TOLERATION ACT EXPLAINED: AN ANSWER TO A LEGAL ARGUMENT ON THE TOLERATION ACT: SHEWING THAT THE COURT OF QUARTER SESSIONS

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Toleration Act Explained: An Answer to a Legal Argument on the Toleration Act: Shewing that the court of quarter sessions by Anonymous

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Toleration Act Explained.

AN

ANSWER

TO A

LEGAL ARGUMENT

ON THE

TOLERATION ACT,

SHEWING THAT THE

COURT OF QUARTER SESSIONS

Have a Judicial Function

AS TO THE ADMINISTRATION OF OATHS TO PERSONS OFFERING THEMSELVES FOR QUALIFICATION AS PROTESTANT DISSENTING MINISTERS.

BY A BARRISTER OF THE TEMPLE.

LONDON:

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AN

ANSWER

TO A

LEGAL ARGUMENT,

&c. &c.

THE subject of the Argument, which I have undertaken to answer, has long seemed to me one of great importance, and the first appearance of the advertisement announcing the publication excited a proportionate interest in my mind. I have since found that it is the production of a learned friend, whose talents and attainments, in common with all who know him, I highly respect. It is, however, in my humble judgment, calculated to disseminate very erroneous views of the question in dispute, and as my opinions are at least the result of deliberate and unbiassed conviction, I submit them to the public eye, not despairing that the author of the Argument may be induced to allow, that there exists some reason to doubt of the conclusions which have hitherto appeared to him satisfactory, if not sufficient to abandon them. At all events his honorable mind will wish the subject to be fairly and unreservedly discussed.

It must be admitted, that the general opinion has been in favor of his conclusions; not, however, in the extent which he has asserted*. Some exceptions have been known to the prevailing, and, in my view of it, erroneous construction of the Act, particularly in the Counties of Hants, Bucks, Caernarvon, Devon, Norfolk, and Suffolk. In the first of these Counties, an eminent practising Barrister is Chairman of the Sessions, and I believe the oaths are not (nor have been during his presidency in the Court) indiscriminately administered to all applicants, but that the party wishing to take them is previously questioned as to the object he has in view. If the answer is, That he wishes to take them *as a Dissenter only*, he is permitted upon his mere assertion to take them, and the taking is recorded, but he is always instructed that his certificate will only protect him against the penalties of non-conformity. If on the other hand, he claims any particular character among the dissenters, such as the Act specifies, he is required, unless the notoriety of the fact makes it unnecessary, to satisfy the Court by competent evidence, that he is invested with such character, and then, and not till then, is admitted to take the Oaths, and perform the other conditions required of a party *so* applying. If he comes without any claim to orders, and without a congregation, to qualify as a *Minister*, he is not allowed to do so, though admitted to qualify, if that is required, as *a Dissenter only*.

In the County of Bucks, about five years ago, two

* Page 30, 31, and 74.

persons applied at the same time to the Court to take the Oaths as Teachers, one being appointed to a congregation, the other not. The former was admitted to qualify, and the latter rejected for want of a congregation. He complained very much of the decision; but though the Chairman informed him, that the Court wished the question to be tried in Westminster Hall, and would afford him every facility if he chose to appeal to the King's Bench, this course was not adopted, and the judgment of the Court below remained in force. In Caernarvon, a little before the Denbighshire Case, a similar application to that rejected in Bucks was made, and met with a similar fate, the party in this Case calling himself a *Methodist* Teacher, a description which the Court considered as not within the Toleration Act, nor in any way advancing his claim to qualify as a Teacher.

The instances above stated of a practice contrary to what has been assumed as universal till the Denbighshire Case occurred, can be readily authenticated. The others stand on more general reputation; but have already been published*, and, I believe, without contradiction. I also know that this interpretation of the law, though certainly far less prevalent than the more lax and comprehensive interpretation, has accorded with the opinions of Lawyers eminent for their learning and sound judgment; and I am as strongly persuaded, as the Author of the Argument is with regard to his conclusions, that "it

* See British Review, No. 4, Page. 484.

requires only a calm consideration of the Statute," for the unbiassed mind to adopt those which I have formed, and shall attempt to support.

The positions he has maintained are set forth in Page 35 of the Argument in these words,—" That the Magistrates in Sessions have no power, either to refuse the oaths, or to enquire into the qualification of him who claims to take them ; that such claim is a sufficient warrant for the Court to administer them, and the bare statement of the description in which the party wishes to take them sufficient evidence of his answering that description; and that, if that description is comprised in the eighth section of the Toleration Act, the Court of Quarter Sessions is by law compellable to administer the oaths and the declaration, and to permit the subscription to the thirty-six articles, of which the Clerk of the Peace is also compellable to enter a record, and to grant a certificate."

The truth of these positions is admitted as to the claim of taking the oaths under the second section of the Act, and as they regard the Clerk of the Peace. But I trust it is consistent with the high respect I have professed for the Author of the Argument, and a becoming diffidence in my own conclusions, to say that in all other respects they appear to me to be contrary to the letter and spirit of the Statute, as well as to the genuine principles of religious liberty, which, like civil liberty, is *felo de se*, unless restrained within due bounds. I shall without further preface, state my reasons for adopting

an interpretation of the law fundamentally different, confining myself, as the Author of the Argument has done, to the several clauses of the Statute. I shall also notice some of his more detailed reasonings, from which I am compelled to differ.

To avoid, however, unnecessary subjects for dispute, I must premise, that if in the first of the above positions the term "*qualification*," as applied to the party claiming to take the oaths, is meant to involve "his fitness, or unfitness to act as a Dissenting Minister *," I shall not contend that the Magistrates are authorized *in that sense*, to inquire into his qualification. I think no such power was ever given by the Act; and, from its sound and comprehensive wisdom in other respects, I conclude it never was intended to be given. Indeed with the highest esteem for the noble Lord who has lately stood forward on this subject, in this single respect I thought, with much deference, that the provisions of the bill he introduced were not strictly according to the principles of toleration, or even to those which have hitherto governed the civil power with regard to the established religion. The fitness, or unfitness of a Minister, is a matter exclusively of religious regulation, to be decided by the rules of discipline in each Society, and, according to those of the Church of England, left entirely to the Diocesan, whom no earthly power can in this respect control.

I should have supposed, that the division of his

* Page 43.