

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
Parnell v. Boughton, from the Chancery  
Court of York; delivered Tuesday, 24th  
November 1874.*

---

Present :

ARCHBISHOP OF CANTERBURY.

LORD CHANCELLOR.

BISHOP OF LONDON.

LORD PENZANCE.

LORD SELBORNE.

SIR JAMES W. COLVILLE.

JUDGE OF THE HIGH COURT OF ADMIRALTY.

SIR BARNES PEACOCK.

THEIR Lordships do not desire to call upon the Respondent. The questions which are raised in this case are questions merely of pleading, and are, moreover, questions of mere technicality in pleading; and their Lordships desire it to be understood that, in the advice which they will feel it their duty to tender to Her Majesty, no decision will be given nor any opinion expressed on any proposition of law. Their Lordships cannot but regret that, upon what is merely a question of technicality in pleading, the great and, as they think, the unnecessary expense has been incurred of bringing the case at this stage before this tribunal.

The objections which are made to the articles are threefold. The first is an objection to those parts of several of the articles in which certain acts are alleged to have been done in a ceremonial manner, or as connected with and being part of the ceremonies of public worship. With regard to the introduction of

those words, their Lordships are not prepared to say that the words may not be surplusage, and that the conclusion to be drawn from the other averments would not, of itself, supply the absence of these words, if they had been absent. But their Lordships cannot regard these words, at the highest, as more than a statement by the pleader that the acts alleged were not done in an accidental or casual manner, but were done deliberately and intentionally, and as forming part of the worship which was then proceeding. Their Lordships, in this sense, conceive that the words amount to allegations of fact capable of proof, and do not, as was said, amount to conclusions of law to be drawn from facts.

The second objection deals with those parts of the articles in which it is said that the Appellant, being responsible as incumbent for the due performance of Divine service in his church, sanctioned or permitted, and, in another article, sanctioned or permitted and suffered, these acts, which are alleged to have been a departure from the course of public worship as authorized by law. It is said, that the averment should have been, that the acts in question were authorized by the incumbent; but their Lordships are of opinion that the incumbent being responsible for the due performance of Divine service, it is, in the first instance, at all events, sufficient to charge that departures from that order of service were sanctioned or permitted, or were sanctioned or permitted and suffered, by him, leaving it to him to allege and prove, if he is able, any circumstances which will show that these acts, although actually done, had not his authority, or had not, in reality, his sanction or permission. Their Lordships, not finding any precise statutory enactment requiring the use of particular words, are not prepared to say that the words used in the present case are inappropriate.

The third charge remains, which is that contained in the 12th and in the 13th articles, that the Appellant "sanctioned or permitted, and "suffered the Lord's Supper to be celebrated by "another clergyman, in the church or chapel, "in the course of public worship and Divine "service, so that he himself then consecrated "and received the elements, when only one "person communicated with him;" and, also, that the Appellant himself, on another day, "sanctioned or permitted and suffered, the "Lord's Supper to be celebrated by his curate "in the said church or chapel, in the course of "public worship and Divine service, so that he "himself then consecrated and received the "elements, when only two persons communi- "cated with him;" and also that on a third occasion, on a Sunday morning, November the 3d, and on Sunday morning, June 15th 1872 and 1873, the Appellant himself "celebrated the "Lord's Supper in the course of public worship "and Divine service, and himself then conse- "crated and received the elements, when no "person communicated with him."

Now the two rubrics which have been referred to upon the subject of this charge, are the second and third at the end of the Communion Service: "There shall be no celebration of the Lord's "Supper except there be a convenient number "to communicate with the priest, according to "his discretion"; "and if there be not above 20 "persons," the next rubric says, "in the parish "of discretion to receive the communion, yet "there shall be no communion except four or "three, at the least, communicate with the "priest." Now, what their Lordships find has been done in the case of these two articles is, that, as they stand, there is an averment, following the exact words of the second of these rubrics, that there has been communion, and

that the elements were consecrated and received by the minister, either where no person communicated with him, or where only one person communicated with him, or where only two persons communicated with him. Their Lordships are of opinion that, at this stage of the case, and without offering any expression of what they may think, when the facts of the case come to be more closely examined, it is sufficient for the Complainant to follow the words of the rubric as he has done; and to say that there were either no persons, or not more than one, or not more than two, communicating with the priest upon the occasion in question, leaving it for the minister complained of to allege, by way of answer to this charge, anything he has to allege, either as to his having seen that there were other persons in church, as he thought, ready to communicate, and as to whom he expected that they would communicate, or any other defence that he is able to allege.

Their Lordships are of opinion, therefore, that there is no substance in any of the three objections made against these articles; that the judgment of the learned Judge below is correct; and that this Appeal ought to be dismissed, with costs, and they will humbly advise Her Majesty accordingly.