Privy Council Appeal No. 71 *of* 1932.

The Reverend Harold Francis Davidson - - - - *Appellant*

v.

The Bishop of Norwich - - - - - - *Respondent*

FROM

THE CONSISTORY COURT OF THE DIOCESE OF NORWICH.

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH OCTOBER, 1932.

Present at the Hearing:

LORD ATKIN.
LORD TOMLIN.
LORD WRIGHT.

Ecclesiastical Assessors:

THE BISHOP OF ST. EDMUNDSBURY AND IPSWICH.
THE BISHOP OF LEICESTER.
THE BISHOP OF ELY.

[*Delivered by* LORD ATKIN.]

This is an appeal in respect of matters of law from a judgment of the learned Chancellor of the Diocese of Norwich sitting in the Consistory Court of that diocese. On the 8th January, 1932, the Bishop of Norwich, as prosecutor, made complaint to the Consistory Court pursuant to Section 2 of The Clergy Discipline Act, 1892, against the appellant, the Rector of Stiffkey in the diocese of Norwich. The original charges were as follows:—

"1. The Defendant has been guilty of immoral conduct in that from September, 1921, until November, 1931, he has had sexual intercourse with Rose Elizabeth Ellis on many occasions.

"2. The Defendant in or about the month of August, 1929, was guilty of immoral conduct in that he annoyed and made improper suggestions to Dorothy Burn at the premises at 15, Walbrook, London, E.C.4, of Messrs. J. Lyons & Co., Ltd.

"3. The Defendant was on the 12th November, 1931, guilty of an immoral act in that he embraced a young woman in a public room at the Yeng Wah Chinese Restaurant at 58, High Street, Bloomsbury.

"4. The Defendant has during the last five years been guilty of an immoral habit in that he has habitually associated with women of loose character for immoral purposes."

A further series of charges was added of molesting a number of young females with immoral intent. The charges in respect of some of these were withdrawn at the hearing.

Further particulars of the charges were asked for and given, and the case was heard before the Chancellor at intervals between March and June, 1932. The hearing extended over 25 days, and on the 8th July, 1932, the Chancellor delivered his judgment, finding each of the above charges proved. In July last, an application was made on behalf of the appellant for leave to appeal from the judgment on questions of fact, but after hearing counsel for the appellant, their Lordships found themselves unable to advise His Majesty to give leave. The appellant, therefore, as he was entitled to, gave notice of appeal on matters of law. He appeared in person, a proceeding which ordinarily deprives the Court of the assistance which they desire on issues of law. In the present case the appellant has suffered no disadvantage, for the points raised present no difficulty, and in some cases are such as no counsel would have been likely to present to any tribunal as matters of law. Their Lordships, however, think it desirable to deal *seriatim* with the points raised in the original notice of appeal, and in the further notice which the appellant was permitted to give—

"1. That the learned Chancellor was wrong in law in refusing to admit certain evidence tendered by the Defence, and in holding that such evidence was inadmissible."

The evidence which this refers to was evidence of persons who could say that the appellant had been engaged in genuine preventive and rescue work among young women, and could give instances of assistance honourably given by him. The objection was taken that this evidence offended against the rule that only general evidence of character of good reputation can be given. The Chancellor upheld this contention, but later the objection was withdrawn by counsel for the prosecutor; evidence of the kind suggested was given on behalf of the appellant; and the evidence which the appellant complained of as being rejected was of witnesses who were not tendered to the Court, and some of whom were never present in Court. It is obvious that in such circumstances where counsel had an opportunity of calling witnesses and exercised his discretion in not calling them, no complaint in law arises in respect of the hearing. It becomes unnecessary to consider whether the Chancellor was right or wrong in arriving at his original decision to reject the evidence.

"2. That the learned Chancellor was wrong in law in allowing witnesses called by the prosecution to be treated as hostile witnesses, and in permitting such witnesses to be cross-examined by counsel for the prosecution."

The instances relied on by the appellant are the witnesses Stewart and Farmer. In respect of this matter, it is to be remembered that the appellant was represented by experienced counsel who were well aware of the restrictions imposed upon examining counsel in such a matter. As regards the first witness, there appears to have been no cross-examination of the witness by Mr. Oliver for the prosecutor; as regards the second witness, the Chancellor, on objection being made, ruled that the witness was hostile and permitted him to be cross-examined, but the only use made by Mr. Oliver of that facility was to put to him two leading questions in favour of the appellant, both of which were answered affirmatively. The matter has no substance in it; and there is no ground for objection in law to the course taken.

> "3. That the learned Chancellor was wrong in law in considering and giving judgment upon charges which were alleged to have occurred over five years before the date of the service of the complaint."

This is based on Section 5 (1) of The Clergy Discipline Act :—

> "A complaint under this Act for an offence shall not be made after five years from the date of the offence or of the last of a series of acts alleged as part of the offence . . . "

The charge to which the section is said to be relevant is the first charge, that from September, 1921, until November, 1931, the appellant had sexual intercourse with Rose Elizabeth Ellis on many occasions. The Chancellor in his judgment found that the appellant met Rose Ellis in September, 1920, in Leicester Square, and that from that date there began an association which he found to be an immoral association and to have lasted down to March of this year. The five years under the Act would run from the 8th January, 1927; and if on this charge the Chancellor had convicted the appellant only on intercourse which took place before that date, there would probably be ground for complaint. But there was evidence of association after that date, and the Chancellor was, in their Lordships' opinion, entitled to take the view that the immoral association consisted of "a series of acts," the last of which took place within the period of five years. In any event, there can be no doubt that the Chancellor was entitled to consider the nature of the association in the earlier period in considering whether the association in the later period was for immoral purposes. Their Lordships are of opinion, therefore, that this objection fails.

> "4. That the learned Chancellor was wrong in finding me guilty of misconduct with one Rose Ellis without the evidence of the said Rose Ellis whose evidence was available."

As a proposition of law, this of course is quite unfounded. The omission to call Rose Ellis merely affects the weight of the evidence on the one side or the other. The Chancellor thought that the appellant's decision not to call her weakened his case. But whether that be right or wrong no question of law arises.

To come now to the further grounds stated in the further notice of appeal, these are :—

"*a.* That the learned Chancellor was wrong in law in admitting certain evidence tendered by the Prosecutor."

This refers to two pieces of documentary evidence.

The first is a letter written by Rose Ellis on a piece of music, and addressed to the appellant. It was put to the appellant in cross-examination. When first put he said, "Yes, I remember," but shortly after he said he had never received it. It does not appear to have been accepted by the Chancellor as evidence against the appellant. He makes no reference to it in his judgment and it is not shown to have had any effect in the ultimate decision.

The second piece of evidence is that of a photograph taken of the appellant in company with a girl of 15 or 16 in which the appellant is holding a shawl over the girl in such a way that she exhibits a back view of herself entirely nude. The appellant gave an explanation of this transaction which the Chancellor obviously did not accept. Their Lordships content themselves with saying that having heard the explanation, they can see no principle of law which compelled the Chancellor to accept it. This was obviously a matter which called for explanation, and was quite properly put to the appellant in cross-examination.

"*b.* That the learned Chancellor was wrong in law by finding me guilty in the case of Miss Taylor whose name was not included in the original charges, and in whose case no reliable or corroborative evidence was tendered by the Prosecutor."

It is true that this young woman's name was not specifically mentioned in the particulars; but evidence in respect of her was admitted without objection under a general clause in the particulars. She was mentioned by the first witness called, and there was further evidence given in respect of her association with the appellant. The objection appears to be directed solely to the weight of the evidence in respect of which their Lordships have already decided that there is no ground for giving leave to appeal.

"*c.* That the learned Chancellor was wrong in law in that he misdirected himself upon several matters in course of the case."

The appellant was unable to direct the attention of the Board to any misdirection of himself by the Chancellor on any matter of law. He confined himself to criticisms of the Chancellor's judgment in matters of fact, criticisms which were put at least as forcibly by counsel on the application for leave to appeal; and which failed to convince this Board that there was any fit ground for complaint. No question of law emerged on this last ground.

In the result, their Lordships have been satisfied that there is no matter of law on which the judgment can be assailed, and on these grounds they have advised His Majesty that the appeal should be dismissed with costs.

In the Privy Council.

THE REVEREND HAROLD FRANCIS DAVIDSON

v.

THE BISHOP OF NORWICH.

DELIVERED BY LORD ATKIN.

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