

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Phillipotts v. Boyd and others, from the Court of Arches ; delivered 25th February, 1875.

Present :

LORD HATHERLEY.

LORD PENZANCE.

LORD SELBORNE.

LORD CHIEF BARON.

SIR MONTAGUE SMITH.

SIR ROBERT P. COLLIER.

THIS is an Appeal from a Decree of the Court of Arches, reversing an Order made by the Lord Bishop of Exeter, as Visitor of the Cathedral Church of St. Peter in Exeter, for the removal of a sculptured reredos recently erected at the east end of the choir of that Cathedral by the Dean and Chapter, on the ground that the sculpture, so erected, contains or consists of images, not permitted within churches by the law of the Church of England.

The Judgment of the Court below makes it necessary, in the first place, to decide whether the Bishop, as Ordinary, had a visitatorial power over the Cathedral Church of Exeter, with reference to the sculpture of which the Appellant complained, and whether, in the exercise of that power, it was competent for him, if he found that sculpture to have been unlawfully erected, to make an order for its removal.

The Respondents have contended throughout these proceedings, that the Bishop had no such power,

and the learned Judge of the Court of Arches has so determined.

It is not, and indeed it could not be, disputed that, according to the General Ecclesiastical Law, "all Deans and Chapters are subject to the visitation of the Bishop, *jure ordinario*, and of the Archbishop of the province, *jure metropolitico*." (2 Burn's Eccl. Law, Phillimore's Ed. 1842, p. 93.) It is equally certain that as to some matters, at all events, the Bishop, visiting his Dean and Chapter as Ordinary, would have power to make orders binding upon the Dean and Chapter, subject to an appeal to the higher Ecclesiastical Tribunals. By the case of Dr. Goodman, reported in Dyer, p. 273 (the same law is recognized by Lord Holt in *Phillips v. Bury*, 2 T.R., 353), it appears that, before the Church Discipline Act, 3 & 4 Vict., cap. 86, this power would have enabled a Bishop, as visitor, to pronounce, in case of necessity, a sentence of deprivation against an offending member of the Chapter. Since that Statute it has been determined, in the Dean of York's case (2 Q.B., 1), that, in order to inflict any personal punishment for an ecclesiastical offence upon an individual member of a Chapter, the Bishop must proceed against him as against any other Clerk in holy orders, under the Church Discipline Act, and not as visitor. But the Statute leaves untouched all other power which the Bishop might previously have exercised in his visitation except this single power of proceeding against individuals by way of punishment.

Two arguments have been urged before their Lordships in this case against the Bishop's jurisdiction.

The first is that, although the Bishop may have power to visit the Dean and Chapter as Ordinary, and also power, in some cases, to make orders binding on the Dean and Chapter (subject to appeal), yet he cannot do so with reference to any part of the structure or fabric of the Cathedral Church. For such a limitation of the Bishop's visitatorial power no authority has been cited: and, considering the nature and importance of the duties which the Dean and Chapter have to perform with respect to the fabric of their Church, the burden of proof rests, in their Lordships' opinion, on those who, admitting the general

visitatorial power, contend that it is thus limited. It appears, not only from the precedents in the history of the Cathedral Church of Exeter, to which their Lordships will have occasion to refer, but from the form of the Articles of Inquiry at the visitation of the Cathedral Church of York by Archbishop Harcourt, *jure ordinario*, in 1841 (which the learned editor of Burn's Ecclesiastical Law, edition 1842, vol. 2, p. 93, c., states to have been "framed in careful compliance with former precedents"), that the practice, in visitations of this kind, has been for the ordinary to include among the matters cognizable by him in this form of proceeding, the repairs, and generally the state and condition of the fabric, of the Cathedral Church. The reason of the thing, and all the authority which has been produced, is opposed to this first argument, which their Lordships, therefore, reject as untenable.

The other argument (and it is that which seems to have chiefly prevailed with the learned Dean of the Arches) is, that the Dean of Exeter has a peculiar jurisdiction, exclusive of the Bishop, within the "close" of the Cathedral Church, which (it is contended) includes the area and fabric of the Cathedral itself. Reliance, for this purpose, was placed upon an instrument of "Composition," dated in 1616, and purporting to be made between the then Bishop of Exeter, the Dean and Chapter, the Dean, the several Archdeacons of the Diocese, and the Custos and College of Vicars Choral of the Cathedral Church. Their Lordships were referred to what purports to be a copy of this document, printed in a note at pp. 232—236, of the 3rd vol., of Dr. Phillimore's Reports. It is hardly necessary to say that such a printed statement in a book of Reports could not be treated by their Lordships as in itself evidence, either of the existence or the due execution of such a document. The fact of its execution seems to have been challenged in the reported case. Their Lordships, however, understood the argument in the Court below, and upon appeal, as having proceeded upon the footing of the execution and authority of such a document, and they therefore proceed to consider its value and effect. It was not alleged that the successors of the then Bishop of Exeter could, by the mere force of an agreement or composition of this nature, made in

1616, be ousted from any ordinary jurisdiction which they would otherwise have possessed; but the contention was, that this document is evidence of the previous legal existence of a peculiar of the Dean within the "Close" of Exeter, exclusive of the ordinary jurisdiction of the Bishop. Some of the remarks made by Sir John Nicholl, in his judgment in *Parham v. Templar* (3 Phill., 252), seem for this purpose to be important. This document, he says, "states that the agreement or composition is made upon a view of ancient usage, and upon searching and consulting proper authorities. But it does not state how far any such search was made, nor recite any particulars to prove this ancient usage. In short, whether it may not be altogether irregular and an usurpation, the instrument itself does not afford any means of ascertaining. The search was probably made, not by the Archdeacons or the Bishop, or any of the Principals, but by their agents or officers,—possibly some practitioners in these Courts not very well read either in the canon or the civil law of the country." Upon these grounds, and on the further ground of the Metropolitan not being a party to the instrument, the learned Judge, in that case, refused to accept it as evidence that an Appeal from those Peculiarities of the Dean and Chapter (such as Ashburton), which were exclusive of the Bishop's ordinary jurisdiction, would lie to the Bishop in the first instance, and not to the Metropolitan. Yet this seems to have been an inseparable part of the composition, considered as (what it purports to be) a general scheme for defining the manner and form in which the execution of the ecclesiastical jurisdiction of the several parties to it should for the future "be bounded, limited, and for ever thereafter used and exercised by the said parties and their successors;" and for the "clearing" of those "questions" which it recites to have been "then, and theretofore, moved between the same parties, touching the execution of ecclesiastical jurisdiction within the Diocese of Exeter;" "and for the settling and establishing a peace and certainty therein for ever thereafter between the said parties and their successors." The Court does not appear to have proceeded in the case of *Parham v. Templar*, upon the sole evidence of this document, so far as it

recognized Ashburton as being a Peculiar of the Dean and Chapter, in which their jurisdiction was exclusive of the ordinary jurisdiction of the Bishop ; and, in that case, no question whatever arose as to any jurisdiction either of the Dean or of the Bishop within the Cathedral Close or the Cathedral itself.

Supposing, however, that this composition could properly be accepted as evidence of some exclusive peculiar jurisdiction of the Dean within the Cathedral Close, its terms must be accurately weighed to ascertain the true nature and character of that jurisdiction. The material parts of the composition are these:—

1. “That Matthew Sutcliff, Dean of the said Cathedral Church, and his successors, and his and their officer and officers, shall for ever hereafter, solely and without any concurrence, prove in common form all testaments” (except those of knights, beneficed men, and such as were *de robá Episcopi*) “within the parish of Braunton, in the county of Devon, and the Close of the Cathedral Church of St. Peter, in Exeter ; and also, solely and without any concurrence, hear and determine, within the said parish of Braunton and Close aforesaid, all causes, as well *ad instantiam partis*, as *ex officio*.”

2. That “within the residue of the Diocese, the Bishop or his Chancellor, solely and without concurrence, shall have power to dispense in all causes, to grant all manner of licences, sequestrations, and relaxations, and (generally) to do whatsoever is not formally declared to belong to the said Archdeacons, Dean and Chapter, Dean, and Custos and College, or to some of them, as aforesaid.”

3. “Lastly, that the said Bishop, his Chancellor, or officers for the time being, shall and may, for ever hereafter, once in every three years complete, visit all the said Diocese, except the peculiars of the said Dean and Chapter, Dean, and Custos and College of Vicars, and their successors.”

Unless, therefore, the visitatorial authority of the Bishop, as Ordinary, over the Dean and Chapter themselves, was, according to the true construction of this instrument, to be exercised by the Dean, as part of his peculiar jurisdiction within the Close of the Cathedral Church, it is not taken away from, but is (by the very terms of this instrument) re-

served to the Bishop. "Peculiars," as Ayliffe states (in a passage cited by Sir John Nicholl, at p. 245 of the judgment in *Parham v. Templar*), "are called exempt jurisdictions; not because they are under no Ordinary, but because they are not under the Ordinary of the Diocese, but have one of their own." The Ordinary of the Cathedral Close of Exeter, so far as it is described as a peculiar by this composition, was the Dean. But the only matters in respect of which the Dean was, according to the terms of the composition, to exercise ordinary jurisdiction within the Close, were the grants of probates, not of all persons, but of persons not falling within certain specified classes, and "the hearing and determination of causes," whether *ad instantiam partis* or *ex officio*. The composition does not provide that the Dean shall visit himself; still less does it provide that the Cathedral Church shall be exempt from all ordinary visitation, and subject only to the metropolitan jurisdiction of the Archbishop. It is further manifest, that if, by the terms of this composition, the Bishop, as Ordinary, had been excluded from visiting the Dean and Chapter or the Cathedral, it would have been a total, and not merely a partial, exclusion. Any visitation of the Cathedral by the Bishop, as Ordinary, for any purpose whatever, would (in that view) have been quite as much *ultra vires*, as a visitation for the purpose of setting right whatever might be found wrong as to the fabric of the Church.

Passing from the letter of the composition itself to the evidence which is before us of the usage and practice, as to visitation, of the Cathedral Church of Exeter since the date of that instrument, their Lordships find that this evidence is altogether adverse to the contention of the Respondents. There is no instance given of the exercise of any jurisdiction by the Dean, except one case of brawling within the Cathedral, which arose in the year 1827, and which was manifestly a "cause," either *ad instantiam partis* or *ex officio*. Such a cause would no doubt have been cognizable by the Dean under the express terms of the composition if the Cathedral ought to be deemed part of the Close, and it would have been equally cognizable, under the same instrument, by any Archdeacon of the Diocese, if the brawling had happened within one of that Archdeacon's

peculiars. But there is no trace of its ever having been supposed or contended, before the arguments in the present case, that the Bishop of Exeter had not, over the Dean and Chapter, and within the Cathedral of the Diocese, as large and full visitatorial jurisdiction, as Ordinary, as any other Diocesan Bishop has in his cathedral church. That jurisdiction has been, in practice, exercised on more than one occasion, without objection or protest, and its existence was expressly admitted, in the course of a recent public inquiry, by the Dean and Chapter.

In 1660 Bishop Seth Ward held a primary visitation of this Cathedral; and in the Articles then exhibited by him, inquiries were made (among other things) into the condition of the fabric generally, and of the roof, windows, seats, floors, towers, and bells. No question appears to have been raised as to his authority so to inquire.

In 1678 Bishop Lamplugh held another primary visitation of the Cathedral. Articles were exhibited on that occasion substantially similar to those of Bishop Ward (though not in exactly the same form); and, in addition to these, the second Article inquired "whether any passages or doors had been made in the times of the late rebellion, leading into the Cathedral by breaking down the wall thereof, and continued to be so?" The Dean and Chapter put in their answers to these Articles. As to the second Article they said "that there was only one door, towards the north-east, that was made in the late times, which had not been walled up (as another door then made had been), because it was a great convenience to several dignitaries of the Church and other persons of quality, and was neither indecent itself nor prejudicial to anybody." It appears, however, that by some objector, connected (as is to be presumed) with the Cathedral, a presentment was made against the door, which the Dean and Chapter thus desired to keep open, as having been improperly and illegally made through a private chapel at the north-east end of the Church, "to the dishonour of the Church," and to the prejudice of a particular family which had right of burial there. The Bishop, as visitor, adopted this latter view; and he thereupon ordered "that the said door be forth-

with shut up, and hereafter not opened ; and that, before Candlemas next ensuing, the aforesaid door be taken away, and the wall made up, and the passage restored to the right owner ; and that the great gate next the street be by that time taken down and walled up." At a further visitation on the 21st April, 1680, it was finally certified to the visitor by the Dean that this order had been fully obeyed, and that the door in question had been walled up, as directed.

In 1852, the Dean and Chapter of Exeter, in answer to questions addressed to them by the Royal Commissioners for inquiring into the Cathedral Churches and Capitular Bodies in England, stated that the Bishop of Exeter was their visitor ; and that the powers of the visitor were "those vested in him by the general law, not modified by any special custom." For the Dean, they did not then claim any peculiar jurisdiction, further than by stating that he had "archidiaconal authority within the Close ;" which, however, was no longer exercised by him. In Bishop Voysey's Statute of 1544 (to which they then referred, as the document in which the duties of the several dignitaries and officers would be found most fully stated), the same statement is found, that the Dean had "*jurisdictionem Archidiaconalem in omnibus enumeratis infra clausum Exoniensis Ecclesiæ,*" no other jurisdiction of the Dean being there mentioned.

Their Lordships are, under these circumstances, unable to agree with the opinion expressed by the learned Dean of Arches against the jurisdiction of the Bishop in the present case.

The right of the Bishop to visit, as Ordinary, in respect of the fabric being established, the question arises whether the order made by him for the removal of the reredos can be sustained. It was first suggested in argument that the Respondents were in the same position as if they were applying for a faculty to authorize its erection inasmuch as the erection without a faculty was illegal.

Their Lordships cannot accede to this argument of the Appellant's Counsel. It was pressed upon them in order to lay the foundation for an exercise of discretion on the part of the Bishop even in a case where there might be no breach of the law.

No authority has been cited, and no instance has

been produced, in which a grant of any such faculty has been applied for, either in the case of Exeter Cathedral or of any other Cathedral, although it is notorious that important alterations in the fabric of most Cathedrals have continually been effected.

The argument, which was urged at the bar, that although a faculty may not strictly be necessary, the express or implied consent of the Bishop ought to be obtained for every alteration in the fabric of a Cathedral, was equally unsupported by authority; and their Lordships cannot, under these circumstances, conclude either that the Bishop, as Visitor, has a discretion to order any alteration in the fabric of the Cathedral Church, except on some definite legal ground; or that such a discretion, if not possessed by the Bishop, could be exercised by the Court of Arches, or by Her Majesty in Council, when adjudicating on an appeal from the Bishop's judgment as Visitor.

The case before us on the present Appeal must therefore be determined with reference to the question whether the structure itself is contrary to the Ecclesiastical Law.

For determining this question their Lordships have proceeded to examine the authorities and documents cited before them in proof of the alleged illegality of the Respondent's proceedings.

At the commencement of the Reformation attention was directed to the numerous representations in churches, either by sculpture or painting, or both, of those who were venerated either as Divine persons or as Saints of the Church, and to the outward acts of worship or honour paid to these representations or images. In the first year of Edward VI (1547) injunctions were issued to h Clergy and Laity by the King, with the advice of the Protector and the Council, purporting to be in continuation of like injunctions issued by Henry VIII, which, amongst other things denounced, as tending to idolatry and superstition, "the offering of money, candles, or tapers to relics or images, or kissing or licking of the same." And the Clergy were directed to take down and destroy "such images as they know to have been so abused with pilgrimages or offerings of anything made thereunto, or shall be hereafter censured unto," and to suffer thenceforth "no torches or candles, tapers nor images of wax

to be set before any image or picture," but only two lights upon the High Altar . . . admonishing their parishioners that images serve for no other purpose but to be a remembrance whereby men may be admonished of the holy lives and conversations of those that the said images do represent; which images, if they do abuse for any other intent, they commit idolatry in the same.

By the 28th of these Injunctions the Clergy are ordered "to take away, utterly extinct, and destroy all shrines, tables, candlesticks, trindles, or rolls of wax, pictures, paintings, and all other monuments of feigned miracles, pilgrimages, idolatry, and superstition, so that there remain no memory of the same in walls, glass windows, or elsewhere within their Churches or houses." The execution of these injunctions was intrusted to the Ordinary, and Articles were framed to be inquired of in the King's visitation, one of which inquired, "Whether there do remain not taken down in your Churches, Chapels, or elsewhere, any misused images with pilgrimages, and whether do remain, not defaced and destroyed, any shrines, coverings of shrines, or any other monument of idolatry, superstition, and hypocrisy."

A question has been raised as to the authority under which these injunctions were issued; whether, under the statute 31 Henry VIII, c. 8, giving to the King's Proclamations the force of law, or by virtue of the Act of Supremacy. The learned Judge in the Court below seems to treat the injunction as a Proclamation under the statute, which statute was soon afterwards repealed; but whether it was so or not appears to their Lordships to be an inquiry not material to the present issue, for the reasons to be afterwards mentioned.

The next document relied upon by the Appellant is a Latin letter headed "Mandatum ad amovendas et delendas imagines" of Archbishop Cranmer to the Bishop of London, dated the 24th February, 1547, which recites (in English) letters missive (purporting to have been received by the Archbishop), signed by certain Lords of the Council, and containing the following passage:—

"After our right hartye recommendations to your Lordship, where now of late in the king's majestie's visitation amonge other goodlye injunctions com-

manded to be generally observed, through all partes of this his highnes realme, one was set forthe, for the taking downe of all such images as had at any tyme been abused with pilgrimages, offerings, or censings; albeit that this said injunction hath in many partes of the realme ben wel and quyetlye obeyed and executed, yet in many other places muche stryfe and contentyon hath rysen and dayly ryseth, and more and more encreaseth, about the execution of the same, some men beyng so super-tytyous or rather wylfull, as they wold by theyr good wylles retayne all such images styll, although they have beene mooste manyfestlye abused, and in some places also the images which by the saide injunctions were taken downe, be now restored and set up againe, and almoste in every place ys contentyon for images, whether they have been abused or not; and whiles these men go about on both sides contentyouslye to obtaine theyr mindes, contending whether this or that image hath been offered unto, kyssed, censed, or otherwise abused, partyes have in some places been taken in suche sorte, as further inconvenyence is very like to ensue yf remedie be not provided in tyme; considering therefore that allmost in no places of this realme ys any sure quyetness, but where all images be hoolly taken awaye and pulled downe already, to the intent that all contentyon in everye part of this realme for this matter may be clerely taken awaye, and that the lyvely images of Chyste shulde not contende for the deade images, which be things not necessary and without whiche the churches of Christ contynued most goodlye many yeres; We have thought good to signify unto you that his highnes pleasure, with th' advyse and consent of us the lord protectour and the reste of the counsell, ys, that immediatly upon the sight hereof, with as convenyent diligence as you maye, you shall not onlye give ordre that all the images remayninge in any church or chappell within your diocese be removed and taken away, but also by your letters signifye unto the reste of the bishopes within your province his highnesse pleasure for the lyke order to be given by them and every of them within their severall dioceses; and in th' execution thereof we requyre both you and the reste of the bisshopes foresaid to use suche foresight as the same may be

quyetlye donne with as good satisfaction of the people as may be."

The Archbishop then directs the Bishop to proceed accordingly, and Articles appear to have been framed to be inquired of in the visitation of the Diocese of London; one of which is framed in the very words of the 28th of the King's Injunctions, so far as regards images.

Whatever may have been the legal effect of this mandate, it may be assumed that it was sent under the circumstances stated, and in consequence of the letter set forth as having been sent to the Archbishop from the Lords of the Council.

It appears plain to their Lordships that the Injunctions were directed (3rd and 28th) to the removal or destruction of such images only "as had at any time been abused" by superstitious observances; but the letter refers to the difficulty of distinguishing them from others, and to the pretext made for retaining some that had been "manifestly abused" by reason of their alleged exemption from abuse. Accordingly, it is directed that, in order to make sure of attaining the original purpose, all the remaining images should be then removed.

This order, or letter, then of the King's Council, explained as it is in its objects and intentions on the face of the document itself, appears to their Lordships to amount to no more than an administrative act or step taken at the time, for the time, and dictated by the necessities peculiar to the time. It did not contain, nor profess to contain, the enunciation of any general law of a permanent character with respect to images. It, no doubt, proceeded on the implied assertion that the worship or abuse of images was contrary to the true doctrine of the Church, then at the commencement of its Reformation. But it did not involve all images in a general condemnation, even by implication, for it distinguished between those which had been abused and those which had not, so far as condemnation went, and ordered the removal of all, whether abused or not, for the sake of peace, and for the purpose of insuring obedience to the former orders. Far from denouncing dead images as things unlawful, this document speaks of them "as things not necessary."

The Act of the 3rd and 4th Edward VI, intituled "An Act for the abolishing and putting away divers

books and images," enacts, by the 1st Section, that all books (enumerating many) heretofore used for service of the church, written or printed in the English or Latin tongues, other than such as are or shall be set forth by the King's Majesty, shall be by authority of this present Act clearly and utterly abolished, extinguished, and forbidden for ever to be used or kept in this realm or elsewhere within any of the King's dominions.

The 2nd Section enacts that, if any person that then had, or thereafter should have, in his custody any such books or images of stone, timber, alabaster, or earth, graven, carved, or painted, which heretofore have been taken out of any church or chapel, or yet stand in any church or chapel, and do not before the last day of June next ensuing deface and destroy, or cause to be defaced and destroyed, the same images and every of them, "and do not deliver up the books there mentioned in the manner and for the purpose of their destruction therein mentioned, he shall, for every book willingly retained in his hands, incur such penalties as in the Act mentioned." The careless wording of the Act, which omits all penalty with reference to images, induces a suspicion that the introduction of images into the Act was an afterthought; but, be this as it may, this Act would imply the necessity of all persons defacing or destroying or delivering up all images which had already been, or might afterwards be, removed out of churches, and probably, also, the obligation of removing those then remaining in churches, whether abused or not, except in cases falling within the exception of the 6th Section of the Act, which provides, that the Act shall not extend "to any image or picture or any tomb in any church or chapel or churchyard only for a monument of any king, prince, or nobleman, or other dead person, which hath not been commonly reputed and taken for a Saint, but that such pictures and images may continue in the like manner and form as if the Act had never been had or made."

The exception itself shows the generality in all other respects of the enactment as embracing all images; though it is remarkable that the excepted cases are referred to as occurring in any church or churchyard, whilst the rest of the Statute appears to

be confined to images contained in or removed from the inside of churches or chapels.

This Statute was repealed by 1 Mary, sec. 2, c. 2, but that Statute was in its turn repealed by 1 Jas. I, c. 25, sec. 48, and the Statute of Edward was thereby revived. The Act of James I is itself repealed by the 26 and 27 Vict., c. 125. But an express section of that Act provides that, where any Act thereby repealed had the operation of reviving any former Act, such reviver shall not be affected. The Act of Edward VI, therefore, remains unrepealed.

It is in this state of circumstances that their Lordships deem it unnecessary to consider by what authority the Royal Injunctions and the Archbishop's mandate may have been originally issued.

Their Lordships concur in the opinion expressed by this Tribunal in *Westerton v. Liddell*, and cited by the learned Judge in the Court below, viz., that the Act "related to the destruction of images already ordered to be removed, but which either had not been removed, or, having been so, were still retained for private devotion and worship." It may be regarded as a recognition by the Legislature of the validity of these orders (though not expressly referred to), and of the obligation of obedience to them, but it does not go further; and, as with the mandate above referred to, so with this statute, it appears to their Lordships, that the efficacy of the Act of Edward was spent upon the definite purpose to which it was directed, and that the Legislature did not thereby make, or intend to make, provision in respect of the subsequent use or abuse of any other images.

Up to this time then, viz., up to and including the Statute of Edward the VIth, the case as to "images" stands thus:—The King's injunctions in the first year of his reign condemned several superstitious practices with reference to images, such as pilgrimages to particular images, offerings made to them of any kind, kissing or licking, or censing the same, and directed all shrines, pictures, paintings, and other monuments of feigned miracles, pilgrimages, idolatry, and superstitions, to be destroyed by the Incumbent, so that there remain "no memory of the same in walls, glass windows, or elsewhere

within the churches or houses of their parishioners." The Metropolitan then communicated to the Bishop of London a letter received by him from the Privy Council, with reference apparently to what had been done under the Injunctions, and the difficulty of distinguishing images which had been abused from those which had not, which letter directs a total removal and destruction of all images. This is followed by the Statute, and so matters appear to have rested till the reign of Mary, when the Act of Edward was repealed, and the images, or some of them, were probably restored.

It is remarkable that nothing was done by Elizabeth with reference to the revival of the Act of Edward, but in the first year of her reign (1559) Injunctions were issued by her, the 23rd of which directed that the Clergy should take away, utterly extinct, and destroy all shrines, . . . pictures, paintings, and all other monuments of feigned miracles, pilgrimages, idolatry, and superstition, so that there remain no memory of the same in glass windows, or elsewhere within their churches and houses; and Articles, on the visitation of the Queen, were issued, founded on these Injunctions, the 45th of which inquired whether the Clergy knew any that kept in their houses any undefaced images, tables, pictures, paintings, or other monuments of feigned and false miracles, . . . and do adore them, and specially such as have been set up in churches, chapels, and oratories.

In the next year the Queen put forth the following Proclamation:—

"Elizabeth. — The Queen's Majesty understanding that by means of sundry people, partly ignorant, partly malicious or covetous, there hath been of late years spoiled and broken certain ancient monuments, some of metal, some of stone, which were erected up as well in churches as in other public places within this realm, only to show a memory to posterity of the persons there buried, or that had been benefactors to the buildings or dotations of the same churches or public places, and not to nourish any kind of superstition, by which means not only the churches and places remain at this present day spoiled, broken, and ruined, to the offence of all noble and gentle hearts, and the extinguishing of the honourable and good memory

of sundry virtuous and noble persons deceased, but also the true understanding of divers persons in this realm (who have descended of the blood of the same persons deceased) is thereby so darkened, as the true course of their inheritance may be hereafter interrupted, contrary to justice; besides many other offences that hereof do ensue to the slander of such as either gave or had charge in times past, only to deface monuments of idolatry and false feigned images in churches and abbeyes; and therefore, although it be very hard to recover things broken and spoiled, yet both to provide that no such barbarous disorder be hereafter used, and to repair as much of the said monuments as conveniently may be Her Majesty chargeth and commandeth all manner of persons hereafter to forbear the breaking or defacing of any parcel of any monument, or tomb, or grave, or other inscription and memory of any person deceased, being in any manner of place: or to break any image of kings, princes, or noble estates of this realm, or of any other that have been in times past erected and set up for the only memory of them to their posterity, in common churches, and not for any religious honour, or to break down and deface any image in glass windows in any church without consent of the Ordinary, upon pain that whosoever shall herein be found to offend, to be committed to the next gaol.”

The words “false,” and “feigned images,” which frequently occur in these documents, may either refer to images to which particular efficacy was falsely attributed, or (a meaning borne out by some passages in the Homilies) to images falsely alleged to be true likenesses of either the Saviour or any Saints, of whom no true likeness existed. But whatever meaning be assigned to these words, the language of both the Injunctions and the Proclamation, is plainly addressed, not to all “pictures, paintings, or monuments, &c.,” but to a limited class of them, and this a class tainted with falsehood or superstition. As the Reformation proceeded, and the Articles of Religion came to receive statutory authority, the doctrine of the Church on this subject was plainly set forth.

The 22nd Article of Religion declares that “the Romish doctrine concerning Purgatory, pardons, worshipping, and adoration, as well of images as of

reliques, and also invocation of saints, is a fond thing vainly invented, and grounded upon no warranty of Scripture, but rather repugnant to the Word of God." In other words, it condemns only the abuse of images.

But great stress has been laid in the argument of this case upon the Homilies against the Perils of Idolatry, which are recognized in the 35th Article of Religion (amongst other Homilies) as containing "a godly and wholesome doctrine, and necessary for these times, and therefore are judged to be read in churches by the ministers diligently and distinctly, that they may be understood of the people."

The 46th and 49th Canons give special directions as to the reading of the Homilies, and the 80th Canon orders the Book of Homilies to be provided in each parish.

This recommendation, however, of the Homilies cannot be pressed further than as containing an approbation of "doctrines," therein contained, and even that of a qualified character, as being specially necessary for the times when the Articles were framed and published. Now the Homily against the Peril of Idolatry (contained in several Parts) sets forth in very glowing colours the vanity and folly of paying adoration or worship to images or paintings, but it recognizes the original intention of such images or paintings to have been the better instructing of the ignorant, as set forth in the letter of Gregory to Serenus (cited by the learned Judge in the Court below). The Homily observes, "you may withal note that seeing there is no ground for worshipping of images in Gregory's writing, but a plain condemnation thereof, that such as do worship images do unjustly allege Gregory for them." The Homily, however, proceeds to affirm that the worshipping of images is a necessary consequence of their being allowed to exist, and therefore concludes strongly for their entire abolition, irrespective of actual abuse. Now it is plain that the "doctrine" maintained by the Homily is that of the 22nd Article, and condemns paying "honour and reverence to images as being an act of idolatry, and contrary to the Second Commandment." In the judgment of its author the existence of any image, whether originally intended for instruction or not, is dangerous, as tending to

idolatry. This cannot be called doctrine. It is an opinion as to the consequences which might at that time follow the use of representations of sacred objects, and probably the opinion might then be well founded; whilst it is, on the contrary, notorious that numerous sculptures and pictures representing the Saviour and Apostles and other holy men exist, and have existed for more than two centuries in and outside of our churches, to which no worship has been paid. The old associations were broken off, and the old "monuments of superstition" had either been removed, or become innocuous, before the reign of Elizabeth was closed.

In the 9th of Elizabeth, on a visitation by Archbishop Parker, Articles were exhibited, the 6th of which inquired whether any taught "that any man is borne with which do extol any superstitious religion or religious pilgrimages, lighting of candles, kissing, kneeling, or ducking to images." And at another visitation in the 12th of Elizabeth, by the same Metropolitan, Articles were exhibited, by the 6th of which inquiry is made "whether images and all other monuments of idolatry and superstition be destroyed and abolished, and whether your churches and chancels be well adorned and conveniently kept without waste, destruction, or abuse of anything. Whether the rood loft be pulled down according to the order prescribed, and if the partition between the chancel and the church be kept."

These Articles appear to observe the distinction noticed in the Queen's Proclamation already referred to between the representations which had been abused and those which had not. It is not improbable that there had existed some conspicuous representation of a crucifix in the rood-lofts which had been abused, and therefore was directed to be removed.

In Cardwell's "Annals" (Vol. I, No. LXXVII) are Articles intended to have been exhibited at Archbishop Grindal's visitation in the 18th Elizabeth, the 4th of which inquires "whether rood-lofts be taken down to the cross-beam," and the 6th inquires whether (amongst other things), "all images and other relics and monuments of superstition and idolatry be utterly defaced, broken, and destroyed, and if not, where and in whose custody they remain." It appears to be doubtful whether

these Articles were ever exhibited. From this time, and notwithstanding the revival in the time of James I of the Act of 3 and 4 Edward VI, there appears to have been neither further legislation nor inquiry with reference to pictorial or sculptured representations of sacred subjects in churches.

What, then, is the character of the sculpture on the reredos in the case before their Lordships? For what purpose has it been set up? To what end is it used? and is it in danger of being abused? It is a sculptured work in high relief—in which are three compartments. That in the centre, represents the ascension of our Lord, in which the figure of our ascending Lord is separated by a sort of border from the figures of the Apostles, who are gazing upward. The right compartment represents the Transfiguration, and the left the descent of the Holy Ghost on the Day of Pentecost. The representations appear to be similar to those with which every one is familiar in regard to the sacred subjects in question. All the figures are delineated as forming part of the connected representation of the historical subject. The ascension necessarily represents our Lord as separated from the Apostles, who are gazing at Him on His ascent. As finials to the architectural form of the reredos, there is on each side a separate figure of an angel. It is plain to their Lordships that the whole erection has been set up for the purpose of decoration only.

It is not suggested that any superstitious reverence has been or is likely to be paid to any figures forming part of the reredos, and their Lordships are unable to discover anything which distinguishes this representation from the numerous sculptured and painted representations of portions of the sacred history to be found in many of our cathedrals and parish churches; and which have been proved, by long experience, to be capable of remaining there without giving occasion to any idolatrous or superstitious practices. Their Lordships are of opinion that such a decorative work would be lawful in any other part of the church: and, if so, they are not aware of any contravention of the laws ecclesiastical by reason of its erection in the particular place which it now occupies. Their Lordships have not adverted to the case of *Cook and others v. Tallent*, mentioned by the learned Judge

in the Court below, because they have been furnished by the Registrar with a full note of that case, which appears to have proceeded on consent.

Their Lordships desire it to be clearly understood that nothing decided in this case affects the question of superstitious regard being paid, contrary to the XXIInd Article of Religion, to any representations or images that are, or may at any time be, set up in churches. The law will at all times be sufficiently strong to correct and control any such abuse: but their Lordships are of opinion that the sculpture in question is not liable to be impugned in that respect. Their Lordships will, therefore, recommend Her Majesty to reverse the decree pronounced by the Dean of the Arches, so far as it reversed the decree of the Lord Bishop of Exeter in pronouncing for his jurisdiction as Visitor and Ordinary of the Cathedral Church of St. Peter, in Exeter; but to affirm the decree of the Dean of the Arches in all other respects; and their Lordships, regard being had to the argument in the Court below and before them, in opposition to the jurisdiction of the Lord Bishop do not decree the payment of any costs of this Appeal by any party. Indeed, they understood it to be stated at the Bar, by the Counsel for the Respondents, that they did not ask for costs.