THE

CHURCHMAN

JULY, 1880.

ART. I.—THE ORNAMENTS RUBRIC.

ITS HISTORY AND LEGAL INTERPRETATION IN THE LIGHT OF RECENT PUBLICATIONS.[1]

MY object in writing this Paper is twofold: to vindicate the decision of the Folkestone case against the strictures of Mr. James Parker; and with his aid and that of Lord Selborne, Mr. Milton, and Canon Swainson, to clear up some historical difficulties connected with the Rubric; putting the matter in as plain a manner as possible, so that the substantial justice of the decision may be clear even to those who are not "learned in the law."

As some take a distinction between Church Law and State Law, I may point out that *under the former*, there is no difficulty at all about the present question, for any rule or order which may have sanctioned the vestments must long since have been *abrogated by disuser*.[2] But by the Law of the *State* it is otherwise: and therefore, as we are under the State, we have only to inquire about the meaning of the Rubric according to the law of the State, of which indeed it was entirely the creature. Here then I admit that, judging only by the words, the contention of the

[1] I refer especially to the following:—
1. The Folkestone Ritual Case.
2. Mr. James Parker's Introduction to Revisions.
3. Lord Selborne's Notes.
4. Mr. James Parker's Letter to Lord Selborne and Postscript.
5. Rev. W. Milton's Letter to Lord Selborne.
6. Canon Swainson's Historical Inquiry.

For brevity also I must assume that my readers know something of the history of the controversy. Among the many earlier publications relating to it, I may refer to a pamphlet of my own ("The Vestments and the Rubric," 1867).

[2] "The Law of the Church on Ritual," by the Bishop of Lincoln.

Ritualists is plausible. And, as long ago as 1867, I wrote to the *Times*, to urge that the Rubric should be revised and made to correspond in words with what I believed, and do still believe to be, its real meaning. Such a revision then made would have saved much expense and much heart-burning.

We ought not perhaps to wonder that the decision was not received with universal satisfaction. Those who have formed a very strong opinion, are, for a time, generally dissatisfied with a decision which goes against them. And so, in this case, many people maintained stoutly that the judges were wrong. But this feeling would most likely have subsided, if the researches of Mr. James Parker had not been affirmed by himself and believed by others to have proved that the grounds of the decision were wrong.

Lord Selborne, Mr. Milton, and now Canon Swainson, have to a great extent answered Mr. Parker; but Lord Selborne is by his position restrained from taking up the legal question. And both as a matter of law and of history, I think there is yet further light to be thrown on the question.[1] And surely, when the Church has so much work to do, and so many enemies to fight, and is in so great danger by her "unhappy divisions," I cannot be wrong in attempting to remove even one of the many bones of contention. For one sore left unhealed is a source of irritation and division, and therefore of weakness. And I appeal to those who are called "high" as well as those who are called "low," to consider the matter fairly and dispassionately.

For our present purpose the Rubric must be considered as part of the Act of Uniformity of 1662. And for its interpretation we must, as Blackstone teaches us, "enquire and find out by the most certain signs, *what was the intention of the legislators at the time when the law was made.*" (Comm. i. 59.)

It is therefore not enough for us to ascertain what the words mean in themselves. For if the legislators of 1662 used them in one sense, and we take them in another, even though it be a more correct one, we make ourselves legislators instead of them.

A simple illustration will show the justice of this rule. Suppose I take a liking to a lad whom I believe to be the son of A. B., and leave him a legacy so describing him. After my death it turns out that A. B. had only one son, who had run away,

[1] The confusion, as well as unrest, which exists in the minds of many, is proved by what took place in the Southern Convocation last year. It was assumed that the legal question might be reopened. A desire was expressed that nothing should be done to prevent this. But a resolution was passed to add to the rubric a note, WHICH WOULD HAVE LEGALIZED THE VESTMENTS!!

and of whom it appears I had never heard, and that he had adopted this lad in his place. The words of my will are perfectly clear. But any court in the world would construe the will, not according to the words, but according to my intention.

In the present case the words are certainly not clear *in themselves*. We must go back at all events to the history of the year 1549, to ascertain their meaning. Now there is this further source of uncertainty, or at least difficulty, that the clause was not a new one in 1662. It was a continuation, with some verbal alterations which at first sight seem very trivial, of one which had existed since 1559. This original Rubric again had referred to, and derived its validity from, a certain section in Queen Elizabeth's Act of Uniformity. And it is an obvious rule, that the interpretation of an old clause which is repeated with or without alteration in a later Act, is not necessarily the same as if it was altogether new. Hence the question resolves itself into these two: First, what was the law before 1662; secondly, whether any and what alteration in the law was effected in 1662.

I. Mr. Parker considers that there is no question about the original meaning of the Rubric, or rather the corresponding Section of the Act, and that it refers to Edward's First Prayer Book. But some of the extreme Ritualists think it refers to what the law was before that Prayer Book came out (see *Church Quarterly*, vol. viii. p. 474); and Mr. Milton thinks that it never legalized the chasuble or alb at all. But assuming that Mr. Parker's view is correct as to its original meaning, another question arises as to the power given to the Queen of making "other order."

The Act directs that the ornaments shall be used "until other order" shall be taken by the authority of the Queen, with the consent of certain Commissioners or of the Metropolitan. Mr. Parker contends that such order was never taken.

His first argument, and one which he lays great stress on, is this: that as the Queen in 1561 exercised in a very formal way another power given to her by the same Act, she is not likely to have exercised *this* power except with the same formalities; and that as there is no evidence of her ever having done this, that which goes to show that she exercised the power in a different way, must be erroneous. But this argument, as an *à priori* one, resting on a mere presumption, needs no refutation. Naturally, however, he devotes his main strength to disprove the authority of the "Advertisements," as it was this document which the Judicial Committee considered to be the "other order" referred to in the Act.

And his first argument is this: that whereas the Advertisements are now quoted as an entirely new order, by which a great

change was made in the law of ornaments, nothing having been done previously since the passing of the Act, they were—

> In the main a repetition of injunctions or orders previously issued, the principle and main features of which may be found in those issued by Queen Elizabeth in 1559, with variations and modifications suited to the requirements of the time.—*Letter to Lord Selborne*, p. 17.

Now suppose this to be true, as I believe it is, it does not invalidate the decision. If the Advertisements conform to the requisitions of the Act, then, as the Injunctions were not clearly expressed, and it was not clear that they had the requisite consent, the judges did right in resting their decision on the latter and not the earlier document. But as a matter of history it seems to me that the alteration, which in the Folkestone case is attributed to the Advertisements, was, by the Queen herself and by those who acted under her, considered to have been made by the 30th Injunction of 1559. Mr. Parker attempts to disprove this, by maintaining that that Injunction referred only to the "apparel" not the "vestments;" which he says are "distinct." (Letter, p. 73.) But in this he is clearly wrong. (1) Of a document which he quotes in p. 84, he kindly gives the original Latin, in which the habits ordered to be worn out of church and those to be used at the Lord's Supper are both called by the same word, "*vestes.*" (2) In his quotation of this Injunction in p. 21, he omits the words on which the question hangs, namely, "*in all places and assemblies both in the Church and without.*" (3) The Injunction, in speaking of the habits used "in the *latter* year of King Edward," seems to refer to the change made under King Edward's Second Prayer-Book, by which the surplice was ordered, and albs, vestments and copes forbidden.[1] The Bishops, soon after the Injunctions came out, prepared "Interpretations" for the better explaining of what was obscure in them. And in these Interpretations they say "there is to be used only one apparel, as the cope in the Lord's Supper, and the surplice in all other ministrations." Here they call the cope and surplice by the term "apparel;" and they show that these things are in their opinion treated of in the Injunctions which they thus interpret. (5) There are other authoritative documents quoted by Mr. Parker himself, in which the surplice is treated

[1] I am justified in this inference by the language of Bishop Madox's Vindication, published in 1733, and quoted in Soames's "Elizabethan Religious History," p. 28. He says: "The Protestant habits worn in King Edward's time, *in the last year of his reign* . . . were . . . gown, cap, tippet, or scarf . . . . and in the Church a white surplice." I notice also that Mr. Parker, though he contends that the Injunction only referred to the ordinary walking dress, does not attempt to prove that there was *in this respect* any difference between what was worn in the earlier and later years of Edward's reign.

as being ordered by the Injunctions. I refer to Archbishop Parker's Articles (Letter, p. 60); and Bishop Cox's Injunction (*ib.* p. 62). And in p. 71, Mr. Parker, quoting Gualter's letter to Humphrey, admits that the cope and surplice *were understood* to have been ordained by the Injunctions of 1559.

If then there was a general opinion to this effect, and if those who were most likely to know what the Queen meant by her Injunctions, considered that they dealt with the dress of the clergy in their ministrations as well as in their walking abroad, we have at least some evidence that this really was her intention. Though before the passing of the Act, (May 8) she might, both from her own prepossessions and from a desire to conciliate the Romish party, desire to have vestments of Edward's First Book, she might have found before the 24th of June (the probable date of the Injunctions being issued) that the opposition of the Protestants was more to be feared than that of the Romanists, and that she was more likely to succeed in carrying the ornaments of the "latter year" of Edward than those of the second year.

I press this point as absolutely necessary to the right understanding of the history, and the only hypothesis by which the facts can be reconciled.

It is true that these Injunctions were issued by the Queen as under her own prerogative, and says nothing about the advice of the Commissioners. She disliked that restriction, and wished to be recognised as an untrammelled sovereign. But she was quite clever enough and prudent enough to comply with the condition, while she assumed to be independent of it.[1] And as the Injunctions were issued with express reference to the Queen's general Visitation, for which Commissioners were appointed, and as about the same time a general Commission was also appointed (Swainson, p. 21), it is highly probable that their "advice" was obtained. But this is not certain. The decision in the Folkestone case, therefore, was most properly made to rest on the Advertisements, and not on the Injunctions.[2]

It is clear that the Queen was not only acted on by different external influences, but also led by a variety of feelings in her

[1] See, in confirmation, the Archbishop's letter to Cecil. (P.S. p. 375).

[2] Whether the history of the Advertisements as given in the judgment is perfectly accurate in all its details, or Mr. Parker is right in his criticisms on certain passages of that judgment, is a matter which does not at all affect the main question. We are told by Solomon that "the heart of kings is unsearchable;" and many different views may be taken of Elizabeth's conduct in this matter. But I think it appears most consistent if we suppose that she looked on these Advertisements, not as an altogether new thing, but as a step towards the carrying out and enforcing of the law as laid down in the Rubric and Injunctions, a clearer definition and some slight modification of the law being made for that purpose.

own mind. She liked a good deal of outward display, but she was willing to abate something of this, in order to secure what she valued much more, namely, obedience and uniformity. These, if possible, she was determined to have: but at the same time she wanted to keep up her popularity, and to throw the odium of stringent measures on the Bishops. Therefore she made them take as on their own authority the measures which she had ordered. This entirely accounts for all that Mr. Parker makes so much of. The facts he has collected with great diligence only show the success of the Queen's manœuvre.

But the policy which led her to conceal her part in the affair, and not to give the "sign manual" behind which the Archbishop might have sheltered himself, only lasted for a time. "The Parker Correspondence" (P.S. p. 386) gives a letter from her to the Archbishop, dated August 28th, 1571, which seems to me unmistakable.[1] The Queen speaks indeed of her Injunctions as the declaration and explanation of the law; but as all that the Archbishop had done for uniformity since the Advertisements, was done under them, it follows that the Queen, in sanctioning his action, sanctioned the Advertisements.

Looked at in this light, the whole history is consistent. Whether the Queen gave her sanction to the Advertisements before they were issued or afterwards is immaterial. In either case their legal validity is established. Of her subsequent sanction there are many evidences, besides the letter of Aug. 1571. I may specially notice Whitgift's Articles of 1583–4, which were laid before the Queen, and afterwards with some alterations published by her authority. (Lord Selborne's Notes, p. 25, and App.) The original draft as presented to the Queen with mar-

[1] "When we required you as the Metropolitan, and the principal person in our commission for causes ecclesiastical, to have good regard that such uniform order in the Divine service and rules of the Church might be duly kept as by the laws in that behalf is provided, and by our Injunctions also declared and explained; and that you should call unto you for your assistance certain of our Bishops to reform the abuses and disorders of sundry persons seeking to make alteration therein: we understanding that with the help of the Bishops of Winchester and Ely, and some others, ye have well entered into some convenient reformation of things disordered, and that now the said Bishop of Ely is repaired into his diocese whereby you shall want his assistance: we minding earnestly to have a uniformity prescribed by our laws and Injunctions, and that none should be suffered to decline either on the left or on the right hand from the direct line limited by authority of our said laws and Injunctions, do earnestly, by our authority royal, will and charge you by all means lawful to proceed herein as you have begun.

"And for your assistance we will that you shall, by authority hereof, and in our name, send for the Bishops of London and Sarum and communicate these our letters with them and straightly charge them to assist you," &c.

ginal notes for her consideration, and the alterations afterwards made, seem conclusive. In the draft the Advertisements are referred to as the leading authority. In the Articles as printed, the reference to the Advertisements remains, the Injunctions being coupled with them. In the marginal notes the two documents had also been coupled together, *the Advertisements being expressly stated to have been set out by her Majesty's authority.* What further evidence can be needed I am at a loss to conceive. Mr. Parker himself admits (Letter, p. 66) that "towards the end of Elizabeth's reign the Advertisements seem to be more directly referred to as authoritative." And this in itself is evidence that sooner or later they must have been authorized by the Queen.

On Mr. Parker's attempt to prove that the Advertisements themselves were not intended to limit the ornaments, but only to bring them *up to* a certain standard, while divergence *beyond* that standard was allowed, I need say very little. Whatever other things the Queen might wish for, her main endeavour was to secure uniformity in this matter of vestments, "and that none should be suffered to decline either on the left or right hand." (Her Letter of 28th August, 1571, as above.)

I now pause to notice more particularly the other works mentioned at the beginning of this paper. For lack of room I must do this very briefly. Indeed, their value consists for the most part of a number of details, which for their full effect ought to be taken together.

Lord Selborne's Notes, suggested by the perusal of Mr. Parker's earlier publication, are, I need not say, most clear, as far as they go. But they could not anticipate the difficulties which Mr. Parker has since raised. Lord Selborne shows (pp. 11, 12) the STATE origin of the ornaments Rubric; also the general rejection of albs and chasubles, and the partial disuse of copes from 1559 to 1664. He also notices the then prevalent opinion, that the 30th Injunction excluded the albs, &c., though "without much inquiry into the sufficiency of that authority for such a purpose." Lord Selborne affirms the authority of the Advertisements, dwelling much on the Articles of 1584, as showing that the Advertisements had been sanctioned by her.

Mr. Milton's pamphlet is, with one exception, very forcible. He shows in several particulars the fallacy of Mr. Parker's reasoning. And he goes very near to establish the legal authority of the Injunctions as a duly qualified order under the Act, though he quotes them for another purpose. But he adopts as a solution of the difficulty, a rendering of the Rubric, which I cannot think sound—namely, that it did not *in itself* legalize the albs, &c. It is remarkable, that in order to fortify this construction of the Rubric by showing what was done *under it*,

he produces evidence of what was done by the Commissioners in the Queen's Visitation of 1559, when what was done may have been done *under the Injunction.*

Canon Swainson's "Inquiry" is limited to Queen Elizabeth's reign. But within that period it contains a vast repertory of facts and documents, which throw very great light on our present subject. On the Injunctions, indeed, he has bestowed less attention than might have been expected. And I think he must have been misled by Mr. Parker's imperfect account of the 30th, as he inserts, parenthetically, in his brief account of the habits which it ordered to be worn (p. 18), the words ("clearly out of doors"), whereas the Injunction expressly says, "both in the Church and without." But in all other respects his "Inquiry" is most valuable. He completely destroys the force of Mr. Parker's comparison between the order given by the Queen in 1561, and that in 1564–5, under which the Advertisements were made. He shows, first, that the contrast which Mr. Parker draws is unfair, as being between a copy of the Queen's Letter of 1561, as it had been received by the Archbishop, and a draft (though not the original one) of the Letter of 1565, before it had been sent, the one being a copy of a finished, the other of an unfinished letter, as the actual letters in both cases are lost. And he shows that in all the most important particulars there was not a contrast, but a very great similarity between the two transactions. He shows further, by induction from a large number of instances, that the Queen's general way of acting was quite in accordance with that which she pursued in relation to the Advertisements. And the impression derived from the whole is, that Mr. Parker's notion of a letter concocted between Cecil and the Archbishop, and then sent to the latter as from the Queen, without her knowing anything about it, is absurd to the greatest degree.

I am glad also to see that Canon Swainson confirms my view of the Queen's Letter of August, 1571, of which he says: "I cannot but think that" it "refers to the previous letter of January 25th, 1565, and the Advertisements which resulted from it."

Leaving now the reign of Queen Elizabeth, we must pause for a moment at the Canons of 1603, as they contain evidence of what the law was then considered to be by the highest authorities in the Church.

First, the Canons not only follow in the lines marked out by the Advertisements, but quote them as a leading authority. (Canon 24.) Secondly, Canon 58 is inconsistent with the notion that copes might be worn in parish churches. For ministers who are not graduates are forbidden to wear hoods, and only permitted to wear "upon their surplices some decent tippet of black, *so it be not silk.*" This restriction would be utterly absurd if it was

lawful for a non-graduate minister to wear a gorgeous cope of silk, satin, or velvet.

II. Now we proceed to the reign of Charles II. And on this I make the following observations:—

1. It is clear that the *general* practice of the Church had, from the early part of Queen Elizabeth's reign, been in accordance with what I consider to have been the law under the Injunctions and Advertisements.

2. Edward's First Prayer Book had become very scarce, and was practically unknown to the Church and the nation at large.

3. Although Cosin *in his younger days* had taken up the idea that the "vestments" were still legal, and ought to be worn, the notes in which he expressed that idea, had not been published, and were never published, till long after his death. He had in a subsequent note expressed at least a doubt as to the correctness of his former impression; and the probability is, that in 1662 he had forgotten all about it. His exile in France, and his intercourse with the French Protestants, had greatly modified his views, and he is mentioned by Baxter as one willing to make concession. There is no evidence that he then or afterwards considered the vestments legal.

4. The diligence of some Puritans had ferretted out from old books some notions about the vestments, and they tried to frighten people from the surplice by talking about copes, &c. But the highest Churchmen only spoke of the surplice. They professed to be satisfied with the Church as it had been before the rebellion. And whatever may have been the case with some few clerical antiquarians, it is certain that in the minds of the great body, whether in Convocation or Parliament, the surplice was the only thing really thought of.

Now I ask any candid man to answer this question. If Convocation had ventured in their revision to specify the ornaments in detail, and had ordered the clergy to wear albs and chasubles, would it have passed either House of Parliament? Would there not have been a storm of indignation? And is it not then certain that in the *intention of the Legislature*, surplices, and surplices only, were ordered? And although we may now think, or even know, that the words of the Rubric include other "vestments," yet when we consider that for the most part the surplice only had in fact been worn since the very year 1559, when the Rubric was first framed, that the changes in the law effected by Queen Elizabeth's Injunctions and Advertisements were gradual, and rather followed the custom than led it, and that the whole revision was greatly hurried over; and, as far as appears, no public attention was called to the wording of the Rubric, we shall have little hesitation in concluding that the Legislature must have supposed that the reference in the Rubric really

included the surplice only, and that they meant this, and this only, to be worn.

This conclusion is strongly fortified by the fact that the Canons of 1603 were reprinted in 1660 and 1662 ("The Vestments and the Rubrics," p. 31), and ordered by the King to be observed.

It is, I think, admitted on all hands, that the whole evidence of what was done under the Act of 1662 negatives the legality of the "vestments," except on the supposition that the authorities of the Church thought themselves at liberty to enforce only a part of what they knew that the law commanded. It is very difficult to understand how this supposition can be seriously entertained. But I may notice two things: First, it necessitates the assumption, that every individual Bishop exercised universally and by universal consent, that *power of dispensation* which was peremptorily refused to the King!! Secondly, it is not enough to show, even if it could be shown, that Bishop Cosin and a few other Churchmen in their "inner consciousness," knew what Edward's First Prayer-Book had ordered, and what the words of the Rubric included, unless it can also be shown that the facts are consistent with a general knowledge of this by the Legislature. The contrary of both these things is clear.

On the whole then, I think I have shown, 1st, that Queen Elizabeth did by her Injunctions and Advertisements taken together legally abolish the "vestments;" and 2nd, that, according to the true intention of the Legislature of 1662, the "vestments" were not then, and are not now, legal ornaments of the Minister.[1]

ROBERT W. KENNION.

---

[1] I ought perhaps to notice a curious dilemma which Mr. Parker has fallen into. His main argument would lead us to suppose that the law stands as it did in 1549, under Edward's First Prayer-Book, no "other order" having been taken within the terms of the Act. But throughout, he says comparatively little of albs and chasubles. And in p. 190 he makes this most remarkable admission. He says: "We are now dealing with the cope (since albs and chasubles have already been declared illegal on other grounds"). I cannot find anything on which to ground this, unless it refers to the Bishops' "Interpretations." If this is what he means, I may thank him for it, and quote him as an authority for the view that the "Interpretations," which have no independent legal validity, not only show the true meaning of the Injunctions, but prove that the latter had the requisite consent to make them legal.