*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Rev. James Bonwell* v. *the Lord Bishop of London, from the Court of Arches: delivered* 18*th July*, 1861.

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Present:

THE ARCHBISHOP OF YORK.
LORD JUSTICE KNIGHT BRUCE.
LORD JUSTICE TURNER.
SIR JOHN T. COLERIDGE.

THIS was an appeal against a sentence of deprivation pronounced by the Dean of the Arches, in a suit promoted in virtue of Letters of Request from the Lord Bishop of London. The Appellant conducted his case in person, and contended on several grounds that the Decree ought to be reversed generally, or, at all events, that the sentence should be reduced to one of less severity.

For the better understanding of these grounds, and the principle on which their Lordships' recommendation to Her Majesty will proceed, it may be convenient to state, in the first instance, what they consider to be the facts established by the evidence adduced in the Court below.

It appears, then, that in October 1858, Mr. Bonwell, a beneficed clergyman of many years' standing, and being a married man with a family, was at Margate alone, and there met at the house of a Mr. Robinson, Miss Elizabeth Yorath, who was on a visit at the house of a Major Watts, a gentleman resident at that place. The introduction which he thus obtained led to his calling on her at Major Watts' house. The acquaintance soon ripened to an intimacy; he paid her particular attentions, which were favourably received; he soon conducted himself towards her as an accepted lover, and it was

understood in the family in which she was visiting, and among their acquaintance, that they had become engaged to each other. It does not appear precisely at what time he returned to London. Miss Yorath left Margate on or about the 1st December; she staid some little time in London; attended services in the Appellant's church, and on one occasion during that month was admitted into the vestry by his order; and did not return to Newport, where she and her mother resided, until the latter end of the month.

Not long after her return, on the 22nd January, 1859, Mr. Bonwell came to Mrs. Yorath's house, on a visit to her; he announced himself to her mother, a blind lady, and to her brother, a surgeon, as Miss Yorath's accepted suitor; he was introduced as such to the friends of the family, and it was understood that the marriage was to take place in June or July 1859. During this visit, and in several which followed in the spring of 1859, the manner of Mr. Bonwell and Miss Yorath to each other was that of engaged lovers; the family had entire confidence in his honour and morality, and without restraint he and Miss Yorath were allowed to sit up alone, and they frequently did so to a late hour after the family had retired to rest.

She left her home some months after, in consequence of pregnancy, which had become apparent. She went on the 8th June to Margate, to the house of Major Watts, but, as might have been expected, left it on the 9th, her state of pregnancy being objected to her, and she not denying it.

In that month of June, she came to the house of a Mrs. Glenney, in Balls' Pond Road, under the name of Mrs. Harvey, and took lodgings there; on being asked for a reference, she gave Mr. Bonwell's printed card and address. When she took possession he came with her, and appeared on terms of intimacy, assisting her in her first arrangements. There she remained for some weeks, and left on the 22nd July; during this period she was seen by her landlady occasionally walking with him; she did not always sleep at home, and once was away for nearly a fortnight, and during this absence Mr. Bonwell, on one occasion, sent a man named Beilby to inquire for her letters, as for the letters of Mrs. Harvey. This man, on his return to Mr. Bon-

well's house, found him and Miss Yorath there, and he introduced her to him as his cousin Mrs. Harvey; Mrs. Yorath, her mother, was also there at the same time.

During all this time, however, Mrs. Bonwell, who kept a school or college for young ladies, was absent; she returned on the 22nd July, unexpectedly, with her son and two of her pupils. Miss Yorath had gone not long before, leaving by mistake a parasol behind. The Appellant was not at home when Mrs. Bonwell arrived, and before his return she had discovered that a lady had been staying there in her absence; she taxed him with it on his return, and he stated that she was a Mrs. Harvey, a cousin from Australia, but this explanation was not believed; there was a quarrel, and he left the house for the night.

Near to the church of St. Philip is a school-house, with school-rooms, and a kitchen, bed-room, and parlour. These last had not been occupied from December 1858, and were under the control of Mr. Bonwell, who had been often there in the day-time, and occasionally slept there. On some occasions Miss Yorath was in this house, and once, in the month of July 1859, she had let herself into it between 10 and 11 at night by a key. In this bed-room on the 11th August, 1859, she was delivered of a male child. Mr. Bonwell sent for the nurse and for the medical man. For the twelve days that she remained there, he was in daily attendance in the bed-room on the mother and child; at the end of those days they were removed to the Sussex Hotel, in Southwark. Mr. Bonwell took the apartment, described the lady as being his sister, and paid the bill for their stay there. After a few days the child died, and Mr. Bonwell employed the undertaker and paid his charges for the funeral.

In this summary their Lordships purposely omit some circumstances, not unimportant, connected with the stay at the Appellant's dwelling-house, because in regard to them there is some conflict in the evidence; they do not desire to express any dissent from the view which the Court below took of this evidence, but they prefer not to rely upon it.

From circumstances attending the funeral of the child, which, however, do not reflect on the Appellant, a Coroner's Inquest was held, and this led to a

Commission, issued by the Respondent under the Church Discipline Act. The Report of the Commissioners found that there was room for further proceedings against Mr. Bonwell for having admitted or caused to be received in July or August 1859, into an upper room, fitted up as a temporary sleeping apartment, in the school-house of the parish or district of St. Philip's, Stepney, and therein harboured, a certain unmarried female named Elizabeth Yorath, then far advanced in pregnancy, in which room on or about the 11th August, 1859, the said Elizabeth Yorath was delivered of an illegitimate child, and for having thereby caused great scandal to the Church; and also in respect of his conduct in relation to the said Elizabeth Yorath at the time of, and subsequent to, the delivery of the said illegitimate child, and in relation to its burial, and also in respect of his being the father of the said child; but the Commissioners found that there was no just ground for instituting further proceedings against him for having had adulterous intercourse with her actually within the diocese of London, on the ground that the evidence adduced could not, in their opinion, warrant his conviction of that offence.

Upon this finding, the Letters of Request were issued, and Articles filed. The former prayed that a citation might issue to the Appellant to answer to articles for the matters which had been found by the Report as fit to be further inquired into, but were silent as to the matter respecting which it had stated that there was no ground for any further proceedings. The 13th and 14th of the latter charged the Appellant with the commission of adultery with Elizabeth Yorath on a Tuesday and on a Wednesday night in the month of July 1859, in his own dwelling-house. The Articles, after objection, were admitted by the Dean of the Arches, with some slight verbal alterations, which did not affect the 13th and 14th. Many witnesses were examined *viva voce*, and cross-examined by the Appellant in person, and after time taken, the judgment now appealed against was pronounced.

Their Lordships have now heard the Appellant in person, both on the effect of the evidence, the admissibility of certain parts of it, and also of some of the Articles. On the two latter points they will

presently express their opinion, but on the first they state at once their entire concurrence in the conclusion at which the Court below has arrived. They have listened with patience to everything addressed to them on this subject by the Appellant, who has exhibited great industry and cleverness; in these respects, and in entire freedom from embarrassment, his defence has suffered nothing by not having been entrusted to a professional advocate; and their Lordships have thought it better to permit many things to be said and produced, which in strictness were perhaps inadmissible, the Queen's Advocate, for the Respondent, not insisting on their exclusion; their Lordships mention this circumstance that it may not be drawn into a precedent. But after all they have heard, they have no doubt whatever that the Appellant, long past the heyday of life, a clergyman, a husband, and a father, and specially bound by the strongest ties to a life of purity, has been guilty of seduction and adultery; and that in the pursuit of his wicked design he has deliberately and persistently represented himself to be a single man, has professed to be the honourable suitor of a single woman, so depriving her of the protection, even against her own passions, which the ordinary care of a mother and brother would have thrown around her, has polluted her by his embraces even under the maternal roof; that in the course of his guilty intercourse with her he has with many artifices admitted her to his own house, and given her access to the vestry of his church and the schoolhouse adjoining it, and finally made the latter her place of refuge when the fruit of their guilty connection was to see the light; by this whole series of acts, so soon as they became known, unavoidably creating the most just and greatest scandal and offence to his parishioners and the whole Church.

Their Lordships will at present express no opinion as to the character of such conduct in such a man, under such circumstances, or the consequences which ought to result in the measuring out a discretionary punishment: they say only that, in their opinion, the learned Judge in the Court below could have come to no other conclusion but that the Appellant was guilty to this extent at least.

But it is necessary to consider the various objections in point of law which the Appellant has relied

on in the course of his argument. He has complained, first, of the omission which we have noticed in the Letters of Request; this complaint appears to their Lordships to be without the least foundation. It is the office of the Letters to present to the Court of Arches the subject of the future proceedings, that which is to form the matter of charge to be inquired into. To state matters over which the Judge is to exercise no jurisdiction would be simply irrelevant, and no hardship can ever result to a Defendant from the omission of such matters; for if it be material for his defence that the Judge should be informed that on certain other matters, not in charge, but more or less connected with those which are, the Commissioners have found that no sufficient *primâ facie* evidence was offered to them, it must always be in his power to bring that to his knowledge; and in the present case the Appellant cannot complain, because the learned Judge, in the exercise of his discretion, has proceeded as if a copy of the Report itself had been regularly brought before him.

There is as little foundation for the objection, which is next in order, that the Articles exhibited in the Court below go beyond the finding in the Report of the Commissioners, and especially in charging two acts of adultery to have been committed in the diocese of London. It is unnecessary for their Lordships to pronounce any opinion whether, in proceedings under the Church Discipline Act, the Court of Arches may entertain and adjudicate upon charges not reported by Commissioners as fit to be inquired into, for the point really does not arise in this case. The authorities cited before their Lordships, and in the Court below, do not appear to be entirely in unison, and many arguments of weight may be urged on either side. If ever a case should come before their Lordships, the facts of which make a decision necessary, it will be their Lordships' duty to lay down the rule; the facts will then be presented more precisely, and they will have the advantage of hearing the points argued at the Bar more fully than has now been done.

But assuming the contention of the Appellant to be well founded, more than one answer now occurs: First. The insertion of an objectionable item of charge will not vitiate others well laid, nor can it

form any valid ground of objection to the judgment where the Judge has confined himself to the charges which are well laid. Now in this case the learned Judge in the Court below, who was evidently quite aware of the nature and weight of the objection, has carefully excluded from the grounds of his Decree any fact of adultery in London or elsewhere, and has limited himself to the charges to which the objection does not apply. A second answer is, that the Report does charge the Appellant with being the father of the illegitimate child of which Miss Yorath was delivered; whatever, therefore, tended to establish the paternity was fit to be alleged before the Judge, and to be inquired into by him. The distinction is perfectly clear between what is matter of charge and what is evidence to prove it; had the paternity not been proved, the fact of adultery alone, however satisfactorily proved, could have not been made the ground of a Decree against the Appellant, assuming his objection to be valid; still it was, like any of the other facts, lawfully to be used as evidence in order to prove the paternity, which was charged, and might therefore well be alleged by the Articles.

And this reasoning equally disposes of the Appellant's next objection, that facts were allowed to be given in evidence which did not occur within the Diocese of London. Assuming the jurisdiction to be purely local, it cannot be more so than that of a Grand Jury sworn to inquire of offences committed within the body of their county, or of a Judge of Assize trying their presentments: the one cannot find, nor the other try (except under special statutes in particular cases) offences committed elsewhere; but a crime committed elsewhere, even out of England, may, like any other fact, be a link in the chain of evidence to establish the specific crime committed within the county, and, if so, must, of course, be inquired into, but only as evidence. So here all that occurred at Margate and at Newport was most material to establish the charges laid in the diocese of London, and to give the true character to certain of the Appellant's acts in London, which without them might have admitted of an explanation, false indeed, but apparently consistent with his innocence.

The Appellant's next objection is that the Dean

of the Arches has no power to pronounce the sentence of deprivation, but that it can only be pronounced by some superior authority; whether in this case the Bishop of London, or the Archbishop, he was not prepared to say. His reliance was on the 122nd Canon, and a doubt expressed by Sir John Nicholl in the case of Saunders *v.* Davies (1 Add. 291.) The Canon, however, when examined, appears clearly to be applicable only to Bishops and to Diocesan jurisdictions. The doubt of so eminent a Judge as Sir John Nicholl must always be entitled to respect, but is of the less importance when it is known that, at least in one case, he himself afterwards pronounced the sentence, and that a case, Burgoyne *v.* Free (2 Hagg. 406), which was much contested and much considered, and in which his Decree was appealed to the Delegates and affirmed; and which was also in the Court of Queen's Bench, and in the House of Lords on a question of Prohibition; where the objection would have been fatal and was not taken. In a much considered case, that of Kitson *v.* Loftus (4 Notes of Cases, 350), his immediate successor, Sir Herbert Jenner Fust, pronounced the sentence of deprivation, which will be found at length in Coote's "Ecclesiastical Practice," 243. It purports to proceed entirely on the independent authority of the Dean of the Arches. Indeed, the practice of the Court of Arches as to this may now be considered as settled; and it is obvious that though abundant reason may be given why the rule of the Canon should be prescribed as to a Diocesan Court in order that the same authority which conferred the cure of souls should alone be called upon to revoke it, there would be great difficulty in applying that rule to the Court of Arches, in which the Bishop has no jurisdiction. The Appellant has shown the greatest industry in the search for authorities, and yet no instance was adduced by him in which either the Bishop or the Archbishop had ever pronounced the sentence in person in the Court of Arches. Oughton describes the position and power of the Dean of the Arches in these very large terms: "Porro ille officialis Archiepiscopi Principalis, cum ipso Archiepiscopo quoad jurisdictionem æquiparatur. Dicitur enim eandem esse dignitatem, et idem auditorium Officialis, et Episcopi; et in foro judiciali parem esse

officialem Archiepiscopi ipsi Archiepiscopo. Quodque Officialis Principalis habet idem consistorium, cum ipso Archiepiscopo tam in eis quæ competunt Archiepiscopo, jure Legati, quam in his quæ competunt jure metropolitico." (Ord. Judiciorum, Proleg. xi.) In a Court of Appeal the authority of the decision appealed against, of course, cannot be invoked; but on a question of the practice of the Court it is impossible to hold for nothing the authority of the long-experienced Judge who now presides in the Court of Arches.

Their Lordships may seem to have dwelt at unnecessary length on this point, but the distinction between the Chancellors and Official Principals of Bishops, and the Dean of the Arches, having been not always attended to, they have thought it right, once for all, to put an end to the doubt.

Lastly, the Appellant contended that the sentence of deprivation was invalid as without precedent; or if not formally invalid, yet was inequitable on the ground of extreme severity, and such as their Lordships should exercise their discretion upon, and mitigate to suspension. The first branch of this objection is founded on the Appellant's misconception of the nature of the offence for which the Decree has been pronounced: he spoke of a single act of incontinence, and compared his case, so understood, with others where the defendants had been guilty of a series of acts, or where other vices, such as drunkenness, gambling, or swearing, had become habitual. In some of these the present sentence, in others a lighter had been pronounced. But the Appellant is not to answer for a single act; his sentence is founded on the grave public scandal to the Church, the necessary consequence of his commission of the very gravest ecclesiastical offences. The scandal of criminal acts over which in themselves the Ecclesiastical Court has no jurisdiction, because cognizable only in the Courts of Common Law, is a well-known ground of deprivation; in such cases the guilt, or the conviction of the party in a Temporal Court, is matter of proof only, but the punishment is visited on the scandal, and it is, therefore, immaterial whether that results from one act or many; if it be grave, and a necessary consequence of the act upon its becoming known.

In such cases the Ecclesiastical Judge is neces-