

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Simpson
v. Flamank, from the Court of Arches; delivered
29th June, 1867.*

Present:

LORD PRESIDENT.
ARCHBISHOP OF YORK.
LORD CAIRNS.
LORD JUSTICE TURNER.
SIR EDWARD VAUGHAN WILLIAMS.
SIR RICHARD TORIN KINDERSLEY.

THEIR Lordships, having heard the case of the Appellant elaborately argued, have not thought it necessary to call upon the Counsel for the Respondent, and are now prepared to state the reasons for the advice which they propose humbly to tender to Her Majesty in reference to this Appeal.

It was, in the first place, contended that the Commission issued on the 20th of June, 1866, by the Lord Bishop of Exeter, did not state on the face of it that the offences mentioned in it had been committed within the two years defined by Section 20 of the Act 3 & 4 Vict. cap. 86, and that therefore the Report of the Commissioners, and all the subsequent proceedings, were invalid.

Their Lordships are unable to see any foundation for this argument. The Statute, although it prescribes a limit of time within which the proceedings by Commission must be commenced, is silent as to any specific form of, or statements in, the Commission; and the notice of the Commission, which the Statute requires to be given to the person accused, is to state the nature of the offence, with the names, addition, and residence of the party on whose application or motion the Commission is about to issue, and nothing more.

The Commission and the notice in the present case allege with substantial, if not with technical,

distinctness, that the offences which are charged are continuing offences; and the Appellant, when he appeared before the Commissioners, objected by his Counsel, not that the offences were not in fact committed within two years, but merely that they were not alleged to have been so committed; and this objection having been overruled, the Appellant admitted the facts mentioned in each of the charges. The Appellant therefore has in no way been misled or prejudiced in the course of his defence before the Commission; and this part of the Appeal against the form of the proceedings is, in their Lordships' opinion, wholly without justification.

Their Lordships, however, although they have entered into the merits of this objection of the Appellant, desire to express no dissent whatever from the view of the Dean of the Arches, that the proceedings before the Commissioners would not be open to appeal before the Arches Court on the score of irregularity; and this part of the Appeal to Her Majesty would, on this ground also, fail.

It was argued in the next place, that the Decree or Citation from the Arches Court ought to have stated, and did not state, that the offences alleged had been committed within two years previous to the Citation. The case, it was said, if sent by the Bishop, under Section 13 of the Act, to be heard before the Court of Appeal of the Province, must be there "heard and determined according to the law and practice of such Court," and the practice of the Court of Arches, it was contended, required that the Decree should show on the face of it jurisdiction in this respect.

The Appellant did not raise this objection in the Court of Arches by appearing under protest. On the contrary, he appeared absolutely to the Citation, and prayed articles; and afterwards opposed, on this ground, the admission of the articles. Their Lordships will, in favour of the Appellant, assume, although they would hesitate to decide, that it was open to him, after appearing and praying articles, to object to the citation in point of form: and they will also assume in his favour, although they think it open to doubt, that the statement in the Citation of offences as con-

tinuing offences did not sufficiently show a jurisdiction under the Statute.

The Statute, however, by Section 13, provided that the Judge of the Arches Court should have power to make orders for expediting suits under the Act, or otherwise improving the practice of the Court. It appears that by the Rules or Orders of the Arches Court, made under this Statute and in force at the time of this Citation, a form of Citation or Decree was given, approved of by the Judge: and in this form, obviously intended to shorten what had been previously in use, no provision is made for a specification of the offence, or for a statement of the time when or within which it was committed; but the letters of request are referred to as remaining in the Registry of the Court, and as being the foundation of, and therefore showing the jurisdiction to issue, the Decree. The form of Decree citing the Appellant appears to their Lordships to have been in accordance with the form given by these orders; and the Letters of Request which the Decree refers to contain an express statement that the offences alleged were committed within two years. The Decree appears, therefore, to their Lordships to be in accordance with the practice of the Court: and they are unable, as to this, as well as in the case of the other objection, to look upon it otherwise than as groundless, and made only for the purpose of delay.

Their Lordships will humbly advise Her Majesty to dismiss the Appeal with Costs.

