Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Marriner (Clerk) v. the Lord Bishop of Bath and Wells, from the Court of Arches; delivered March 26, 1878.

Present:

SIR JAMES W. COLVILE.
SIR ROBERT PHILLIMORE.
SIR BARNES PEACOCK.
SIR MONTAGUE SMITH.
SIR ROBERT P. COLLIER.

Episcopal Assessors.

BISHOP OF EXETER.
BISHOP OF OXFORD.
BISHOP OF MANCHESTER

THIS is an Appeal from a sentence of the Court of Arches.

On the 19th December, 1875, the Rev. Thomas Fitzherbert, vicar of Marston Magna, in Somersetshire, died.

In January 1876 the Appellant, Mr. Marriner, presented himself to the Bishop of Bath and Wells for institution to that vicarage, of which Mr. Marriner was patron, having purchased the advowson in January 1874.

Mr. Marriner had not been ordained by the Bishop of Bath and Wells, and was required by him to produce the usual testimonials of piety, sobriety, honesty, conformity to the doctrine and discipline of the Church of England, and fitness for admission, such testimonials to be signed by three beneficed

Clerks who had had personal knowledge of him, and, if these Clerks were not beneficed in the diocese, to be countersigned by the Bishop of the diocese in which they were beneficed.

The secretary to the Bishop of Bath and Wells duly sent to Mr. Marriner's solicitors the forms of these testimonials, drawn up in the usual language. Mr. Marriner, before the 28th April, 1876, laid certain testimonials before the Bishop, but his Lordship refused to institute him to the vicarage, and has justified his refusal upon the grounds that the testimonials were insufficient, and that Mr. Marriner had been guilty of drunkenness and untruthfulness.

Mr. Marriner brought a suit of *duplex querela* against the Bishop in the Court of Arches. A monition issued from that Court to his Lordship to institute Mr. Marriner, or show cause why he should not do so. The Bishop appeared to the monition. Mr. Marriner gave in a libel, setting forth his claim to institution; the Bishop gave in a responsive allegation, to which Mr. Marriner replied by a counter-allegation. Witnesses on both sides were examined orally in Court. The cause was heard by Lord Penzance, who, without calling upon the Bishop's Counsel to reply, decided in favour of the Bishop, and condemned Mr. Marriner in the costs.

From this sentence Mr. Marriner has now appealed to Her Majesty in Council.

Their Lordships having heard the Counsel for the Appellant, do not think it necessary to hear Counsel for the Respondent, since, upon full consideration of the evidence, and of the argument addressed to them by the learned Counsel for the Appellant, they are of opinion that the Judgment of the Court of Arches ought to be affirmed.

The Court of Arches found Mr. Marriner guilty of acts of drunkenness upon three occasions, whilst he was incumbent of Silsden, in the diocese of Ripon. The first in order of time happened on the 27th October, 1868, the second on the 25th February, 1873, the third on the 14th September, 1873.

With respect to the charge of drunkenness on the 27th October, 1868, Humphreys, who then kept a school at Silsden, and is now the master of the Board School there, swears that on that evening he

was conducting a night school in the ordinary place, which seems to have been at a little distance from his own house; that he heard a knock at the door, and, on going out, found Mr. Marriner "leaning against the end of the school, decidedly drunk," and unable to "stand straight up." The witness adds, "I asked him what was the matter. He said, 'Oh, I have had a few glasses, and I and my wife have quarrelled and she has struck at me;' and then he burst out crying, and said, 'Mr. Humphreys, just let me go up to your house and sleep for to-night.'" This witness further deposed that he took Mr. Marriner to his house and got him to bed; that in order to do this, he had to put him into the room occupied by two young ladies who were staying there, and were obliged to seek accommodation for the night elsewhere. The witness then returned to his school, and, after dismissing his scholars, went to Mr. Marriner's house, where, after knocking the people up, he had the communication with Mrs. Marriner which will be presently stated. He then returned to his own house, where he saw Mr. Marriner, who appears to have remained in bed there until about 3 A.M., when he roused the witness and his wife by shouting to be shown the way out, and was let out and went home. As to the interview with Mrs. Marriner he swears that when he saw her and told her what had happened, she said, "Whatever will become of him? I thought he was in the barn;" and that on the next day he received the following letter from her, which was read in evidence without objection:—

"My dear Sir,

"If Mr. Marriner should ask you if any one saw him last night, do not say 'No.' Equivocate. Say you did your best to prevent it, but a number of people were about, or something of that sort, and you will greatly oblige.

"Yours truly,

"E. MARRINER.

"P.S. Destroy this."

Humphreys' testimony was to some extent corroborated by that of his wife. She did not see Mr. Marriner on this occasion, but she says she heard her husband bring him into the house; recognized his voice in the passage, and confirms the statement of their having had to send their two "young lady visitors" to sleep elsewhere, and that of their

having been awakened at 3 A.M. by Mr. Marriner calling out that he wanted to be shown the way out. To the precise date of the occurrence she cannot swear.

On the other hand, Mr. Marriner admits that he did one evening go to the school, call out Mr. Humphreys, and ask to be taken to his house for a few minutes; that he was there taken upstairs by Mr. Humphreys, who left him and returned to the school; that he did fall asleep, at least for some time, in Humphreys' house, and, when he got up, called Humphreys, who let him out. But he swears that this took place, not on the 27th October, 1868, but in the month of November 1867, when Mrs. Marriner was expecting to be brought to bed of a child, which was afterwards born on the 16th of that month. And his account of what happened is that about 7 P.M. on the 4th November he had been trying some little experiments in that portion of his barn which he used as a sort of laboratory; that some gun-cotton which was lying on a bench suddenly ignited as he was pouring a liquid into a phial; that he was thrown back against the wall by the explosion, the phial being shattered into pieces, his hands cut, and his face also wounded; that, not wishing to alarm Mrs. Marriner in her then condition, he went to Mr. Humphreys at the school. His statement as to what happened after he got to Mr. Humphreys' house is in these words: "He shut the door, and I called after him, 'Mr. Humphreys, if you please, if I should happen to fall asleep, call me immediately on your return from the night-school,' and he said he would do so. I went to wash my hands, but there was no water in the room. I took my pocket-handkerchief and rubbed my face and hands; first of all I sat on the side of the bed, and my heart was beating fast. I lay down, and in the course of half-an-hour I awoke. When I got up I called Mr. Humphreys, and said, 'Let me go home; you promised to call me when the school closed.' He let me out, and there it ended." In cross-examination (p. 188) he says that his object in going to Mr. Humphreys' house was chiefly, if not wholly, to get washed; that he did not intend to sleep, and does not suppose that he slept till 3 A.M. The precise time of his return home he does not fix.

The other witness for the defence on this charge is Mrs. Marriner. She corroborates her husband as to the date of the occurrence, admits that Humphreys did come to her, but states that all that passed between them was that he said that he had come to tell her that Mr. Marriner was at his house, and would be home presently; and that she replied that she thought he was in the barn. She deposes to her husband's sobriety up to the time when he left her after tea, but states that he did not come home until between 12 and 1 o'clock; that she was grieved at his staying out late, and did not say much to him, and was not aware of the mark on the side of his eye or of the cut on his finger until the following morning. She explains her letter to Mr. Humphreys, which, it is to be observed, is not dated, by saying that she wrote it because she was grieved that her husband should have gone down to Mr. Humphreys' house with his face so dirty, and that she "thought remarks might be passed about it."

It appears, therefore, that, in respect of this charge, the witnesses on either side, whilst *ad idem* as to certain facts, were in direct conflict as to other and more material facts, including the date of the occurrence. The learned and experienced Judge who heard their testimony gave credit to the story told by Humphreys and his wife, and disbelieved that of the Promovent, though corroborated in some measure by Mrs. Marriner. And, looking to all the evidence, of which a portion has been cited, and considering the improbability of the explosion of the gun-cotton as the *causa causans* of what afterwards took place, and the further improbability that if Mr. Marriner went, as he said, to Mr. Humphreys' house to wash off the effects of the accident, he would not have asked for and obtained the means of doing so, instead of going to sleep there for an indefinite time, their Lordships are unable to say that the Judge of the Arches Court was wrong in pronouncing this charge to be proved.

They are of the same opinion with respect to the finding on the second charge, namely, that of drunkenness at the funeral of a boy on the 25th February, 1873. In weighing the conflicting evidence on this charge, the learned Judge could not disregard the singular appearance of the entry in the parish register, which their Lordships also have had an

opportunity of examining. Mr. Marriner sought to explain this by saying, that the clerk, not having the book ready, he made the entry on a subsequent day, late in the evening, and when it was nearly dark. Upon this he is in direct conflict with the undertaker, who swore that the entry was made, as would presumably happen, at the time of the funeral and in his presence. The finding on this, like that upon the former charge, can only be successfully impugned on the ground that the learned Judge ought to have given credit to the testimony of Mr. Marriner when opposed to that of the adverse witnesses.

It is to be observed with respect to all the charges the principal witness for the defence is the accused clerk, Mr. Marriner himself. It is in their Lordships' opinion just that he should have the fullest opportunity of telling his own story. He gives his evidence subject on the one hand to all reasonable deductions from its credit on the ground of his deep interest in the result, but, on the other hand, with a strong presumption in his favour on account of his profession, position, and education. If, however, on a review of all the facts proved or admitted, and a comparison of the evidence on both sides, they find it impossible to believe the exculpatory evidence given by the Defendant, it is their clear duty to refuse assent, without regard to the consequences.

The third and principal charge is thus laid in the responsive allegation:

"On Sunday, the 14th day of September, 1873, the Promovent (that is, Mr. Marriner) being at that time Perpetual Curate or Incumbent of Silsden, in the Diocese of Ripon, and responsible for the performance of Divine Service on that day, in the Church of Silsden aforesaid, neglected to perform, or provide for the same, and was discovered by one of the Churchwardens of Silsden aforesaid, and one John Gawthorpe, a police constable, lying on his back in a bed-room in his house within the Parish of Silsden, in a state of intoxication."

The defence in the allegation in reply is as follows:—

"1. As to the 2nd Article of the Responsive Allegation, he says that he admits that the Promovent omitted himself to perform or to provide for the performance of Divine Service in the Church of Silsden on the said 14th September, 1873, but he alleges that such omission was due solely to the Promovent having had, on the morning of the said day, a sudden attack of indisposition in no way caused by or connected with the use

of alcoholic stimulants; that by such illness he was wholly incapacitated from leaving his bed on the said day; and that by reason of the premises he had no opportunity of providing for the performance of Divine Service in his church on that day; and he further denies that the Promovent was discovered on the said day by one of the Churchwardens and the said John Gawthorpe in his house in a state of intoxication, or that he was in fact intoxicated during any part of the said day."

For the purpose of investigating this charge, it appears expedient to their Lordships to consider the evidence as to the conduct of Mr. Marriner under three heads, namely, (1) his conduct immediately previous to the 14th September: (2) on the day of the 14th; (3) subsequently to that date. It is right, however, to state that, although by the responsive allegation, Mr. Marriner is specifically charged with having been intoxicated on the 11th, and again on the 12th of September, 1873, there is no distinct finding by the learned Judge of the Arches Court on either of these charges. Their Lordships will therefore deal with the evidence relating to them, in so far only as it throws light on what took place on the 14th.

It appears that on Thursday, the 11th September, Mrs. Marriner left her house and went with her children to her brother, Mr. Taylor, who lived a few miles distant from Silsden, at a place called Stanbury. She did not return to her home until Monday, the 15th. She left Mr. Marriner alone in the house, as they then kept no servant; but, before going, cooked some victuals, which she left there for him. She also locked up the front door, and left the key with a neighbour, Mrs. Cockshott, in order, as she says, to be able to enter should she return during her husband's absence.

John Gawthorpe, a police constable, produced as a witness by the Respondent, states that, in consequence of a message received by him, he went to Mr. Marriner's house on Thursday, the 11th, and found there Mr. Taylor and a Mr. Thomas Clough. This was between 7 and 8 o'clock in the evening. Taylor and Clough "were," the witness says,

"At the front door, rapping, and Mr. Marriner inside asking who was there, and they told him, and he said 'I cannot open the door, I have not got the key,' From there we went to the kitchen door, and then Mr. Marriner unbolted it.

"The door was opened by Mr. Marriner. He then stood in

the doorway in his night-shirt, and said to Mr. Taylor and Mr. Clough, 'Who are you?' and they told him. He said, 'I do not know you,' and they repeated who they were, and he said again, 'I do not know you.' He said, 'Will you come in?' and they refused to do so. He shut the door, and said, 'Farewell, farewell; adieu, adieu.'"

The witness further says that he was called there as a policeman; that he was told by Taylor, as his reason for applying to him, "My sister has left her husband; we have not seen or heard anything of him since she went away yesterday, and we are afraid something has happened to him;" and adds that "Mr. Marriner had on that occasion every appearance of a man intoxicated." It is unfortunate that neither Mr. Taylor nor Mr. Clough has been examined. Gawthorpe's evidence is, however, confirmed in some particulars by Mr. Brook Booth, who was casually near the vicarage. That witness, however, says of Mr. Marriner on that occasion: "I did not think he was drunk, still I was astonished at what he did."

Mr. Marriner's own version of the story is, that about twenty minutes after 10 at night he was in bed, that he had no servant in his house. He then says:

"I heard a knock at the door.

"I got out of bed and went down. Before opening the door I asked, 'Who is there?' and one of them said who they were, and I drew the bolt and opened the door, and stepped back into the kitchen.

"I had nothing on but my night-shirt. I said, 'Come in, gentlemen,' and George Taylor said, 'I will not come in just now. I was wanting to see my sister. Is she in bed?' I said, 'No are you not aware that she went to Stanbury?' He said, 'No, I did not know a word about it.' I said, 'Is Mr. Wright worse?'

"He was lying then on his death-bed. I said 'Is Mr. Wright worse,' because I expected something unusual from their coming at that time of night. Thomas Clough answered this, and he said he could not say he was, but they would have liked if Elizabeth, my wife, had been at home, for her to come down.

"I said, 'Shall I come down?' and they said, 'Oh, no, by no means, there is no cause whatever for it;' and I think that was everything that passed, neither less nor more.

"I did not see anything of Gawthorpe at that time.

"I was perfectly sober."

On the next day, Friday, a little after 9 o'clock at night, the police constable, Gawthorpe, went again to the house, at whose instigation it is not quite

clear, "but it was for the purpose of looking after Mr. Marriner to see whether he was all right." He entered the house, having got the key from Mrs. Cockshott, went upstairs to the bedroom door, rapped at it a considerable time with a stick and got no answer. He then says:

"I came out of the house, locked the door, and sent for a ladder. A ladder was brought and placed against the window. A man named Lund went part of the way up the ladder, and when he had got half-way up the window was put up, and Mr. Marriner put his head out of the window, and said, 'If you do not disperse, I will fire upon you.'

"We all ran away.

"There was no one in the house, that I could find."

Mr. Marriner's account substantially agrees with this. He explains his threat to fire by saying that he heard a noise, and thought they were thieves come to steal his fruit, and said, "If you don't go away I will fire upon you."

As to what happened on the Saturday we have little or no direct evidence except that of Mr. Marriner. He says that he went to see his wife at Stanbury, and as to this he is confirmed by her. He states that on his return he dined very moderately, tried some chemical experiments in his kitchen until about 5 o'clock, then had some tea, finished his sermon, and went to bed about half-past 9 without having drunk any spirituous liquor whatever. Then, he says, "I remember nothing more till about 11 o'clock on Sunday morning."

The history of this Sunday morning begins with the evidence of Mr. Booth Green, the churchwarden. He says that the morning service used to begin at half-past 10, that at a quarter-past 10 on that morning he sent for Gawthorpe, "because there was no one to conduct the service, and it was reported in the town that Mr. Marriner was dead." That he went with Gawthorpe to Mr. Marriner's house, and that Gawthorpe got a ladder and obtained an entrance through one of the bedroom windows, and then opened the door for him (Mr. Green), and both, with Mr. Brook Booth and others, went into the bedroom. It appears, from the evidence of the witnesses for the Defendant, that they found Mr. Marriner lying between the bed and the mattress; the bed-clothes, blankets, sheets, and coverlet

on the floor; his arms were bare, and he was lying perfectly still; there was a fearful smell of human excrement in the place, and a smell of spirits.

At first they thought he was dead; his eyes were open, but he appeared to have no sensation; he did not speak, or answer when spoken to. On a small table at the bed-foot there was a bottle with the cork in, which appeared to contain gin or whiske, another with the neck off without a cork, and another with the neck off and a cork in. Of the latter, one at least was on the floor. No wine-glass or tumbler was seen in the room. Shortly afterwards Dr. McNab came into the room. He was a physician and surgeon who, being in attendance on Mr. Wright, had been sent for. When asked as to Mr. Marriner's condition, he said:

"He was in a shocking state; I can hardly describe. The room was in a shocking state,—unwashed, a complete state of disorder and disarrangement. He looked as if he had not been washed for I do not know how long. He seemed to be suffering either from temporary insanity or delirium."

And he stated that his opinion of the cause of Mr. Marriner's condition, formed at the time, was that it was the result of a continued drunken state; that he had not the appearance of a man who was merely drunk the night before, but that of one who had been drinking for some days.

Some medical evidence was given on behalf of Mr. Marriner by Dr. Duckworth, his ordinary medical attendant, who saw him on the day following and thought his state was not ascribable to drinking, and by Mr. Usher, Dr. Duckworth's assistant, who saw him on the evening of Sunday, and says that his patient, when he saw him, was quite sober, and gave an account of himself which led him (Mr. Usher) to the conclusion that he had been threatened with a fit of appoplexy.

It remains to consider what was the conduct of Mr. Marriner after the recovery of his consciousness on Sunday afternoon.

It appears that, on the following Tuesday, Mr. Marriner had an interview with Mr. Booth Green, the churchwarden, whom he had sent for. Mr. Green says of this interview: "He (Mr. Marriner) was in the study; he said he had sent for me; that it was a very bad job, and he could not tell

what to do. I said it was a bad job, and he could not pretend to preach again at Silsden after what had happened on the Sunday, and I should advise him to resign the living. After a while he agreed to do so, and asked me to write to the Bishop telling him he would resign." Mr. Marriner's own account of this is as follows :—

"I sent for Jeremiah Booth Green either on Monday morning or Tuesday morning. I said to Jeremiah Booth Green, 'I am very troubled on this account. I am afraid if these things are repeated'—alluding to what I imagined had been done—'I could have no more comfort or happiness in this neighbourhood;' and Jeremiah seemed to be affected with what I said to him, and I asked his opinion as to what he thought I ought to do. Jeremiah said, 'Oh, there is nothing but what would be explained, he hoped, in the course of a few days.' I said, however, in the meantime, 'I have made up my mind to leave this neighbourhood. I have made up my mind to go from this neighbourhood; and I think for that purpose it will be better if you will write to the Bishop of Ripon and tell him that I have resigned.'"

Mr. Green did thereupon write the following letter :—

"Rev. Sir,—I write to inform you that the Rev. James Marriner has resigned his charge of St. James' Church, Silsden. We are now without clergyman, and I beg respectfully to ask you to send some one at once to take charge till there is a clergyman appointed for the living.—Yours truly, JEREMIAH B. GREEN, Churchwarden."

On the 17th September the Bishop wrote to Mr. Marriner, desiring to see him, as to a charge of a very serious nature, upon Friday, the 19th, and on that day Mr. Marriner went to the Bishop's with Mr. Booth Green. The Bishop told Mr. Marriner that he must either resign the living that day, or that he should issue a commission against him. The upshot was that he did, after a short consideration, sign his resignation. Their Lordships are not inclined to press against Mr. Marriner the mere fact of his resignation; but it is important to observe that no cause was assigned by Mr. Marriner on that occasion to account for the condition in which he was found on Sunday morning.

The resignation was made on the 19th September, and on the 24th, after his return home with ample opportunity of consulting with everybody, and especially his medical advisers, he wrote to the Bishop a letter, from which the following is an extract :—

"Wearied in body and troubled in mind, I retired to bed on the night of the 13th September (having opened my bedroom window from the bottom—for many years this has been a common custom of mine). On this night I had neither touched, tasted, nor handled, any intoxicating liquor whatever. I had been busy up to the hour of 9·30 P.M., preparing for my Sabbath duties. On the following morning I was awoke from an insensible sleep, the morning of the 14th, about 11 o'clock, my head being lifted from the pillow fell back again powerless. Some cried out I was dying, for they thought I did not breathe. Some ran for a physician,—there happened to be one in the village attending a patient. He was brought: not my family physician, but one who lives at a distance. He declared my case extraordinary, but that I was perfectly sober, and he administered a restorative. About three hours afterwards came my own family physician; at once he declared I was threatened with a fit of apoplexy, but that I was perfectly sober. Neither of those physicians saw each other. Neither knew what the other had said; but they both declared me quite sober, and both have written the same testimony. On the same morning, the morning of the 14th, there were found standing by my bed six bottles, some had contained spirits and were quite empty, some were opened but not empty, and some not opened at all. How is this to be accounted for? I most solemnly declare I did not taste; I most solemnly declare I did not bring those bottles into my bedroom. Mrs. Marriner, wearied and tired with waiting and watching at the sick bed-side, had taken the children to the country home of her brother for a day or two's rest. I was alone. My bed-room window fronts the garden. My room was entered by the window from the garden. I was sleeping deeply and soundly, for no man can mistake my sleep, especially when wearied. Next morning the bottles were found at my bedside, and I was insensible. I am as convinced as I am of my own existence that there was something done to me and the bottles placed where they were found. Is it not absurdly ridiculous to imagine that any man would take six bottles of spirits into his bedroom. That very fact carries its own refutation, and would do so in any civil Court of Justice throughout the kingdom, but this never will be proved in my case *with my consent*. To what intent was this done? Not for plunder, for my pocket-book, containing my railway dividends, and a small leather purse containing 24*l.* in gold, lay on the top of the dressing table, and my gold watch hung at my bed-head, all remained as when I went to bed. My opinion is it has been done to ruin my reputation; for since Mrs. Marriner and I became Good Templars we have recommended total abstinence wherever we have gone, and a fortnight ago I preached a sermon specially to the Good Templars. This is the only reason I can assign. I think I have taken proper measures for the detection of the guilty, and if detected, they shall be brought to justice. Everything in this matter depends on activity and silence. Any man's chamber might be entered in the like manner, and his house plundered. No man is safe."

The case, then, on the 24th September, stood thus. Mr. Marriner had been found on the 14th in

the condition above described, under circumstances from which it had been inferred, as it might reasonably be inferred, that that condition was caused by drunkenness more or less prolonged; and the last, if not the only suggestion which, up to that time, he had made to account for his condition and the liquor said to have been found in his bedroom, was that an enemy had entered the room by the open window, placed some bottles there which had not been previously there, and in some unexplained way had reduced him to a state of insensibility. He admits that it was not until the beginning of October that a totally different explanation, which constituted his substantive defence before the Court of Arches, suggested itself to his own mind. He did not even then write to the Bishop of Ripon in order to make that explanation, which was so inconsistent with his letter of the 24th September, known; and the attempt to prove that the deceased Stephen Tillotson did communicate with the Bishop, and send to him a description of the contents of the bottles found in the room, wholly failed.

Now, what was the explanation? He says that he was engaged on Saturday afternoon in making chemical experiments; that for those experiments he used ordinary black wine or liquor bottles; that he took six of these bottles containing chemicals up to his bedroom, wishing to observe the generation of gas; and the suggestion is, that after he had retired to rest there was in the course of the night such an evolution of gas as burst one or more of the bottles, and that the fumes of those gases had reduced him to the condition in which he was found. Their Lordships entirely agree with the learned Judge of the Arches Court that it is next to impossible to reconcile the truth of this explanation, whatever may be its antecedent plausibility, with the fact of his having written to the Bishop of Ripon the letter of the 24th September. One material fact to be explained was the presence of bottles in his bedroom, and it is almost incredible that to do this he should have had recourse to the improbable suggestion contained in the letter, if he had himself carried up bottles of chemicals to his room—a fact which he could hardly have forgotten. In cases like the present, one of the surest tests of truth is consistency of statement. Their Lordships also observe that

this story of the chemicals has not been corroborated by any evidence of the purchase of chemicals, or of their existence in the house.

Their Lordships will now notice some of the points which were taken in the course of the argument by way either of objection to the case of the Defendant or of corroboration of that of the Promovent.

It was urged that no glass or other drinking vessel was found in the Promovent's bedroom, and that the proof of what the bottles found there really contained was, to say the least, imperfect. As to the first of these circumstances, it is to be observed that it by no means follows that there was no glass in the room because none was seen there by the Defendant's witnesses. The room was in the greatest confusion, the bed-clothes huddled together on the floor, Mr. Marriner half covered by the feather or flock bed. A glass, if there, might easily escape observation. The Defendant's witnesses did not retain possession of the room or its contents, nor did they assume the care of Mr. Marriner. This, by his own showing, was done by Mr. Thomas Throup, a witness very favourable to Mr. Marriner, who does not seem to have been considered by the Judge of the Arches Court to be wholly trustworthy. He says (page 116), "I said, 'If you will every one go back, I will attend to Mr. Marriner myself.' Gawthorpe comes to me and says, 'Who has given you authority?' I said, 'Nobody has given me authority further than myself. If there is anything wrong with Mr. Marriner or Mrs. Marriner, I will stay.' I stayed with him the whole of the day, except when I left for my meals."

Again, Thomas Tillotson, also one of the Promovent's witnesses, says, at page 217, that he took the bottles which were in the bedroom downstairs; and at page 219, that he put them into the front room and left them there, fastening the door and giving the key to Mr. Marriner. It was therefore Mr. Marriner, if anybody, who had the means of showing that these bottles contained chemicals, and not spirits or other intoxicating liquor.

With respect to the medical evidence, it is to be observed that although serious attempts were made in cross-examination to discredit Dr. McNab, and it was in some measure established that he was not on good terms with the Marriners, the learned Judge did not

see grounds for disbelieving him. On the other hand, the effect of the testimony of both Dr. Duckworth and Mr. Usher, so far as it is in favour of the Promovent, is greatly weakened by the statement in the certificate given by the former on the 19th of September, 1873, to the effect that Mr. Marriner's illness had been said to have been caused by drinking, and that he (Dr. Duckwoh) was not prepared to say whether that was the case; and by the fact that Mr. Usher in his evidence admitted the correctness of that statement, and cannot be said to have contradicted the statement of Gawthorpe, who swore that, by Mr. Usher's advice and with his aid, he removed a quantity of liquor from the cellars—an act obviously done by way of precaution, and in order to prevent Mr. Marriner, if so minded, from getting more drink. All that Mr. Usher says, when asked whether he had advised Gawthorpe to do this is, "I am sure I don't know; I cannot recollect."

Their Lordships need hardly say that it is not their habit to vary or reverse the findings of the Court appealed from upon evidence of facts taken *vivâ voce* before it, unless they have a clear conviction that these findings are wrong. In the present case, after full consideration of all the evidence, and of the able comments upon it which have been addressed to them, they feel bound to express their full concurrence in the conclusion to which the learned Judge of the Arches Court came, viz., that the three charges of drunkenness which have now been considered had been established against Mr. Marriner.

It has been much urged upon their Lordships that assuming the intoxication of the 14th September, 1873, to be proved, the Bishop of Bath and Wells was not justified in refusing institution to Mr. Marriner in January 1876.

It was not, indeed, contended—and their Lordships think if it had been the contention would have been untenable—that mere lapse of time without proof of amendment would suffice to place Mr. Marriner in the position and give him the rights of an innocent presentee.

It was admitted that evidence of his being *emendatus moribus* was a necessary condition precedent to his being instituted to the cure of souls in Marston

Magna; but it was maintained that such evidence had been produced; the Bishop of Bath and Wells was of opinion that it had not, and their Lordships entirely agree with him.

In the first place, there is no expression of penitence, no declaration or promise of amendment made to the Ordinary, which the proper discipline of the Church, as well as the rights of parishioners, justly require from such an offender. On the contrary, there has been a persistent denial of the offence. In the next place, adequate testimonials of an amended life have not been furnished.

In the case of a clerk suspended from the performance of his clerical functions, the Ordinary, acting either by himself or through his Court, has for many years been in the habit of requiring that a proper certificate from three beneficed clerks, as to amendment of life, should be filed in Court as a condition precedent to the removal of the decree of suspension.

Extreme cases were suggested in which it would be physically impossible to obtain the certificate of three beneficed clergymen; in such cases the Ordinary would doubtless exercise sound discretion, and would take care that substantial justice was done. But the present is not one of such cases. Some testimonials, indeed, have been tendered in the present case, but they turn out upon examination to be of the most unsatisfactory kind, and upon some of them the able counsel for Mr. Marriner admitted that he could not rely.

The certificates or testimonials, which are annexed as exhibits to the libel, marked E, and F, and G, state that the signers had known Mr. Marriner personally for the space of three years last past, and had had opportunities of observing his conduct, and that he had lived piously and soberly, and was a fit person to be instituted. But there is this remarkable feature in these testimonials, that the signers are made to vouch for the good conduct and sobriety of Mr. Marriner during the three years previous to their subscription of the testimonial, a period which covers the actual time in which he has been found guilty of drunkenness.

But independently of this general objection to the testimonials, when they are examined they prove to be always insufficient, and, for the most part,

worthless. As examples of the reckless way in which these certificates have been signed, the evidence of Pitman, a churchwarden of Marston Magna, may be referred to. Mr. Pitman's personal knowledge of Mr. Marriner consisted in having seen him walking through the village. He said, "We have asked one another how we were;" and upon being asked, "Did you ever get any further than that?" he answered "No."

Again the Rev. George Bayldon is asked whether on his oath he will say that Mr. Marriner has been personally known to him for three years past. "I would not," he answers; "simply because I signed it at the time because I was in a great hurry." "Now you are here as a witness can you say that?" "No, I could not say he was personally known; it was done in a hurry and from kindly motives."

It is unnecessary to state at greater length the worthless character of these testimonials. In their Lordships' opinion the Bishop of Bath and Wells exercised a very sound discretion in refusing to be influenced by them.

Having regard to the public as well as the private interests involved in this decision, their Lordships have thought it right to enter at some length into their reasons for affirming this Judgment.

Their Lordships will humbly advise Her Majesty to affirm the Judgment of the Court of Arches. The Appellant must pay the costs of this appeal.

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