of Request now in question, and of hearing and determining the case sent therewith.

The Respondent contends that the clause does not impose that duty upon the Judge universally, but only in the cases in which he approves of the reason which induced the Bishop to send them, and that in any other case he is under no obligation and under no duty to accept and act upon them.

The Respondent, in the Judgment delivered by him, has considered first the law as it prevailed before the Church Discipline Act with reference to procedure in the Court of Arches upon Letters of Request; secondly, the law introduced by that Statute.

Upon the first point he came to the conclusion that the Court of Arches, before the passing of the Act, was entitled to refuse Letters of Request, unless and until proper grounds were assigned why they should be accepted. Upon the second point he has come to the conclusion, that though the Statute authorized the Bishop to send the Letters of Request to the Court of the Province, it does not enact that the Court of Arches must accept them, or that it may not require reasons to be assigned why it should accept them.

Their Lordships desired the question on the effect of the Statute to be first argued; and they are satisfied, notwithstanding the very able manner in which the contrary view of the case has been put before them, that according to the true construction of the Statute, the Judge of the Court of Arches

cannot refuse to deal with this case according to the 13th section of the Church Discipline Act, pursuant to the Letters of Request.

Assuming, as their Lordships do, for the purpose only of explaining their opinion on the effect of the Statute, that any Bishop on transmitting a cause by Letters of Request to the Court of Appeal of the province is bound to state some valid reason why he does not proceed in the first instance to hear and determine the matter in his own Court, yet they conceive that the 13th section of the Statute supplies in itself a reason for his so doing, and renders it imperative upon the Court to "hear and determine the matter." The sections of the Statute which precede the 13th give to the Bishop (as has been observed by the Respondent) greater powers, and greater assistance in the exercise of his powers, to hear and determine cases falling within the provisions of the Act; but the 13th section also expressly provides that it shall be lawful for him, either in the first instance or after a report by Commissioners, that there is sufficient *primâ facie* ground for instituting proceedings, and before the filing of articles, to send the case, by Letters of Request, to the Court of Appeal.

On the part of the Respondent it has been ably contended that Letters of Request are a term of art with a known meaning, having been a known instrument for transmitting matters from one jurisdiction to another in ecclesiastical procedure, and that they are in effect a request which may be refused—and not a command which ought to be obeyed—and that the direction to the Judge to hear and determine a case according to the law and practice of his Court, included the practice of rejecting Letters of Request which appeared to be sent without sufficient reason. He further concluded, on grounds of expediency, that such a case as the present ought to be first heard and determined by the Bishop before it should come to the Court of Appeal of the Province.

But these arguments have failed to convince their Lordships that the Respondent is entitled to their Judgment, and they have come to the conclusion that the words of the enactment "to be there heard and determined according to the law and practice of the Court" are to be construed according to

their ordinary acceptation, and are clear to secure the duty, as well as the power of so hearing and determining the cases sent.

It appears to their Lordships that it would be a very unreasonable construction of the Act to hold that when it is expressly enacted that the Bishop may send the Letters of Request in order "that the cause may be heard and determined," the Judge of the Court to whom such Letters are addressed should first determine not the cause, but the question whether or not he will hear it.

It is to be observed that the words of the statute do not merely authorize the Bishop to send Letters of Request, requesting thereby that the cause may be heard and determined, but enable him to send the case itself by Letters of Request to the Court of Appeal to be there heard and determined.

The Letters of Request constitute the vehicle by which the case is to be brought before the Court, but when brought thither the case is to be proceeded with as of right.

Their Lordships are of opinion that had it been intended to give the Court of Appeal an option as to whether or not it would hear the case, words to that effect ought necessarily to have been introduced.

The case of Golightly *v.* the Bishop of Chichester (2 Ellis and Ellis, 209) and the dictum in Sherwood *v.* Ray (1 Moore P.C. 397) which were cited by the Respondent, do not in any way affect the question before their Lordships. They refer to the commencement of proceedings at the instance of a private promoter. But, on the other hand, it has been decided that after a commission has been issued by the Bishop, and a Report has been made that there is sufficient *primâ facie* ground for instituting proceedings, these must be proceeded with (*ex parte* Denison, 4 Ellis and Blackburn, 310). Great inconvenience would arise from a construction of the Statute which would arrest the course of justice after the case had been entertained by the Bishop to the extent of issuing a Commission and obtaining a Report. If the Judge of the Court of Appeal of the Province can refuse to hear it under the Letters of Request, the Bishop, in the event of a mandamus being applied for against him, may say that he was entitled to the option of sending it to the Court of Appeal of the Province, and that he had done so,

and the case might, therefore, remain wholly unheard.

The learned Judge has said that it would be strange if the discretion as to allowing a suit to be instituted were vested in the Bishop and denied to the Archbishop; but the same might be said of a case heard by the Bishop and afterwards, on regular appeal brought before the Archbishop. The question as to the propriety of the inquiry is not before the Archbishop in either case, but the only question is, whether the Bishop shall first hear it, or send it at once for trial to the Court of Appeal. The statute intended to give an opportunity, where the Bishop thought such a course desirable, of sparing the litigant one hearing.

Their Lordships are further of opinion that Letters of Request ought not be regarded as a compulsory command to perform an onerous service, seeing that all exercise of authority in administering justice according to law ought to be regarded as a privilege and an honour; and the Bishop, in sending the case, by Letters of Request, to the cognizance of the Official Principal, ought to be regarded as seeking guidance from superior knowledge and judicial powers rather than imposing on another a burthen which he should have supported himself, without resorting to extraneous aid.

The Letters of Request are no more than the process by which the cause is to be placed in a condition to be heard and determined by the Superior Court.

Sir Herbert Jenner Fust appears, in the case of Brooks *v.* Creswell (4 Notes of Cases, 431), to have taken this view of the statute, and we conceive it to be the correct interpretation. In Sanders *v.* Head (3 Curt E. R. 42) he appears to have entertained the same opinion, and the latter case came before the Judicial Committee (4 Moore P. C. C., 1867), which approved of the decision. Their Lordships, therefore, will advise Her Majesty to remit the cause to the Court of Arches, to be there heard and determined according to the law and practice of the Court.

There will be no costs on either side.

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