

moved the Court to dismiss the defendant from the suit; the promovent being dead.

The motion was supported by an affidavit which stated that the death of the promovent had occurred on the 17th of January, 1877.

*Dr. Tristram*, on behalf of the executors of the promovent, did not oppose the motion.

The Court granted the motion but made no order as to costs.

Proctor for promovent: *Brooks*.

Proctors for Bishop of Oxford: *Moore & Currey*.

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[IN THE COURT OF ARCHES.]

Feb. 27.

HOWARD AND OTHERS v. BODINGTON.

*Public Worship Regulation Act, 1874 (37 & 38 Vict., c. 85), s. 9.—Jurisdiction—Service of Representation on Respondent—Enactment not merely Directory*

The 9th section of the Public Worship Regulation Act, 1874, provides that unless the bishop, to whom a representation of illegal acts or omissions on the part of any incumbent within his diocese has been sent, shall be of opinion, after considering the whole circumstances of the case, that proceedings should not be taken on the representation. . . . "he shall within twenty-one days after receiving the representation transmit a copy thereof to the person complained of, and shall then transmit the representation to the archbishop, who shall forthwith require the judge to hear the matter of the representation." By s. 16 it is further provided that, if any bishop is the patron of the benefice held by the incumbent respecting whom a representation shall have been made, the archbishop of the province shall act in the place of such bishop in all matters thereafter arising in relation to such representation.

A representation under the above Act, was sent to the bishop of the diocese on the 29th of August, 1876. The bishop received the representation on the 30th of August, and finding that the party complained of was the incumbent of a benefice in his patronage, forwarded it on the 15th of September to the archbishop of the province. On the 21st of October the archbishop transmitted a copy of the representation to the party complained of. The party complained of did not acknowledge the receipt of the copy of the representation so transmitted to him, and though subsequently personally served with a duplicate copy of the representation entered no appearance. Afterwards the archbishop required the judge to hear the matter of the representation:—

*Held*, that the proceedings were void, and must be dismissed by the judge, for the provision as to the time within which a copy of a representation should be transmitted to the party complained of was imperative, and had not been complied with.

ON the 30th of August, 1876, a representation made in pursuance of the Public Worship Regulation Act, 1874, under the

1877 hands of Frederick Howard, John Painter, and Samuel Bruce  
HOWARD Andrews, three inhabitants for more than one year next before  
v. the commencement of the proceedings, of the ecclesiastical dis-  
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representation the Rev. C. Bodington, the vicar or incumbent of  
the said ecclesiastical district or chapelry was the party com-  
plained of, was received in the diocesan registry of the Bishop  
of Litchfield.

The patronage of the living of St. Andrew, Wolverhampton, is vested in the Bishop of Litchfield for the time being, and the Bishop of Litchfield, having regard to the provisions of the 16th section of the Public Worship Regulation Act, 1874, directed that the representation should be forwarded to the Archbishop of Canterbury. On the 15th of September the representation was accordingly forwarded to the registry of this court, where it was received on the 16th of September, and was on the 18th of September given by the deputy-registrar of this court to the principal registrar of the province of Canterbury, by whom eventually it was submitted to the Archbishop of Canterbury. On the 21st of October a copy of the representation was transmitted by the archbishop to Mr. Bodington, and was received by him in the course of the next day. Mr. Bodington, however, did not acknowledge the receipt of the copy so transmitted to him, and was afterwards personally served at Wolverhampton with a duplicate copy, under the 6th section of the rules and orders made in pursuance of the Public Worship Regulation Act, 1874 (1).

Subsequently a requisition, signed by the Archbishop of Canterbury under the 9th section of the Public Worship Regulation Act, 1874, was sent to the Dean of Arches (the Right Honourable Lord Penzance), to require him to hear and determine the matter of the representation.

No appearance was entered on behalf of Mr. Bodington.

February 20. *Jeune* appeared on behalf of the complainants.

No counsel appeared for Mr. Bodington.

On the case being called on, the counsel for the complainants

stated that he thought it right to call the attention of the Court to the fact that by no fault of the complainants the copy of the representation which, according to the provisions of the 9th section of the Public Worship Regulation Act, 1874, had to be transmitted to the party complained of, had not been transmitted to him until the 21st of October, 1876, more than six weeks after the representation had been sent to the Bishop of Litchfield. He then proceeded further to state in detail the circumstances under which the case had been brought before the Court, as the same are substantially set forth in this report.

His Lordship intimated that the Court was prepared to hear the question argued, whether it had jurisdiction to proceed with the hearing of the case, and suggested that the witnesses proposed to be produced on behalf of the complainants in support of the representation might be examined *de bene esse*.

The counsel for the complainants thereupon addressed the Court in support of the jurisdiction, contending that the provision in the 9th section of the Public Worship Regulation Act, 1874, with regard to the time of service of a copy of the representation on the party complained of, was merely directory, and that a literal compliance with its terms was not a condition precedent to the Court exercising jurisdiction. The authorities relied on in argument are referred to at length in the judgment.

Witnesses in support of the allegations in the representation were then called and examined on behalf of the complainants.

At the conclusion of the examination his Lordship adjourned the further hearing of the case, in order that the complainants might give formal proof of the date on which a copy of the representation had been transmitted to or served on Mr. Bodington.

Feb. 27. The case came on for further hearing.

The counsel for the complainants produced and examined as a witness a clerk in the office of the principal registry of the province of Canterbury, who formally proved in effect that on the 21st of October last, he had sent a copy of the representation in a registered letter from such registry addressed to Mr. Bodington; that no reply was received thereto, but that Mr. Bodington when after-

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wards personally served with a duplicate copy admitted that the copy first sent had been duly received by him.

LORD PENZANCE. Upon this case coming on for hearing before the Court on a former occasion, the Court thought it necessary that some proof should be given of the period at which the representation was served upon the respondent. The respondent did not appear, and therefore the proceedings of the Court, whatever they might be that had to be taken, must be taken in his absence, and under those circumstances the Court thought it necessary to require proof that the representation had been served upon him, and to know at what date it had been so served. That proof was given in an informal manner on the former occasion, and has been supplemented by the evidence of the witness who has just been called. It appears from that evidence that the Rev. Charles Bodington was served with the representation in this suit on the 22nd of October last, because it was forwarded to him in a registered letter on the 21st, and would reach him on the 22nd of October.

Now, the provisions with respect to these matters in the Public Worship Regulation Act, 1874, are very precise, the statute requires that the representation shall in the first instance be transmitted to the bishop of the diocese of the respondent. The important words of the 8th section of that Act, are as follows:—

“If the archdeacon of the archdeaconry, or a churchwarden of the parish, or any three parishioners . . . . being male persons of full age, who have signed and transmitted to the bishop under their hands the declaration contained in schedule A. . . . shall be of opinion that the incumbent has within the preceding twelve months failed to observe the provisions of the Book of Common Prayer. . . . such archdeacon, churchwarden, parishioners . . . . may . . . . represent the same to the bishop by sending to the bishop a form as contained in schedule B to this Act duly filled up and signed.”

A further section of the Act declares that rules and orders shall be made by certain persons for regulating the procedure and settling the fees to be taken, under the Act, so far as the same may be expressly regulated by the Act, and on turning to the rules and

orders it appears that the very first order is : "The representation, declarations, and all other documents required by the Act, or by these rules and orders to be transmitted to the bishop, shall be either delivered at, or sent by post in a registered packet to, the registry of the diocese within the jurisdiction. . . . Such registry is hereinafter called the diocesan registry." Reading, therefore, the first rule with the 8th section, it appears to be the duty of the parishioners to represent what they complain of to the bishop, by sending to the registry of the diocese the form contained in schedule B of the Act. That requisition was duly complied with by the complainants. They sent their representation to the registry, and they sent it at a date which I will mention presently. The next provision of the Act is as follows : "Unless the bishop shall be of opinion, after considering the whole circumstances of the case, that proceedings should not be taken on the representation, . . . he shall, within twenty-one days after receiving the representation, transmit a copy thereof to the person complained of, and shall require such person, and also the person making the representation, to state in writing, within twenty-one days, whether they are willing to submit to the directions of the bishop. . . ." That is the provision which gives rise to the question the Court has to consider to-day. It is a provision that the bishop, if he is not of opinion that the proceedings shall be stopped, shall within twenty-one days after receiving the representation, transmit a copy of it to the person complained of. Now, what happened in this case is this, the representation is dated the 29th of August, it was received in the bishop's registry in conformity with the 1st rule of the rules and orders on the 30th of August. That would be, under the statute, the receipt by the bishop, and would be the date from which the twenty-one days, which the statute accorded to the bishop to consider whether proceedings should be taken on the representation, would run.

The twenty-one days would therefore expire on the 20th of September, the bishop having received it on the 30th of August. I believe the bishop was away from home, but that I do not know. The bishop kept the representation until the 15th of September, and on that day appears to have sent it up to the registry of the archbishop, saying that he was the patron of the living, and that the

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archbishop had to act in his place. That was done in conformity with the 16th section of the Act, which says: "If any bishop shall be patron of the benefice . . . held by the incumbent respecting whom a representation shall have been made, or shall be unable from illness to discharge any of the duties imposed upon him by this Act in regard to any representation, the archbishop of the province shall act in the place of such bishop in all matters thereafter arising in relation to such representation." Therefore, in this case, as the bishop was the patron of the living, it is quite plain that from the moment he received the representation it was the archbishop who had to act in his place, which of course he could not do until the bishop sent the representation to him. The bishop, however, did not send it till the 15th of September. The archbishop would receive it on the 16th of September, within four days of the time when, according to the Act, the archbishop would be bound to transmit a copy to the respondent; but the duty of the archbishop acting in place of the bishop was to make inquiries and to consider how far under the circumstances the proceedings should or should not be allowed to proceed. The twenty-one days accorded by the Act to the bishop, or in his place the archbishop, appear to me to have been accorded to him for that purpose. He is to consider whether, in his opinion, it is a proper case for the proceeding to go forward. If he thinks it is not, then he is not to transmit the representation to the respondent at all, but to put his reasons on record.

On the other hand, if the bishop thinks that it is a proper case for the proceedings to go forward, then he transmits a copy of the representation to the respondent. Now those are the duties which, the bishop being the patron of the living, devolved upon the archbishop, and assuming that the archbishop did receive the representation on the 16th of September, he would have only four days within which to exercise that option or that judgment. That obviously is too short a time, and I think that the object of the Act was practically defeated when the representation remained in the hands of the bishop as late as the 15th of September.

But however that may be, what took place was this: Having got to the deputy registrar of this court, I believe, on behalf of the archbishop, it was forwarded to another of the archbishop's

officers. There seems to have been some misunderstanding as to whose duty it was to bring it before the archbishop, and in the result it was not transmitted or served upon the respondent until the 22nd of October, which was more than a month after the twenty-one days had expired.

Now that is the state of things which this Court has to consider; and it has to ask itself the question: What is the consequence of so wide a departure from this provision of the statute? The matter was excellently argued by Mr. Jeune the other day. First, he contended that this Court could not consider the matter at all, because he said if you turn to the statute you will find that the business of the judge is, upon receiving a representation from the archbishop, "to hear the matter of the representation." These are the words of the section of the statute: "The judge shall give not less than twenty-eight days' notice to the parties of the time and place at which he will proceed to hear the matter of the representation." And again, in the same section, "The archbishop shall forthwith require the judge to hear the matter of the representation." Then it was argued that all that the judge has to do is to take the representation and ascertain whether the facts stated in it are true, and to apply the law to those facts, and that there his function begins and ends.

Well, I have considered that argument, which has I think some warrant in the particular language used by the statute. But I think that, upon the whole, the Court could not put so narrow a construction on these words, "to hear the matter of the representation," without doing obvious and great injustice. For instance: suppose that the respondent had never been served with the representation at all, can it really be seriously argued that this Court is bound to shut its eyes to that fact, and to go on and hear the facts and issue a monition against the respondent, who has never been in any way brought into court or attempted to be brought into court? So again: suppose the respondent appears at the hearing and says, amongst other things, that he has never had an opportunity of submitting the matter to the arbitrament of the bishop, and details certain circumstances to shew that in that respect the statute has not been complied with, is the judge to take no notice of that and to say I have nothing to do with that;

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all I have to do is to try the representation. It seems to me that that mode of looking at the matter would involve great and unnecessary expense upon the parties, and would hardly be consistent with the proper intention of the legislature. Well, then, again: suppose it is alleged that both parties agree to be bound by the bishop, but that after all the bishop declines to settle the matter at all, and sends it on to the archbishop, surely that is a matter that the Court is entitled and bound to inquire into, in order to see whether the matter comes properly before it under the provisions of the Act. If this Court cannot undertake those functions, I do not see what other court can, and the result would be that, notwithstanding all these preliminary provisions of the statute had been disobeyed, or not been acted upon, this Court would be bound to go on and hear the case, and issue a monition against the party, although the doing so might be totally contrary to the justice of the case and the intention of the Act. Upon the whole, therefore, I think I must reject that suggestion. Well, then, secondly, it was contended that, although it is a positive provision of the Act that a copy of the representation shall be transmitted to the respondent within twenty-one days from the time the bishop received it, yet that that provision is only what has been called in the law courts "directory." Now the distinction between matters that are directory and matters that are imperative is well known to us all in the common language of the courts at Westminster. I am not sure that it is the most fortunate language that could have been adopted to express the idea that it is intended to convey; but still that is the recognised language, and I propose to adhere to it. The real question in all these cases is this: A thing has been ordered by the legislature to be done. What is the consequence if it is not done? In the case of statutes that are said to be imperative, the Courts have decided that if it is not done the whole thing fails, and the proceedings that follow upon it are all void. On the other hand, when the Courts hold a provision to be mandatory or directory, they say that, although such provision may not have been complied with, the subsequent proceedings do not fail. Still, whatever the language, the idea is a perfectly distinct one. There may be many provisions in Acts of Parliament which, although they are not strictly obeyed, yet do not appear to the Court to be of that



material importance to the subject-matter to which they refer, as that the legislature could have intended that the non-observance of them should be followed by a total failure of the whole proceedings. On the other hand, there are some provisions in respect of which the Court would take an opposite view, and would feel that they are matters which must be strictly obeyed, otherwise the whole proceedings that subsequently follow must come to an end. Now the question is, to which category does the provision in question in this case belong? Mr. Jeune was good enough to refer me to Sir Benson Maxwell's book "On the Interpretation of Statutes," and to quote a number of cases from it (Maxwell, On the Interpretation of Statutes, ch. xii., sec. 3, pp. 330-345). Since the matter was argued I have been very carefully through those cases, but upon reading them all the conclusion at which I am constrained to arrive is, that you cannot glean a great deal that is very decisive from a perusal of those cases. They are on all sorts of subjects. It is very difficult to group them together, and the tendency of my mind, after reading them, is to come to the conclusion which was expressed by Lord Campbell in the case of the *Liverpool Borough Bank v. Turner*. (1) Lord Campbell was then sitting as Lord Chancellor. In an appeal from the Vice-Chancellor, and in giving judgment, his Lordship said this:—

"No universal rule can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory, with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed."

I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory.

But amongst the cases to which attention was called is a case of *Vaux v. Vollsans* (2), to which I will call attention, because I think it more nearly resembles the matter we have in hand than any

(1) 29 L. J. (Ch.) 827; 30 L. J. (Ch.) 379; 2 De G. F. & F. 502.

(2) 4 B. & A. 525.

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other that I have met with. *Vaux v. Vollans* (1) was an action of debt for penalties against the defendant, the Rector of Hems-worth, for wilfully absenting himself from his benefice without licence or exemption; there was a general plea of nil debet, and at the trial in the county of York it was proved by the agent of the plaintiff's attorney that on the 3rd of April he served a notice of the cause of action, signed by the attorney, on the deputy registrar of the Archbishop of York personally, at his residence at Mount-gate, in that city, the public registry being kept in a different place, namely, the office in the minster yard. I should say that the provision of the statute, to comply with which this notice was served, was that no writ should be sued out against any spiritual person for any penalty or forfeiture incurred under the Act, until a notice in writing of the intended writ should have been delivered to him or left at the usual or last known place of his abode, and also to the bishop of the diocese, by leaving the same at the registry of his diocese, by the attorney or agent for the parties, so that there was an obligation on the plaintiff's attorney, before he founded the right to maintain the action, to give notice of the action to the bishop of the diocese by leaving the notice at the registry of his diocese. What happened was this: The agent of the attorney did not leave the notice at the registry, but he served it on the deputy registrar at his own house, the registry happening to be shut, and the deputy registrar came and proved that the notice was served, and that the next day he took it to the registry, so that it got there all right on the following day after the deputy registrar received it. Therefore, as far as the substance of the matter was concerned, there was, and never could have been a case in which there was a more perfect compliance with what one would have thought was the object of the statute. But the Court held that the statute having said that the notice must be served by leaving it at the registry, inasmuch as it was not left at the registry by the agent of the attorney, the Act had not been complied with, and so the action failed. In the course of giving judgment, Mr. Justice Littledale said:—

“The statute does require that the delivery to the bishop shall be by leaving the notice at the registry of his diocese. The object that it shall be left in a

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(1) 4 B. & A. 525.

place where it is likely to be attended to by the bishop or his officer, may have been attained by its having been first delivered to the deputy registrar and afterwards carried by him to the registry office; but that is not the specific mode of delivery required by the statute. If we hold that a personal service on the deputy registrar was sufficient it might then be said that delivery to a clerk or a porter elsewhere than at the registry office might suffice. I think the safest course is to adhere to the words of the legislature."

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In that case the failure was in not serving the notice in a proper form. Here the failure is not serving the notice in a proper time, which, to my mind, is of very much more importance than the form or way in which it was served, provided it got to its ultimate destination. That case is no doubt a strong one to shew that where the legislature chooses to provide for these minute matters with apparent intention that they should be adhered to, no supplemental or different mode which even attains the same end is allowable or permissible, but the proceedings are void. No doubt it may be said that that was a penal statute, a point about which I will say a word presently.

Then, in one of the old cases, I think that of *Rex v. Lowdale* (1), the language was somewhat similar. That was a case in which the question was the appointing five overseers, and the statute only allowed four. Lord Mansfield said: "The precise time, in many cases, is not of the essence," and another of the judges added that in the 43rd Eliz. nobody ever thought that the number of overseers was discretionary. Lord Mansfield in his judgment, moreover, distinguished between things which, as he said, were the essence of the matter and things that were not, and he also remarked—which is a matter that I think furnishes the strongest argument on this occasion, that the number in the statute having been four there was no number to stop at if the parties exceed four—they might go on without any boundary unless the specified number of four was the limit. That, as I shall point out presently, appears to me to be a matter of serious importance, because if we desert the twenty-one days, the question arises how long may the matter hang over the head of the respondent?

The general result of those cases is what I have pointed out. There is a case of notice to an elector. The notice was sent to his true address. The statute said it was to be sent to the address on the

(1) 1 Burr. 445.

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register, and because it was not sent in accordance with the statute, it was held to be bad, although the fact was that owing to the notice going to his true address, the man got it when perhaps he would not have got it if they had sent it to the address on the register which he had left: *Noseworthy v. Buckland-in-the-Moor*. (1)

Then the Court has to consider what is the scope of this enactment. I think nobody can doubt that of all the important steps in the suit there is no step so important as that which regards the service of the first proceedings on the respondent. That which is to give the respondent notice that he is to be made the subject of a suit is the most important step in the whole cause, whatever Court the suit is brought in, or whatever the nature of the proceedings, whether there is an action in one of the Common Law Divisions, in the Chancery Division, in the Probate and Divorce Division, or a suit in the Ecclesiastical Court, there is not a more important step in the cause than that which provides for the service upon the respondent. Because, of course, that which gives notice to him of the proceedings is the only thing that puts him on his defence, and enables him to bring forward all those things that are in his favour. Now, in other courts service upon the respondent or defendant is always carefully provided for. In the Common Law Courts I think a writ after it was issued was only in force for six months, and after that time could not be served unless renewed (15 & 16 Vict. c. 76, s. 11). If it were served a day after the six months without being renewed the service would be void. In the Divorce and Matrimonial Court, where I presided for some years, I recollect perfectly well a personal service on the respondent was required and thought necessary. But in this statute that we are considering, we must bear in mind that really the whole scope of the statute is to provide a new form of proceeding; it is a new form of suit. It has been said over and over again that this statute constituted a new court, but it did not constitute a new court; it created a judge of the existing provincial court; and what it did constitute was a new form of proceeding. The legislature chose to point out in these various sections the particular steps which should be taken, and minutely to tie the parties down to a particular time, and when they came to provide for the

(1) Law Rep. 9 C. P. 233.

machinery of the Act being carried out by rules and orders, they expressly, in the 19th section, excepted those matters that were expressly regulated by the Act. Therefore, the question that we are inquiring into was really, as far as one can see, one treated by the legislature as one of considerable importance. The service upon the respondent is practically the beginning of the suit, because the bishop after he receives the representation may say that the proceedings should not go on at all, and the very first step that really gives life and vigour to the suit is the service upon the respondent.

Now, as I said just now, if twenty-one days is not to be adhered to, what limit is there to the time within which it would be lawful to serve this notice upon the respondent? That is a matter that has pressed more upon my mind than any other. It seems to me that there is no limit. Can it be said that, the statute having said that the service of the representation should be within twenty-one days, it would be perfectly lawful, and that the suit could proceed, although the representation was not served for a year or even two years? This is matter not without importance, because the statute provides that the representation must complain of something that the incumbent has within the preceding twelve months failed to observe, and therefore the suit cannot commence except for a matter that has happened within a year. Well, but if another year is to be taken before the representation is served upon him such delay seems to me to be very much at variance with the intention of the legislature. If the service of the representation is looked upon as what it really is, namely, the commencement of the suit, it is practically extending the period within which the suit may be brought from one year to two, or for ought I know, to three; and there seems to be no limit if the period specified in the Act is once deserted.

It is said, and said truly, that if the bishop chose to hold this representation back, and not to serve it, either one or other of the parties might push the bishop on; but suppose they did not; suppose the suit hangs over for a year or eighteen months, is the Court to pass by the irregularity, and say that, notwithstanding that, the proceedings are in order, and that it is competent to the Court to entertain them?

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On the other side, in opposition to those views, it has been argued, first of all, that no harm is done to the respondent. I think that everybody will admit that the continuation of a suit, and its hanging over a man's head beyond the time that the legislature provided, is a harm, and the extent of that harm it is perhaps not so easy to measure exactly, but I think it is a harm ; at any rate, in neither of the two cases to which I have called attention was there any harm done, because the notice really got to the right place, but what was done was not done in the form provided by the statute, and therefore it was held that the proceedings were void.

Then, again. It has been said, and this was a cogent part of the argument, that this was the act of a third person ; I think there is a good deal in that. I think that many things would render the proceedings void if done by the parties themselves, against whom it might be said it was their own fault if the proceedings had failed through their own remissness, which would not render the matter void if done by a third person, and that third person a public officer. Several cases were cited to shew that where a statute had thrown upon a public officer the duty of doing a certain thing in a certain time, and it was not done, the Court held it was directory only. But such cases appear to me to differ essentially from this in the particular to which I have already called attention, namely, that it is of vital importance here to the individual that he should be brought into Court at the time within which the statute says he shall be brought into Court.

Then, again it is said that this is a provision intended only for the benefit of the complainants, and it is no doubt considerably for the benefit of the complainants, because they file their representation, and of course they wish to go forward with their suit.

If the bishop holds it back, he is doing them a wrong, but I am unable to see that it is not also a provision intended for the benefit of the respondent, and I do not think the Court is at liberty to speculate too narrowly as to what the motives of the legislature were. They have chosen to provide a definite time within which the representation is to be served, and the question is whether, the matter being one of essential importance, the Court is at

liberty to throw what the legislature have provided aside, upon some speculation that they intended it for the benefit of the complainants and not for the benefit of the respondent.

Then, lastly, it was said if what has occurred in this case is held to be fatal to the proceedings, you will put it in the power of the bishop indirectly to defeat the proceedings if he chooses, by not choosing to forward the representation. There is some truth in that, no doubt, but I do not think that is an argument to which the Court can listen; the Court can hardly entertain the supposition that a person holding the position of a bishop would take such a course, not only such an illegal course, but a course so sinister and so utterly unworthy of one holding the rank of a bishop in this country. It is not my business to make suggestions on such subjects beyond certain limits, but I apprehend if any course of that sort were taken, the party would not be without a remedy, and if he suffered injury by the bishop wilfully holding back the representation, and not serving it, the Courts of this country would provide some remedy for it.

Upon a review, therefore, of these matters, and after full attention to the excellent argument that I heard upon the subject, I have come to the conclusion that these proceedings cannot go forward. I think the statute has prescribed a particular form to be followed, and that the Court is not at liberty to cast the time mentioned aside, upon any speculation as to the possible reasons why that particular provision was adopted. I foresee that were the Court to take an opposite view, it would be very difficult to know where to stop in future, and very difficult to work out this Act in the way in which I think the legislature intended it to be worked out. It is with regret, therefore, that I am obliged to say that these proceedings must come to an end, but at the same time there is this reflection, that the matters that are charged in this representation are pretty nearly all of them—not all of them, I think, but the most part of them—matters that are now under appeal in a case with which we are all acquainted, the judgment in which has not been given, and probably, I should think, will not be given for another two months (1). Therefore the parties here are quite capable of commencing afresh, and filing a fresh

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(1) *Ridsdale v. Clifton*, post, 276.

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representation, and then matters will go forward in their regularity, and the determination of the suit will not be ultimately much delayed.

Solicitor for complainants: *Girdlestone*.

July 17.

[IN THE COURT OF APPEAL.]

THE ANNANDALE.

*Forfeiture — Intent to conceal British character of Ship — Sale to bonâ fide Purchaser for value after Offence committed, but before seizure by the Crown — Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104) s. 103, sub.-s. 2.*

A cause of forfeiture, under the 103rd section of the Merchant Shipping Act, 1854, was instituted on behalf of a British officer of Customs against a vessel seized for an alleged infringement of the provisions of that section. The plaintiff in his statement of claim alleged that on the 18th of July, 1874, one of her owners being a British subject, had falsely represented, contrary to the fact, and with intent to conceal the British character of such ship, that she had been sold to foreigners. An appearance in the action having been entered on behalf of a foreigner as defendant, a statement of defence and counter-claim was delivered on his behalf, which in the 7th paragraph thereof set up the defence that on the 6th of July, 1876, the defendant became bonâ fide purchaser of the vessel proceeded against, for valuable consideration, without knowledge of any of the matters alleged in the statement of claim. The plaintiff demurred to the 7th paragraph of the statement of defence:—

*Held*, affirming the decision of the Judge of the Court of Admiralty, that the demurrer must be allowed; for that the property in the vessel was divested out of its former owners, and vested in the Crown immediately on the commission of any of the offences in respect of which, under the provisions of the section, the penalty of forfeiture was imposed.

THIS was an appeal by the defendant Hans Lowe from a decision of Sir R. Phillimore allowing a demurrer to the statement of defence in an action of forfeiture under the 103rd section of the Merchant Shipping Act, 1854, and holding that the ship *Annan-dale*, which was proceeded against in such action, was vested in the Crown at the time of the commission of the offences charged in the statement of claim. (1)

The pleadings and arguments are fully set forth in the previous report.

(1) Ante, p. 179.