Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Read and others v. *The Bishop of Lincoln, from the Court of the Archbishop of Canterbury; delivered the 2nd of August* 1892.

Present:

THE LORD CHANCELLOR.
LORD HOBHOUSE.
LORD ESHER.
LORD HERSCHELL.
LORD HANNEN.
SIR RICHARD COUCH.
LORD SHAND.

Ecclesiastical Assessors:

THE BISHOP OF CHICHESTER.
THE BISHOP OF ST. DAVID'S.
THE BISHOP OF LICHFIELD (now ARCHBISHOP OF YORK).

[*Delivered by the Lord Chancellor.*]

Before dealing with any of the specific charges which are the subject of the Appeal, their Lordships think it right to notice an objection raised by Counsel as to the legitimacy of some of the considerations by which the Archbishop was influenced in arriving at his conclusions.

It has been urged that upon such subjects as the practice of the Primitive Church, the Ritual of the Eastern and Western Churches, the position of the Lord's Table, the position of the celebrant at the Table, and like questions, which are *ex hypothesi* beyond the reach of living memory,

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the Archbishop has consulted ancient authors, historical and theological works, pictures, engravings, and a variety of documents, of which undoubtedly any careful and competent historian would avail himself, but which it is argued cannot legitimately be made use of in a Court of Justice, and upon which it is said no Judge is justified in placing any reliance in forming his judgment.

Where the objection is of so general a character, it is impossible to do more than apply to it a general treatment.

The first observation that arises is, that if our law were to exclude all such historical investigation as is pointed to by the objection, and questions of ritual and ecclesiastical practice could only be investigated by the light of the words of an Act of Parliament some centuries old, and by the testimony of living witnesses, it would disclose a very unreasonable and unsatisfactory state of the law.

Who can doubt that contemporaneous usage would be of incalculable value in forming a judgment on such subjects as are indicated above? And if no historical investigation can be permitted as to what was the contemporaneous usage, one source of light upon doubtful questions would be excluded.

The novelty of the objection urged before this Board is not a conclusive consideration, since the fact that an objection has not previously been taken is by no means conclusive against its validity when actually taken; but their Lordships cannot fail to be struck by the absence of any such objection in, *e.g.*, *Ridsdale* v. *Clifton*, where not by Counsel only, but in the judgment ultimately pronounced, such authorities as Hooker, Baxter's "Life and Times," Collier's "Ecclesiastical History," Dr. Thomas Bennett's "Paraphrase," Cosin's "Works," and the like

were quoted and relied upon; and this not upon questions of doctrine or opinion, but as leading to inferences of fact of what was usual at the time of the writers referred to.

But their Lordships are of opinion that the objection is founded upon an erroneous view of the law. Where it is important to ascertain ancient facts of a public nature, the law does permit historical works to be referred to.

The House of Lords upon the impeachment of Warren Hastings, having first determined that it would only proceed upon judicial evidence, such as would be receivable in a Court of law, received in evidence (being advised, it will be remembered, by the Judges) Cantemir's "History "of the Turkish Empire." In the case of St. Katharine's Hospital, Lord Hale admitted Speed's "Chronicles" to be evidence of a particular point of history in Edward the Third's time, and Chief Justice Pemberton received the same evidence to prove the death of Isabel, Queen Dowager of Edward the Second, and said he knew not what better proof could be given.

Without considering further how far an Ecclesiastical Judge has a right to act upon his own historical learning, when it becomes important to ascertain what was the ecclesiastical practice, or what were the views entertained by eminent theologians, in remote times, it is enough to say here, dealing with the objection generally, that it is impossible to contend that if in other respects the Archbishop's judgment was well founded, it could be invalidated by his having called to his aid for this purpose his own historical researches.

Nor does it make the objection better that instead of pronouncing *ex cathedrâ* what in his opinion was the history of such and such

a practice the Archbishop has disclosed in his Judgment the sources from which he derived his views.

With respect to some of the matters which have been the subject of debate in this appeal, it has been strongly urged that they have been conclusively determined by this Board, and that if the facts are found to be the same no further argument is permissible. That question was raised in the case of *Ridsdale* v. *Clifton*. Some of the points in issue in that case had been already the subject of decision by this Committee in the case of *Hebbert* v. *Purchas*. In answer to the argument that they had been conclusively settled and were no longer open to discussion, Lord Cairns, in delivering the judgment of the Committee, said:—(L. R. 2, Prob. 305.) "Their Lordships have had to "consider, in the first place, how far, in a "case such as the present, a previous decision "of this tribunal between other parties, and an "Order of the Sovereign in Council founded "thereon, should be held to be conclusive in "all similar cases subsequently coming before "them. . . . In the case of decisions of "final Courts of Appeal on questions of law "affecting civil rights, especially rights of pro-"perty, there are strong reasons for holding "the decisions, as a general rule, to be final as "to third parties. . . . Even as to such "decisions it would perhaps be difficult to say "that they were, as to third parties, under all "circumstances and in all cases absolutely final, "but they certainly ought not to be reopened "without the very greatest hesitation. Their "Lordships are fully sensible of the importance "of establishing and maintaining, as far as "possible, a clear and unvarying interpretation "of rules, the stringency and effect of which "ought to be easily ascertained and understood

" by every clerk before his admission to holy " orders. On the other hand, there are not, in " cases of this description, any rights to the " possession of property which can be supposed " to have arisen by the course of previous de- " cisions; and in proceedings which may come " to assume a penal form, a tribunal, even of " last resort, ought to be slow to exclude any " fresh light which may be brought to bear upon " the subject."

It was argued for the Appellants that the doctrine thus laid down in *Ridsdale* v. *Clifton* was only applicable where there was some " fresh " light," and that by this was meant some fact which had not been under the consideration of the tribunal on the previous occasion. But an examination of the arguments and judgment shows that this was not the meaning of the Committee. They entered upon an elaborate and independent examination of the law bearing upon the legality of acts already pronounced illegal, and it was expressly stated, as their Lordships' conclusion, " that although very great " weight ought to be given to the decision in " *Hebbert* v. *Purchas*, yet they ought in the " present case to hold themselves at liberty to " examine the reasons upon which that decision " was arrived at, and, if they should feel them- " selves forced to dissent from those reasons, to " decide upon their own view of the law." In the result their Lordships dissented upon one point from the reasoning of the previous Committee, and came to the conclusion that an act was lawful which had been previously pronounced illegal. In the present case their Lordships cannot but adopt the view expressed in *Ridsdale* v. *Clifton* as to the effect of previous decisions. Whilst fully sensible of the weight to be attached to such decisions, their Lordships

are at the same time bound to examine the reasons upon which the decisions rest, and to give effect to their own view of the law.

The first matter dealt with by the Archbishop is that contained in the 4th Article. That Article, when read with the 13th and 14th Articles, seems to contain, as the Archbishop points out, two heads of charge. 1st, the mixing of the cup during the Communion Service, and 2nd, the consecration and administration of the mixed cup. With the former of these their Lordships need not concern themselves. The finding of the Archbishop on this part of the charge was adverse to the Respondent, and no question as to the legality of this act arises upon this appeal. As regards the latter head of charge, however, the Archbishop declared that the act of consecrating wine which had been mixed with water before the service, and of administering the same when so mixed to the communicants, would not be offences against the ecclesiastical law of England. The Appellants impeach this declaration, and ask their Lordships to pronounce the use of wine mixed with water in the administration of the Lord's Supper to be an ecclesiastical offence. The ceremonial mixing of the cup as part of the service is no longer in question; all that their Lordships have to consider is, whether the mere supply of wine which has some water in it, and the consecration and administration thereof in the Holy Communion, is a violation of the ecclesiastical law.

It is argued that the Prayer Book directs that "wine" is to be used for the purpose of the Sacrament, and that the Rubric is not complied with if any water has been added to the wine which is so used. The argument must necessarily go the length of asserting that what is in that case consecrated and administered is

not "wine." It is difficult to contend that what is generally called and known as "wine" loses that character by the admixture of a little water. Wines differ in alcoholic strength, and their Lordships do not believe that any one would hesitate to apply the word "wine" to such a mixture, or that it would be an unnatural use of language to do so. The responsive plea states that "a little water" was added, and it is not suggested that there was such an admixture as to cause the wine to lose its distinctive character as wine. It is to be observed that the word wine is applied in King Edward's First Prayer Book to the mixture of wine and water which that Prayer Book enjoined, and in the absence of any liturgical direction as to the alcoholic strength of the wine, their Lordships cannot think that the mere use of the word wine in the Rubric by implication prohibited the presence of water in that which is consecrated and administered.

And their Lordships, after carefully weighing what was said in *Hebbert* v. *Purchas*, are unable to see anything in the references to "wine" in any part of the Rubrics inconsistent with this view. Lord Hatherley, in delivering the judgment of this Committee in *Hebbert* v. *Purchas* (L. R. 3, P. C., 651), said, that since it had been decided that the act of mingling wine with water in the service with a view to its administration is one of the additional ceremonies excluded by implication by the service for the Holy Communion, the question was whether the doing of 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. And after stating that whatever the admixture

of water symbolised, it could scarcely be said that the reception of the mingled chalice had no share in this symbolism, but only the act of mingling, concluded that if the mingling and administering in the service water and wine was an additional ceremony, and so unlawful, it did not become lawful by removing from the service the act of mingling, but keeping the mingled cup itself and administering it.

Their Lordships find themselves unable to concur in this reasoning. The mixing of water with the wine in and as part of the service is no doubt a ceremonial act, and there can be as little doubt that, if so, it is an additional ceremony, quite apart from any particular idea as to its symbolical character which may induce the act. But where the chalice is placed mixed upon the Holy Table, no act is done during the service, in addition to those prescribed; the acts of consecration and administration are precisely the same as if the chalice were unmixed, and the recipients may even well be ignorant whether the chalice be mixed or not. It seems to their Lordships that there is not in such a case any additional ceremony, that no ceremonial act is added to the service. The "removing from the service the act of mingling," which the judgment in *Hebbert* v. *Purchas* treated as of no moment, is the removal of the very thing which as an added ceremony was unlawful.

If wine, with a small admixture of water, be "wine" within the meaning of the Rubric, and if the use of it does not involve an added ceremony, their Lordships cannot but agree with the Archbishop that it does not become unlawful on account of any symbolism which has been attached to the use of the mixed chalice. The practice cannot be said to have received any general agreed or definite symbolical meaning at

any period of the Church's history. And indeed the use of the mixed chalice, because Christ himself is believed to have administered wine mingled with water, cannot with propriety be said to be a symbolical use of it, and yet this is the ground on which many have both advocated and defended the practice.

The use of the mixed chalice in primitive times is not denied. In mixing water with the Sacramental wine the early Christians in all probability merely followed the practice which prevailed at that period, when, according to the ordinary usage, wine was not taken without some admixture of water, and when in ordinary parlance the word οἶνος was understood to include wine and water. Plutarch, writing at a period not very far removed from the time of the institution of the Lord's Supper, uses the phrase: τὸ κρᾶμα, καίτοι ὕδατος μετέχον πλείονος, οἶνον καλοῦμεν.

It is to be observed, however, that in the narrative of each of the Gospel accounts of the institution itself, the word wine does not occur, but cup—ποτήριον,—as also in St. Paul's reference to it in the First Epistle to the Corinthians.

There appear to have been three stages in the practice of the Church. At one time simple mixture of the wine with water. Then there appears to have been instituted an additional ceremony in which there was a ceremonial admixture but separate from the service; and then in later times an incorporation of the ceremonial admixture into the administration itself. It was to the latter, which was in use in their time, that the attention of our Reformers was directed, and which they certainly intended to exclude.

Their Lordships consider that the Archbishop accurately states the law when he says that the

mixing of the wine in, and as part of the service, is against the law of the Church, but that the use of a cup mixed beforehand does not constitute an ecclesiastical offence.

The charge in the Eighth and Twelfth Articles seems to resolve itself into a question of fact.

It is not denied, but impliedly admitted by the Bishop, that anything like the ceremony of ablution would be illegal.

The time at which the act was done is by the Appellants themselves stated to have been after the Benediction, when, according to all ordinary understanding, as well as upon the true construction of the Rubric, the Service is at an end. The act itself is described by the Bishop as having been done with the intention of complying with the direction of the Rubric, reverently to consume what remained of the consecrated elements. Even if their Lordships should be of opinion that in the honest desire to comply with the direction in question the Bishop exhibited excessive care and scruple in the mode in which he performed the prescribed duty, that certainly could not be construed to be an Ecclesiastical offence.

The drinking of what the witness called to prove the facts describes as the " rinsings," does not suggest any ceremony, and their Lordships cannot think that what was done was intended to be anything but what it is alleged to have been, namely, a reverent consumption of the remnants of the consecrated elements in accordance with the Book of Common Prayer, or that there is any reason to regard it as an additional and therefore unlawful ceremony.

The appeal on this point therefore fails.

The Sixth Article and the Responsive Plea taken together establish that it was with the Bishop's sanction that the hymn known as "The "Agnus" was sung by the choir. The hymn, which was sung in English, consists of words taken out of the Bible, and unless there be something to make the singing of that particular hymn at the time alleged in the charge unlawful, the argument must go to the full extent of making all hymns or psalms sung during the service in the English Church an unlawful addition to such service.

With respect to this charge, the Archbishop states that it was not contended before him that it is illegal to use a hymn or anthem in all places in the Service where its use may not have been ordered, and practically the same concession was made here. It would indeed be difficult to maintain, in the face of usage ever since the passing of the Act of Uniformity, that singing a hymn at all during the Service was in itself illegal. The careful research of the Archbishop has established, as far as historical evidence can establish anything, that during the 17th and 18th centuries the practice was common, and it has undoubtedly continued to our own time. Such universal and unbroken usage is of great force, and it would in their Lordships' opinion be impossible now to contend that in itself, and apart from any interference with the due order of the Service or anything objectionable in the hymn sung, the practice is illegal.

Whether the origin of the usage is the permission given by 2 and 3 Edward VI., c. 1, s. 7, "to use openly any psalms or prayer taken out of "the Bible, at any due time, not letting or "omitting thereby the service or any part thereof "mentioned in the said Book," it is immaterial now to inquire. The charge is that the hymn was sung "before the reception of the elements."

This is admitted in the Responsive Plea. But the Archbishop did not understand it as alleging that the celebrant waited till the end of the hymn before he and others received the elements. No evidence was given on the point, and the Archbishop's construction was not questioned before their Lordships. No case of "letting" any part of the service, therefore, was made out against the Respondent. With reference to the provision in the Statute that the Psalms must be used at a "due "time," it is noteworthy that the "Hymns and "Songs of the Church" by Wither, licensed by James I. and Charles I. in succession, should contain, in connection with a hymn inserted therein, a statement that "We have a custom among "us, that during the time of administering "the Blessed Sacrament of the Lord's Supper, "there is some Psalm or Hymn sung the better "to keep the thoughts of the communicants from "wandering after vain objects." Considering the ordinary mode in which the Sacrament is administered to each communicant, and the number who may either have received or be waiting to receive the elements, their Lordships cannot differ from the Archbishop that it was a "due time" for singing a hymn.

If hymns and anthems are lawful at this point in the service, it cannot be said that the "Agnus Dei" is otherwise than appropriate. Although the words are not in their combination taken out of Scripture, they combine two separate passages of Scripture and are found in more places than one in the Book of Common Prayer. They have direct reference to the great event commemorated in the Sacrament, and they are not likely to be abused to any kind of idolatrous adoration, except by those who would make for themselves other opportunities for it.

It is quite true that they were omitted from

this part of the service in 1552, but other omissions were made at the same time which it was not suggested could have any doctrinal significance.

The Ninth charge is founded upon an alleged disobedience to that part of the Rubric prefixed to the Communion Service, which is in these words :—

"The Table, at the Communion-time having a fair white linen cloth upon it, shall stand in the Body of the Church, or in the Chancel, where Morning and Evening Prayer are appointed to be said. And the Priest, standing at the North-side of the Table shall say the Lord's Prayer, with the Collect following, the people kneeling."

The charge as formulated sufficiently shows what is intended to be charged as illegal, though it is true, as pointed out by the Archbishop, that the particular illegality is not definitely stated. The words at the end of the Ninth Article "and not on the north side thereof" sufficiently show what the pleading meant, *i.e.*, that the standing on the west side of the table during the whole of that part of the Service which intervenes between its commencement and the ordering of the bread and wine before the Prayer of Consecration is illegal, and an offence against the Act of Uniformity.

Before discussing the matter in its relation to the express words of the Rubric, their Lordships cannot forbear from observing that it is impossible to assign to the directions in the Rubric any meaning, either positively or negatively, which touches matters of doctrine. Whatever the position of the priest may be, it is the same whether there is or is not a celebration of the Lord's Supper, and the Rubric immediately before the Prayer for the Church Militant shows that what is described as the

Communion Service may be used, at least that the part of it down to the end of that prayer may be used, without the celebration of the Lord's Supper at all. This is also plain from the first Rubric at the end of the entire Service.

The question is therefore, by the form of the charge, whether the position of the Respondent, on the occasion to which the charge relates, constituted an ecclesiastical offence.

It is difficult to understand the importance which has been attached by the Appellants to the position of the priest during the early part of the Communion Service. It appears to be suggested that the eastward position at the Holy Table is significant of the act of the priest being a sacrificial one. The Archbishop has pointed out that in his opinion this view is erroneous, but quite apart from this, if there be any such significance in the position of the officiating priest, and if the intention of those who framed the Rubrics now in force was to prohibit a position which could be interpreted as indicating a sacrificial act, it is obvious that the prohibition would have been specially aimed at the position during the consecration of the elements. Yet it has been decided by this Committee, and the Appellants did not seek to impeach the decision, that the celebrant may at that time stand at the middle of the Table facing eastwards. If this be lawful, of what importance can it be to insist that he shall during the two prayers with which the service commences place himself at that part of the Table which faces towards the north? And this is all that is now in controversy. The point at issue has been sometimes stated to be whether the eastward position is lawful, but this is scarcely accurate. Even if the contention that the priest must stand at that part of the Table which faces northward were well founded, there is nothing to make his

saying the Lord's Prayer and the opening Collect with his face eastward unlawful; the only question is whether he can lawfully do so when occupying a position near the north corner of the west side of the Table. Of what moment is it, or can it ever have been, to insist that he should, during the two prayers with which the service commences, place himself at that part of the Table which faces towards the north, if it be lawful to stand at the middle of the Table facing eastward during the prayer of consecration? The very necessity of occupying the position which it is contended is alone legal during the early part of the service would serve to emphasise the subsequent change of position, and to render the position assumed at the time the elements are consecrated the more significant.

In their Lordships' opinion there can be no doubt that at the period when the Rubric in question was framed, the Table was, at the time of the Holy Communion, placed in almost all parish churches lengthwise in the body of the church or chancel, the smaller sides or ends facing east and west, and the longer sides north and south, when the church stood, as it ordinarily did, east and west. And there can be as little doubt that the Rubric was framed with reference to this position of the Table. Whilst the Table stood in this position and the priest could comply conveniently with all the directions of the Rubrics, without assuming a position at any part of the Table other than that prescribed at the commencement of the service, there would be no reason for any change of position. When at a later period the Holy Table came to be placed, what has been termed altarwise, a controversy unquestionably arose as to the manner in which the Rubric ought to be complied with. Those who were in favour of the change to the altarwise position insisted that the Rubric was com-

plied with if the priest stood at the north end or side of the Table. The Puritan party, on the other hand, who objected to the change, insisted that it rendered compliance with the directions of the Rubric impossible, inasmuch as the priest could not stand on the north side of the Table, neither of the "sides" according to their view facing the north. This controversy was still being carried on, when the Prayer Book now in use came into force, but the Rubric prescribing the position of the priest at the commencement of the Communion Service was left unaltered in its terms, and no attempt was made to solve the controversy. Subsequently to this period the position at the north end or side of the Table appears to have become the common, though not, perhaps, absolutely the universal one, there being reason to believe that a position at the northern side of that part of the Table which faces westward was sometimes assumed. When the question came to be discussed before this Board in the case of *Ridsdale* v. *Clifton*, Dr. Stephens, the leading Counsel who appeared for the promoters of the suit, still argued that the Acts of Uniformity required that at Communion time the Lord's Table should stand with its ends east and west, thus providing a side to the north at which the priest is to stand and officiate. It is to be observed that the only question which had to be decided, either in *Hebbert* v. *Purchas* or *Ridsdale* v. *Clifton*, was whether the clergymen against whom these suits were brought had occupied an unlawful position by standing at the middle of the west side of the Communion Table whilst saying the Prayer of Consecration. It is true that opinions were expressed as to the position which it was the duty of the clergyman to occupy during the earlier part of the service. But these expressions of opinion were *dicta* not necessary

for the decision of either of those cases, in which opposite views were taken as to the legality of the position occupied during the Prayer of Consecration. The question whether it is an ecclesiastical offence to stand, whilst saying the two prayers with which the service commences, elsewhere than at the north end had not then to be determined, and it must be remembered that the observations in the judgment in *Ridsdale* v. *Clifton* were, in some measure at least, directed to the argument, to which reference has been made, that the Table must during the administration of the Communion stand lengthwise east and west. Their Lordships, in *Ridsdale* v. *Clifton*, expressed the opinion that where the minister is directed to stand at the north side of the Table, it is his duty to stand at the side of the Table which, supposing the church to be built in the ordinary eastward position, would be next the north, whether that side be a longer or shorter side of the Table. It will be observed that, although the only direction in the Rubric has reference to a particular point of the compass, their Lordships did not consider that the obligation to stand at the commencement of the Communion Service facing southwards was absolute. They interpreted the Rubric with reference to the fact that churches, at the time the Rubric was framed, generally stood east and west. It seems equally legitimate to have regard to the usual position of the Table as having been then in contemplation, and there can be, as has been pointed out, no doubt that this was lengthwise in the body of the church, the ends facing east and west. It is true that a quadrilateral, whatever its form, is rightly described as having four sides, and the word "side" may without impropriety be applied to each of them. But it is obvious, from the arguments which were common at the time when the Table began to be

placed in what has been called the altarwise position, that the word "end" was then as now more usually employed than the word "side" to describe the shorter sides of the quadrilateral.

Their Lordships are of opinion that, even assuming that what would be more commonly spoken of as "ends" may properly be called "sides," yet where a position at the "north side" was enjoined by the Rubric, one of the longer sides of the Table was in contemplation, and it was also in contemplation that all the acts prescribed which were to be done at the Table should be done at that side.

When the terms of the Rubric are considered, in connection with the circumstances existing at the time it was framed, their Lordships consider that it cannot be regarded as so definitely and unequivocally enjoining that the priest shall, no matter how the Table may be placed, stand at that end of the Table which faces the north when saying the opening prayers that no other position can be assumed without the commission of an ecclesiastical offence. They cannot think that it renders it obligatory on a clergyman who thinks it desirable during the prayer of consecration to stand at the side of the Table which now ordinarily faces westward to stand during the earlier part of the service at a different part of the Table. Their Lordships are not to be understood as indicating an opinion that it would be contrary to the law to occupy a position at the north end of the Table when saying the opening prayers. All that they determine is that it is not an ecclesiastical offence to stand at the northern part of the side which faces westward.

In dealing with the charge relating to lighted candles on the Communion Table, it becomes necessary to consider with care the allegations

actually made and the proofs in reference to the allegations.

The offence is alleged to have taken place in the Church of St. Peter-at-Gowts on the 4th December 1887, and the charge in the 3rd Article is that the Bishop "when officiating "as Bishop and the principal celebrant in "the Service for the administration of the "Holy Communion in the same church used, "and permitted to be used, lighted candles "on the Communion Table, or on a ledge im- "mediately over the said Table so constructed "as to appear to form part of the said Com- "munion Table, during such Service as a matter "of ceremony, and when such lighted candles "were not required for the purpose of giving "light."

The 13th Article alleges,—

"That the use of the lighted candles" . . . . . is an "unlawful addition and variation "from the form and order prescribed . . . . "by the said Statutes and of the order of the "administration of the Holy Communion . . . "and . . . . contrary to the said Statutes and "to the Rubrics . . . and to the . . . canons."

The Responsive Plea 2 of the Bishop is that "throughout the celebration there were without "any objection being raised by him two lighted "candles on the Holy Table. These lights "whether required for the purpose of giving "light or no, are in his judgment and he submits "lawful." All that is here admitted is that two candles were, without objection on the part of the Bishop, alight throughout the celebration on the Holy Table. And the only fact added by the proof was that they were not required for the purpose of giving light.

The allegation that the candles were used as a matter of ceremony is an essential averment in any view of the offence indicated by the

charge. It is not charged that there was any act of lighting or carrying lights about, nor was there any evidence of their use as a matter of ceremony, unless it be afforded by the mere fact that they were alight during the Communion Service.

If the proof corresponded with the allegation in all respects it would be matter for grave consideration how far the Archbishop's elaborate exposition of the history of the question, and in particular the decision of two learned Judges in 1628 and 1629, have afforded new materials for consideration since the decision of this Board in *Martin* v. *Mackonochie* (L. R. 2, P. C. 365) upon the same subject, but their Lordships are unable to see that the charge against the Bishop raises the same question. The charge against Mr. Mackonochie, who was himself responsible for the arrangement of the service and for the ornaments in his church, was presented under two aspects, and this Board dealt with both:— The ceremonial lighting and burning of the candles when light was not required, and the placing and keeping the candles as unlawful ornaments on the Lord's Table. It is important to bear in mind the commentary made in that case upon the utterance of the Council of Trent, *De Missæ Ceremoniis et Ritibus*:—

"*Cerimonias item adhibuit ut mysticas benedictiones, lumina, thymiamata, vestes, aliaque multa.*"

In commenting upon this it was said by this Board (L. R. 2, P. C. 387):—

"There is a clear and obvious distinction between the presence in the church of things inert and unused, and the active use of the same things as a part of the administration of a sacrament or of a ceremony. Incense, water, a banner, a torch, a candle and candlestick may be part of the furniture or ornaments of a church,

but the censing of persons and things, or, as was said by the Dean of the Arches, the bringing in incense at the beginning or during the celebration, and removing it at the close of the celebration of the Eucharist, the symbolical use of water in Baptism, or its ceremonial mixing with the sacramental wine; the waving or carrying the banner; the lighting, cremation, and symbolical use of the torch or candle; these acts give a life and meaning to what is otherwise inexpressive, and the act must be justified, if at all, as part of a ceremonial law."

Their Lordships are not able to attach any definite meaning to the phrase that the Respondent was officiating as Bishop. If it is sought to be argued that his position as Bishop made any difference in his responsibility from that which would attach to any other clergyman not being the incumbent, their Lordships are not prepared to adopt such a view. The act of lighting candles, or keeping them alight, the placing or maintaining ornaments, are all things for which the incumbent of the church is himself responsible, and their Lordships in the case of *Martin* v. *Mackonochie* felt themselves compelled to deal with the questions whether there had been a ceremonial use of the lights, and whether unlawful ornaments had been in use. It was on the latter ground mainly that the judgment against the Respondent was rested. No such question arises here; the Bishop is not charged, and manifestly could not be, with introducing unlawful ornaments. If he had disapproved of the existence of the lights where they were placed he would have had no power to remove them; and, where no act of lighting, cremation, or actual use is proved, it is impossible to say that the ecclesiastical offence has been established of using a ceremony not retained and therefore prohibited by the Act

of Uniformity, unless the mere fact that the Bishop took part in the consecration and administration of the elements, whilst the lights were burning, constituted of itself the use by him of such a ceremony. No act was done by the Bishop which conveyed, or was calculated to convey, to the minds of those present any different idea from that which would have been conveyed had the lights been absent. Their Lordships are not prepared to hold that a clergyman who takes any part in the celebration of divine service in a church in which unlawful ornaments are present necessarily uses them as a matter of ceremony.

Doubtless acts done by a person primarily responsible, may be so aided and assisted by others that the persons thus aiding and assisting become parties to the transaction and as guilty as the principal, but no such case has been in their Lordships' opinion established here. There is no allegation or evidence that the Bishop was a party to or a participant in the original lighting and placing the candles where they were placed, and the only alternative open to a clergyman, under the circumstances of this case, whatever his own views, and whatever his rank in the Church, would be to refuse to join in the administration of the Sacrament of the Lord's Supper to the congregation because there was a light burning when no light was necessary. Whatever view might be entertained as to the propriety of such a course being taken, their Lordships are unable to affirm that the not taking such a course makes the Bishop so far responsible for the act of the incumbent in lighting and keeping alight the candles as to establish the charge contained in the 3rd Article.

The Bishop's Responsive Plea, in which he submits that the existence of the two lighted candles on the Table throughout the celebration

is lawful, and in which he admits that he made no objection, does not add anything to the case made against him. No authority was cited to show that his not making such objection constitutes an ecclesiastical offence, and their Lordships are of opinion that it does not.

Finally, it is necessary to say that their Lordships do not concur in the suggestion made at the Bar that upon those parts of the case as regards which an ecclesiastical offence was found to be proved the Archbishop was under a legal obligation to issue a monition. The promoters of a suit have, it is said, a right, where they have succeeded in establishing a breach of the law, to insist upon sentence being pronounced, even if it be only a monition not to repeat the offence. Their Lordships are of opinion that the promoters have no such right. If the Archbishop has satisfied himself that the offence will not be repeated, he is entitled to accept the assurance of future submission, and is not bound to inflict a penalty, and a monition is a penalty.

In the result, their Lordships will humbly advise Her Majesty that this Appeal should be dismissed.