

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Hebbert, heretofore Elphinstone, v. Purchas, from the Arches Court of Canterbury; delivered 23rd February, 1871.

Present :

LORD CHANCELLOR.
ARCHBISHOP OF YORK.
BISHOP OF LONDON.
LORD CHELMSFORD.

IN this case, which comes to us from the Arches Court of Canterbury, the learned Judge of that Court has directed a monition to issue to the Rev. John Purchas as to several matters and things complained of by the Promoter, and has condemned him in costs; and the Defendant has not appealed. But as to certain charges contained in the 16th, 17th, 20th, 25th, 36th, and 38th Articles of Charge, the learned Judge has refused or omitted to direct a monition to issue against the Defendant, and to condemn him in the costs of these Articles; and against the decision upon these Articles the Promoter has appealed.

The substitution of Henry Hebbert as Promoter, for the purpose of this Appeal, for Charles James Elphinstone, the Promoter in the Court below, since deceased, has been allowed by a former judgment of this Committee.

The Rev. John Purchas, the Respondent, has not appeared, and the Committee has not had the assistance of the argument of counsel on his behalf.

The charges which are the subject of this Appeal are that the Respondent has offended against the Statute Law and the Constitutions and Canons Ecclesiastical, by administering wine mixed with

water, instead of wine, to the communicants, as pleaded in the 16th Article; and by standing with his back to the people, between the people and the Holy Table, whilst reading the Prayer of Consecration in the Holy Communion, as pleaded in the 17th Article; and by the use of wafer bread instead of bread such as is usual to be eaten, in the administration of the Holy Communion, as pleaded in the 20th Article; and by causing holy water, or water previously blessed or consecrated, to be poured into divers receptacles for the same in the said church, in order that the same might be used by persons in the congregation, or by causing or permitting the same to be used by others, as pleaded in the 25th Article; and by himself wearing and sanctioning and authorizing the wearing by other officiating ministers, whilst officiating in the Communion Service, and in the administration of the Holy Communion in the said church, a vestment called a chasuble, as pleaded in the 36th Article; and by himself wearing, and causing or suffering to be worn by other officiating clergy, when officiating in the Communion Service in the said church, certain other vestments called dalmatics, tunics or tunicles, and albs, and by himself wearing, carrying, or causing or suffering other officiating clergy in the same church to wear or bear in their hand, a certain cap called a biretta, during Divine Service, as pleaded in the 38th Article. (Case pp. 9, 10).

We find it convenient to adopt the order followed by the learned Dean of the Arches, and to examine first, the charge of wearing and causing to be worn, a chasuble, tunics, or tunicles and albs, in the celebration of the Holy Communion.

It is necessary to review shortly the history of the Rubric, usually known as the "Ornaments-Rubric," which governs this question.

The first Prayer Book of King Edward VI, 1549, contains the following Rubric at the beginning of the Communion office:—

"Upon the day and at the time appointed for the ministration of the Holy Communion, the priest that shall execute the holy ministry shall put upon him the vesture appointed for that ministration, that is to say, a white albe, plain, with a vestment or cope, and where there be many priests or deacons, then so many shall be ready to help the priest in the

ministration as shall be requisite, and shall have upon them likewise the vestures appointed for their ministry, that is to say, albes with tunicles."

In the second Prayer Book of Edward VI (1552) this was altered, and it was ordered that the minister "shall use neither albe, vestment, nor cope, but being archbishop or bishop he shall have and wear a rochet, and being a priest or deacon he shall have and wear a surplice only."

The Prayer Book of Elizabeth (A.D. 1559) provided that "the minister at the time of the communion, and at all other times of his ministration, shall use such ornaments in the church as were in use by authority of Parliament in the second year of the reign of King Edward VI, according to the Act of Parliament set in the beginning of this book."

This Committee has already decided (*Liddell v. Westerton*), that the words "by authority of Parliament in the second year of the reign of King Edward VI," refer to the first Prayer Book of King Edward VI.

The Act of Parliament set in the beginning of Elizabeth's book is Queen Elizabeth's Act of Uniformity, and the 25th Clause of that Act contains a proviso, "that such ornaments of the Church and the ministers thereof shall be retained and be in use, as was in this Church of England by authority of Parliament in the second year of the reign of King Edward VI, until other order shall be therein taken by the authority of the Queen's Majesty, with the advice of the Commissioners as appointed and authorized under the Great Seal of England for causes Ecclesiastical, or of the Metropolitan of this Realm."

The Prayer Book, therefore, refers to the Act, and the Act clearly contemplated further directions to be given by the Queen, with the advice of Commissioners or of the Metropolitan. It was not, apparently, thought desirable to effect an immediate outward change of ceremonies, although the adoption of the second Prayer Book of Edward VI, in lieu of the first, had effected a great change in the very substance of the Communion Service, with which the theory of the peculiar vestments (the albe and chasuble) was closely connected.

The rubric and the proviso together seem to restore for the present the ornaments of the minister

which the second Prayer Book of King Edward had taken away. But Sandys, afterwards Archbishop of York, who assisted at the revision of the Prayer Book, gives to Archbishop Parker a different suggestion:—"Our gloss upon this text," he says, "is, that we shall not be forced to use them (the ornaments), but that others in the meantime shall not convey them away, but that they shall remain for the Queen." (Burnet's Reformation, vol. ii, Records, p. 332.) The injunctions of Elizabeth appeared in the same year, 1559, and one of them orders that "the churchwardens of every parish shall deliver unto the visitors the inventories of vestments, copes, and other ornaments, plate, books, and specially of grails, couchers, legends, processions, hymnals, manuals, portasses, and such like appertaining to the Church." (Cardwell Doc. Annals I, 228.) Commissioners began to carry out these injunctions in the same year. One of their Returns is in the Record Office (Calendar of State Papers, Domestic, 1547-1580, p. 148), which shows that they chiefly occupied themselves in taking inventories of Church ornaments and of the service books in use.

In the year 1564 appeared the advertisements of Elizabeth. They make order for the vesture of the minister in these words:—"In the ministration of the Holy Communion now in Cathedral and Collegiate churches, the principal minister shall use a cope, with gospeler and epistoler agreeably; and at all other prayers to be said at the said Communion Table to use no copes but surplices."

"That every minister saying any public prayers or ministering the Sacraments or other rites of the Church, shall wear a comely surplice with sleeves, to be provided at the charge of the parish." (Cardwell Doc. An. I, 326.)

These Advertisements were very actively enforced within a few years of their publication. An inventory of the ornaments of 150 parishes in the Diocese of Lincoln, A.D. 1565-1566, has been published by Mr. Edward Peacock; and it shows that the chasubles or vestments and the albs, were systematically defaced, destroyed, or put to other uses, and a precise account was rendered of the mode of their destruction. Proceedings took place under Commissions in Lancashire in 1565 and 1570; in Carlisle in 1573 and following years, when "vestments seem to have disappeared

altogether." (Rev. J. Raine, "Vestments," London, 1866). There is no reason to doubt that all through the country, commissions were issued to enforce the observance of the advertisements within a few years after they were drawn up.

The Visitation Articles of the Archbishops and Bishops about this time show that the operation of the advertisements had been rapid and complete. Archbishop Grindal, in 1571, inquires, "whether all vestments, albs, tunicles, stoles, phanons, pixes, paxes, hand-bells, sacring-bells, censers, crismatories, crosses, candlesticks, holy water stocks, images, and such other reliques and monuments of superstition and idolatrie be utterly defaced, broken and destroyed." (2nd Report, Ritual Commission, p. 408*a*.) Archbishop Parker in 1575 asks, "in the time of celebration of Divine service, whether they wear surplices." (2 Ritual Commission, p. 416*a*.) Aylmer, Bishop of London, uses the same form of question as Archbishop Grindal (*Ibid.*, p. 418*b*.) Sandys, Archbishop of York, inquired in 1578, "whether your parson, vicar or curate, at all times in saying the Common Prayer upon Sundays and holydays, and in administering of the Sacrament doth use and retain the surplice yea or nay." (*Ibid.*, p. 422*a*.)

Upon the whole, there is abundant evidence that within a few years after the advertisements were issued, the vestments used in the Mass entirely disappeared.

It is true that for some years after the appearance of the Advertisements, great reluctance was exhibited by the Puritan party to the use of the surplice, and, in the struggle against the use, they sometimes asserted that, if the surplice were insisted upon, then, by virtue of the Rubric and Act of Parliament, the other vestments mentioned in the first Prayer Book of Edward VI should also be used.

In a somewhat rare tract, printed in the reign of James I, 1605, and addressed to the Bishop of Worcester, defending "the not exact use of the authorized Book of Common Prayer," the writer (p. 34) argues that no such order was made by the Queen as was directed by the Act of Parliament, yet even he admits that the Metropolitan, "on the Queen's mandative letters that some order might be taken, had conference and communication, and at the

last, by assent and consent of the Ecclesiastical Commissioners, did think such orders as were specified in the Advertisements meet and convenient to be used and followed" (p. 36); but he asserts that they were of no value, since "the Queen's assent was not yielded."

This last proposition can hardly be maintained; for if the Queen's mandative letter preceded the compilation of the Advertisements, and if, as it appears abundantly, they were afterwards enforced as by her authority, her assent must be presumed. It appears probable that the Queen hesitated before the Advertisements were thus enforced, as to which see a remarkable letter from the Archbishop to Cecil, on the 28th March, 1566, cited by Mr. Perry in his book on "Lawful Church Ornaments," (p. 209), from the Parker Correspondence, on which Mr. Perry remarks "it would seem that the Archbishop's application had at length some success, for immediately afterwards he sent his letter to the Bishop of London for conformity," and in the letter to the Bishop he requests him "to transmit the Book of Advertisements to the other Suffragans of the Province."

But, as has been said, the contemporaneous evidence as to the abolition of all vestments obnoxious to the Puritan party (other than the surplice, hood, and tippet, and the square cap) is abundant.

In a scarce book, called "A Part of a Register," in which is a considerable number of documents collected by those who objected to Church Ritual, the complaint is uniformly against copes and surplices. Thus, in a letter by A. G., 1570, page 13, he complains of "crossing, coping, and surplissing." A Report of the Examination of Smith, Nixon, and others before the Lord Mayor, the Bishop of London, and other Commissioners, 1567, page 28, describes Hawkins, one of the accused, as saying, "Surplisses and copes be superstitious and idolatrous." Ireland, another of them (page 32) says to the Bishop, "But you go like one of the Mass priests still;" to which the Bishop replies,—"*You see me wear a cope or a surpliss at Paul's. I had rather minister without these things, but for order's sake and for obedience to the Prince.*"

In another of these documents, called "A View

of Antichrist, His Laws and Ceremonies," there is a careful enumeration of ornaments complained of as Popish, not mentioning alb nor chasuble; but (page 63) there is mention of "the cap, the tippet, the surplice for small churches, the cope for great churches, furred hoods in summer for the great doctors, silken hoods in their quiers upon a surplesse, and the grey amise with the catte's tails." This mention of the amise is the only notice in the many tracts collected in the Register of any specific vestment other than the surplice and cope being worn. But in the same book is contained "A Letter by Master Robert Johnson to Master Edwin Sandys (1573)," in which, at page 104, he says, "You must yield some reason why the tippet is commended and the stole forbidden; why the vestment is put away and the cope retained; why the alb is laid aside and the surplice is used; or why the chalice is forbidden in the Bishop of Canterbury's Articles or the grey amice by the Canon more than the rest, why have they offended, &c." Edward Dering (1593), in another tract in the same book, speaks of the grey amice having been specially forbidden in the "Book of the Discipline of the Church of England." He goes on to say that other vestments, equally superstitious, are used; and in a passage immediately before this he asks, "how he can subscribe to the ceremonies in Cathedral Churches, where they have the priest, Dean, and Sub-dean in copes and vestments, all as before;" but that he is alluding in this to the cope and surplice is plain both from the before-cited statement of the Bishop of London to Hawkins, and from the question in Johnson's tract "Why the vestment is put away and the cope retained, the alb laid aside and the surplice in use;" and the enumeration of Popish ornaments in "The View of Antichrist."

Now all the tracts above cited are dated within ten years after the date of the advertisements, and the complaints so bitterly made as to the cope and surplice would certainly have been extended to the alb and chasuble had they not then ceased to exist.

In the correspondence with foreign Reformers, called the "Zurich Letters," the controversy is treated as having become confined to the cope and surplice.

At the Hampton Court Conference the Puritans objected to the surplice, as "a kind of garment which the priests of Isis used to wear." (Cardwell Conferences, p. 200). There was evidently no other vestment in use to which they could object. The revised Prayer Book, issued soon after, retained the ornaments-Rubric in the same form as in the Prayer Book of Queen Elizabeth. The Canons of 1603-4 enacted by both Convocations, and ratified by the King's consent, sanctioned the use of this Prayer Book. But whilst thus implicitly sanctioning the ornaments-Rubric, the Canons also provide specially for the vesture of the minister. Canon 24 directs the use of "a decent cope" for the principal minister in the Holy Communion in Cathedrals and Collegiate Churches "according to the Advertisements published Anno 7 Elizabeth;" and Canon 58 directs that "every minister saying the public prayers or ministering the Sacraments or other rites of the church shall use a decent and comely surplice with sleeves, to be provided at the charge of the parish."

Their Lordships think it needless to adduce authorities to show that there was no attempt to revive or use the chasuble, alb, and tunicle, between the years 1604 and 1662.

The Ornaments-Rubric of 1662 is as follows:—
 "And here it is to be noted that such ornaments of the church and of the minister 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 VI." The form of this Rubric is different from that of the preceding Prayer Book, and follows, for the most part, the wording of the proviso of the Act of Queen Elizabeth.

The learned Judge, in the Court below, assumes (Appendix, p. 74) that the Puritan party at the Savoy Conference, objected to *this* Rubric: whereas it was the Rubric of James that they were discussing. Upon that, the Puritans observed that, "Inasmuch as this Rubric seemeth to bring back the cope, alb, and other vestments forbidden by the Common Prayer Book, 5 & 6 Edward VI, and so for reasons alleged against ceremonies under our eighteenth general exception, we deem it may be wholly left out." The Rubric had been in force for nearly 60 years,

and they do not allege that the vestments had been brought back; nor would a total omission of the Rubric have been a protection against them. The Bishops in their answer show that they understand the surplice to be in question, and not the vestments. (Cardwell Conferences, 314, 345, 351). But the learned Judge through this oversight has overlooked the most important part of the proceedings. The Bishops determined that the Rubric "should continue as it is." But after this they did, in fact, re-cast it entirely. It must not be assumed that alterations made under such circumstances were made without thought, and are of no importance. The Rubric had directed the minister to "use at the time of the Communion, and at all other times of his ministrations," the ornaments in question. The statute of Elizabeth did not direct such use nor refer to any special times of ministration, but it ordered simply the retaining of the ornaments till further order made by the Queen. The Bishops threw aside the form of the old Rubric and adopted that of the Statute of Elizabeth, but added the words "at all times of their ministration" without the words which had in all former Rubrics distinguished the Holy Communion from other ministrations; a mode of expression more suitable to a state of things wherein the vestments for all ministrations had become the same. The change also brought in the word "retained," which, it has been argued, would not include things already obsolete. Whatever be the force of these two arguments, the fact is clear that the Puritans objected to a Rubric differing from this; and that after their objections, the Rubric was re-cast, and brought into its present form.

With regard to the suggestion attributed to the House of Lords, "whether the Rubric should not be mended where all vestments in time of Divine service are now commanded which were used by Edward VI" ("Cardwell Conferences," p. 274), the learned Judge has overlooked the fact that this applies to the earlier Rubric; and the suggestion did not emanate from the House of Lords, nor was it ever adopted by that body. And the learned Judge omits to observe that the Rubric of James, which was objected to, was amended after the suggestion.

From the passing of the Act of Uniformity there

is abundant evidence to show that the vestments in question were not used at all. Their Lordships may refer to the various Visitation Articles published in the Second Report of the Ritual Commission and elsewhere, as showing that the surplice alone was to be used, and that deviations from that rule were on the side of defect, and not in the direction of returning to the vestments of the Mass. Some of these Articles were published by Bishop Cosin and others who took part in the revision of the Prayer Book. In the 6th Article Bishop Cosin inquires "have you a large and decent surplice (one or more) for the minister to wear at all times of his publick ministration in the church?" (2 Ritual Commission, 601 a.) This repetition of the words "at all times of his ministration," the exact words of the Rubric, is very significant as a contemporaneous exposition of it by one of its framers.

These, then, are the leading historical facts with which we have to deal in the difficult task of construing the Rubric of Ornaments. The vestment or cope, alb, and tunicle were ordered by the first Prayer Book of Edward VI. They were abolished by the Prayer Book of 1552, and the surplice was substituted. They were provisionally restored by the Statute of Elizabeth, and by her Prayer Book of 1559. But the Injunctions and the Advertisements of Elizabeth established a new order within a few years from the passing of the Statute, under which chasuble, albe, and tunicle disappeared. The canons of 1603-4, adopting anew the reference to the Rubric of Edward VI, sanctioned in express terms all that the advertisements had done in the matter of the vestments, and ordered the surplice only to be used in parish churches. The revisers of our present Prayer Book in 1662, under another form of words, repeated the reference to the second year of Edward VI, and they did so advisedly, after attention had been called to the possibility of a return to the vestments.

The authority of the Advertisements has been questioned on the ground that it has never been shown that they received the assent of the Queen. Supposing, for the sake of argument, that the Advertisements did not receive the official assent of the Queen, but were acted upon under a number of Royal Commissions, and with the approval of the Metropolitan, their Lordships think this was a

“taking other order” within the meaning of the Statute. There is no doubt that the Advertisements were carried into effect as legally binding, and were enforced by Royal Commissions. There is no doubt that they were accepted in some cases by reluctant people, as of legal obligation; and their authority is expressly recognized by the 24th canon of 1603-4.

In the case of *Macdougall v. Purrier* (4 Bligh's Reports, 433) the House of Lords presumed the enrolment in Chancery of a Decree of Commissioners appointed by an Act of Henry VIII for settling the tithes in London, although no such enrolment could be found, on the principle that where instruments have been long acted on and acquiesced in by parties interested in opposing their effect, all formalities shall be presumed to have been observed. No special form of consulting the Metropolitan is prescribed to the Queen.

Their Lordships are now called on to determine the force of the Rubric of 1662, and its effect upon other regulations, such as the Canons of 1603-4. They do not disguise from themselves that the task is difficult.

The learned Judge in the Court below has said that “the plain words of the Statute, according to the ordinary principles of interpretation, and the construction which they have received in two Judgments of the Privy Council, oblige him to presume that the ornaments of the Minister, mentioned in the first Prayer Book of Edward VI, are those to which the present Rubric referred.” “They are, for Ministers below the order of Bishops, and when officiating at the Communion Service, cope, vestment, or chasuble, surplice, alb, and tunicle; in all other services the surplice only, except that in Cathedral Churches and Colleges the academical hood may be also worn.” He considers that the object of the advertisements of Elizabeth “was to secure as great an amount of decent Ritual as the circumstances of the time would permit.” (Appendix, p. 77.)

“As to the Visitation Articles,” from the time of the Statute of Charles II, the learned Judge observes, “the same principle applies to them as to the Advertisements and Canons, and indeed as to every attempt to procure a decent ritual since Queen Elizabeth's time; namely, that the authorities

were content to order the minimum of what was requisite for this purpose." (Appendix, p. 81.) Remarking upon the question whether the consent of the King to the Canons of 1603-4 could be held to be an execution of the powers given to the Queen by the Statute of Elizabeth, the learned Judge after some comments which their Lordships do not feel called on to examine, says "a subsequent Statute, which expressly revived a prior Statute inconsistent with the Advertisements of Elizabeth, would by necessary implication repeal them." (Appendix, p. 79).

The Committee is unable to accept this interpretation of the Advertisements and the Visitation Articles as the true one. Their Lordships think that the defacing, and destroying, and converting to profane and other uses, of all the vestments now in question, as described in the Lincoln MS. published by Mr. Peacock, show a determination to remove utterly these ornaments, and not to leave them to be used hereafter when higher Ritual might become possible. They think that the inquiries of Sandys and Aylmer, already quoted, show that the surplice was not to be the least or lowest, but the only vestment of the parochial clergy. They think that the Articles of Visitation (cited Ritual Commission, Report 2), issued at and after the passing of the Act of Uniformity, which ask after the "fair surplice for the minister to wear at all times of his ministration," without any suggestion of any other vestment, could scarcely have been put forth by Bishops desirous of a more elaborate Ritual and aware that the vestments were now of statutable obligation. They think that in prescribing the surplice only, the Advertisements meant what they said, the surplice only; and that strong steps were taken to insure that only the surplice should be used.

Their Lordships remark further that the doctrine of a minimum of ritual represented by the surplice, with a maximum represented by a return to the mediæval vestments is inconsistent with the fact that the Rubric is a positive order, under a penal Statute, accepted by each clergyman in a remarkably strong expression of "assent and consent" and capable of being enforced with severe penalties. It is not to be assumed without proof that such a Statute was framed so as to leave a choice between contrary interpretations, in a question that

had ever been regarded as momentous, and had stirred, as the learned Judge remarks, some of the strongest passions of man. Historically all the communications between Archbishop Parker and the Queen and her Government indicate a strong desire for uniformity, and the Articles of Visitation after 1662 were all framed with the like object. If the minister is ordered to wear a surplice at all times of his ministration, he cannot wear an alb and tunicle when assisting at the Holy Communion; if he is to celebrate the Holy Communion in a chasuble, he cannot celebrate in a surplice.

In order to decide the question before the Committee, it seems desirable first to examine the effect of the Church legislation of 1603-4. The 14th Canon orders the use of the Prayer Book without omission or innovation, and the 80th Canon directs that copies of the Prayer Book are to be provided, in its lately revised form, and, by implication, the Ornaments-Rubric is thus made binding on the clergy. Canon 24th directs the use of the cope in Cathedral and Collegiate Churches upon principal feast days, "according to the Advertisements for this end, anno 7 Elizabeth." Canon 58th says that "every Minister saying the public prayers, or ministering the Sacraments or other rites of the Church, shall wear a decent and comely surplice with sleeves, to be provided at the charge of the parish." There can be no doubt that the intention here was not to set up a contradictory rule, by prescribing vestments in the Prayer Book and a surplice in the Canons which give authority to the Prayer Book. It could not be intended, in recognizing the legal force of the Advertisements, to bring back the things which the Advertisements had taken away, nor could it be expected that either the Minister or people should provide vestments in lieu of those which had been destroyed, and accordingly no direction is given with regard to them. The provisions of the Canons and Prayer Book must be read together, as far as possible, and the Canons upon the vesture of the Ministers must be held to be an exposition of and limitation of the Rubric of Ornaments. Such ornaments are to be used as were in use in the Second year of Edward VI, limited as to the vestments by the special provisions of the Canons themselves; and the contem-

aneous exposition of universal practice show that this was regarded as the meaning of the Canons. There does not appear to have been any return to the vestments in any quarter whatever.

The Act of 1662 sanctioned a Prayer Book with a different Rubric, but it referred back to the Second of Edward VI, and in some sense or other revived the Rubric of King Edward's First Book; the question is in what sense and in what degree. There seem to be three opinions on this point.

One, that the Act of 1662 repealed all legislation on the subject of the ornaments of the Minister; the second, that the Act and the Canons set up two distinct standards of ritual on this subject; and the third, that the Act of 1662 is to be read with the Canons of 1602 still in force, and harmonized with them.

I. The first is that expressed by Dr. Lushington, in the case of *Westerton v. Liddell*, that in reviving the Rubric of 1549 the Act of 1662 excluded and repealed all provisions whatever of Act of Parliament or Canon which had been made after 1549 and prior to 1662. This view was adopted by Sir John Dodson in the same case, when it reached the Arches Court. The consequence of this must be that every celebration of the Holy Communion in a surplice only, from 1662 to the present day, would be a violation of the Statute. The Canons of 1603-4 being repealed as to this matter, together with the Advertisements on which the Canons built, there would be no legal warrant for using the surplice and omitting to use the vestments at the Holy Communion. Yet there is no doubt of the practice. For 180 years the vestment was never worn. And thus there would be the unusual occurrence of a Statute repealing former legislation and fortified with heavy penalties, which was systematically broken not only by one and all of those who had declared their unfeigned assent and consent to all and everything contained in the Book of Common Prayer, but by the framers of the Rubric themselves immediately after the confirmation of it by Act of Parliament. Nor is there during that time one single instance of calling to account or censuring any one for his particular share in a universal violation of the law. It appears plain to their Lordships from these facts that the idea of the repealing power of this Rubric is a modern one.

But the 24th Clause of the Act of Uniformity shows that it was not the intention of the passers of the Act to repeal past laws. It provides that "the several good Laws and Statutes of this realm which are now in force, for the uniformity of prayer and the administration of the Sacraments . . . shall stand in full force and strength, to all intents and purposes whatever, for the establishing and confirming the said Book." The laws were to remain; but they were to bear on the new Book of Common Prayer, and not upon any former one. Now, the Prayer Book up to that time in use—the Book which was the subject of the Hampton Court Conference—rested upon the Canons of 1603-4; and it is hard to suppose that the most obvious "laws" of all, those in force up to that moment, were excluded from the saving power of this 24th Clause. Their Lordships think that the Canons relating to the vestments of the Ministers were not repealed by the Act of Uniformity, and that the Canons had the same force after the passing of that Act which they had before. The contemporary exposition on this point is very strong. Bishop HENCHMAN, of Salisbury, in 1662, in enquiring whether his Churches are provided with the Prayer Book "newly established," enquires for the "comely, large, and fine surplice," and for no other vestment. The same enquiry for the "comely large surplice, for the minister to wear at all times of his ministration," is found in a great number of Visitation Articles, republished by the Ritual Commission (Report 2, Appendix, p. 606, 614 and following), extending from 1662 to the end of the century. Bishop FULLER, of Lincoln, A.D. 1671, Bishop GUNNING, of Ely, A.D. 1679, and Bishop TRIMNELL, of Norwich, A.D. 1716, refer to the 58th Canon as unrepealed, in the margin of their Visitation Articles upon the surplice. Their Lordships are of opinion that the Canon was not repealed, and that the Ecclesiastical authorities had no suspicion that it had been.

II. The next opinion is, that the Canons and the Act of Uniformity, being irreconcilable, set up distinct standards of Ritual, the one of a more elaborate and the other of a severer type, the one a maximum and the other a minimum, the one represented by the Rubric and the other by the 58th Canon. To this view the learned Judge in the Court below appears to incline. Their Lordships,

notwithstanding this authority, are obliged to come to the conclusion that this view is at variance with all the facts of the case. They have already observed that the chasuble, alb, and tunicle were swept away with severe exactness in the time of Queen Elizabeth, and that there was no trace of any attempt to revive them. The Act of Uniformity reflects, by the strictness of its provisions, the temper of the framers. The fate of a "proviso as to the dispensation with deprivation, for not using the cross and surplice," which was sent down from the House of Lords to the House of Commons illustrates this. The Commons rejected the proviso (Commons' Journals, VIII, 413), and in the subsequent conference between the two Houses, the Manager, Serjeant Charlton, gave, amongst other reasons for rejecting the proviso, "that it would unavoidably establish schism, . . . that he thought it better to impose no ceremonies than to dispense with any; and he thought it very incongruous at the same time when you are settling uniformity to establish schism" (Lords' Journals, vol. xi., p. 449 *a*). And the House of Lords agreed that this proviso should be struck out (Lords' Journals, vol. xi., pp. 450 *a*, 450 *b*). It cannot be supposed that an Act which applied the principle of uniformity so strictly in one direction was intended on the other to open the door to a return to practices that were suspected as Romish, and this without serious remonstrance in either House from the minority. The purpose of the Act is clear. It was to establish an uniformity upon all parties alike. That is its language, and that is the interpretation it bore with those in authority who had to expound it in visitation articles and the like.

III. The third opinion remains, that the provisions of the Rubric of Edward the Sixth are continued, so far as they are not contrariant to other provisions still in force. And here it is to be observed again that the Rubric was altered, after refusal to listen to the Puritan objections, to a form different from that of any former Rubric, by introducing the word "retained." Both in the statute of Elizabeth and in the Rubric in question the word "retain" seems to mean that things should remain as they were at the time of the enactment. Chasuble, alb, and tunicle had disappeared for more than sixty years; and it has been argued fairly that this word would not have

force to bring back anything that had disappeared more than a generation ago. To retain means, in common parlance, to continue something now in existence. It is reasonable to presume that the alteration was not made without some purpose; and it appears to their Lordships that the words of the Rubric strictly construed, would not suffice to revive ornaments which had been lawfully set aside, although they were in use in the second year of Edward VI. But whether this be so or not, their Lordships are of opinion that as the Canons of 1603-4, which in one part seemed to revive the vestments, and in another, to order the surplice for all ministrations, ought to be construed together, so the Act of Uniformity is to be construed with the two canons on this subject, which it did not repeal, and that the result is that the cope is to be worn in ministering the Holy Communion on high feast days in Cathedrals, and Collegiate Churches, and the surplice in all other ministrations. Their Lordships attach great weight to the abundant evidence which now exists that from the days of Elizabeth to about 1840, the practice is uniformly in accordance with this view; and is irreconcilable with either of the other views. Through the researches that have been referred to in these remarks a clear and abundant *expositio contemporanea* has been supplied which compensates for the scantiness of some other materials for a judgment.

It is quite true that neither contrary practice nor disuse can repeal the positive enactment of a statute, but contemporaneous and continuous usage is of the greatest efficacy in law for determining the true construction of obscurely framed documents. In the case of the Bristol Charities (2 Jac. and Walker, 321) Lord Eldon observes, "length of time (though it must be admitted that the charity is not barred by it) is a very material consideration when the question is, what is the effect and true construction of the instrument? Is it according to the practice and enjoyment which has obtained for more than two centuries, or has that practice and enjoyment been a breach of trust?" We may ask in like manner what is the true construction of the Act of 1662 and of the Rubric which it sanctioned?

Is it according to the practice of two centuries, or was the practice a continual breach of the law commanded and enforced by the Bishops, including the very Bishops who aided in framing the Act?

The learned Judge relies on two former judgments of this Committee, as having almost determined the question of vestments; one of them in the case of *Liddell v. Westerton*, and the other in the case of *Martin v. Mackonochie*.

In *Liddell v. Westerton*, the question which their Lordships had to decide was whether the Rubric which excluded all use of crosses in the service, affected crosses not used in the service but employed for decoration of the building only, and they determined that these were unaffected by the Rubric.

They decided that the Rubric in question referred to the Act passed in 2 and 3 Edward VI, adopting the first Prayer Book, and not to any canons or injunctions having the authority of Parliament, but adopted at an earlier period. Their Lordships feel quite free to adopt both the positive and the negative conclusions thus arrived at. In construing the expressions made use of in that judgment, it should be borne in mind that this question of the vestments was not before the Court.

In *Martin v. Mackonochie* the Committee stated anew the substance of the judgment in *Liddell v. Westerton* upon this point, but did not propose to take up any new ground.

Their Lordships will advise Her Majesty that the Defendant Mr. Purchas has offended against the Laws Ecclesiastical in wearing the chasuble, alb and tunicle; and that a monition shall issue against the Defendant accordingly.

With respect to the cap, called a biretta, which the Defendant is said to have carried in his hand, but not to have worn in church, their Lordships would not be justified, upon the evidence before them, in pronouncing that the Defendant did an unlawful act.

As to the holy or consecrated water in the church the evidence does not go to the full extent of the charge. There is no proof whatever that the water placed in the church was consecrated at all, nor that it was put there by the Defendant with the purpose of its being used as the congregation seem to have used it. This is a penal proceeding, and each

charge must be strictly proved as alleged. Upon this point, too, the appeal must be disallowed.

Their Lordships now proceed to the 16th Article, which charges that, on a certain day, the Defendant "administered wine mixed with water instead of wine to the communicants at the Lord's Supper." The learned Judge in the Court below has decided that it is illegal to mix water with the wine at the time of the service of Holy Communion; but he decides that water may be mixed with the wine "provided that the mingling be not made at the time of the celebration." For this view the learned Judge quotes, amongst other authorities, Bishop Andrewes, but it has escaped him that the practice of Bishop Andrewes was that which he condemns; in his Consecration Service, the Bishop directs as follows:—*Episcopus de novo in calicem ex poculo quod in sacrâ mensâ stabat, effundit, admistitque aquâ, recitat clare verba illa consecratoria.* (Sparrow's Articles &c.) The learned Judge considers that the act of mixing has some symbolical meaning, but he holds that it was "wholly unconnected with any papal superstition, or any doctrine which the Church of England has rejected." (Appendix p. 88.) Nor does it appear that the controversy between the Romish and Reformed churches turned so much upon the symbolism of the mixed cup, as upon the necessity of its use.

Their Lordships find here two questions for their consideration. Since it has been decided by this Committee that additional ceremonies or innovations are excluded by implication by the service for Holy Communion; or, in other words, that the service for Holy Communion is not only a guide but a sufficient guide in its celebration; and since the learned Judge has decided that the act of mingling wine with water in the Service, with a view to its administration, is one of the additional ceremonies so excluded, the first question is whether the doing the act before the service, and in the vestry or elsewhere, could so alter the symbolical character of the act that the cup might be brought in and consecrated and administered to the people, without constituting an innovation or additional ceremonial act, beyond what is ordered in the service.

If this question be decided in the affirmative, the

second question would be whether upon a fair construction of the directions of the Rubrics, this previous mingling could take place without violation of the Rubrics.

The first question is, whether this is an additional ceremony, not provided in the Rubric? the second question is, whether it is contrary to the express directions of the Rubric?

On the former question their Lordships observe that, whether the water mingled with the wine be used because Christ himself is believed to have used it, or in order to symbolize the water from the rock given to the thirsty Israelites, or the blood and water from the side of the Lord, or the union of Christ with His people (the water being a type of the people), or the union of two natures in the one Lord, it can scarcely be said that the reception of the mingled chalice had no share in this symbolism, but only the act of mingling. Their Lordships are unable to arrive at the conclusion that, if the mingling and administering in the service water and wine is an additional ceremony, and so unlawful, it becomes lawful by removing from the service the act of mingling but keeping the mingled cup itself and administering it. But neither Eastern nor Western Church, so far as the Committee is aware, has any custom of mixing the water with wine apart from and before the service.

As to the second question, the addition of water is prescribed in the Prayer Book of 1549; it has disappeared from all the later books, and this omission must have been designed. The Rubric of 1662, following that of 1604, says "The bread and wine for the Communion shall be provided by the Curate and Churchwardens at the charges of the parish." So far wine, not mixed with water, must be intended. The priest is directed in the Rubric before the Prayer for the Church Militant to place on the table "so much bread and wine as he shall think sufficient." Of so much of this wine as may remain unconsecrated it is said that "the Curate shall have it to his own use." These directions make it appear that the wine has not been mingled with water, but remains the same throughout. If the wine had been mingled with water before being placed on the table, then the portion of it that

might revert to the Curate would have undergone this symbolical mixing; which cannot surely have been intended.

Their Lordships gladly leave these niceties of examination, to observe that they doubt whether this part of the article is of much importance. As the learned Judge has decided that the act of mingling the water with the wine in the service is illegal, the private mingling of the wine is not likely to find favour with any. Whilst the former practice has prevailed both in the East and the West, and is of great antiquity, the latter practice has not prevailed at all; and it would be a manifest deviation from the Rubric of the Prayer Book of Edward VI as well as from the exceptional practice and directions of Bishop Andrewes. Upon this 16th Article, however, whether it be more or less important, their Lordships allow the Appeal, and will advise that a monition should issue against the Defendant.

The 20th Article charges the Defendant with using on divers occasions "wafer bread, being bread made in the special shape and fashion of circular wafers, instead of bread such as is usual to be eaten," and with administering the same to the communicants. The Rubric of the Prayer Book now in force, runs thus:—"And to take away all occasion of dissension and superstition which any person hath or might have concerning the bread and wine, it shall suffice that the bread be such as is usual to be eaten, but the best and purest wheat bread that conveniently may be gotten." This is the same with the Rubric of 1552, 1559, and 1604, with two exceptions. The present Rubric omits after "eaten" the words "at the table with other meats," and it introduces words which have been prominent in the argument in this case; instead of "to take away the superstition," it reads "to take away all occasion of dissension and superstition." In the first book of Edward VI the direction is different: "For avoiding all matter and occasion of dissension, it is meet that the bread prepared for the Communion be made, through all this realm, after one sort or fashion, that is to say, unleavened and round, as it was afore, but without all manner of print, and something more larger and thicker than it was, so that it may be aptly divided into divers pieces, and every one

shall be divided in two pieces at the least, or more by the discretion of the minister, and so distributed." One of the Elizabethan injunctions is at variance with the Elizabethan Rubric, continued from the 2nd book of King Edward, and provides as follows:— "Where also it was in the time of King Edward VI used to have the sacramental bread of common fine bread, it is ordered for the more reverence to be given to the holy mysteries, being the Sacraments of the body and blood of our Saviour Jesus Christ, that this same sacramental bread be made and formed plain, without any figure thereupon, of the same fineness and fashion, round though somewhat bigger in compass and thickness, as the usual bread and wafer heretofore named singing-cakes, which served for the use of the private masses." (Cardwell.) The learned Judge calls this injunction a *contemporanea expositio* of the Rubric, but it is in fact a superseding of the Rubric, nor can it be regarded as at all reconcileable with it. Upon these facts the learned Judge decides as follows:—"It appears, therefore, that while the first Rubric prescribed a uniformity of size and material, the later and the present Rubric are contented with the order that the purest wheaten flour shall suffice, and the bread may be leavened according to the use of the Eastern or unleavened according to the use of the Western Church."

Their Lordships do not find any mention of flour, and apart from this slight inadvertence, their Lordships are unable to accept this view of the passages that have been quoted. The first Book of Edward has in view uniformity of practice, and not the choice of two practices; the bread is to be made "through all this realm after the same sort and fashion." The 2nd Book of Edward VI. is not so positive in form, for the words "it shall suffice" are used; but it produced uniformity and not diversity, for the Injunction of 1559 says, "it was in the time of King Edward the Sixth, used to have the Sacramental bread of common fine bread." This general use the Injunction proposes to change; but again the order is universal and binds the very minutest details; the bread is to be plain without any figure, fashioned round but somewhat bigger in compass and thickness than the cakes used in private masses: there is no trace of an intention to leave men free to follow the fashion of the Eastern or of the Western Church.

So there are three distinct orders, first, for wafer bread, unleavened as before, but larger and without print; then for common bread usual at the table; then for a new kind of bread thicker than the wafer and without symbolical figures; and the first and last are in their form universal and absolute; and the second also had brought about a general usage and not a diversity. There was, no doubt, a great division of opinion upon this question; and this makes it all the more remarkable, that none of the three orders takes the natural course of leaving the matter free. Each seems to have aimed at uniformity but each in a different practice.

But it has been argued by some that the phrase "it shall suffice" implies a permission; that the words may mean "it shall be sufficient, but another usage is allowed and might even be better." On the other hand, it has been argued, that in other places in the Liturgy "it shall suffice" must be construed into a positive direction; that if "it shall suffice" to pour water on a sickly child, this ought to restrain the clergyman from immersing a child known to be sickly; that even the weaker form "it may suffice" in the Rubric as to children and infants, brought to be baptized, conveys to the minister a distinct direction as to what he is to do, and leaves no alternative course apparent; that "it shall suffice that the Litany be once read" for both deacons and priests is meant to be, and is received as a positive order; and that in such cases "it shall suffice" means "it shall be sufficient for the completeness of a sacrament or for the observance by the minister of the Rubric." Their Lordships are disposed to construe this phrase in each case according to the context. Here the expression is "to do away all occasion of dissension and superstition . . . it shall suffice." If these words left the whole matter open, and only provided that the usual bread should be sufficient where it happened to be used, it is difficult to see how either dissension or superstition would be taken away: not dissension, for there would be a licence that had not existed since the Reformation; not superstition, for the old wafer with its "print," its "figures," which the first Book of Edward and the injunctions desired might be excluded, might now be used if this Rubric were the only restraint. Their Lordships are therefore inclined to think on this ground alone

that the Rubric contains a positive direction to employ at the Holy Communion the usual bread.

It is at least worthy of notice that when Cosin and others at the last revision desired to insert the words making the wafer also lawful, these words were rejected.

But their Lordships attach greater weight to the exposition of this rubric furnished by the history of the question. From a large collection of Visitation Articles, from the time of Charles II it is clear that the best and purest wheat bread was to be provided for the Holy Communion, and no other kind of bread. They believe that from that time till about 1840 the practice of using the usual wheat bread was universal.

The words of the 20th Canon, to which the Visitation Articles refer, point the same way. The churchwardens are bound to supply "wheaten bread," and this alone is mentioned. If wafer bread is equally permitted, or the special cakes of Edward VI's first Book and of the injunctions, it is hard to see why the parish is to supply wheaten bread, in cases where wafers are to be supplied by the minister or from some other source. And if wafers were to be in use, a general injunction to all churchwardens to supply wheaten bread, would be quite inapplicable to all churches where there should be another usage.

Upon the whole their Lordships think that the law of the Church has directed the use of pure wheat bread, and they must so advise Her Majesty.

It remains to consider part of the 17th Article of charge, which sets out that the Respondent during the whole of the prayer of consecration at the Holy Communion "stood at the middle of that side of the holy table which if the said holy table stood at the east end of the said church or chapel (the said table in St. James's Chapel, in fact, standing at the west end thereof), would be the west side of such table, in such wise that you then stood between the people and the said holy Table, with your back to the people, so that the people could not see you break the bread or take the cup into your hand." The learned Judge deals with this charge very briefly, believing it to have been settled by this Committee in the Judgment in *Martin v. Mackonochie*. He says, "I must observe that the Rubric does not require that the people should see the breaking of

the bread, or the taking of the cup into the priest's hands; and, if it did so prescribe, the evidence in this case would establish that all the congregation could see him take the cup into his hand, and some of them at least could see him break the bread." The Rubric on this point is this: "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 followeth." Their Lordships are of opinion that these words mean that the priest is so to stand that the people present may see him break the bread and take the cup into his hands; although the learned Judge is right if he means to say that the mere words do not speak of seeing.

Their Lordships think that the evidence of the witness Verrall, which there is no reason to doubt, proves that "generally the congregation could not see" the breaking of the bread, because the Respondent had his back turned to them. As regards the cup, the witness said that they could see him take the cup into his hand, but being asked further, he says, "I could tell he was taking the cup into his hand." This is consistently explained by supposing that the witness and others could see a certain motion of the Respondent which from their knowledge of the service and from the subsequent elevation they were sure was the taking of the cup into his hands. It would probably be impossible in any position so to act that all the congregation could see or that all should be unable to see; but we take it as proved that the greater part of the congregation could not see the breaking of the bread or the act of taking the cup into the hands.

The facts being established, their Lordships proceed to consider the question itself. In default of argument on the Respondent's side, they have been somewhat aided by a large mass of controversial literature, which shows how much interest this question excites, and which has probably left few of the facts unnoticed.

The Rubric upon the position of the table directs that it shall "stand in the body of the church or in the chancel, where morning and evening prayer are

appointed to be said." This is the same as the Rubric of 1552, 1559, and 1604, excepting the verbal alteration of *are* for *be*. It goes on, "And the priest standing at the north side of the table, shall say the Lord's Prayer with the Collect following." The table is a moveable table. By the injunctions of Queen Elizabeth (Cardwell, Doc. Annals I, p. 210) it is ordered "that the holy table in every church be decently made and set in the place where the altar stood, and there commonly covered as thereto belongeth, and as shall be appointed by the visitors, and so to stand, saving when the Communion of the Sacrament is to be distributed; at which time the same shall be so placed in good sort within the chancel, as whereby the minister may be more conveniently heard of the communicants in his prayer and ministrations, and the communicants also more conveniently and in more number communicate with the said minister. And after the Communion is done, from time to time, the same holy table to be placed where it stood before." If this custom still prevailed of bringing the table from the east and placing it in the chancel, the two Rubrics would present no difficulty. The priest standing on the north side as directed by the one, would also be standing before the table so as to break the bread before the people, and take the cup into his hand as required by the other. No direction was given for a change of position in the Prayer of Consecration in the second book of King Edward VI, but only a change of posture in the words "standing up." But before the time of the Revision of 1662, the custom of placing the table along the east wall was becoming general, and it may fairly be said that the revisers must have had this in view.

The following questions appear to require an answer, in order to dispose of this part of the case; what is meant by "the north side of the table?" What change, if any, is ordered by the Rubric before the Prayer of Consecration? And what is the meaning of "before the people" in that Rubric?

As to the first question, their Lordships are of opinion that "north side of the table" means that side which looks towards the north.

They have considered some ingenious arguments intended to prove that "north side" means that

part of the west side that is nearest to the north. One of these is that the middle of the altar before the Reformation was occupied by a stone or slab, called *mensa consecratoria* and *sigillum altaris*, that the part of the altar north of this was called north side, and that to the south of it was called the south side. Without inquiring whether English altars were generally so constructed, which is to say the least doubtful, their Lordships observe that in the directions for the substitution of a moveable table for the altar and for its decent covering, and its position at various times, there is no hint that this is to revive this peculiarity of the altar which it replaced; and they do not believe that the table was so arranged or divided.

Another argument is drawn from the Jewish Ritual. On offering sacrifices before the Lord, the altar was to be sprinkled with the blood, and a red line was drawn across the altar to mark the height at which it should be sprinkled; and it is argued that the line being only in front, the Priest must have stood in front in order to see it and be guided by it. But on the other hand the line probably went all round the altar, and the sprinkling was applied to all the sides. And even if the fact was rightly stated, it would be impossible to allow an argument so remote and shadowy to supersede the plain sense of a direction so clear in itself. When the table was placed in the body of the Church or chancel, the Priest or Minister was to stand on the north side of it, looking south.

When it became the custom to place the table altarwise against the east wall, the Rubric remained the same. And there are many authorities to show that the position of the Minister was still upon the north side or end, facing south. It is only necessary to cite a few. Archdeacon Pory (1662), in his Visitation Articles, says, "The Minister standing, as he is appointed, at the north side or end of the table when he celebrates the Holy Communion." In the dispute between the Vicar of Grantham and his parishioners (1627), Bishop Williams plainly shows that whichever way the table was to stand, which was the matter in dispute, the position of the Minister was on the north. "If you mean by altarwise that the table shall stand along close by the wall, so that you be forced to officiate at one end

thereof (as you may have observed in great men's Chapels), I do not believe that ever the Communion Tables were otherwise than by casualty so placed in country churches." He also says, "I conceive the alteration was made in the Rubric to show which way the celebrant was to face." (Heylin, "Coale from the Altar," and Williams, "Holy Table.") Heylin says, quoting the Latin Prayer Book of 1560, "I presume that no man of reason can deny but that the northern end or side, call it which you will, is *pars septentrionalis*, the northern part." ("Coale from the Altar.") When Bishop Wren was impeached in the House of Lords, A.D. 1636, for consecrating the elements on the west side of the table, he answered that he stood on the north side at all the rest of the service except at the Prayer of Consecration. "He humbly conceiveth it is a plain demonstration that he came to the west side only for the more conveniency of executing his office, and no way at all in any superstition, much less in any imitation of the Romish priests, for they place themselves there at all the service before and at all after, with no less strictness than at the time of consecrating the bread and wine." Nicholls (Commentary on Common Prayer, published 1710), Bennett (Annotations on Book of Common Prayer, 1708), Wheatley (Rational Illustrations of Common Prayer, 1710), confirm the view that when the table was placed east and west, the Ministers position was still on the north.

Their Lordships entertain no doubt whatever that when the table was set at the east end the direction to stand at the north side was understood to apply to the north end, and that this was the practice of the church.

It will be convenient to consider next what is the meaning of the words "before the people," in the Rubric, before the Consecration Prayer. Nicholls (*Op. cit.*) observes—"To say the Consecration Prayer (in the recital of which the bread is broken) standing before the table, is not to break the bread before the people; for then the people cannot have a view thereof, which our wise Reformers, upon very good reasoning, ordered that they should." That stress was laid on this witness of the people of the act of breaking, appears by other passages; for example, Udall says—"We

press the action of breaking the bread against the Papist. To what end, if not that the beholders might thereby be led unto the breaking of the Body of Christ." (Communion Comeliness, 1641.) Wheatley (*Op. cit.*) says—"Whilst the priest is ordering the bread and wine he is to stand before the table; but when he says the Prayer he is to stand so that he may with more readiness and decency break the bread before the people, which must be on the north side. For if he stood before the table, his body would hinder the people from seeing, so that he must not stand there, and, consequently, he must stand on the north side, there being, in our present Rubric, no other place for the performance of any part of this office."

Their Lordships consider that the Defendant, in standing with his back to the people, disobeyed the Rubric in preventing the people from seeing the breaking of the bread.

The north side being the proper place for the minister throughout the Communion office, and also whilst he is saying the Prayer of Consecration, the question remains, whether the words "standing before the table" direct any temporary change of position in the minister before saying the Prayer of Consecration? This is not the most important, but it is the most difficult question. One opinion is that of Wheatley, quoted above, that the Rubric sends the priest to the west side of the table to order the elements, and recalls him for the Prayer itself. This, however, would be needless if the elements were so placed on the table as that the priest could, "with readiness and decency," order them from the north side, as is often done.

It would also be needless in any case where the Communion Table was placed in the body of the church or in the chancel with its ends east and west. And though this position is not likely now to be adopted, the question is whether that was the law at the time this Rubric was drawn. Now the Rubric prescribes that the Table shall stand "in the body of the church or in the chancel where morning and evening Prayers are appointed to be said;" and there are two cases, which occurred in 1633, those of Crayford (Cardwell Doc. Annals, ii, 226) and St. Gregory's London (*Ibid.*, ii, 237) which show that the Table, though placed at the east end, might be moved for

convenience' sake and under competent authority. This, too, is the view of Bishop Wren in 1636 (Ibid ii, 252) "That the Communion Table in every church do always stand close under the east wall of the chancel, the ends thereof north and south, unless the ordinary give particular directions otherwise." Should the Table be placed with its ends east and west, it would be absurd to enforce a rule that the priest should go to the west end to order the elements, seeing the north side would be in every way more convenient.

Upon these facts their Lordships incline to think that the Rubric was purposely framed so as not to direct or insist on a change of position in the minister, which might be needless; though it does direct a change of posture from kneeling to standing. The words are intended to set the minister free for the moment from the general direction to stand at the north side, for the special purpose of ordering the elements; but whether for this purpose he would have to change the side or not is not determined, as it would depend on the position of the Table in the church or chancel, and on the position in which the elements were placed on the Table at first. They think that the main object of this part of the Rubric is the ordering of the elements; and that the words "before the Table" do not necessarily mean "between the Table and the people," and are not intended to limit to any side.

The learned Judge in the Court below, in considering the charge against the Defendant that he stood with his back to the people during the Prayer of Consecration, briefly observes "the question appears to me to have been settled by the Privy Council in the case of *Martin v. Mackonochie*." The question before their Lordships in that case was as to the posture and not as to the position of the Minister. The words of the Judgment are: "Their Lordships entertain no doubt on the construction of this Rubric" [before the Prayer of Consecration] "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 passage refers to posture or attitude from beginning to end, and not to position with reference to the sides of the table. And it could not be construed to justify Mr. Purchas in standing with his back to the people, unless a material addition were made to it. The learned Judge reads it as if it ran, "They think that the words standing before the table apply to the whole sentence, *and that before the table means between the table and the people on the west side.*" But these last words are mere assumption. The question of position was not before their Lordships; if it had been, no doubt the passage would have been conceived differently, and the question of position expressly settled.

Upon the whole then, their Lordships think that the words of Archdeacon, afterwards Bishop, Cosin in A.D. 1687 express the state of the Law, "Doth he [the minister] stand at the north side of the table, and perform all things there, but when he hath special cause to remove from it, as in reading and preaching upon the Gospel, or in delivering the the Sacrament to the communicants, or other occasions of the like nature." (Bishop Cosin's Correspondence. Part I, p. 106. Surtees Society.) They think that the Prayer of Consecration is to be used at the north side of the table, so that the minister looks south, whether a broader or a narrower side of the table be towards the north.

It is mentioned that Mr. Purchas' chapel does not stand in the usual position, and that, in fact, he occupied the east side when he stood with his back towards the people. If it had happened, as it does in one of the Chapels Royal, that the north side had been where the west side usually is, a question between the letter and the spirit of the Rubrics would have arisen. But the Defendant seems to us to have departed, both from the letter and the spirit of the Rubrics; and our advice to Her Majesty will be that a monition should issue to him as to this charge also.

As all the charges have been proved against the Defendant except as to two less important particulars, we direct that he shall pay the costs in this Court and in the Court below.