

*Judgment of the Lords of the Judicial Committee of the Privy Council on a further Motion to enforce obedience to the Monition in the case of Martin v. Mackonochie from the Court of Arches: delivered 25th November, 1870.*

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Present:

THE LORD CHANCELLOR.

THE ARCHBISHOP OF YORK.

LORD CHELMSFORD.

THIS is an application against the Rev. Alexander Heriot Mackonochie, Perpetual Curate of the Parish of St. Alban's, Holborn, for disobedience to a Monition founded upon an Order in Council of the 19th January, 1869, by which he was commanded (amongst other things) to abstain for the future from the elevation of the cup and paten during the administration of the Holy Communion, and from kneeling or prostrating himself before the consecrated elements during the Prayer of Consecration. A previous application for disobedience to the Monition in these particulars was made against Mr. Mackonochie, upon which their Lordships expressed an opinion that the Monition had been disobeyed with reference to kneeling during the Prayer of Consecration, and condemned him in costs. Upon that occasion their Lordships explained the way in which the Article of Charge with respect to the elevation of the cup and paten came to be worded as it was. The Article, as it was originally framed, was objected to as vague and general, and was ordered to be reformed. The Article, as reformed, charged Mr. Mackonochie with having elevated the paten and the cup above his head during the Prayer of Consecration. It was quite unnecessary to charge an elevation of the paten and

the cup to the extent described in the reformed Article, because the 28th of the Articles of Religion prohibits all elevation of the elements, declaring that "the Sacrament of the Lord's Supper was not by Christ's Ordinance reserved, carried about, lifted-up, or worshipped." So the elevation of the paten and cup need not have been charged to have taken place during the Prayer of Consecration. It would have been sufficient to have stated it to have occurred during the administration of the Holy Communion. But the charge having been thus precisely framed (however unnecessarily), the specific offence to be proved against Mr. Mackonochie was not simply an elevation of the cup and paten, but an elevation of them above his head at the particular period of the administration when the Prayer of Consecration was being read. Upon the original hearing before the Dean of the Arches, he pronounced that Mr. Mackonochie had offended in the terms of this Article, and monished him to abstain for the future from the elevation of the cup and paten during the administration of the Holy Communion as pleaded in the Articles. There was no Appeal from this part of the sentence. In the Monition which followed the Appeal to this Committee from the rest of the sentence of the learned Judge of the Arches Court, Mr. Mackonochie is commanded to abstain from the elevation of the cup and paten during the administration of the Holy Communion; but upon the former application against Mr. Mackonochie for disobedience to this Monition, their Lordships were of opinion that the words "as pleaded in the Articles," must be understood as being in the Monition, and, therefore, that the prohibited elevation was confined to the degree and the time charged in the Article. The unnecessary particularity in the wording of this Article of charge afforded Mr. Mackonochie the opportunity of which he availed himself, to obey the Monition to the letter, and still to continue to elevate the cup and paten during the administration of the Holy Communion, but not above his head, nor during the Prayer of Consecration.

Their Lordships were therefore compelled, upon the evidence produced upon the former application against Mr. Mackonochie, to come to the conclusion that he had not disobeyed the monition in this

respect, but they took care "to have it distinctly understood that they gave no sanction whatever to a notion that any elevation of the elements, as distinguished from the mere act of removing them from the Table and taking them into the hand of the Minister, was sanctioned by law." Upon another charge of disobedience to the Monition, Mr. Mackonochie was not so successful upon the former occasion in protecting himself by a supposed literal compliance with its terms. He was commanded not to kneel or prostrate himself before the consecrated elements during the Prayer of Consecration. He admitted that it was his practice "during the Prayer of Consecration reverently to bend one knee at certain parts of the prayer, and that occasionally in so doing his knee momentarily touched the ground, but that such touching of the ground was no part of the act of reverence intended by him. And he contended that this genuflection, unless the knee reached the ground, was not kneeling. Their Lordships, however, expressed a clear opinion that bowing the knee in the manner described by Mr. Mackonochie was kneeling, and that it was not necessary a person should touch the ground in order to perform such an act of reverence as will constitute kneeling." Their Lordships thought it right, upon this occasion, to express a hope that Mr. Mackonochie would learn "that mere literal compliance with the monition in a merely evasive manner would not suffice." And they observed that "literal compliance with regard to the actual limits of the Order was of course all that he was held to by law, and for obedience to the spirit of the Order they could only trust to his own feelings and his own conscience."

Mr. Mackonochie is now again before their Lordships upon complaint of acts of disobedience to the Monition similar to those with which he was charged upon the former occasion.

The Appellant prays their Lordships to declare that Mr. Mackonochie has not complied with the Monition, inasmuch as—

1st. He knowingly and habitually sanctions the elevation of the paten and cup above the head of the officiating clergyman in the Prayer of Consecration.

2ndly. That he knowingly and habitually sanc-

tions kneeling or prostration before the consecrated elements during the Prayer of Consecration.

The affidavits filed on behalf of the Appellant describe the acts done by the officiating clergyman during the administration of the Holy Communion upon seven different Sundays in the months of December 1869, and January and February 1870. As the affidavits on the other side do not deny the general correctness of the account of what took place upon these occasions (nor did Mr. Mackonochie in his cross-examination), it may be assumed that they describe what is the ordinary course pursued in the administration of the Holy Communion in the Church of St. Alban's. It appears, then, that the practice is that, upon the officiating clergyman reaching the solemn words of institution in the Prayer of Consecration, he drops his voice so as to be nearly inaudible, and a bell begins to toll; that he then elevates (not the paten, but) a wafer, and replacing it upon the Communion Table bows his head down towards the Table and remains for some seconds in this position; that he then elevates the cup and replacing it on the Table bows down as before, after which the administration of the elements commences.

The Appellant alleges that on the days mentioned, in the affidavits which he has filed, the paten and cup were elevated above the head of the officiating clergymen during the Prayer of Consecration; and that during the same prayer there was kneeling or prostration before the consecrated elements.

To begin with his case as to the elevation of the cup and paten, the Appellant has distinctly proved that, upon each of the seven Sundays mentioned in the affidavits, the officiating Clergyman during the Prayer of Consecration elevated a large wafer bread above his head, and also during the same prayer elevated the cup, so that its rim was some inches above his head. These statements are opposed by the affidavits of the Clergymen who officiated upon the several Sundays mentioned in the Appellant's affidavits. Mr. Howes, who was the officiating Clergyman on four of the Sundays, denies that, on either of those days, he raised or elevated the paten or chalice above his head during the Prayer of Consecration, and adds that he had not consciously nor to the best of his knowledge done so since the



practice was discontinued by Mr. Mackonochie after the 30th December, 1866. Mr. Stanton, who officiated on Sunday, the 26th December, 1869, swears that he did not intentionally elevate the paten or cup above his head in the Prayer of Consecration; and Mr. Willington, who officiated on two of the Sundays, states positively that he did not elevate the paten or cup above his head in the Prayer of Consecration. It is to be observed that these affidavits might, according to a possible view entertained by the reverend gentlemen, be regarded by them as literally true, because the paten was not elevated by them but a wafer bread, and the whole of the cup was not raised above the head, but only the upper part of it. It appears from the cross-examination of Mr. Mackonochie that, after the institution of proceedings against him, he introduced the practice of elevating the wafer and not the paten. As he has confessed that his object upon every occasion has been merely to comply literally with the law, it was not unfair to presume that the change from the paten to the wafer was made in order that he might not be accused of elevating the paten. But Mr. Mackonochie stated to their Lordships (and they accept his statement) that "he has in no way sheltered himself behind the difference between the wafer and the paten, but has treated the wafer as the paten, and considered the elevation of the wafer as equivalent to the elevation of the paten." It is sufficient therefore to say that, if any such distinction had been attempted, it could not have been successful, as the elevation which is unlawful is that of the consecrated bread itself, and not of the paten in which it is placed.

Again, there can be no doubt that the elevation of any part of the cup above the head is an elevation to that extent of the cup itself. This Mr. Mackonochie very properly admitted in his cross-examination. He said, "The cup is the whole cup; to raise any part of the cup above the forehead is to raise the cup above the forehead."

Now, the conclusion to be drawn from this state of facts is, that Mr. Mackonochie, having determined to yield the merest literal obedience to the precise letter of the Monition, had resolved that neither he nor his Curates should elevate the paten or the cup above

their heads during the Prayer of Consecration; but, in consequence of the difficulty of keeping to the exact degree of elevation intended, the officiating clergyman unconsciously and unintentionally elevated the wafer and the cup to the extent mentioned in the affidavits. But if Mr. Mackonochie has been (as he admitted) "carefully scanning the Monition and the Order in Council to see how he could keep exactly within them," and has been acting upon his understanding "that legal judgments should be interpreted according to their letter," he has no right to complain of the letter if the Monition is applied against him, and he is made accountable for an actual non-compliance with its terms, whatever his intentions to obey it may have been. The act of elevation to the prohibited degree was witnessed; the secret intention could not be known. That the elevation charged took place during the Prayer of Consecration appears from the evidence of Mr. Mackonochie that the raising of the wafer and of the cup takes place after the words of institution in each kind; consequently, the wafer, at least, must be raised as the prayer is proceeding.

The remaining charge to be considered against Mr. Mackonochie is, his sanctioning kneeling or prostration before the consecrated elements during the Prayer of Consecration. Their Lordships (as already mentioned) having upon the former occasion, when Mr. Mackonochie was charged with disobedience to the Monition, decided that the genuflexion which he practised amounted to kneeling, Mr. Mackonochie, with the same object which he has always had in view, to pay only the closest literal obedience to the Monition, gave notice to his Curates that he intended thenceforth to bow without bending the knee at the part of the Prayer of Consecration where he had previously knelt. This intention he and his Curates carried out, according to the description given in the affidavits, by bowing down towards the Table after replacing the wafer upon it, and remaining some seconds in that position, and adopting the same course with respect to the cup. Mr. Mackonochie stated that upon some of these occasions his forehead may have touched the Table, but that this was no part of the act of bowing, his object being merely a low bow.

Their Lordships do not regard a reverential bow in the light of an act of prostration, as contended for by the learned Counsel for the Appellant; but the posture assumed and maintained for some seconds by Mr. Mackonochie is certainly not a mere bow, but a humble prostration of the body in reverence and adoration. Their Lordships consider that the charge against Mr. Mackonochie, of sanctioning prostration before the consecrated elements, is therefore fully proved.

Their Lordships cannot refrain from expressing their great regret at the course which Mr. Mackonochie has thought himself justified in adopting in his proposed submission to the authority of the Monition. He has (as he admitted in his cross-examination) "carefully scanned the Monition and the Order in Council, to see how nearly he could preserve the prohibited ceremonies, or," as he expressed it, "how far he could obey the law of the Church" (or what he chooses to consider the law of the Church) "without disobeying the law of the State."

Mr. Mackonochie must be reminded that the right of the Church of England to ordain ceremonies is asserted by the 34th of the Articles of Religion, to which he has given his assent, and that none of the ceremonies which he practises are prescribed by the Church.

In the attempt to satisfy his conscience, and to shelter himself under the narrowest literal obedience to lawful authority, Mr. Mackonochie has been a second time foiled. Upon the former occasion their Lordships, after expressing their opinion judicially that the Monition had been disobeyed, did not think it necessary to do more to mark their disapprobation of Mr. Mackonochie's course of proceeding than by directing that he should pay the costs of the application. Upon this repetition of his offence, their Lordships think that they ought to proceed further. They therefore declare that Mr. Mackonochie has not complied with the Monition in respect of the elevation of the paten or wafer, nor as abstaining from prostration before the consecrated elements. And they order that he be suspended for the space of three calendar months from the time of notice of the suspension, from all discharge



of his clerical duties and offices, and the execution thereof: that is to say, from preaching the Word of God, and administering the Sacraments, and celebrating all other clerical duties and offices; and further, that he pay the costs of this application.

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