

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Martin v. Mackonochie, from the Court of Arches, delivered on the 23rd December, 1868.

Present at the hearing:

LORD CHANCELLOR CAIENS.

ARCHBISHOP OF YORK.

LORD CHELMSFORD.

LORD WESTBURY.

SIR WILLIAM ERLE.

SIR JAMES W. COLVILE.

THE case of *Martin v. Mackonochie*, commenced before the Bishop of London, was, under the provisions of the Clergy Discipline Act, sent by the Bishop to the Court of the Archbishop of Canterbury for trial in the first instance; and having been fully heard before the Judge of the Arches Court, resulted in a Decree made on the 28th of March, 1868.

Mr. Mackonochie, the clerk in holy orders against whom these proceedings were directed, was charged with four offences against the laws ecclesiastical, viz.:—

1. The elevation during or after the Prayer of Consecration in the Order of the Administration of the Holy Communion of the paten and cup; and the kneeling or prostrating himself before the consecrated elements;
2. Using lighted candles on the Communion Table during the celebration of the Holy Communion, when such candles were not wanted for the purpose of giving light;
3. Using incense in the celebration of the Holy Communion;

4. Mixing water with the wine used in the administration of the Holy Communion.

The learned Judge of the Arches Court by his Decree sustained the 3rd and 4th of these charges, and admonished Mr. Mackonochie to abstain for the future from the use of incense, and from mixing water with the wine as pleaded in the articles. Against this part of the Decree there is no Appeal.

The 2nd charge, as to lights, was not sustained, the learned Judge holding that it was lawful to place two lighted candles on the Communion Table during the time of the Holy Communion. Against this the Promoter has appealed.

As to the 1st charge, Mr. Mackonochie, while admitting the elevation of the consecrated elements at the times and in the manner alleged, pleaded that he had discontinued the practice before the institution of the suit. The learned Judge therefore admonished Mr. Mackonochie not to recur to the practice; but as to the other part of the charge, namely, the kneeling and prostrating himself before the consecrated elements, the learned Judge held that if Mr. Mackonochie had committed any error in that respect, it was one which should not form the subject of a criminal prosecution, but should be referred to the Bishop in order that he might exercise his discretion thereon.

The Promoter appeals from the latter part of the decision of the learned Judge on this charge, and he also complains in his Appeal that the Defendant was not ordered to pay the costs of the suit.

The questions thus raised by the Appeal were very fully and ably argued before this Tribunal, and their Lordships have now to state their reasons for the advice which they propose humbly to offer to Her Majesty.

They will advert first to the charge of kneeling before the consecrated elements.

It is necessary to refer to the whole of the charge on this head as contained in the 3rd and 4th articles, although some of the Acts charged are said to have been discontinued before the suit commenced.

These Articles run thus:—

“Third, That the said Alexander Heriot Mackonochie has in his said church, and within two years last past (to wit, on Sunday, the 23rd day of December, on Christmas Day last past, and on Sunday, the 30th day of December, all in the year of our

Lord 1866), during the prayer of consecration in the Order of the Administration of the Holy Communion, elevated the paten above his head, and permitted and sanctioned such elevation; and taken into his hands the cup, and elevated it above his head during the prayer of consecration aforesaid, and permitted and sanctioned the cup to be so taken and elevated; and knelt or prostrated himself before the consecrated elements during the prayer of consecration, and permitted and sanctioned such kneeling or prostrating by other clerks in holy orders.

“Fourth. That such elevation of the paten, and such taking and elevation of the cup, and such kneeling and prostrating, are severally unlawful additions to and variations from the form and order prescribed and appointed by the said statutes, and by the said Book of Common Prayer, and Administration of the Sacraments, and other rites and ceremonies of the Church, and are contrary to the said statutes, and to the 14th, 36th, and 38th of the said constitutions and canons, and also to an Act of Parliament passed in a Session of Parliament holden in the thirteenth year of Queen Elizabeth, chapter 12, and to the 25th and 28th of the Articles of Religion therein referred to.”

Mr. Mackonochie's answer to these Articles is as follows:—

Third. Whereas in the 3rd Article given in and admitted as amended in this Cause, it is pleaded that the said Alexander Heriot Mackonochie has, to wit—on Sunday, the 23rd day of December, on Christmas-day last past, on Sunday, the 30th day of December, all in the year 1866, during the prayer of consecration in the Order of the Administration of the Holy Communion, elevated the paten above his head, and permitted and sanctioned such elevation, and taken into his hands the cup and elevated it above his head during the prayer of consecration aforesaid, and permitted and sanctioned the cup so to be taken and elevated, and knelt or prostrated himself before the consecrated elements during the prayer of consecration, and permitted and sanctioned such kneeling or prostration by other Clerks in holy orders. Now the same is in part utterly pleaded, for the party proponent alleges that whilst he admits that the said Alexander Heriot Mackonochie did, on the said two Sundays and on Christmas day, during the prayer of consecration kneel and sanction kneeling by other Clerks before the Lord's Table, he denies that his said party did on the said two Sundays, and on the said Christmas day, kneel or prostrate himself before the consecrated elements, or permit and sanction such kneeling or prostration by other Clerks in holy orders, as in the 3rd Article pleaded. And he further alleges, that whilst he admits that he did, on the said two Sundays and Christmas day, in the said 3rd Article mentioned, elevate and sanction the elevation, by other Clerks, of the paten and cup above his head, as is in the said 3rd Article pleaded; yet that such elevation of the paten and cup has been wholly discontinued by the said Alexander Heriot Mackonochie during the Administration of the Holy Communion ever since the said 30th day of December, 1866, and long prior to the institution of this suit. That such practice was discontinued in consequence of legal advice, and in compliance with the expressed wish of the

Lord Bishop of the Diocese of London, and with a resolution of convocation, as was well known to the promoter of this suit before he instituted the same.

Before turning to the evidence in support of this charge, it will be proper to consider a preliminary objection which was taken to the Articles, and to the letters of request and citation by which they were preceded.

It was said that although the Articles alleged that the Respondent "knelt or prostrated himself before the consecrated elements during the prayer of consecration," the letters of request and citation were for "*bowing, kneeling, or prostrating himself before the consecrated elements during or after the prayer of consecration.*" It was contended that the citation showed no offence, for it might be taken, as in an indictment, in the sense most favourable to the accused, and as affirming nothing more than that he bowed after the prayer of consecration, which, it was said, would or might be innocent. And the Articles, it was argued, by omitting this alternative, were a departure from the citation.

To this it might be sufficient to reply that the objection taken to this citation—a citation, which it is not disputed, does contain other charges cognizable by the Ecclesiastical Court—is an objection of a strictly technical character, and one which would be waived by the appearance of the Respondent as he did appear, without protest, and by praying for Articles. But passing from this, it is to be observed that the supposed analogy between the citation and an indictment, on which this objection is founded, entirely fails. The Act of Uniformity, 1 Eliz., cap. 2, contemplates two modes of procedure for enforcing its provisions; one by indictment, under section 4, and the other by process for admonition before the Ordinary under section 23; and it is under the latter and not the former section that the present proceedings are taken. Moreover, in the case of an indictment followed by judgment, the indictment and judgment become the record, and the judgment is read with reference to the indictment; and if the indictment is open to a construction which is innocent, and would not sustain a judgment, the judgment would be vicious and must be arrested; whereas the citation is followed by Articles, which in turn are met by a plea; and the

Court after hearing evidence, defines by its sentence how much of the charge it considers to be relevant, and to have been proved, and thereby corrects any excess of averment in the citation.

The preliminary objection, therefore, on this charge their Lordships feel themselves obliged to repel.

It is necessary now to examine the evidence adduced in support of the charge; and in doing this, and in considering the character of the charge itself, their Lordships will confine their attention to the conduct and acts of the Respondent as the celebrating or consecrating minister. The allegations and proof as to "sanctioning and permitting other clerks" are so vague that no weight could be, and in the argument little weight was attempted to be, given to them.

The chief witness in support of the charge is Mr. Beames. He has not been cross examined, and no evidence has been adduced for the Respondent. The statement of Mr. Beames may therefore be taken to be uncontroverted. He speaks of the 23rd and 25th of December, 1866. On both of these occasions the Respondent was the celebrant at the Communion Service. The effect of the answers of Mr. Beames may be stated to be that the Respondent commenced to read the prayer of consecration standing; that on reaching the words "the same night that He was betrayed," he elevated the paten above his head, returned it to its place on the Communion Table, and then knelt on his knees towards the table, inclining or prostrating his head towards the ground; that he then rose and resumed the prayer; that when, in the further course of the prayer, he took the chalice, he elevated it above his head as he had done the paten, replaced it on the Communion Table, and knelt or prostrated himself as before.

The elevation of the elements has, as already said, been discontinued, and as to the kneeling after the consecration of the chalice, it might possibly be suggested that it was a kneeling after finishing the prayer of consecration, and with reference to the next part of the service in which the celebrant becomes himself the recipient. Omitting, therefore, for the present, the elevation and the

second kneeling, the evidence remains that the Respondent, after commencing the prayer of consecration standing, paused in the middle of the prayer, knelt down, inclining or prostrating his head towards the ground, and then, rising up again, continued the prayer standing.

In order to bring the conduct of the Respondent on this head to the test of ecclesiastical law, it is proper now to turn to the rubric of the Order of the Administration of the Holy Communion.

The Lord's Prayer and the collect, with which the service commences, are to be said by the priest "standing at the north side of the table."

The priest is then to turn to the people and rehearse distinctly all the ten commandments, "the people still kneeling," implying that the priest is still to stand.

This is to be followed by one of the collects for the Sovereign, "the priest standing as before," and by the collect for the day.

The priest is then to read the Epistle and Gospel, and to say the Creed, during which no change of attitude is indicated.

After the sermon, when the priest has returned to the Lord's Table, the sentences of the offertory, the prayer for the church militant, and the exhortations are to be "said" by the priest, without any direction as to change of posture; and then, at the confession, he, as well as all the people, is directed to kneel.

For the absolution and the sentences which follow the priest is directed to stand up, and to turn himself to the people; for the words "It is very meet," &c., and the "prefaces," he is to turn to the Lord's Table, and he is then to kneel down at the Lord's Table, and, in the name of all the recipients, say the prayer "We do not presume," &c.

The rubric before the prayer of consecration then follows, and is in these words:—

"When the priest, standing before the table, hath so ordered the bread and wine that he may with the more readiness and decency break the bread before the people, and take the cup into his hands, he shall say the prayer of consecration; as follows."

Their Lordships entertain no doubt on the con-

struction of this rubric that the priest is intended to continue in one posture during the prayer, and not to change from standing to kneeling, or *vice versa*; and it appears to them equally certain that the priest is intended to stand and not to kneel. They think that the words "standing before the table" apply to the whole sentence; and they think this is made more apparent by the consideration that acts are to be done by the priest before the people as the prayer proceeds (such as taking the paten and chalice into his hands, breaking the bread, and laying his hand on the various vessels) which could only be done in the attitude of standing.

This being, in their Lordships' opinion, the proper construction of the rubric, it is clear that the Respondent, by the posture or change of posture which he has adopted during the prayer, has violated the rubric, and committed an offence within the meaning of the 13 & 14 Car. II, cap. 4, sects. 2, 17, 24, taken in connection with the 1 Eliz., cap. 2, and punishable by admonition under sec. 23 of the latter statute.

It was contended on behalf of the Respondent that the act complained of was one of those minute details which could not be taken to be covered by the provisions of the rubric; that the rubric could not be considered as exhaustive in its directions, for no order could be shown in it requiring the celebrating minister to kneel while himself receiving the bread and wine; and that there was no charge or evidence against the respondent that in kneeling after the consecration any adoration of the sacrament was intended.

Their Lordships are of opinion that it is not open to a minister of the Church, or even to their Lordships in advising Her Majesty as the highest Ecclesiastical Tribunal of Appeal, to draw a distinction, in acts which are a departure from or violation of the rubric, between those which are important and those which appear to be trivial. The object of a Statute of Uniformity is, as its preamble expresses, to produce "an universal agreement in the public worship of Almighty God," an object which would be wholly frustrated if each minister, on his own view of the relative importance of the details of the service, were

to be at liberty to omit, to add to, or to alter any of those details. The rule upon this subject has been already laid down by the Judicial Committee in *Westerton v. Liddell*, and their Lordships are disposed entirely to adhere to it: "In the performance of the services, rites, and ceremonies ordered by the Prayer Book, the directions contained in it must be strictly observed; no omission and no addition can be permitted."

There would, indeed, be no difficulty in showing that the posture of the celebrating minister during all the parts of the Communion Service was, and that for obvious reasons, deemed to be of no small importance in the changes introduced into the Prayer Book at and after the Reformation. The various stages of the service are, as has already been shown, fenced and guarded by directions of the most exact kind, as to standing and kneeling, the former attitude being prescribed even for prayers, during which a direction to kneel might have been expected. And it is not immaterial to observe, that whereas in the first Prayer Book of King Edward VI, there was contained at the end a Rubric in these words:—"As touching kneeling, crossing, holding up of hands, knocking upon the breast, and other gestures, they may be used or left, as every man's devotion serveth, without blame:" this Rubric was, in the second Prayer Book of Edward VI, and in all the subsequent Prayer Books, omitted.

The argument against the completeness of the directions as to posture, derived from a supposed absence of any order that the celebrant shall kneel whilst himself receiving, does not appear to their Lordships to be well-founded. In the Rubric as to the reception of the sacramental bread and wine, the words "all meekly kneeling" apply, as their Lordships think, to the celebrant, as well as to other clerks, and to the people. And this is made more clear by the Rubric termed the Black Rubric, added at the end of the service.

It is true, as was contended, that there is no charge against the Respondent, that the kneeling complained of was intended as an act of adoration of the sacramental elements. Such a charge, involving as it would, an inquiry into sentiments and feelings,

of which no tribunal can adequately judge, would be difficult of proof; and the Rubrical enactments appear to have been wisely confined to prescribing an order of service free from those outward movements which had become more or less associated with errors in doctrine which, at the Reformation, were renounced. If this order is departed from, it is, as their Lordships think, unnecessary to inquire into the motive by which the departure has been occasioned.

Another argument urged on behalf of the Respondent should also be noticed. Mr. James contended with great ability that the charge as to kneeling during the prayer of consecration was made in connection with the charge as to the elevation of the sacrament, and that the charge of kneeling was only an aggravation of that of elevation, which had been discontinued. This no doubt is so; but the kneeling under the circumstances described, being itself, as their Lordships think it is, a violation of the Rubric, they do not think that the judgment of the Court should the less be passed upon it because the other part of the charge, namely, that as to the elevation, is no longer resisted.

It only remains, on this part of the case, to advert to the very learned and elaborate Judgment of the Dean of the Arches. That learned Judge states that the Rubric does not give precise directions that the celebrant should kneel at the times when it appears that the Respondent does kneel: that he is far from saying it is not legally competent to him to adopt this attitude of devotion; and that it cannot be contended that at some time or other he must not kneel during the celebration, although no directions as to his kneeling at all are given by the Rubric.

Their Lordships, however, think, as they read the Rubric, that directions as to the celebrant kneeling at a particular time of the celebration, namely when he himself receives the sacrament, are given; and that at the time when it appears that the Respondent kneels, namely, during the prayer of consecration, the directions in the Rubric are precise that he should stand and not kneel.

The learned Judge further observes that if Mr. Mackonochie has committed any error in this respect, it is one which should not form the subject

of a criminal prosecution, but belongs to the category of cases which should be referred to the Bishop. This category the learned Judge had previously defined to be—

“ Things neither ordered nor prohibited expressly or by implication, but the doing or use of which must be governed by the living discretion of some person in authority.”

And as to cases in this category, the learned Judge considered that, according to the preface to the Prayer Book, “ the parties that doubt or diversely take anything should always resort to the Bishop of the Diocese.”

Their Lordships do not think it necessary to consider minutely the cases to which, or the manner in which, this direction in the preface to the Prayer Book is applicable, inasmuch as in their opinion the charge against the Respondent, with which they are now dealing, involves what is expressly ordered and prohibited by the Rubric, and is therefore a matter in which the Bishop could have no jurisdiction to modify or dispense with the rubrical provisions.

On the whole, their Lordships are of opinion that the charge against the Respondent of kneeling during the Prayer of Consecration has been sustained, and that he should be admonished, not only not to recur to the elevation of the paten and the cup as pleaded in the 3rd Article, but also to abstain for the future from kneeling or prostrating himself before the consecrated elements during the Prayer of Consecration, as in the same Article also pleaded.

The other charge involved in this Appeal is that of using lighted candles on the Communion Table during the celebration of the Holy Communion, when such candles are not wanted for the purpose of giving light.

This charge is contained in the 5th and 6th Articles, which are as follows :—

Fifth. That the said Alexander Heriot Mackonochie has in his said Church, and within two years last past, to wit, on Sunday the 23rd day of December, on Christmas-day last past, on Sunday the 30th day of December, all in the year of our Lord 1866, and on Sunday the 13th day of January, in the year of our Lord 1867, used lighted candles on the Communion Table during the celebration of the Holy Communion, at times when such lighted candles were not wanted for the purpose of giving light, and permitted and sanctioned such use of lighted candles.

Sixth. That the use of such lighted candles is an unlawful addition to and variation from the form and order prescribed and appointed by the said statutes, and by the said Book of Common Prayer, and Administration of the Sacraments and other rites and ceremonies of the Church, and is contrary to the said statutes and to the 14th, 36th, and 38th of the said constitutions and canons.

The responsive plea of Mr. Mackonochie, on this head, is as follows:—

“Fifth. Whereas, it is pleaded in the fifth article that the said Alexander Heriot Mackonochie has, in his said church, and within two years last past, to wit, on Sunday, the 23rd day of December, on Christmas-day last past, and on Sunday, the 30th day of December, all in the year of our Lord 1866; and on Sunday, the 13th of January, in the year of our Lord 1867, used lighted candles on the Communion Table during the celebration of the Holy Communion, at times when such lighted candles were not wanted for the purpose of giving light, and permitted and sanctioned such use of lighted candles. Now the same is in part untruly pleaded, for the party proponent alleges that on the said three Sundays and Christmas-day, in the said fifth article mentioned, the said lighted candles were not placed on the Communion Table, but upon a narrow moveable ledge of wood resting on the said Table, and that the said candles were so placed and kept lighted, not during the celebration of the Holy Communion only, as falsely suggested in the said fifth article, but also during the whole of the reading of the Communion Service, including the epistle and gospel, and during the singing after the reading of the Nicene Creed, and during the delivery of the sermon.

“Sixth. That he denies that the use of such lighted candles is an unlawful addition to and variation from the form and order prescribed and appointed by the said Statutes, and by the said Book of Common Prayer and Administration of the Sacraments, and other rites and ceremonies of the Church, and is contrary to the said statutes, and to the 14th, 36th, and 38th of the said constitutions and canons as in the said sixth article alleged.”

The facts, therefore, on this part of the case, appear to be that the Respondent uses two lighted candles during, with reference to, and as an accompaniment of, the Communion Service, and not for the ordinary purpose of giving light, and that these candles are placed on a ledge of wood which is placed on the Communion Table.

The Dean of the Arches seems to have considered that all the practices complained of before him, including this use of lighted candles, were ceremonies. The Respondent, in the argument of his counsel at the bar, appeared to prefer to treat the question as one of ornament, and Mr. James

said he considered the lighted candles "part of the symbolical decoration of the altar."

If it were necessary to decide which of these views is correct, their Lordships would feel disposed to agree with the Dean of the Arches, that however candles and candlesticks may *per se* be looked upon as a part of the furniture or ornaments of the church, taking the word ornaments in the larger sense assigned to it by this Committee in *Westerton v. Liddell* (Moore, p. 156), yet the lighting of the candles, and the consuming them by burning throughout, and with reference to a service in which they are to act as symbols and illustrations, is itself either a ceremony, or else a ceremonial act forming part of a ceremony, and making the whole ceremony a different one from what it would have been had the lights been omitted.

The Council of Trent (22nd Session, 5th chapter), *De Missæ Ceremoniis et Ritibus*, says, "Ceremonias item adhibuit ut mysticas benedictiones, lumina, thymiamata, vestes, aliaque multa."

Dr. Donne also in his *Sermons* (p. 80, fol. ed. 1640), writing in support of the use of these lights, calls it a ceremony. He says, "It is in this ceremony of lights as it is in other ceremonies."

There is a clear and obvious distinction between the presence in the Church of things inert and unused, and the active use of the same things as a part of the administration of a sacrament or of a ceremony. Incense, water, a banner, a torch, a candle and candlestick may be parts of the furniture or ornaments of a church; but the censuring of persons and things, or, as was said by the Dean of Arches, the bringing in incense at the beginning or during the celebration, and removing it at the close of the celebration of the Eucharist, the symbolical use of water in baptism, or its ceremonial mixing with the sacramental wine; the waving or carrying the banner; the lighting, cremation, and symbolical use of the torch or candle: these acts give a life and meaning to what is otherwise inexpressive, and the act must be justified, if at all, as part of a ceremonial law.

If the use of lighted candles in the manner complained of be a ceremony or ceremonial act, it might be sufficient to say that it is not—nor is any cere-

mony in which it forms a part—among those retained in the Prayer Book, and it must therefore be included among those that are abolished; for the Prayer Book, in the Preface, divides all ceremonies into these two classes: those which are retained are specified, whereas none are abolished specifically or by name; but it is assumed that all are abolished which are not expressly retained.

Passing however from this, the use of lighted candles, if a ceremonial act or part of a ceremony, would be prohibited by Queen Elizabeth's Act of Uniformity, sec. 4, which is now applicable to the present Prayer Book, and which makes it penal to use any other rite, ceremony, order, form, or manner of celebrating the Lord's Supper * * * than is mentioned and set forth in the said Book: and any prior authority for the practice, from usage or otherwise, would be avoided by sec. 27, which enacts that "all laws, statutes, and ordinances, whereby any other service, administration of sacraments, or Common Prayer, is limited, established, or set forth to be used within this realm, shall from henceforth be utterly void and of none effect."

As to the argument that the use complained of is at most only part of a ceremony, their Lordships are of opinion that when a part of a ceremony is changed, the integrity of the ceremony is broken, and it ceases to be the same ceremony.

The learned Judge of the Arches Court was of opinion that these lights were ordered by injunctions having statutable authority, which injunctions had not been directly repealed; that they were primitive and Catholic in their origin, Evangelical in their proper symbolism, purged from all superstition and novelty by the very terms of the injunction which ordered their retention in the church, and that, therefore, it was lawful to place them on the Holy Table during the time of the Holy Communion "for the signification that Christ is the very true light of the world."

The authorities cited show beyond all doubt the very ancient and general use in the Church of these symbolical lights; and the injunction to which the learned Judge refers, is the third of those issued, A.D. 1547, in the first year of the reign of King Edward VI. By this it was ordered that images should be taken down and destroyed, and that

spiritual persons should suffer no torches or candles to be set afore any image or picture, but only two lights upon the High Altar, before the Sacrament, which, for the signification that Christ is the very true light of the world, they should suffer to remain.

It would deserve consideration how far under any circumstances this injunction could now be held operative, having regard to the words "upon the high altar, before the Sacrament," and to the distinction pointed out by this Committee in *Westerton v. Liddell* (Moore, 176-184), and *Parker v. Leach* (2 Moore, N. S., 199) between the Sacrificial Altar and the Communion Table. But without dwelling on this, and without stopping at this place to inquire into the nature of the authority under which the injunctions of 1547 were issued, their Lordships are clearly of opinion that the injunction in question, so far as it could be taken to authorize the use of lights as a ceremony or ceremonial act, was abrogated or repealed by the Act 1 Eliz., cap. 2, particularly by section 27 already mentioned, and by the present Prayer Book and Act of Uniformity, and that the use of lighted candles, viewed as a ceremony or ceremonial act, can derive no warrant from that injunction.

Reference was made in the argument for the Respondent to a constitution of the Council of Oxford, under Walter, Archbishop of Canterbury, A.D. 1322. That constitution is in these words:—"Tempore quo missarum solennia peraguntur, accendentur duæ candelæ, vel ad minus una;" and is apparently a repetition of the earlier constitution of A.D. 1222 (Wilkins Concilia, vol. i, p. 595):—"Tempore quo missarum solennia peraguntur, accendentur duæ candelæ, vel ad minus una cum lampade." As to these constitutions it is sufficient to say that, in their Lordship's opinion, they must be taken, if of force at the time of passing of any of the Acts of Uniformity, to have been repealed by those Acts.

It remains to be considered whether the use of these two lighted candles can be justified as a question of "ornaments" according to the definition of that term already referred to. It was in this sense that the argument for the Respondent appeared to prefer to regard them; and the learned Judge of the Arches Court also, although, at the

earlier part of his Judgment, he had stated that the matters complained of before him must be considered as "ceremonies," appears ultimately to have applied to the use of the lighted candles the law or rubric as to ornaments.

The Rubric or note as to ornaments, in the commencement of the Prayer Book, is in these words:—

"And here it is to be noted that such ornaments of the church, and of the Ministers thereof, at all times of their ministration, shall be retained and be in use as were in this Church of England, by the authority of Parliament, in the second year of the reign of King Edward the VIth."

The construction of this Rubric was very fully considered by this Committee in the case of *Westerton v. Liddell* already referred to; and the propositions which their Lordships understand to have been established by the Judgment in that case may thus be stated.

1. The words "authority of Parliament" in the Rubric, refer to and mean the Act of Parliament 2 & 3 Ed. VI. cap. 1, giving Parliamentary effect to the first Prayer Book of Edward VI, and do not refer to or mean Canons or Royal injunctions, having the authority of Parliament made at an earlier period.—*Moore*, p. 160.

2. The term "ornaments" in the Rubric means those articles, the use of which, in the services and ministrations of the church, is prescribed by that Prayer Book.—*ibid.*, p. 156.

3. The term ornaments is confined to these articles.—*Ibid.*, p. 156.

4. Though there may be articles not expressly mentioned in the Rubric, the use of which would not be restrained, they must be articles which are consistent with, and subsidiary to, the services: as an organ for the singing, a credence table from which to take the sacramental bread and wine, cushions, hassocks, &c.—*Ibid.* p. 187.

In these conclusions, and in this construction of the Rubric, their Lordships entirely concur, and they go far, in their Lordships' opinion, to decide this part of the case.

The lighted candles are clearly not "ornaments" within the words of the Rubric, for they are not prescribed by the authority of Parliament therein

mentioned, namely, the First Prayer Book; nor is the injunction of 1547 the authority of Parliament within the meaning of the Rubric. They are not subsidiary to the service, for they do not aid or facilitate—much less are they necessary to—the service; nor can a separate and independent ornament, previously in use, be said to be consistent with a Rubric which is silent as to it, and which by necessary implication abolishes what it does not retain.

It was strongly pressed by the Respondent's Counsel that the use of lighted candles up to the time of the issue of the first Prayer Book was clearly legal; that the lighted candles were in use in the Church in the second year of Edward the VIth; and that there was nothing in the Prayer Book of that year making it unlawful to continue them. All this may be conceded, but it is in reality beside the question. The Rubric of our Prayer Book might have said: those ornaments shall be retained which were lawful, or which were in use in the second year of Edward the VIth, and the argument as to actual use at the time, and as to the weight of the injunction of 1547, might in that case have been material. But the Rubric, speaking in 1661, more than 100 years subsequently, has, for reasons which it is not the province of a judicial tribunal to criticize, defined the class of ornaments to be retained by a reference, not to what was in use *de facto*, or to what was lawful in 1549, but to what was in the Church by authority of Parliament in that year; and in the Parliamentary authority which this Committee has held, and which their Lordships hold, to be indicated by these words, the ornaments in question are not found to be included.

Their Lordships have not referred to the usage as to lights during the last 300 years; but they are of opinion that the very general disuse of lights after the reformation (whatever exceptional cases to the contrary might be produced), contrasted with their normal and prescribed use previously, affords a very strong contemporaneous and continuous exposition of the law upon the subject.

Their Lordships will, therefore, humbly advise Her Majesty that the charge as to lights also has been sustained, and that the Respondent should be admo-

nished for the future to abstain from the use of them, as pleaded in these articles.

All the charges against the Respondent having been thus established, their Lordships see no reason why the usual consequence as to costs should not follow; and they will advise Her Majesty that the Respondent should pay to the Appellant the costs in the Court below, and of this Appeal.

