Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of a Beneficed Clerk v. *Lee, from the Consistory Court of the Diocese of London; delivered* 16*th December* 1896.

Present:

The Lord Chancellor.
Lord Watson.
Lord Hobhouse.
Lord Davey.
Sir Richard Couch.
Sir Francis Jeune.

Ecclesiastical Assessors:
The Archbishop of York.
The Bishop of Manchester.
The Bishop of Ely.

[*Delivered by the Lord Chancellor.*]

This is an appeal from a judgment of the learned Chancellor of the Diocese of London, and the only question for their Lordships' determination is whether the Chancellor had jurisdiction in the suit. The proceeding in question was under the Clergy Discipline Act 1892, and the clerk in Holy Orders, who is now the Appellant, was charged by the prosecutors with offences which may be shortly stated as follows. First, that he was guilty of simony in relation to his presentation and institution to a certain benefice, and, secondly, that he knowingly made a false declaration against simony under the Clerical Subscription Act 1865 previous to his admission to the said benefice.

The learned Chancellor has in his judgment referred to many of the facts and circumstances connected with the case. But none of these facts or circumstances have yet been made the

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subject of proof, and their Lordships do not consider it necessary to consider whether the charges are well or ill founded. The question before them is in the nature of a plea to the jurisdiction, and for the purpose and the purpose only, of considering this question they will assume that the charges can be substantiated.

Before the passing of the Clergy Discipline Act 1892 every offence committed by a clerk in Holy Orders against the laws ecclesiastical was punishable only under the Church Discipline Act 1840. The Act of 1892 withdrew from the cognizance of the Act of 1840 a certain class of offences, and the 2nd Section of the Act of 1892 defines what that class is. The material words of the Section for the present purpose are as follows, "If a clergyman . . . is alleged to have been "guilty of any immoral act, immoral conduct, "or immoral habit, or of any offence against the "laws ecclesiastical being an offence against "morality and not being a question of doctrine "or ritual" he may be prosecuted by the persons, and in the manner by the Act prescribed.

The first question which their Lordships have to consider is whether the offence of simony, committed by a clerk in order to gain admission to a benefice, is "an immoral act," "immoral conduct," or "an offence against the laws "ecclesiastical being an offence against morality," within the meaning of the above quoted section of the Act.

Several of the propositions appearing in the judgment of the learned Judge in the Court below and urged in argument before their Lordships appear to be beyond dispute. There is no doubt that the General Councils whose authority is accepted by the Church of England, Acts of Parliament, the Canons of 1603, Judges, and writers of recognised position, have, in all ages, condemned simony in emphatic terms, and

have applied to it language not inappropriate to describe moral delinquency. Nor can it well be disputed that the offence of simony not only in its original significance of the purchase of spiritual authority, but in some instances of the later, and more frequent, application of the term to abuse of patronage, deserves reprobation, though it may be that the somewhat nice distinctions between the legal and illegal exercise of patronage introduced into our law, have, to a certain extent, blunted the edge of moral censure on simony as an offence. But what their Lordships have to consider is whether the offence of simony falls within the language of the section above quoted.

Their Lordships think that this question should be looked at broadly. The term "immoral," except in the way presently to be mentioned, has not in the Act of 1892 any description or definition, nor is it a term carrying with it any precise legal significance. But it cannot their Lordships think be doubted that the object of the Act of 1892 was to provide a more ready and economical mode than that afforded by the Act of 1840, for punishing those offences which do not depend on disputable points of law, or on matters so highly controversial as doctrine and ritual, but which, in the consensus of general opinion, are acts of personal immorality, such as various forms of vice or dishonesty or other like conduct, of evil example generally, and especially so if committed by a person invested with sacred functions. Their Lordships do not think that simony can fairly be considered as falling within this category, and their view is confirmed by observing the definition, or rather perhaps extension, given to the term "immoral" by the Act.

It is provided in Section 12, "the expression "'immoral act,' 'immoral conduct,' and 'immoral "'habit,' shall include such acts conduct and

" habits as are proscribed by the 75th and 109th " Canons issued by the Convocation of the " Province of Canterbury in the year 1603."

The language of these Canons denounces the offences which the 109th Canon sums up as " uncleanness and wickedness of life," but it goes further and condemns acts and conduct hardly to be considered immoral, but certainly dangerous to the reputation, or unworthy of the character of ministers of religion. It appears to their Lordships that in thus applying and extending the use of the term " immoral " the Act shows that the intention was to confine its scope to offences of the kind referred to in these Canons. It is also to be remarked that no reference is made to that one of the Canons which deals with simony.

Their Lordships think, therefore, that in order to punish the offence of simony in a clerk resort cannot be had to the provisions of the Act of 1892 but that proceedings must still be taken under the Act of 1840.

There remains the charge of knowingly making a false declaration under the Clerical Subscription Act 1865.

Their Lordships do not desire to indicate any doubt that a false statement made knowingly in order to gain some benefit, is, whatever the subject-matter of the statement, and, in every sense of the term, an immoral act. But it is a different question whether the declaration against simony made by a clerk under the Clerical Subscription Act 1865 can be isolated from the charge of simony, and brought within the provisions of the Act of 1892. Their Lordships think that this was not the intention of the Act. It is obvious that, were it otherwise, in every case in which a false declaration as to simony is charged, it would be necessary to begin by determining whether simony in fact had been

committed, and thus an offence would be tried indirectly which cannot be directly tried.

Their Lordships would further observe that the solemn declarations to be made by clergymen are not confined to the commission of simony. The 36th Canon requires a promise to be made, at ordination, and institution, that the clergyman will use the form prescribed in the Book of Common Prayer and no other, and the Ecclesiastical Courts have more than once referred to a violation of this promise as aggravating the offence of clergymen found guilty of what are known as ritual offences (*see Sanders* v. *Head* 3 Curt. 565, *Combe* v. *De la Bere* 6 P. D. 157). But if it be permissible to separate the charge of violating this promise from that of the commission of a ritual offence, and to proceed against a clergyman under the Act of 1892 for the violation of such promise, it is obvious that the Act would be used in a manner contrary to its expressed intention.

Their Lordships are, therefore, of opinion that the judgment of the Court below ought to be reversed, and the complaint against the Appellant dismissed, and they will humbly advise Her Majesty accordingly. The Respondent will pay the costs of the Appellant of the appeal, and in the Court below.