

**A REPORT OF THE JUDGMENT
DELIVERED IN THE
ECCLESIASTICAL
COURT OF GLOUCESTER, ON THE
TWELFTH DAY OF APRILL, 1848**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649230839

A report of the judgment delivered in the ecclesiastical court of Gloucester, on the twelfth day of April, 1848 by Joseph Phillimore

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017


This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

JOSEPH PHILLIMORE

**A REPORT OF THE JUDGMENT
DELIVERED IN THE
ECCLESIASTICAL
COURT OF GLOUCESTER, ON THE
TWELFTH DAY OF APRILL, 1848**

A REPORT
OF
THE JUDGMENT
DELIVERED IN THE
Ecclesiastical Court of Gloucester,
ON
THE TWELFTH DAY OF APRIL, 1848,
BY THE
WORSHIPFUL JOSEPH PHILLIMORE, LL.D.,
IN THE CAUSE OF
HOPTON AND QUARRELL,
CHURCHWARDENS OF KEMERTON,
v.
THE MINISTER AND CHURCHWARDENS OF KEMERTON.



LONDON:
WILLIAM BENNING AND Co., LAW BOOKSELLERS,
43, FLEET STREET.
1848.

LONDON:
PRINTED BY RAYNER AND HODONS,
109, Fetter Lane, Fleet Street.

ADVERTISEMENT.

My attention has been directed to certain detailed and elaborate strictures on my judgment, in the case of the Kemerton Faculty, which have made their appearance in the *Gloucestershire Chronicle*.

Some of these strictures are founded on such inaccurate premises, as would almost necessarily find their way into the report of any judgment taken *ore tenus* by a short-hand writer, who had no opportunity of access either to the Judge or his manuscript notes.

Unfortunately, however, the strictures are not anonymous—inasmuch as they have the name of the Venerable Archdeacon of the diocese of Bristol prefixed to them, who had himself made a long affidavit in the cause.

ADVERTISEMENT.

Under the circumstances, I have thought it right to publish the Judgment, which, from the copiousness of my Notes, I am enabled to do almost in the very words in which it was delivered.

J. P.

Doctors' Commons,
May 2, 1848.

HOPTON AND QUARRELL,

CHURCHWARDENS OF KEMERTON,

v.

THE MINISTER AND PARISHIONERS

OF KEMERTON.

THIS was a case arising out of a suit brought by the Churchwardens against the inhabitants and parishioners of Kemerton, in the county of Gloucester, for the purpose of obtaining a faculty to take down and rebuild the northern aisle and tower of their parish Church, and to erect a spire on the tower, *provided an adequate sum* could be raised, and to erect a porch and make an entrance into the north aisle.

12th April,
1848.

The cause was argued at much length by Mr. Bonnor, for the Churchwardens, and by Mr. Smallridge, for the Parishioners.

JUDGMENT.

DR. PHILLIMORE.

This is a proceeding instituted by the Churchwardens of the parish of Kemerton, for the purpose of obtaining a faculty from this Court, for taking down, rebuilding, and repewing the north aisle, in conformity with the rest of the Church; and also for taking down and rebuilding the tower, with a

spire thereon, according to certain plans which have been submitted to the consideration of the Court.

Summary
statement of
the plead-
ings.

The grant of this faculty was opposed by Mr. Charles Tidmarsh and Mr. Samuel Powell, two of the parishioners, who prayed leave to be heard on their petition against it; and an act in conformity with the practice of the Ecclesiastical Courts, was entered upon, by the Proctors on each side.

The petition of the Churchwardens has been met by a counter-petition.—The counter-petition has called forth a rejoinder—the rejoinder has been replied to—and the reply has been counter-pleaded in its turn.

In short, the pleadings have been swelled to an unusual and inconvenient length.

Pleadings so unnecessarily diffuse have naturally led to the delay of which I have frequently had to complain in the progress of this cause, and to the introduction of much matter, wholly irrelevant (as it seems to me), to the true issue in the suit.

I may, therefore, with propriety, be spared the superfluous labour of entering very minutely into the details of the several pleadings, and proceed without further preface to the more material facts of the case.

Facts of the
case.

On the 9th of October, 1839, the Rev. Thomas Thorp, Archdeacon of Bristol, and one of the resident Fellows and Tutors of Trinity College, in the University of Cambridge, was collated to the living of Kemerton, by the Bishop of the diocese—the right however of the presentation to the benefice

was disputed by the Corporation of Gloucester—and this dispute gave rise to protracted litigation, which was eventually decided in favor of the Bishop—so that it was not until the 10th of July, 1844, that the new incumbent came to reside on his benefice—indeed it was not, I think, 'till the month of July, 1845, when he resigned his function of Vice-Master at Trinity College, that he became entirely resident at Kemerton.

It is a fact placed beyond controversy, that at this period, part of the interior of the Church obviously stood in need of repair, and from the moment that the Archdeacon was secured in the possession of the living, it seems to have become a favorite, as it was undoubtedly a laudable object of his ambition, that the whole of the Church should be taken down, and an entirely new edifice erected in its stead.

On the 22nd of May, 1845, a vestry meeting was convened by the Rector and the Churchwardens, “to receive a report on the state of the Church, and “to adopt such measures as might appear expedient “for the necessary repair of the same.”

At that meeting it was proposed by the Churchwardens, that they should be empowered and instructed to borrow, on the credit of the Church-rates, the sum of £750, for the rebuilding of the Church—the Rector undertaking by himself or his friends, to raise all the other sums essential to the purpose.

This motion was opposed, on the ground that