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# JUDGMENT

DELIVERED BY

**THE RIGHT HON. SIR ROBERT PHILLIMORE, D.C.L.,**  
OFFICIAL PRINCIPAL OF THE COURT OF ARCHES,

IN THE CASES OF

**MARTIN v. MACKONCHIE**

AND

**FLAMANK v. SIMPSON.**

EDITED BY

**WALTER G. F. PHILLIMORE, B.A.,**

OF THE MIDDLE TEMPLE,

FELLOW OF ALL SOULS COLLEGE, AND VINERIAN SCHOLAR, OXFORD.

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THE arguments in these cases, which occupied sixteen days for the hearing on the merits, included a wide range of matters connected with ecclesiastical jurisprudence. The Judgement will be found to extend to a discussion of the general legal and ecclesiastical principles of the Reformation in the 16th century, and of the present position of our Church.

It contains also an historical and legal analysis of the value of the argument drawn by the Counsel for the Promoters from the practical disuse of particular ceremonies.

The following points underwent judicial investigation to a greater extent than is to be found in any former decided cases; namely, the authority of the Crown *per se*, and under the Supremacy and the Proclamation Acts of Henry VIII., to issue Injunctions; the legal meaning of the term "Ceremony," as used in the Statutes of Uniformity; the rubric as to the discretion of the Ordinary; and the principles upon which the Court should proceed in the construction of rubrics, and the existence of a common unwritten law of the Church, side by side with the written statutes, rubrics, canons, and constitutions.

The Counsel in the case of—

MARTIN v. MACKONCHIE, were,

*For the Promoter,*

Dr. A. J. Stephens, Q.C.,  
Mr. Coleridge, Q.C.,  
Dr. Swabey, and  
Mr. Droop.

*For the Defendant,*

Mr. W. H. James, Q.C.,  
Mr. Prideaux, Q.C.,  
Dr. Tristram, and  
Mr. A. Charles.

In the case of—

FLAMANK v. SIMPSON,

*For the Promoter,*

Dr. Stephens, Q.C.,  
Dr. Swabey, and  
Mr. Droop.

*For the Defendant,*

Dr. Deane, Q.C.,  
Dr. Tristram,  
Mr. (now Mr. Justice) Hannen, and  
Mr. A. Charles.

Before these cases came on for hearing on the merits, there had been a previous argument in each case as to the form of the articles;\* and in the case of *Martin v. Mackonochie* as to the power of the Judge to delegate his jurisdiction to surrogates, which will be seen to be referred to in the Judgement.

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\* 1 Law Reports, Adm. & Eccl. p. 276 : 1 Privy Council Appeals, p. 463.

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JUDGMENT delivered by the Right Hon. Sir ROBERT PHILLIMORE, D.C.L., Official Principal of the Court of Arches, on the 28th day of March 1868, in the Cases of—the Office of the Judge promoted by—Martin *v.* Mackonochie and Flamank *v.* Simpson.

*Preliminary Observations.*

This case of Martin *v.* Mackonochie was brought before my predecessor in this chair, by Letters of Request from the Bishop of London, under the provisions of the 3rd and 4th Victoria, c. 86. That Statute, passed in the year 1840, enables any bishop within the Province of Canterbury either to try the case of a clerk for a criminal offence before himself with certain assessors, or to send it to the Court of the Archbishop for trial in the first instance. Since the passing of this Statute, bishops have very generally availed themselves of the latter provision, and this Court has now before it several cases so sent from several suffragan dioceses of the Province of Canterbury.

Under the old law, when these cases were triable in the Consistorial Court of each bishop, if they were sent by Letters of Request to the Court of Arches, these letters contained an averment that the lack of counsel, and difficulty of obtaining proper legal assistance, rendered it expedient, for the ends of justice, that the case should be tried in the first instance in the Court of Appeal, that is, in this Court. It is not to be wondered at, therefore, that this is, I believe, the only case but one which has been sent by Letters of Request from the great Diocese of London, amply furnished as it is with all means and appliances requisite for the administration of justice, to the Court of Appeal; and I much regret that I am deprived of the great assistance which I should have derived from the judgement of the Bishop of London upon the important matters now before me, if the case had been brought to this Court in the regular course of appeal.

The Letters of Request were accepted by Dr. Lushington, my learned predecessor in this chair, and in an early stage

of these proceedings, before evidence had been taken, or argument heard upon the merits of the case, I was counsel for the accused clerk, and took objections to the manner in which the offence was charged in the criminal articles. When the Archbishop of Canterbury was pleased to confer upon me the Judgeship of his Grace's Court, I proposed to hear the case, with the assistance of two learned persons well skilled in ecclesiastical law, the Vicar-General of the Archbishop, and the Chancellor of Rochester (to whom I take this opportunity of publicly expressing my thanks), but this arrangement was demurred to on behalf of the promoter of the Bishop of London's office, that is the accuser; and I then appointed, as my patent gave me full power to do, those two learned persons to be my surrogates for the hearing of this cause. They held one Court, and in consequence of arguments addressed to them touching the validity of their appointment, they adjourned the hearing of the cause until an opportunity had been afforded for an application to the Temporal Court for a prohibition. The counsel for Mr. Mackonochie applied to the Court of Queen's Bench for a rule *nisi* to show cause why the prohibition should not go to these surrogates, upon the ground that I had exceeded my power in appointing them.

The promoter or accuser did not appear to show cause against the prohibition, and the rule, upon an *ex parte* statement, was perhaps almost necessarily made absolute.

But I think if the rule had been opposed, and the powers given by my patent, and also the fact of the invariable usage of this Court, as proved by its earliest records, to appoint surrogates, been duly brought to the attention of the Court of Queen's Bench, it would have refused the rule. I mention this circumstance, in order to prevent any inconvenience which might ensue from it being supposed that this Court had no power to appoint surrogates. After these proceedings in the Court of Queen's Bench, the surrogates whom I had appointed, by a formal instrument entered upon the records of this Court, resigned the powers which I had conferred upon them.

I then proceeded to hear this cause, and the other, that of *Flamank v. Simpson*, brought before this Court by Letters of Request from the Bishop of Exeter, in which almost the same questions were raised. The arguments in both cases have occupied the attention of the Court for 16 days. The learning, ability, and industry of the counsel have greatly assisted the Court in the execution of the difficult task which it has to perform, namely, to give judgement upon the charges preferred against Mr. Mackonochie and Mr. Simpson.

A good deal has been said by the counsel on both sides respecting the motives of the accuser and the accused in this suit, but upon this subject the Court need say but very little.

Mr. Martin has been allowed by the Bishop of London to promote his Lordship's office in this case, and I must, of course, presume that his Lordship was satisfied upon good grounds, both that it was proper that his office should be promoted, and that Mr. Martin was a proper promoter; because his Lordship, who has the advantage of having a very learned legal adviser, was, no doubt, aware, from the decision of the Queen's Bench in "*Regina v. Bishop of Chichester*," (2 El. & El., 209,) as well as from the decision of the Privy Council in "*Ray v. Sherwood*," (Moore P.C. Reports, 397,) that it was competent to him to exercise his discretion as to whether his office should be promoted or not. I must, therefore, consider Mr. Martin as having obtained full sanction for the course which he has adopted, and wholly decline to impute to him any unworthy motive whatever for the part which he has taken in this suit. It is, however, a matter of fact, admitted or proved before me, that Mr. Martin is not, legally speaking, a parishioner of St. Alban's, nor, of course, a churchwarden, a part of whose office it is to represent to the Ordinary any misconduct on the part of the incumbent. This fact, however, if it should prove to be of any importance at all in this case, can only relate to the subordinate question of costs, and in no way affects my judgement upon the principal questions before me.

Upon the other hand, it is only fair to Mr. Mackonochie to state, that it appears from the documents in the cause, that having the cure of souls in one of the worst and most neglected districts of London, and receiving moderate temporal emolument, he has devoted himself to the discharge of his holy office, and evangelizing an almost heathen population.

It is hardly necessary to say that he is not on this account entitled to conduct the services of the Church (if he has done so) in a manner not authorized by the law.

There are two modes of procedure in the Ecclesiastical Courts, one of a civil, and the other of a criminal, character. There have been, in recent times, two leading judgements delivered upon the lawfulness of certain ornaments (to which word a precise legal meaning has been attached) used during the celebration of Divine worship and certain decorations of churches.

In both these judgements the questions for judicial decision were raised in the civil form of procedure.

The "Stone Altar Case" (as it has been commonly called) arose on an application for a faculty in the Consistory of Ely, and was brought on appeal to this Court.

The causes relating to the Knightsbridge Churches\* were instituted in a similar way in the Consistory of London, from the decision of which Court an appeal was prosecuted, first to the Court of Arches, and ultimately to the Judicial Committee of the Privy Council, which last tribunal recommended Her Majesty to reverse, upon many points, the decision of the Courts below. As the Archbishops and the Bishops, who are Privy Councillors, are only members of the Judicial Committee in cases of criminal proceedings against clerks in holy orders, the prelates who did sit on this last occasion sat only as assessors and not as members of the Court.

The proceedings taken in this case are of a criminal character, and the sound of them, so to speak, is harsher than that of those in the cases to which I have referred, but substantially the same end is sought, and the same remedy pursued; and, with an exception to be hereafter stated, I am not prepared to say,—inasmuch as not only certain ornaments, but also the use of them in the services of the Church, are complained of,—that it would have been competent to the promoters to have brought before me in a civil form all the matters contained in these criminal articles.

They are comprised under the following heads:—

- (1.) The elevation of the Blessed Sacrament of the Lord's Supper, accompanied in Mr. Mackonochie's case by kneeling "or excessive kneeling" at times not prescribed by the Rubrics.
- (2.) The use of incense during the celebration of the Eucharist.
- (3.) The mixing of water with wine at the time of the administration of the Lord's Supper.
- (4.) The use of lighted candles upon the Holy Table.

It will be necessary presently to enter into a fuller and more detailed statement of each of these charges, and of the answers to them. I will only observe that, with one exception to be noticed hereafter, there is no dispute in the case as to the facts to which the law is to be applied.

#### *Statutes of Uniformity.*

The law principally, though not exclusively, relied upon by the counsel for the promoter is contained in the Statutes of Uniformity. I must refer to these statutes.

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\* These cases are afterwards referred to as *Liddell v. Westerton*, &c.



The first Statute is that of 2nd and 3rd Edward VI., c. 1., which accompanied the first Prayer Book. The second is that of 5th Edward VI., c. 4., which accompanied the second Prayer Book, and has been repealed. The third is that of 1st Eliz., c. 2., the penal sections of which are in force.

The additions made to the Prayer Book by James I. were not accompanied by a separate Statute, but were made under the powers conferred upon the Crown acting with the Metropolitans, under a clause of the Statute of Elizabeth.

Fourthly, the present Statute of Uniformity, the 13th and 14th of Car. II., c. 4., which embodies so much of the Statute of 2nd and 3rd Edward VI., c. 1., and of 1st Eliz., c. 2., as were necessary for "the establishing and confirming" of the new Prayer Book.

It is necessary to refer somewhat at length to the Statutes now in force.

The 2nd and 3rd Edward VI., cap. 1., which is the first Act of Uniformity of Edward VI., begins by reciting that there had been in England "different forms of prayer; that " is to say, the use of Sarum, of York, of Bangor, of " Lincoln, and besides the same now of late, much more " divers and sundry forms and fashions have been used in " the cathedral and parish churches of England and Wales, " as well concerning matins or morning prayer and evensong, " as also concerning the Holy Communion, commonly called " the Mass, with divers and sundry rites and ceremonies " concerning the same, and in the administration of the " other sacraments of the Church; and as the doers and " executors of the said rites and ceremonies in other form than " of late years they have been used were pleased therewith, " so others not using the same rites and ceremonies were " thereby greatly offended; and, albeit, the King's Majesty, " with the advice of His most entirely beloved uncle, the " Lord Protector, with others of the council, hath heretofore " divers times assayed to stay innovations or new rites, yet " the same have not had such good success as His Highness " required in that behalf; whereupon His Highness, by the " most prudent advice, being pleased to bear with the frailty " and weakness of His subjects in that behalf, of His great " clemency hath not been only content to abstain from " punishment of those that have offended in that behalf, " (for that His Highness taketh that they did it of a good " zeal,) but also to the intent that uniform quiet and godly " order shall be had concerning the premises, appointed the " Archbishop of Canterbury and certain distinguished men " to consider and ponder the premises, and thereupon having " as well eye and respect to the most sincere and pure

“ Christian religion taught by the Scriptures as to usages  
 “ in the Primitive Church, should draw and make one con-  
 “ venient, meet, and definite order, rite, and fashion of  
 “ common and open prayer, and administration of the  
 “ sacraments, to be had and used in His Majesty’s realm  
 “ of England and Wales, the which at this time, by the  
 “ aid of the Holy Ghost, with one uniform agreement is  
 “ thus concluded, set forth, and delivered to His Highness,  
 “ to His great comfort and quietness of mind, in a book  
 “ entitled ‘The Book of Common Prayer and Administra-  
 “ ‘ tion of the Sacraments, and other Rites and Ceremonies  
 “ ‘ of the Church, after the use of the Church of England:’  
 “ Wherefore the Lords spiritual and temporal, and the  
 “ Commons, in this present Parliament assembled, con-  
 “ sidering as well the most godly travel of the King’s  
 “ Highness, of the Lord Protector, and of other His Highness’  
 “ council, in gathering and collecting the said Archbishop,  
 “ Bishops, and learned men together, as the godly prayers,  
 “ orders, rites, and ceremonies in the said book mentioned,  
 “ and the considerations of altering those things which he  
 “ altered, and retaining those things which he retained in  
 “ the said book, but also to the honour of God, and the  
 “ great quietness which by the grace of God shall ensue  
 “ upon the one and uniform rite and order in such common  
 “ prayer, and rites and external ceremonies, to be used  
 “ throughout England and in Wales, at Calice, and the  
 “ marches of the same, do give to His Highness most hearty  
 “ and lowly thanks for the same.” Then it goes on and  
 says, “ That all and singular the ministers in any cathedral  
 “ or parish church shall be bounden to say and use matins,  
 “ evensong, celebration of the Lord’s Supper, commonly  
 “ called the Mass, and administration of each of the sacra-  
 “ ments and all their common and open prayer, in such  
 “ order and form as is mentioned in this book, and none  
 “ other or otherwise.”

It then enacts, “ That if any manner of parson, vicar,  
 “ or other whatsoever minister that ought or should sing  
 “ or say the common prayer mentioned in the said book,  
 “ or minister the sacraments, shall refuse to use the said  
 “ common prayer or to minister the sacraments in such  
 “ cathedral or parish church, in such order and form as  
 “ they be mentioned and set forth in the said book, or shall  
 “ use, wilfully and obstinately standing in the same, any  
 “ other rite or ceremony, order, form, or manner of mass  
 “ openly or privately, or matins, evensong, or other open  
 “ prayer, than as mentioned and set forth in the said book,”  
 he then becomes liable to certain penalties.

The seventh section of this Act states, “ That it shall be lawful for all men, as well in churches, chapels, oratories, or other places, to use openly any psalm or prayer taken out of the Bible at any time, not letting or omitting thereby the service or any part thereof mentioned in the said book.”

The eighth section of this Act provides, “ That the books concerning the said services shall, at the costs and charges of the parishioners of every parish and cathedral church, be attained and gotten before the Feast of Pentecost next following, or before; and that all such parishes and cathedral churches, or other places where the said books shall be attained and gotten before the said Feast of Pentecost, shall, within three weeks next after the said books so attained and gotten, use the said service, and put the same in use according to this Act.”

The present Act of Uniformity, passed in the year 1662, the 13th & 14th Car. II., c. 4., is entitled “ An Act for the Uniformity of public Prayers, and Administration of Sacraments, and other Rites and Ceremonies; and for establishing the Form of making, ordaining, and consecrating Bishops, Priests, and Deacons in the Church of England.”

The first section gives the following title to our present Prayer Book:—“ The Book of Common Prayer and administration of the Sacraments, and other rites and ceremonies of the Church, according to the use of the Church of England; together with the psalter or psalms of David, pointed as they are to be sung or said in Churches; and the form and manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons.”

The second section, after reciting “ that nothing can conduce more to the settling of the peace of the nation, nor to the honour of our religion and the propagation thereof, than a universal agreement in the worship of Almighty God, and to the intent that every person in this realm may certainly know the rule to which he is to conform in public worship and administration of sacraments, and other rites and ceremonies of the Church of England,” enacts, “ That all ministers shall be bound to say and use the morning prayer, evening prayer, and celebration and administration of both sacraments, and all other the public and common prayer, in such order and form as is mentioned in the book annexed and joined to the present Act, intituled the Book of Common Prayer, and administration of the Sacraments, and other rites and ceremonies of the Church, according to the use of the Church of England.”

And by the 24th section it is further enacted, “by the authority aforesaid, that the several good laws and statutes of the realm, which have been formerly made, and are now in force, for the uniformity of prayer and administration of the sacraments within this realm of England and places aforesaid, shall stand in full force and strength, to all intents and purposes whatsoever, for the establishing and confirming of the said book,” (intituled as aforesaid) “herein-before mentioned to be joined and annexed to this Act, and shall be applied, practised, and put in use for the punishing of all offences contrary to the said laws, with relation to the book aforesaid, and no other.”

By the 17th section it is further enacted, “by the authority aforesaid, that no form or order of common prayers, administration of sacraments, rites, or ceremonies, shall be openly used in any church, chapel, or other public place, or in any college or hall in either of the Universities, the colleges of Westminster, Winchester, or Eton, or any of them, other than what is prescribed and appointed to be used in and by the said book.”

By the Statute 1st Elizabeth, cap. 2., sec. 27., it is enacted, “that all laws, statutes, and ordinances wherein or whereby any other service, administration of sacraments, or common prayer is limited, established, or set forth to be used within this realm, or any other the Queen’s dominions or countries, shall from henceforth be utterly void and of none effect.”

The main proposition upon which the alleged unlawfulness of all the matters contained in the criminal articles has been rested by the counsel for the promoter is, that they are all, in effect, rites and ceremonies other than and additional to those which are prescribed in the Prayer Book and the Act of Uniformity.

The answer to this charge is twofold: first, it is averred that the matters complained of are not rites or ceremonies; secondly, that if they fall within either category they are not “other than or additional to” those prescribed in the Book of Common Prayer, in the sense of being at variance with or repugnant to them, forasmuch as they are in accordance with and subsidiary to them.

Under the first position they maintain that the terms “rites and ceremonies” mean an entire service, such as Masses for the Dead, or services for particular festivals; or customs, such as creeping to the Cross, and the like, which were abolished at the time of the Reformation.

That the elevation of the Blessed Sacrament, excessive kneeling, the use of incense, the mixing water with the wine,

the lighting of candles, are elements or ingredients of a rite or ceremony, and not a rite or a ceremony *per se*.

The terms rite and ceremony, as used in the first Prayer Book, and from thence imported into our present Prayer Book, are terms, so to speak, of ecclesiastical and ritual art, and must be construed with reference to their use in contemporaneous and other works of writers upon ritual, unless they receive a different meaning from a comparison of other passages or parts in the Prayer Book or Statute in which they are found.

I must, therefore, refer at length to the preface in our Prayer Book, entitled,—

“Of rites and ceremonies.

“Of such ceremonies as be used in the Church, and have had their beginning by the institution of man, some at the first were of godly intent and purpose devised, and yet at length turned to vanity and superstition; some entered into the Church by indiscreet devotion, and such a zeal as was without knowledge; and for because they were winked at in the beginning, they grew daily to more and more abuses, which not only for their unprofitableness, but also because they have much blinded the people, and obscured the glory of God, are worthy to be cut away, and clean rejected: other there be, which although they have been devised by man, yet it is thought good to reserve them still, as well for a decent order in the Church (for the which they were first devised), as because they pertain to edification, whereunto all things done in the Church (as the Apostle teacheth) ought to be referred.”

“But now as concerning those persons, which peradventure will be offended, for that some of the old ceremonies are retained still: If they consider that without some ceremonies it is not possible to keep any order, or quiet discipline in the Church, they shall easily perceive just cause to reform their judgements. And if they think much, that any of the old do remain, and would rather have all devised anew: then such men granting some ceremonies convenient to be had, surely where the old may be well used, there they cannot reasonably reprove the old only for their age, without bewraying of their own folly. For in such a case they ought rather to have reverence unto them for their antiquity, if they will declare themselves to be more studious of unity and concord, than of innovations and new fangleness, which (as much as may be with true setting forth of Christ’s religion) is always to be eschewed. Furthermore, such shall have no just cause

“ with the ceremonies reserved to be offended. For as those  
 “ be taken away which were most abused, and did burden  
 “ men’s consciences without any cause: so the other that  
 “ remain, are retained for a discipline and order, which (upon  
 “ just causes) may be altered and changed, and therefore are  
 “ not to be esteemed equal with God’s law. And more-  
 “ over, they be neither dark nor dumb ceremonies, but are  
 “ so set forth, that every man may understand what they  
 “ do mean, and to what use they do serve. So that it is not  
 “ like that they in time to come should be abused as  
 “ other have been. And in these our doings we condemn  
 “ no other nations, nor prescribe anything but to our own  
 “ people only: for we think it convenient that every  
 “ country should use such ceremonies as they shall think  
 “ best to the setting forth of God’s honour and glory, and to  
 “ the reducing of the people to a most perfect and godly living,  
 “ without error or superstition; and that they should put  
 “ away other things, which from time to time they perceive  
 “ to be most abused, as in men’s ordinances it often chanceth  
 “ diversely in divers countries.”

“ Some are put away, because the great excess and mul-  
 “ titude of them hath so increased in these latter days, that  
 “ the burden of them was intolerable; whereof Saint Au-  
 “ gustine in his time complained, that they were grown to  
 “ such a number, that the estate of Christian people was in  
 “ worse case concerning that matter, than were the Jews.  
 “ And he counselled that such yoke and burden should be  
 “ taken away, as time would serve quietly to do it. But  
 “ what would Saint Augustine have said, if he had seen the  
 “ ceremonies of late days used among us; whereunto the  
 “ multitude used in his time was not to be compared? This  
 “ our excessive multitude of ceremonies was so great, and  
 “ many of them so dark, that they did more confound and  
 “ darken, than declare and set forth Christ’s benefits unto  
 “ us. And besides this, Christ’s Gospel is not a ceremonial  
 “ law (as much of Moses’ law was), but it is a religion to  
 “ serve God, not in bondage of the figure or shadow, but in  
 “ the freedom of the spirit; being content only with those  
 “ ceremonies which do serve to a decent order and godly  
 “ discipline, and such as be apt to stir up the dull mind of  
 “ man to the remembrance of his duty to God, by some  
 “ notable and special signification, whereby he might be  
 “ edified. Furthermore, the most weighty cause of the  
 “ abolishment of certain ceremonies was, that they were so  
 “ far abused, partly by the superstitious blindness of the  
 “ rude and unlearned, and partly by the unsatiable avarice  
 “ of such as sought more their own lucre, than the glory of

“ God, that the abuses could not well be taken away, the thing remaining still.”

“ And whereas in this our time, the minds of men are so diverse, that some think it a great matter of conscience to depart from a piece of the least of their ceremonies, they be so addicted to their old customs; and again on the other side, some be so new-fangled, that they would innovate all things, and so despise the old, that nothing can like them, but that is new; it was thought expedient, not so much to have respect how to please and satisfy either of these parties, as how to please God, and profit them both. And yet lest any man should be offended, whom good reason might satisfy, here be certain causes rendered, why some of the accustomed ceremonies be put away, and some retained and kept still.”

“ And although the keeping or omitting of a ceremony, in itself considered, is but a small thing; yet the wilful and contemptuous transgression and breaking of a common order and discipline is no small offence before God, *Let all things be done among you, saith Saint Paul, in a seemly and due order*: the appointment of the which order pertaineth not to private men; therefore no man ought to take in hand, nor presume to appoint or alter any publick or common order in Christ’s Church, except he be lawfully called and authorized thereunto.”

Perhaps it would be difficult to deduce from this language any certain conclusion as to the precise sense in which the terms Rites and Ceremonies are used.

In the first Prayer Book, at the close of the dissertation, which is at the end of the services, “ Of ceremonies, why some be abolished and some retained,” are “ certain notes for the more explication and decent ministration of things contained in this book,” one “ note ” is “ as touching kneeling, crossing, holding up of hands, knocking upon the breast, and other gestures, they may be used or left as every man’s devotion serveth without blame.”

This note does not appear in the subsequent Prayer Books, but, nevertheless, at the Hampton Court conference in the year 1604, the Bishop of Winchester, replying to the objections made by the Puritans to the use of the Cross in baptism and ceremonies generally, said,—

“ In prayer, the kneeling on the ground, the lifting up of our hands, the knocking of our breasts, are ceremonies significant: the first, of our humility coming before the mighty God; the second, of our confidence and hope; the other, of our sorrow and detestation of our sins; and these are and may lawfully be used.”

“ Mr. Dean of the Chapel remembred the practice of the Jews, who, unto the institution of the Passeeover, prescribed unto them by Moses, had, as the rabbins witnessse, added both signes and words, eating soure herbs, and drinking wine, with these words to both, ‘ Take, and ‘ eat these in remembrance,’ &c. ; ‘ Drink this in remembrance,’ &c. Upon which addition and tradition of theirs, our Saviour instituted the Sacrament of his last Supper, in celebrating it with the same words and after the same manner; thereby approving that fact of theirs in particular, and generally, that a Church may institute and retain a signe significant,” which, says the reporter of the conference, satisfied His Majesty exceeding well.—(*Cardwell; Conferences on the Book of Common Prayer*, p. 197.)

These gestures appear to me to have been considered as ceremonies wisely left to every man’s discretion.

In the first “ order of the Communion ” which preceded the first Prayer Book the Rubric says, “ The time of the Communion shall be immediately after that the Priest himself hath received the Sacrament, without the varying of any other *rite* or *ceremony* in the Mass (until other order shall be provided), but, as heretofore, usually the Priest has done with the Sacrament of the Body,” &c.

Here, again, rite and ceremony seem to be used for elements or portions of a service.

Let us consider the construction put upon the Latin terms (from which, of course, the English terms are borrowed) *ritus* et *cæremoniæ* by high Latin authorities.

*Bona* (*Opera Omnia*, p. 562), writing, *De Disciplina psallendi*, § III., says,

*Cæremonia quid sint, et quæ hujus nominis origo. Earum efficacia, et utilitas ad divinum cultum. Veræ a falsis, et superstitiosis discernendæ. Exteriores ceremonias sine interno spiritu parum prodesse.*

..... Sunt autem cæremoniæ, si propriè loqui velimus, ritus sancti in sacrificiis, et divinis officiis ad Dei cultum adhibiti: sed migravit vocabulum in usus etiam profanos; nam cum homines instituissent sibi invicem inclinare, genua flectere, manus osculari: hæ et aliæ honoris exhibitiones, cum proprio nomine carerent, cœptæ sunt etiam cæremoniæ dici.

Van Espen (*Jus Eccles. Universum*, p. 410, t. v., cap. 1, *de celebratione Missarum*) speaking of the celebration of the Eucharist, says: “ Certum tamen est ipsum apostolis suis, totique Ecclesiæ, in eorum personâ, potestatem auctoritatemque dedisse ea omnia in augustissimi hujus mysterii ritibus seu cæremoniis addendi, demendi, immutandi quæ



“ illius dignitati et populorum devotioni pro temporum et locorum diversitate magis congruere judicarent.”

Here, *ritus* and *cæremoniæ* are not separate services, but certain ingredients or accompaniments of one service, that of the Eucharist.

Gavanto (Vol. 1. p. 3. ed. 1823, Venice), a great Roman ritualist, says, that Bona and Suarez both define *cæremonia* as “ actio religiosa ad cultum et decentiam sacrificii ab ecclesiâ instituta.”

He quotes Quarti's opinion as follows :

“ Procedit Quarti ad dividendas cæremonias in eas, quæ sunt intrinsecæ ipsi missæ, et partes ejusdem, et consistunt, dicit ipse, tum in verbis, tum in gestibus celebrantis, de quibus late Suarez, *disp.* 83 et 84, et in eas, quæ sunt circumstantiæ extrinsecæ ejusdem sacrificii, ut locus, tempus, vasa, et vestimenta sacra, &c. Dicit præterea, quod illæ cæremoniæ, quæ consistunt in gestibus, quædam inductæ sunt propter decentiam operandi, nec habent aliam significationem, ex. gr. quod sacerdos dum signat seipsum, ponit sinistram sub pectore; et aliæ inductæ sunt propter significationem moralem, vel mysticam, verb. grat. *mixtio aquæ cum vino*,” (observe these words,) “ digitorum ablutio, crucis signa, de quibus Divus Thomas 3 *part. quæst.* 83, *artic.* 4, § 5.

“ Verum, pace tanti viri, ego distinguerem cæremoniam sacram a ritu, dicendo, ritus sacros consistere in illis precibus, epistola, evangelio, &c., quæ juxta ecclesiæ dispositionem recitari debent in missâ; cæremoniam autem consistere in solis gestibus, quibus prædictæ preces juxta ejusdem ecclesiæ præscriptum peragi debent ad majorem ornatum, et decentiam sacrificii, quod celebratur; et revera Cæremonialia, seu libros cæremoniarum vocamus illos, qui non orationes et preces dicendas præscribunt, sed modum, quo illæ dicendæ sunt; e contra Rituales nuncupamus illos, qui continent preces, seu alias orationes, quas recitandas præscribunt.

“ Ritus, quoniam in verbis regulariter consistunt, vel sunt partes missæ ordinariæ, quia scilicet semper ingrediuntur ejus compositionem; vel sunt extraordinariæ, sive mobiles, quia non semper ejus compositionem ingrediuntur, sed ad majorem quandoque adduntur solemnitatem, atque ornatum.”

(*Gavanto, Thesaurus Sacrorum Rituum, Vol. I., p. 4. Pars I., in Rubricâ Generali.*)

The Council of Trent, in the 22d session, the 5th chapter, “ *De Missæ Ceremoniis et Ritibus*,” speaks as follows :

“ Quumque natura hominum ea sit, ut non facile queat

“ sine adminiculis exterioribus ad rerum divinarum meditationem sustolli, propterea pia mater ecclesia ritus quosdam ut scilicet quædam submissa voce alia vero elatiore in missâ pronuncierentur, instituit, ceremonias, item adhibuit; ut” (these are the instances of ceremonies) “mysticas benedictiones, *lumina, thymiamata, vestes, aliaque id genus multa ex apostolicâ disciplinâ et traditione, quo et majestas tanti sacrificii commenderetur, et mentes fidelium per hæc visibilia religionis et pietatis signa ad rerum altissimarum, quæ in hoc sacrificio latent, contemplationem excitarentur.*”

Whatever authority this passage may have, it would appear to include under the title *Ceremoniæ*, among other things, the use of lights, of incense, and of vestments.

There is no doubt that the terms Rites and Ceremonies are sometimes used in the sense contended for by the Defendants; but on the whole, the result of this examination of authorities leads me to the conclusion that there is a legal distinction between a Rite and a Ceremony; the former consisting in services expressed in words, the latter in gestures or acts preceding, accompanying, or following the utterance of these words.

Applying this principle to the charges before me, I am of opinion, that the matters complained of must be considered in law as ceremonies.

Before I proceed to consider the greater question, whether they are ceremonies forbidden by the ecclesiastical law of England, and more especially by that part of it which consists of the provisions of the Prayer Book and the Statute of Uniformity, I think it right to draw attention to the judgement of the Church Universal, and especially of “that pure and apostolical branch of it established in this realm” upon the general subject of ceremonies.

And from that judgement it will, I think, appear that an essential distinction is drawn between those which are from their origin immutable, and those which it is competent to the proper authorities to mould according to the varying necessities and exigencies of each particular Church.

The only orders given in the New Testament with respect to the ritual of the Church are of the most general kind, and are to be found in the following passages: Saint Paul in his first epistle to the Corinthians directs,

*πάντα πρὸς οἰκοδομὴν γενέσθω*

and again,

*πάντα εὐσχημόνως καὶ κατὰ τάξιν γενέσθω*

which we render,

“ Let all things be done to edification,”

and

“ Let all things be done decently and in order.”

Saint Augustine, whose authority our Church so highly regards, observes, (Ep. 36, tom. ii. p. 101,) “ In his rebus “ de quibus nihil certi statuit Scriptura Divina, mos populi “ Dei vel instituta majorum pro lege tenenda sunt.”

And St. Jerome, to whom our articles refer, says (Ep. xxviii. ad Lucinium Bæticum), “ Ego illud te breviter admonen- “ dum puto traditiones ecclesiasticas præsertim ” (remark the caution) “ quæ fidei non officiant ita observandas ut a “ majoribus traditæ sunt: nec aliorum consuetudinem “ aliorum contrario more subverti. Sed unaquæque pro- “ vincia abundet in suo sensu, et præcepta majorum leges “ apostolicos arbitretur.”

When Augustine, the missionary of Gregory the Great (to whom this country is so much indebted), found the ancient British Churches in possession of a ritual in accordance with the Gallican use and that of the Eastern Church, he became perplexed what course to pursue, and wrote for advice on the subject to the Pope. From our old historian Bede we learn how wise an answer he received :

(Beda, Hist. i. 27, II. Interrogatio Augustini.) “ Cum “ una sit fides,” wrote Augustine, “ cur sunt ecclesiarum “ diversæ consuetudines, et altera consuetudo missarum “ in sanctâ Romanâ ecclesiâ, atque altera in Galliarum “ tenetur? Respondit Gregorius Papa. Novit fraternitas “ tua Romanæ ecclesiæ consuetudinem, in qua se meminit “ nutritam. Sed mihi placet, sive in Romanâ, sive in “ Galliarum, seu in qualibet ecclesiâ aliquid invenisti quod “ plus Omnipotenti Deo possit placere, sollicitè eligas, et in “ Anglorum ecclesiâ, quæ adhuc ad fidem nova est, insti- “ tutione præcipua, quæ de multis ecclesiis colligere potuisti, “ infundas. Non enim pro locis res, sed pro bonis rebus “ loca amanda sunt. Ex singulis ergo quibusque ecclesiis, “ quæ pia, quæ religiosa, quæ recta sunt elige, et hæc, quasi “ in fasciculum collecta, apud Anglorum mentes in consue- “ tudinem depone.”

According to a later historian of our Church, the learned Field, Dean of Gloucester :

“ Ceremonies are outward acts of religion, having institu- “ tion, either from the instinct of nature, as the lifting up of “ the hands and eyes to heaven, the bowing of the knee, the “ striking of the breast, and such like; or immediately from “ God, as the sacraments; or from the Church’s prescrip- “ tion: and either only serve to express such spiritual and “ heavenly affections, dispositions, motions, and desires as “ are or should be in men; or else to signify, assure, and “ convey unto them such benefits of saving grace as God in “ Christ is pleased to bestow on them. To the former

“ purpose and end the Church hath power to ordain ceremonies; to the later, God only.” (*Field, of the Church, Vol. II., p. 527.*)

And Burnet in his *History of the Reformation* (Ed. Poock, Vol. II., p. 155), expressing himself with greater accuracy than usual, in speaking of the use of a ceremony in relation to the belief of the Church, says, “ This seems more necessary to be well explained, by reason of the scruples that many have since raised against significant ceremonies, as if it were too great a presumption in any Church to appoint such, since these seem to be of the nature of sacraments. Ceremonies that signify the conveyance of a Divine grace and virtue are indeed sacraments, and ought not to be used without an express institution in Scripture; but ceremonies that only signify the sense we have, which is sometimes expressed as significantly in dumb shows as in words, are of another kind; and it is as much within the power of the Church to appoint such to be used, as it is to order collects and prayers, words and signs being but different ways of expressing our thoughts.”

The language of our Church in her articles on this subject is expressed as follows: In Article XX.—

“ Of the Authority of the Church.

“ The Church hath power to decree rites and ceremonies, and authority in controversies of faith: And yet it is not lawful for the Church to ordain anything that is contrary to God’s Word written, neither may it so expound one place of Scripture, that it be repugnant to another. Wherefore, although the Church be a witness and a keeper of Holy Writ, yet, as it ought not to decree anything against the same, so besides the same ought it not to enforce anything to be believed for necessity of salvation.”

And in the XXXIVth Article,—

“ Of the Traditions of the Church.

“ It is not necessary that traditions and ceremonies be in all places one, or utterly like, for at all times they have been divers, and may be changed according to the diversities of countries, times, and men’s manners, so that nothing be ordained against God’s Word. Whosoever through his private judgment, willingly and purposely, doth openly break the traditions and ceremonies of the Church, which be not repugnant to the Word of God, and be ordained and approved by common authority, ought to be rebuked openly (that others may fear to do the like), as

“ he that offendeth against the common order of the Church,  
 “ and hurteth the authority of the magistrate, and woundeth  
 “ the consciences of the weak brethren.

“ Every particular or national Church hath authority to  
 “ ordain, change, and abolish ceremonies or rites of the  
 “ Church ordained only by man’s authority, so that all  
 “ things be done to edifying.”

Bishop Beveridge (few higher authorities could be in-  
 voked) in his “*Ecclesia Anglicana Ecclesia Catholica, or*  
 “ the Doctrine of the Church of England consonant to  
 “ Scripture, Reason, and Fathers, in a Discourse upon the  
 “ Thirty-nine Articles,” (Oxford Edition, 1840,) Vol. II.,  
 p. 119, thus comments upon Article XX. “Of the Authority  
 of the Church:”—

“ First, (he says) it hath power to decree rites and cere-  
 “ monies, so that it is lawful for the Church to decree and  
 “ appoint what rites or ceremonies shall be used in the  
 “ public worship of the great God; not as parts of that  
 “ worship, for then they would not be rites and ceremonies.  
 “ And therefore it is in vain objected by the adversaries to  
 “ this truth, that herein we give the Church power to add  
 “ anything to God’s worship which is not commanded in his  
 “ Word; as if rites and ceremonies were in themselves any  
 “ part of worship. Whereas what is any part of God’s  
 “ worship cannot be a mere rite or ceremony, neither can  
 “ that which is a mere rite or ceremony be any part of his  
 “ worship. For rites and ceremonies, in that they are  
 “ nothing but rites and ceremonies, be in themselves in-  
 “ different, neither good nor bad, until determined by the  
 “ Church; after which determination also they still remain  
 “ indifferent in themselves, and are good and bad only in  
 “ reference to their decree, who had power and authority to  
 “ determine them. Whereas every the least part of God’s  
 “ worship can be by no means omitted without sin, and  
 “ therefore when it is here said that the Church hath power  
 “ to decree rites and ceremonies, we must always by the  
 “ words rites and ceremonies understand nothing else but  
 “ the particular circumstances and customs to be observed  
 “ in the service and worship of God, not as any cause or  
 “ part thereof.”

Again the Bishop says, (p. 121)—

“ We must needs grant that the Church of Corinth (and  
 “ so other Churches) had power and authority to determine  
 “ and order these things. Or, if they had no such power  
 “ before, yet St. Paul, or rather the Most High God by

“ St. Paul, did in these words grant them such a power and  
 “ authority, in the decreeing these and the like circum-  
 “ stances and ceremonies for the more decent and orderly  
 “ worshipping of the Glorious Jehovah, giving them this  
 “ one general comprehensive rule, ‘ Let all things be done  
 “ ‘ to edifying, and in order;’ out of which one general rule,  
 “ that, and all Churches whatsoever, according to the variety  
 “ of times and places they live in, were to frame other  
 “ particular rules and canons for the edifying and orderly  
 “ performance of God’s worship ; who being a God,  
 “ not of confusion, but of order in himself, he requires  
 “ such worship as is done in order, not in confusion, from  
 “ us.”

(p. 123)—

“ Neither can I see in reason how this power in ceremonies  
 “ and controversies should be denied the Church. For first,  
 “ as for ceremonies, they cannot but be acknowledged to be  
 “ indifferent, neither in themselves good nor bad ; and if  
 “ they be in themselves either good or bad and not in-  
 “ different, they are not merely ceremonies, especially if  
 “ they be in their own nature bad and sinful, they are not the  
 “ ceremonies intended in this place. For this same Article,  
 “ in the following part of it, doth determine that the cere-  
 “ monies here intended are only such as are not against the  
 “ Scripture, and by consequence not unlawful. Now such  
 “ rites and ceremonies as are in themselves indifferent, it  
 “ can be no sin to determine them to either part ; for  
 “ which part soever they are determined to, they cannot be  
 “ determined into sin. I mean, what is in itself indifferent,  
 “ and so may be used or not used without sin whether it  
 “ be decreed to be used, or not to be used, it cannot be  
 “ any sinful decree, especially when, after as well as before  
 “ the decree, they are still acknowledged to be in themselves  
 “ indifferent, though not as to our use. Which things of  
 “ indifferency also, as all ceremonies are, cannot be supposed  
 “ to come within the command of God, for then they would  
 “ not be indifferent ; and seeing God hath not left any par-  
 “ ticular command, but only a general rule about all things  
 “ of indifferency, that they be so ordered that they be done  
 “ decently and to edifying, the Church cannot be thought  
 “ to sin in determining them, so as she thinks the most  
 “ edifying and decent, as we shall by the blessing of G d  
 “ see more fully in the Thirty-fourth Article. And if it  
 “ be no sin thus for the Church to determine ceremonies,  
 “ it must needs be granted that she hath power to decree  
 “ them.”

And on Article XXXIV. "Of the Traditions of the Church," the Bishop observes, (p. 322)—

" But there being many circumstances required to the performance as well of religious as civil actions, and so to the worship of God as well as anything else, as, for example, the time when, the place where, the habit in which His public service shall be performed, and the like, it being impossible it should be performed without these and the like circumstances, and seeing the all-wise God hath thought good not to determine these in His Word, but to leave it to the discretion of the Church to determine them as it shall see fit, only giving them this general rule to square all these their determinations by—

" Let all things be done decently and in order."

" Hence it is that every particular Church hath still thought fit to exercise this her power and authority in determining these circumstances, according to that manner as seemeth to herself orderly and devout, so that there is no necessity that one Church should determine them after the same manner that another doth ; nay, it is often necessary that one Church should not follow another in this case ; for it often so falls out that what is decent in one place is unseemly in another, and every Church is bound to model circumstances according to that order which is the most seemly and decent in the place where it is settled."

(p. 335)—

" And if we should descend down to after councils, we shall find there was scarce ever a Provincial Church met together in council since our Saviour's time but did not ordain some ceremonies or other to be observed by her children. It would be an endless thing to reckon up all the ceremonies that were ordained or altered by Provincial Churches ; or indeed, all the Provincial Churches that ordained or altered ceremonies in the primitive times. I shall, therefore, instance only in such ceremonies as our Church hath thought good still to retain, that so we may see both how Provincial Churches have still looked upon themselves in all ages to have power to ordain ceremonies, and also, that the ceremonies retained and ordered by our Church are no new-fangled ceremonies, nor Popish superstitions, but that most of them were ordained and used in the Primitive Church before the Pope had forged his superstitions."

This very learned prelate then recites a great number of instances in which the Provincial Councils of different countries have made ordinances with respect to their own

ritual observances, and adds, “ And thus we see how many, even of the very rites and ceremonies which are still in use amongst us, were long ago ordained by Provincial Churches met together in council. Many more might I heap up to the same purpose, but these may be enough to show how the Provincial or National Churches of Christ, in all ages, since His Incarnation, have still exercised this power in ordaining, altering, and abolishing ceremonies, which certainly they would never have done if they had not believed they had power to do it.”

Bishop Jeremy Taylor, (Vol. XIV., Heber’s edition,) in his “ Rule of Conscience ” (p. 21), lays down as Rule XII., *All those Rituals which were taught to the Church by the Apostles concerning Ministries, which were of Divine institution, do oblige all Christendom to their observation.*

And on this rule he observes,—

“(1.) I instance in the Holy Sacrament first of all; concerning which the Apostles delivered to the Churches the essential manner of celebration, that is, the way of doing it according to Christ’s commandment, for the words themselves, being large and indefinite, were spoken indeed only to the Apostles, but yet they were representatives of all the whole ecclesiastical order in some things, and of the whole Christian Church in other; and, therefore, what parts of duty, and power, and office did belong to each, the Apostles must teach the Church, or she could have no way of knowing without particular revelation.

“(2.) Thus the Apostles taught the Bishops and Priests to consecrate the symbols of bread and wine before they did communicate; not only because by Christ’s example we were taught to give thanks before we eat, but because the Apostles knew that the symbols were consecrated to a mystery. And that was done from the beginning, and in all Churches, and in all ages of the Church; by which we can conclude firmly in this rule, that the Apostles did give a canon or rule to the Churches to be observed always, and that the Church did never believe she had authority or reason to recede from it. For in those rights which are ministries of grace, no man must interpose any thing that can alter any part of the institution, or make a change or variety in that which is of Divine appointment. For the effect in these things depends wholly upon the will of God, and we have nothing to discourse or argue; for we know nothing but the institution, nothing of the reason of the thing, and therefore we must in these cases, with simplicity and obedience, apply ourselves to practise as we have received, for we have nothing else to guide us. Memory



“ and obedience, not discourse and argument, are here in  
“ season.”

The Bishop then proceeds to distinguish between alterable and unalterable rites, as follows (p. 23):—

“ But where the Apostles did not interpose, there the  
“ Churches have their liberty ; and in those things also, which  
“ evidently were no part of the appointed liturgy or  
“ ministration, in those things, though it be certain the  
“ Apostles did give rules of order and decency, yet because  
“ order is as variable as the tactics of an army, and decency  
“ is a relative term and hath a transient and changeable  
“ sense, in all these things there is no prescription to the  
“ Church, though we did know what the Churches apostolical  
“ did practise, for they did it with liberty, and, therefore,  
“ we are not bound ; the Churches are as free as ever ;  
“ though the single persons in the Churches can be bound,  
“ yet the Churches always have liberty.”\*

Luther in the “*Formula Missæ et Communionis*” for the Church of Wittenberg, which appears to have been written in 1523, speaking of the ceremonies of Divine worship which he recommends, says :—

“*Sexto, requiritur Evangelii lectio. Ubi nec candelas  
“ neque thurificationem prohibemus, sed nec exigimus, esto  
“ hoc liberum.*”†

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\* The Bishop continues (p. 109) thus :—

“ This rule is to be understood positively and affirmatively, that is, the  
“ Church in all her constitutions must take care that the Church be edified  
“ and built up in some grace or other ; but not so, that whatsoever is for edifi-  
“ cation, she hath power to command. The measures and limits of her legis-  
“ lative power I have already described ; it must be within those circles : and  
“ though other things without them may be useful and fit for instruction, or  
“ to promote the interest of a virtue, yet Christ hath left them at liberty, and  
“ His Church hath no power to bind beyond His commission. They can  
“ exhort and persuade, and, by consent, they can prescribe, but to the making  
“ of a law there is something else required besides that it be apt to edify or to  
“ instruct. For (besides that it must be of something placed in her power) it  
“ must edify, and not destroy ; it must build up, and not pull down ; that is, it  
“ must build with all hands, and not pull down with one.

“ I instance in the institution of significant ceremonies, that is, such which  
“ are not matters of order and decency, but merely for signification and the  
“ representation of some truth or mystery. Those which are prudently  
“ chosen are in their own nature apt to instruct. Thus, the use of pictures in  
“ the Greek and in the Lutheran Churches is so far useful, that it can  
“ convey a story, and a great and a good example to the people that come  
“ thither, and so far they may be for edification. But because these can also,  
“ and do too often degenerate into abuse, and invade religion, to make a law  
“ of these is not safe ; and when that law does prevail to any evil that is  
“ not easily by any other means cured, it does not prevail upon the con-  
“ science, and, indeed, to make a law for the use of them, is not directly  
“ within the commission of the ecclesiastical power.”

† The note of the learned editor, Daniel, in his edition of the *Codex Liturgicus*,  
(Leipsic, 1848,) on this, is :

“ *Sunt quibus thuris odor tam luculentum sit documentum Romanismi, ut,*

The same spirit of true liberality is exemplified in the writings of the late most distinguished American Prelate, the Bishop of Vermont. Speaking of ornaments used in the services of the Church, he observes:—

“ The same liberty exists with regard to lights upon or behind the altar, the use of chrism and incense, the mixing of water with the wine of the Holy Eucharist, and the representation of figures and emblems in stained glass windows; for all of these were established by usage in the second year of Edward VI., and our Church has uttered no *prohibition* concerning any of them, but has merely *omitted* to notice them, directly or indirectly, in her whole legislation. It is certain that none of these things interfere with our liturgy, because they may be used without deviating in the slightest degree from our prescribed forms.

“ And the plain result would seem to be, that their introduction, whether expedient or not, can never be justly considered unlawful.”—(*Law of Ritualism, by Bishop of Vermont, p. 84.*)

Great variety of usage is to be found in the Greek, the Roman, the Gallican, and the English Churches upon this subject. All persons moderately acquainted with Ecclesiastical history are aware with what zeal and tenacity the Church of Milan\* has clung to its Ambrosian rite;—of the various liturgies of the Greek Church, and the different uses in England which, though much reconciled by the famous use of Sarum, were ultimately merged in our present Prayer Book.

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“ si navibus ducant bonos odores thymiatum, statim clament, se odorari ecclesiam Romano-Catholicam. Vident, thuris oblationem Luthero esse ἀδιάφορον. Hoc tamen certum est, thurificationis vestigia in ecclesiâ Lutheri exstare vestigia fere nulla (cf. p. 24.) In hâc urbe nostrâ Halensi sæpius vidi in ecclesiis tribus majoribus, si summæ celebrabantur festivitates, pueros, cum acerris fumigantibus ecclesiæ navim percurrentes: sed hæc cærimonia magis ad εὐωδιδὸν quandam respicere videtur, quam ad cultum divinum.”

\*The writer speaking of the reforms of the Roman Liturgy about the time of, and after the Council of Trent, ascribes the preservation of the Use of Milan, to the energy of the great Archbishop San Carlo Borromeo:

“ Or dirò di quanto ha fatto S. Carlo per la difesa e per la ristorazione dei riti e delle ceremonie Ambrosiane. Se un uomo di debole tempra avesse a quei tempi tenuta la seda Arcivescovil e di Milano, l'antichissima nostra liturgia, espressione e conservazione di più riti primitivi, era forse per subire quelle sorti, che toccarono, già son più secoli, alla gallicana poi alla mozarabica . . . . .

“ Ora non è più a temersi alcun pericolo per la continuità del rito Ambrosiano immobilmente stabilito sul possesso e sulla pratica di presso a diciotto secoli, e tenuto in conto di caro e prezioso deposito che i presenti han ricevuto dai maggiori e devono tramandare ai posteri intatto ed illibato.”—(*Esposizione delle Ceremonie della Messa Privata giusta il Rito Ambrosiano, p. 18 e 20.*)

I will close my citations on this subject with one from the Great Roman Ritualist, Bona :

“ Quarto tanquam verissimum, et apud omnes indubitatum habendum est id quod sæpius in hoc libro repetendum fuit, quædam esse in ecclesia, quæ ad fidem ut dogmata, quædam quæ ad ritus ut mores pertinent. Quæ fidei sunt, sancta inviolabilia, immutabilia semper, et ubique manent; Deumque solum auctorem agnoscunt. Ad ea credenda cæco quodam obsequio captivum ducimus intellectum; ut si quis ea turbare, vel quovis modo immutare aut iis contradicere ausus fuerit, diro anathemate percussus extra ecclesiam fit, nec locum deinceps habet inter Orthodoxos. Ritus et ea quæ morum, ac disciplinæ sunt ab hominum arbitrio pendent, et cum tempore variantur, rerumque statu immutato veteres consuetudines abrogantur, et novæ succedunt, illæsa fidei unitate.”—(*Bonæ, Opera Omnia, “Rerum Liturgicarum,”* Lib. i., cap. xxiii., p. 265.)

“ Moribus autem immutatis sacros quoque ritus variari consequens fuit.”

“ Distinguendæ igitur ætates disquirenda mutationis ratio et omnia ad sua principia revocanda sunt ut certa rerum notitia habeatur.” (*Bonæ, Rer. Lit.,* Lib. i., c. 18, s. 1. p. 242.)

(IX.) Ritus ac cærimoniæ non in æternum permanent tollique possunt ac mutari sine fidei ac unitatis dispendio. (*Ib.* § 9, p. 247.)

I have thought it expedient to recite the foregoing authorities upon the nature of Rites and Ceremonies in order to fortify my position, that the questions now pending before me in no way affect the relations of the Church of England to the Church Catholic, but have reference solely to matters of detail and order in her ministrations, which every independent Church has at all times claimed and exercised; and having thus, I trust, divested the issue of the case before me of that importance which has been, not unnaturally perhaps, ascribed to it by the excited feelings of both parties, I return to the consideration of the charges contained in these criminal articles.

I am not called upon to pronounce in the judgment which I am about to deliver any decision upon any question of doctrine. If, indeed, the law had cast so grave a responsibility upon me, I should have much considered whether it would not have been right and proper to have invoked the aid of spiritual assessors, competent from their position and learning in the Church, to have assisted and guided me in the discharge of such a duty. I thank God, however, that

no such consideration embarrasses me on the present occasion.

*Criminal Articles in the Ecclesiastical Court distinguished from an Indictment.*

Two conclusions result from the premises which I have stated: first, that the matters in dispute are Ceremonies; and secondly, that they belong to that category of Ceremonies which are designated "mutable."

There is also a proposition of fact which should be mentioned in this place, that none of the ceremonies complained of are expressly directed to be used either in the Prayer Book or the Act of Uniformity.

The promoter avers, and undertakes to prove, that with respect to these matters of charge, Mr. Mackonochie has violated the Statutes of Uniformity, certain specified canons of those enacted by the Convocation and Crown in 1603, and the general ecclesiastical law.

The counsel for Mr. Mackonochie have contended, that inasmuch as a breach of the Statutes of Uniformity rendered Mr. Mackonochie liable to be proceeded against criminally in a court of common law, as well as in this court, I am bound to apply the same rules and observe the same strictness required by the common law courts in a matter of indictment. I am of a different opinion, having regard both to principle and to precedent; nor do I admit the proposition that unless Mr. Mackonochie be proved to have committed a breach of the Statutes of Uniformity, although he should be proved to have offended against the law ecclesiastical, that he is entitled to an acquittal from the charges now laid against him. I deem it to be my duty to consider whether the defendant be or be not proved to have offended against the laws ecclesiastical in the matter of one or more, or all, of these criminal charges, and to give my decision accordingly.

I have been referred to a case (*R. v. Sparkes*, 3 Mod. Rep., 79; *Cripps*, Laws of the Church, 626; 2 Burn's Eccl. Law, 429). This was an indictment in the first year of James II. against a clergyman, at the Quarter Sessions in Devonshire, for using *alias preces* in the Church, and *alia modo* than mentioned in the Book of Common Prayer; and the indictment concluded *contra formam statuti*, &c. He was found guilty, and fined 100 marks. Upon writ of error, it was admitted that offences against these statutes might be inquired of by the justices, but the indictment was held bad, for that it ought to have alleged that the defendant

used other forms and prayers instead of those enjoined, which were neglected by him; for that otherwise any person might be indicted who used prayers before his sermon other than such as are required by the Book of Common Prayer; and Mr. Cripps observes, that although this decision established that justices had jurisdiction in such cases, and that indictments, properly framed for offences against these statutes, might be inquired of by them, yet it is probable that indictments of this nature have been very rarely, if ever, preferred; for the jurisdiction of the ecclesiastical court was in no way taken away by those statutes. And wherever it may have been necessary to institute any penal proceedings against clergymen for the omission of, or addition to, anything contained in the Book of Common Prayer, the proceeding has probably been always in the ecclesiastical court; and, indeed, prosecutions in the temporal courts upon those statutes seem to have been discouraged by the judges; for in a case at the Thetford Lent Assizes in 1795, a clerk was indicted upon these statutes, but the evidence was not that he left out or added any prayers, or altered the form of worship, but that he did not read prayers twice on a Sunday, but alternately one Sunday in the morning and the next in the evening, and omitted to read them at all on certain saints' days. Mr. Baron Perryn, who tried the indictment, observed, that it was *primæ impressionis*, and being of opinion that the offence complained of was purely of ecclesiastical cognizance, and not the subject of prosecution in the temporal courts, directed the jury to acquit the defendant, which they accordingly did.

Looking at all the circumstances it does not appear to me that the case of *Rex v. Sparkes* is worthy of much attention, and it will in no way influence my judgement.

The principal heads under which the argument of the Counsel for the Promoter may be ranged appear to me to be the following:

First. That as by each and all of the practices charged in these articles, a new rite or ceremony has been added by Mr. Mackonochie to those which are prescribed by the Statutes of Uniformity, such practices are unlawful.

Secondly. That these particular additions are expressly prohibited.

Thirdly. That they are by necessary implication prohibited, inasmuch as they are connected with Roman or Popish doctrines.

Fourthly. That as such they have, as a matter of fact, been disused ever since the Reformation.

Now it appears to me necessary to examine, in the first

instance, these two last grounds of objection, inasmuch as a consideration of the weight due to them must affect the general application of the law,—wherever it be obscure or ambiguous, or silent as to positive precept,—to the particular subject of these criminal charges.

*Identity of the Status of the Church before and after the Reformation.*

I will, therefore, consider in the first instance what weight is to be ascribed to the proposition—

“ That they are by necessary implication prohibited, inasmuch as they are connected with Roman or Popish doctrines.”

The counter proposition appears to be that the similarity of these ornaments and practices with those in the Church of Rome does not furnish a safe criterion whereby to try the question of their legality in the Church of England. That the true criterion is conformity with primitive and catholic use, and not antagonism to Rome.

A great part of the arguments addressed to me by the Counsel on both sides was founded upon one or the other of these propositions.

I am very far from complaining of these arguments, or of the length to which they extended, for in my opinion a careful consideration of these propositions, however large, grave, and difficult, is a necessary preliminary to the due construction of the laws, formularies, and usages involved in the present inquiry.

They must, if this construction be doubtful, receive, so to speak, a colour and complexion from the judgement which is formed upon the spirit and principles which governed the Reformation of our Church.

It is my duty to form this judgement upon an historical examination—however unequal my powers may be to the task—into the principal acts of the State and the Church which, since the great epoch of the Reformation, have introduced, accompanied, and settled the ecclesiastical establishment of this kingdom.

It is scarcely necessary to say that where the language of a Statute is plain I must obey it, or that where the Court of Appeal has laid down a principle applicable to this case, I must follow it. But, where I have no such guide, I must seek the exposition of the law from the general language of the cardinal statutes, the public and authoritative declarations which accompanied and illustrated them, the judicial construction which they have received, the formularies which

these Statutes ordered, whether with or without the concurrent sanction of the Church, though happily the latter alternative is of rare occurrence; I must also consider the canons which bind the clergy, and the opinions of the Bishops and great divines of our Church, who were not unfrequently also the councillors of the State and the authors of the formularies.

#### A.—*Identity in Law.*

I propose to pursue my investigation in the following order: first, I will consult the law; secondly, I will have recourse to historical and theological statements.

The inquiry into the law admits of the following subdivisions: the statute law; the canons enacted since the Reformation; and the general common law of the Church.

\* In the history of no kingdom is the independence of the National Church written with a firmer character than in that of England, in the Statutes of the Realm, in the decisions of Judicial Tribunals, and the debates of Parliament.

The Constitutions of Clarendon, in Henry the Second's reign (A.D. 1164), though directly aimed at the repression of the inordinate claims and privileges of the National Church, were, no doubt, indirectly "calculated," as Hume observes, "to establish the independency of England on the Papacy;" and therefore, when the King sought Pope Alexander's ratification of them, that Pontiff annulled and rejected all but six out of the sixteen memorable articles.

The resistance of Beckett, and, still more, the general feeling excited by the wicked and impolitic murder of that prelate, procured the practical abrogation of the articles objected to, by the enactments of Edward I. and III., of Richard II., of Henry IV. and V., and of Edward IV.

But in the severe penalties attached to the Statutes of *Provisors* and *Præmunire* may be read the steady determination of the English people to maintain an independent National Church, and to resist the ultramontane doctrines which had taken root in some other countries.

The Statute of Provisors (25th Edw. III., St. 6., A.D. 1350) recites that "the Holy Church of England" was founded in the "estate of prelacy within the realm of England" by the "King and nobles of England, and forbids the prevalent abuses of the Pope's bestowing benefices upon *aliens*, "benefices of England which be of the advowry of "the people of Holy Church," the reservation of first-fruits to the Pope, and the *provision* or reservation of benefices to

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\* Phillimore's International Law, Vol. 2. pp. 412. 416.

Rome. By 38th Edward III., St. 2., c. 1. (A.D. 1363), persons receiving citations from Rome in courts pertaining to the King, &c., are liable to the penalty of 25th Edw. III.

The Statute (A.D. 1392) 16 Richard II. c. 5. renders the procuring of Bulls from Rome liable to *præmunire*, and it recites a variety of Papal aggressions upon the privileges of the Crown; among other matters, as to the translation of Bishops out of the realm, or from one bishopric to another within the realm; and the carrying of treasure out of the realm; and so the realm, destitute as well of counsel, as of substance, to the final destruction of the said realm, and so the Crown of England, which hath been so free at all times that it hath been in no earthly subjection, but immediately subject to God in all things touching the regality (*la regalie*) of the same Crown, and to none other, should be submitted to the Pope, and the laws and statutes of the realm by him defeated and avoided at his will, in perpetual destruction of the sovereignty of the kingdom of the King and Lord, his Crown, his royalty, and of all his realm, which God defend.

This statute before the Reformation, and the subsequent enactment of 24 Henry VIII. c. 12., and the great case of *Cawdry*\* as reported by Lord Coke and corrected by Bishop Stillingfleet, may be said to contain a treatise on constitutional law of England upon the subject of the usurpation of the Papal See upon the liberties of the National Church, and in regard to the authority and privilege of the English Crown. It would be difficult to conceive a clearer or more dignified exposition of the law upon this subject than is contained in the prefatory part of the statute of Henry VIII. "Where by divers sundry old authentick histories and chronicles it is manifestly declared and expressed, that this realm of England is an empire, and so hath been accepted in the world, governed by one supreme head and king, having the dignity and royal estate of the imperial Crown of the same, unto whom a body politic, compact of all sorts and degrees of people, divided in terms, and by names of spirituality and temporalty, been bounden and owen to bear next to God a natural and humble obedience; he being also institute and furnished, by the goodness and sufferance of Almighty God, with plenary, whole, and entire power, pre-eminence, authority, prerogative, and jurisdiction, to render and yield justice, and final determination to all manner of folk, resiants, or subjects within this his realm, in all causes, matters, debates, and contencions, happening to occur, insurge,

\* 3 Coke, 1. Stillingfleet's *Eccles. Cases*, "Of the Foundation of Ecclesiastical Jurisdiction," Vol. 2. p. 49.



“ or begin within the limits thereof, without restraint or provocation to any Foreign Princes or Potentates of the world; the body spiritual whereof having power, when any cause of the law divine happened to come in question, or of spiritual learning, then it was declared, interpreted, and showed by that part of the said body politic called the spirituality, now being usually called the English Church, which always hath been reputed, and also found of that sort, that both for knowledge, integrity, and sufficiency of number, it hath been always thought, and is also at this hour sufficient, and meet of itself, without the intermeddling of any exterior person or persons, to declare and determine all such doubts, and to administer all such offices and duties as to their rooms spiritual doth appertain; for the due administration whereof, and to keep them from corruption and sinister affection, the King’s most noble progenitors, and the antecessors of the nobles of this realm, have sufficiently endowed the said Church both with honour and possessions; and the laws temporal for trial of property of lands and goods, and for the conservation of the people of this realm in unity and peace, without rapine or spoil, was and yet is administered, adjudged, and executed by sundry judges and ministers of the other part of the said body politic, called the temporality; and both their authorities and jurisdictions do conjoin together in the due administration of justice, the one to help the other.”

At the period of the Reformation the National Church introduced an express denial of the authority of the Pope,—henceforth called in all public acts and documents the Bishop of Rome,—into her articles and canons, and an acknowledgment of the temporal supremacy of the Crown over the ecclesiastical as well as the civil state. Henry VIII. was excommunicated, and in the Bull his subjects were commanded to renounce their allegiance, and the nobles were ordered “*sub ejusdem excommunicationis ac perditionis bonorum suorum pœnis,*” to unite with all Christian princes in expelling Henry from England. Elizabeth was excommunicated in pretty similar terms, but not until twelve years after her accession. In answer to a request from the Emperor and other Roman Catholic princes, that she would allow the Roman Catholic places of worship, she replied that she would not allow them to keep up a distinct communion, alleging her reasons in these remarkable words, “for there was no new faith propagated in England; no religion set up but that which was commanded by Our Saviour, practised by the primitive Church, and unanimously approved

“ by the fathers of the best antiquity.” The Roman Catholics, both in England and Ireland, appear to have outwardly conformed to the services of the Church for about ten years.

The peculiar character of the English people and the English Church, is also strongly shown in their determination not to admit the general body of the Canon Law into these realms, but only such portions of it as were consistent with the Constitution, the Common Law, and the peculiar usages of the Anglican Church. The rules of the general Canon Law were principally introduced into this country, and considerably modified in their introduction through the medium of provincial constitutions passed by the authority of the Metropolitans of England. It is true that the Pope endeavoured to maintain his authority in this matter by sending legates from time to time, and by the device of creating the Archbishop of Canterbury “*legatus natus*” of the Holy See.\* But England possesses in her provincial constitutions, collected by Lyndewode, a body of domestic ecclesiastical law, upon which, before the Reformation, a national independent character was in many respects impressed. The common law was always disposed to recognize these constitutions, while to the general canon law it always manifested considerable averseness.

But it has always been the doctrine of the temporal and ecclesiastical courts since the Reformation that the constitutions contained in Lyndewode, and the general usages of the Church, and certain portions of the canon law admitted by those usages, are still binding upon the Church of this realm.

I will give some instances :

So late as the year 1848 criminal articles were preferred against a clerk in holy orders for accepting a benefice with cure of souls whilst in possession of another benefice with a cure of souls without dispensation. The articles alleged that by the 29th canon of the 24th Council of Lateran, A.D. 1215, he was *ipso jure* deprived of the first living. Sir H. Jenner Fust observed “ The first of the articles sets forth the law, namely, that by a decree of the Council of Lateran, when any person in possession of a benefice with cure of souls shall accept another like benefice, the former

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\* “ Thus much is evident, as Gervasius, in the life of William, at this time (anno 1125) Archbishop of Canterbury, well observes, that the legatine power was looked upon as a breach of the law of England, and an invasion of the ancient liberties of the English Church and Nation, as well as the rights of the Sees of Canterbury and York in particular, and that the minds of men were scandalized and offended at it.”—Inett’s “*Origines Anglicanæ*,” Vol. II. p. 223.

“ becomes void, that is, he loses that benefice, and that is the law of this country at this time. The Statute of Henry VIII. does not affect this law, except that it makes the other living voidable; that is, by sentence, or void by presentation of the patron.”

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“ Under these circumstances, the facts being proved, the Court is bound to sign a sentence, declaring the perpetual curacy of Forest Hill void by Mr. Mavor’s acceptance of another benefice with cure of souls.”

In the case of *Saunders v. Head* (3 Curteis’s Rep. 577,) Sir Herbert Jenner Fust, said, “ It has been made a subject of complaint, on behalf of Mr. Head, that the articles do not contain any specification of the law relied on to establish them; that the first article is merely general, and that, under such general pleading it is difficult for a defendant to know how to address himself to the question of law applicable to his case; that the Canon law has been referred to generally without particular specification.”

\* \* \* \*

(p. 579)—

“ Now the objection taken in this case is not taken for the first time, it has been frequently taken in this Court, and, as often, overruled. The answer always given to the objection is, that where the general law ecclesiastical is relied on, it is not necessary to plead specifically; that where the offence is one generally cognizable in the Ecclesiastical Court it is not necessary to point out the particular Canon or Statute on which the proceedings are founded.”

In the case of *Kemp v. Wickes*, Sir John Nicholl said,— “ The law of the Church of England, and its history are to be deduced from the ancient general Canon law, from the particular constitutions made in this country to regulate the English Church, from our own Canons, from the rubric, and from any Acts of Parliament that may have passed upon the subject; and the whole may be illustrated, also, by the writings of eminent persons.”— (*Kemp v. Wickes*, 3 Phillimore’s Rep. 276.)

In the year 1866 a Royal licence was granted to Convocation to alter certain Canons of 1603; the licence recited the 25th of Hen. VIII. c. 29. restraining the meeting of Convocation, and continued as follows:—

“ And further, by the said Act it is provided that no canons, constitutions, or ordinance should be made or put in execution within this realm, by authority of the

“ Convocation of the Clergy, which shall be contrariant or  
 “ repugnant to the King’s prerogative royal, or the customs,  
 “ laws, or statutes of this realm, anything in the said Act to  
 “ the contrary thereof notwithstanding; and, lastly, it is  
 “ also provided by the said Act that such Canons, Constitu-  
 “ tions, Ordinances, and Synodals provincial which then  
 “ were already made, and which were not contrary or re-  
 “ pugnant to the laws, statutes, and customs of this realm,  
 “ nor to the damage or hurt of the King’s prerogative royal,  
 “ should then still be used and executed as they were upon  
 “ making of the said Act, till such time as they should be  
 “ viewed, searched, or otherwise ordered and determined by  
 “ the persons mentioned in the said Act, or the more part  
 “ of them, according to the tenor or form and effect of the  
 “ said Act, as by the said Act amongst divers other things  
 “ more fully and at large it doth and may appear.”

*B.—Historical and Theological Statements as to Identity.*

Having made these observations with regard to the connection that subsists between the law as to the Church before and after the Reformation, I will now advert to the evidence of identity furnished by our history and theology since the Reformation.

5 In 1549, Edward the Sixth’s government in their message to the Devonshire rebels state, “ It seemeth to you a new  
 “ service, and indeed is none other but the old; the self-same  
 “ words in English which were in Latin, saving a few things  
 “ taken out.” \*

Constant references are made in the Homilies, which were produced under the auspices of Cranmer early in the reign of Edward VI., to the “ usages of the primitive  
 “ Church,” and the “ sentences and judgements of the most  
 “ ancient, learned, and godly doctors of the Church.”

Collier, † speaking of the various influences at work during this reign, says, “ Peter Martyr concurred with Bucer  
 “ in his animadversions upon the Common Prayer Book, as  
 “ appears by his letter to him upon that subject.

“ However, from what has been observed, the reader  
 “ may perceivè Bucer was somewhat overcharged with  
 “ scruples, and carried his censure too far. Neither are his  
 “ remarks at all reconcileable with his concessions in the  
 “ beginning of his discourse. And, amongst other things, his  
 “ setting aside antiquity with so much ease is particularly

\* Foxe, Acts and Mon., v. p. 734. Note to Procter on the Book of Common Prayer, p. 25, 26.

† Ecclesiastical History of Great Britain, Vol. V., Book IV., p. 406.

“ remarkable. There is a great deference, without doubt, “ due to the authority of the first centuries. It was “ then the apostolical traditions were fresh, miracles were “ frequent, and the Church under the conduct of a distin- “ guishing illumination. Then secular views and projects “ of ambition were foreign to inclination. Under such “ opportunities and qualifications what room is there for “ suspicion of ignorance or foul dealing. To reject the “ usages of the ancient Church, because we do not meet “ with them in Scripture, is no good logic. It is plainly “ not the design of the New Testament to furnish liturgies “ and rituals. The converts to St. Peter’s sermon continued “ stedfastly in breaking of bread ; † that is, administering the “ Holy Eucharist ; and in prayers. But what the prayers “ were at this solemnity is nowhere delivered in Scripture. “ Where the extraordinary effusions of the Holy Ghost “ were not supplied, things of this nature were left to the “ discretion of the spiritual directors, who were to govern “ themselves by St. Paul’s general rule, ‘ Let all things be “ done decently and in order.’ (1 Cor. xiv.)

“ It is true, if the religious customs of antiquity were “ plainly inconsistent with the doctrine of the inspired “ writings, we ought to stand off from them ; but in other “ cases our Saviour’s saying is applicable to the present “ purpose, ‘ He that is not against us, is for us.’ And “ when the governors of the Church are under no restraint “ as to ceremonies and compositions, what should hinder “ them from following their judgements, and directing as “ they think fit ? ‘ For where there is no law, there can be “ no transgression.’ What should hinder them in this case “ from enlarging the circumstances of worship, from “ assisting the memory, raising the affections, and explaining “ the mysteries, with additional ceremonies and devotions ?

“ His objection against primitive usages, because they “ have been overvalued and misapplied by the Church of “ Rome, goes upon a mistaken ground ; for, granting the alle- “ gations hold good, there is no consequence in the reason- “ ing. To argue from the abuse against the use of things “ is the way to take our bibles from us ; for what book has “ been more abused than the inspired text ? By this topic “ almost everything in religion and nature must be cen- “ traband and prohibited. Bucer was formerly sensible of “ this fallacy ; he saw the danger of disputing at this rate, “ and determines against it. To quit antiquity in any “ custom because it is continued in the Church of Rome “ has neither reason nor charity in it. It is a peevish

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† Acts ii. 42.

“ principle, and helps to keep up a spirit of division. We ought rather to lament the breaches in the Church than make them wider. All reproachful language, humoursome distance, and unnecessary squabbles, serve only to exasperate one part of Christendom against another, and make our common religion the jest of infidels and atheists.”

The same author\* thus introduces the subject of the apology of Jewel, which is referred to in the 36th of the Canons of 1603.

The next remarkable occurrence is Bishop Jewel's sermon at Paul's Cross. It was preached in Lent this year upon these words of the apostle Paul, “ I have received of the Lord that which also I deliver unto you.” From this text he took occasion to make that remarkable challenge in defence of the Reformation. The Church of England was reproached with novelty by the Papists, and charged with departing from primitive doctrine and practice. To wipe off these aspersions the Bishop put the case upon a bold issue, and declared in the pulpit, “ That if any learned men of all our adversaries, or if all the learned men that are alive, are able to bring any one sufficient sentence out of any old Catholic doctor or father, or out of any general council, or out of the Holy Scriptures of God, or any one example of the primitive Church, whereby it may be plainly and clearly proved that for the six hundred years after Christ there was any private mass in the world; or that there was any communion administered under one kind; or that the people had their common prayer in a language which they did not understand; or that the Bishop of Rome was then called universal bishop or head of the universal church; or that the people were then taught to believe that Christ's body is really, substantially, corporally, carnally, or naturally in the sacrament,” &c. &c.

“ If any one of his adversaries were able to make good but a single proposition amongst all these, either by sufficient declarations in Scripture, or by the testimony of the ancient fathers and councils, he was ready to give up the contest and subscribe himself a proselyte.”

It is not unworthy of remark that in the Canon of 1571, concerning preachers, it is ordered, “ In primis videbunt concionatores, nequid unquam doceant pro concione quod à populo religiosè teneri et credi velint, nisi quod consentaneum sit doctrinæ Veteris aut Novi Testamenti, quodque ex illâ ipsâ doctrinâ Catholici patres et veteres episcopi collegerint.”

\* Collier's Ecclesiastical History, Vol. 6., page 303.

The Puritans did not dispute the lawfulness of set forms of prayer, but they were to be such as were used in Geneva and Scotland (*Neale's History*, p. 236. *Madox*, p. 78.) But Bishop Burnet observes, speaking of the year 1548\*: "It being resolved to bring the whole worship of God under set forms; they (our Reformers) set one general rule to themselves (which they afterwards declared) of changing nothing for novelty's sake, or merely because it had been formerly used. They resolved to retain such things as the primitive Church had practised, cutting off such abuses as the latter ages had grafted on them, and to continue the use of such other things which, though they had been brought in not so early, yet were of good use to beget devotion, and were so much recommended to the people by the practice of them that the laying aside these would, perhaps, have alienated them from the other changes they made; and, therefore, they resolved to make no change without very good and weighty reason. In which they considered the practice of our Saviour, who did not only comply with the rites of Judaism himself, but even the prayer he gave to his disciples was framed according to their forms; and his two great institutions of Baptism and the Eucharist did consist of rites that had been used among the Jews; and since he who was delivering a new religion, and was authorized in the highest manner that ever any was, did yet so far comply with received practices as from them to take those which he sanctified for the use of his Church, it seemed much fitter for those who had no such extraordinary warrant to give them authority in what they did, when they were reforming abuses, to let the world see they did it not from the wanton desire of change or any affectation of novelty, and with those resolutions they entered on their work."

I now approach an authority to which almost universal homage has been accorded,—the authority of Hooker.†

"They," he says, "which measure religion by dislike of the Church of Rome think every man so much the more sound by how much he can make the corruption thereof to seem more large; and, therefore, some there are, namely, the Arians in reformed churches of Poland, which imagine the canker to have eaten so far into the very bones and marrow of the Church of Rome as if it had not so much as a sound belief, no not concerning God himself, but that the very belief of the Trinity were a part of antichristian

\* History of Reformation, Vol. 2, page 150.

† Hooker, Book IV., Chap. VIII.

“ corruption; and that the wonderful providence of God  
 “ did bring to pass that the bishop of the see of Rome  
 “ should be famous for his triple crown,—a sensible mark  
 “ whereby the world might know him to be that mystical  
 “ beast spoken of in the Revelation, to be that great and  
 “ notorious antichrist in no one respect so much as in this,  
 “ that he maintaineth the doctrine of the Trinity. Wisdom  
 “ therefore and skill is requisite to know what parts are  
 “ sound in that church and what corrupted.

“ Neither is it to all men apparent which complain of  
 “ unsound parts, with what kind of unsoundness every such  
 “ part is possessed. They can say, that in doctrine, in  
 “ discipline, in prayers, in sacraments, the Church of Rome  
 “ hath (as it hath indeed) very foul and gross corruptions,  
 “ the nature whereof, notwithstanding because they have  
 “ not for the most part exact skill and knowledge to discern,  
 “ they think that amiss many times which is not; and the  
 “ salve of reformation they mightily call for, but when and  
 “ what the sores are which need it, as they wot full little,  
 “ so they think it not greatly material to search. . . .

“ \* That the Church of Rome doth hereby take occasion  
 “ to blaspheme, and to say our religion is not able to stand  
 “ of itself unless it lean upon the staff of their ceremonies, is  
 “ not a matter of so great moment that it need to be  
 “ objected, or doth deserve to receive an answer. The name  
 “ of blasphemy in this place is like the shoe of Hercules  
 “ on a child’s foot. If the Church of Rome do use any such  
 “ kind of silly exprobaton, it is no such ugly thing to the  
 “ ear that we should think the honour and credit of our  
 “ religion to receive thereby any great wound. They which  
 “ hereof make so perilous a matter do seem to imagine that  
 “ we have erected of late a frame of some new religion, the  
 “ furniture whereof we should not have borrowed from our  
 “ enemies, lest they relieving us might afterwards laugh and  
 “ gibe at our poverty; whereas in truth the ceremonies  
 “ which we have taken from such as were before us are not  
 “ things that belong to this or that sect, but they are the  
 “ ancient rites and customs of the Church of Christ, whereof  
 “ ourselves being a part, we have the selfsame interest in  
 “ them which our fathers before us had, from whom the  
 “ same are descended unto us. . . . .  
 “ . . . . .

“ No man which is not exceeding partial can well deny but  
 “ that there is most just cause wherefore we should be

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\* Hooker, Book IV., Chap. IX.



“ offended greatly at the Church of Rome. Notwithstanding  
 “ at such times as we are to deliberate for ourselves, the  
 “ freer our minds are from all distempered affections the  
 “ sounder and better is our judgement. When we are in a  
 “ fretting mood at the Church of Rome, and with that  
 “ angry disposition enter into any cogitation of the orders  
 “ and rites of our Church, taking particular survey of them,  
 “ we are sure to have always one eye fixed upon the  
 “ countenance of our enemies, and according to the blithe  
 “ or heavy aspect thereof our other eye showeth some  
 “ other suitable token either of dislike or approbation  
 “ towards our own orders. For the rule of our judgement  
 “ in such case being only that of Homer, ‘ This is the  
 “ thing which our enemies would have,’ what they seem  
 “ contented with, even for that very cause we reject; and  
 “ there is nothing but it pleaseth us much the better if we  
 “ espy that it galleth them.

“ Miserable were the state and condition of that Church  
 “ the weighty affairs whereof should be ordered by those  
 “ deliberations wherein such a humour as this were pre-  
 “ dominant. We have most heartily to thank God,  
 “ therefore, that they amongst us to whom the first consul-  
 “ tations of causes of this kind fell were men which aiming  
 “ at another mark, namely, the glory of God and the good  
 “ of this His church, took that which they judged thereunto  
 “ necessary, not rejecting any good or convenient thing  
 “ only because the Church of Rome might perhaps like it.”

The Puritans at the Hampton Court Conference in the reign of James the First vehemently objected to the sign of the Cross in the sacrament of Baptism, and the reply to their objections incorporated in the thirtieth canon (of 1603) deserves the careful study of those who would thoroughly understand the mind of the English Church upon the subject now under consideration :

“ † So that for the very remembrance of the Cross, which  
 “ is very precious to all of them that rightly believe in  
 “ Jesus Christ, and in the other respects mentioned, the  
 “ Church of England hath retained still the sign of it in  
 “ Baptism, following therein the primitive and apostolical  
 “ Churches. And this use of the sign of the Cross in Baptism  
 “ was held in the primitive Church, as well by the Greeks  
 “ as the Latins, with one consent and great applause. At  
 “ what time, if any had opposed themselves against it,  
 “ they would certainly have been censured as enemies of  
 “ the name of the Cross, and consequently of Christ’s merits,

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† Canon 30. (The lawful use of the Cross in Baptism explained.)

“ the sign whereof they could no better endure. This  
 “ continual and general use of the sign of the Cross is  
 “ evident by many testimonies of the ancient fathers.

“ It must be confessed that in process of time the sign of  
 “ the Cross was greatly abused in the Church of Rome,  
 “ especially after that corruption of popery had once pos-  
 “ sessed it. But the abuse of a thing doth not take away  
 “ the lawful use of it. Nay, so far was it from the purpose  
 “ of the Church of England to forsake and reject the  
 “ Churches of Italy, France, Spain, Germany, or any such  
 “ like Churches in all things which they held and practised,  
 “ that, as the apology of the Church of England confesseth,  
 “ it doth with reverence retain those ceremonies which doth  
 “ neither endamage the Church of God, nor offend the minds  
 “ of sober men, and only departed from them in those  
 “ particular points wherein they were fallen both from  
 “ themselves in their ancient integrity, and from the apos-  
 “ tolical Churches which were their first founders.”

Dr. Jackson who was President of Corpus Christi College  
 and Dean of Peterborough, one of our most learned divines,  
 writing A.D. 1629, in his treatise of the Holy Catholic  
 Faith and Church, says,\* “ That the title of *Catholic* is  
 “ proper and essential unto the faith professed by the present  
 “ visible Church of England, but cannot truly be attributed  
 “ to the faith or creed of the *modern visible Romish*  
 “ Church.

“ Whether the name *Catholic* were first bestowed upon  
 “ the Church, or upon that faith which is the life and soul  
 “ of the Holy Apostolic Church, shall be no part of our  
 “ inquiry. It sufficeth that the name *Catholic* itself is  
 “ univocal in respect both of Church and faith. True faith  
 “ is therefore *Catholic* faith because it is the only door or  
 “ way unto salvation, alike common unto all, without  
 “ national or topical respect. Whosoever of any nation  
 “ have been saved have been saved by this one and the same  
 “ faith, and whoever will be saved (as Athanasius speaks)  
 “ must hold this *Catholic faith*, and he must hold it *pure*  
 “ *and undefiled*. The main question then is, who they be  
 “ that hold this *Catholic faith*, and whether they hold it  
 “ *undefiled or no*. Were Vincentius’ rules as artificial as  
 “ they are orthodoxal and honest, the issue betwixt us and  
 “ the Romanist would be very easy and triable. But let us  
 “ take them as they are: ‘ Id Catholicum est quod ab  
 “ omnibus ubique et semper, etc.’ ‘ That is Catholic which  
 “ is held by all, in all places, and at all times.’

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\* Works, Vol. XII. Chap. 21, p. 161, ed. 1845.

“ The three special notes of the Catholic faith or church by him required are *universality, antiquity, and consent*. Whether these three members be different or subordinate, and oftentimes coincident I leave it to be scanned by logicians. According to the author’s limitation, all three marks agree to us, not to the Romanist.”

“ The fallacy by which the Romanists deceive poor simple people is in making them believe that our religion and their religion, our faith and their faith, are *duo prima diversa*, or so totally distinct that part of the one could not be included in the other. But for the *universality* of our faith we have every member of the Romish Church a suffragant or witness for us. First, nothing is held as a point of faith in our Church but the present Romish Church doth hold the same, and confess the same to have been held by all orthodoxal antiquity. So that for the *form* of faith established in our Church, we have the consent of the primitive Church, of the four first general councils, of all succeeding ages unto this present day, the consent likewise of the present Romish Church, and of ourselves. Now, as France is a great deal bigger than Normandy, if we compare them as distinct and opposite, and yet France and Normandy is bigger than France without Normandy, so likewise though the present visible Romish Church be much greater than the Church of England, yet seeing the Romish Church, how great soever, doth hold all the points of faith which our Church doth for catholic and orthodoxal, our consent and their consent, our confession and their confession, is more universal than their consent without ours. But if their consent unto the points of faith believed by us prove our faith to be universal, and our Church by consequence to be *catholic*, why should not our consent unto the points of faith believed by them prove their faith to be universal, or their Church to be *catholic*? Because it is not enough to hold all points of Catholic faith, unless the same points be kept *holy and undefiled*. The Romish Church, we grant, doth hold all points of Catholic faith, and so far as she hold these points we dissent not from her; yet dissent from her we do in that she hath *defiled* and polluted the Catholic faith with new and poisonous doctrines, for which she neither hath the consent of antiquity, nor of reformed churches.”

And again, answering that silly taunt of the Romanists, “ Where was your Church before the Reformation?” he observes: “ The question is much the same as if they should

“ ask us, where was King Henry the Seventh’s kingdom,  
 “ where were his subjects, where was your commonweal  
 “ whilst Richard the Third did call parliaments, and sway  
 “ the sceptre of this kingdom? The kingdom of Henry the  
 “ Seventh and of his successors, or the English common-  
 “ weal, was in the same place then as now it is. The depo-  
 “ sition of the tyrant, the dissolution of the tyranny, and  
 “ the reducing of English subjects to their true allegiance,  
 “ did work no essential alteration in the commonweal of  
 “ the kingdom, but only a reformation of the government,  
 “ and redcement of it to the fundamental laws of the  
 “ land.

“ No more did the rejection of the Romish Church’s  
 “ usurped authority in matters spiritual induce any sub-  
 “ stantial alteration in the English Church, but a reforma-  
 “ tion or reduction of it unto the fundamental constitution of  
 “ the primitive Church.”\*

In the warrant issued by Charles II. for the conference at the Savoy, which preceded the adoption of our present Prayer Book (Cardwell’s Conferences, p. 300), a commission of certain persons is appointed to advise upon and review the said Book of Common Prayer, comparing the same with the most ancient liturgies which have been used in the Church in the primitive and purest times.

So careful were the compilers of this great treasure of the Church that it should speak the Catholic language, to which Christian ears and hearts had been accustomed, while the apostolical spirits and doctrine still guided the undivided Church.

Hear on this subject the erudite and eloquent Donne : “ If  
 “ they (the Roman Catholics) say, we are perplexed with  
 “ differences of opinions amongst ourselves, let this satisfy  
 “ them, that we do agree all in all fundamental things ; and  
 “ that in things much nearer the foundation than those in  
 “ which our differences lie they differ amongst themselves,  
 “ with more acrimony and bitterness than we do. If they  
 “ think to perplex us with the fathers, we are ready to join  
 “ that issue with them ; where the fathers speak unanimously,  
 “ dogmatically, in matters of faith, we are content to be  
 “ tried by the fathers. If they think to perplex us with  
 “ councils, we will go as far as they in the old ones ; and,  
 “ as far as they for meeting in new councils, if they may be  
 “ fully, that is, royally, imperially, called, and equally pro-  
 “ ceeded in, and the resolutions grow and gathered there  
 “ upon debates, upon the place, and not brought thither

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\* Vol. 12., p. 131.

“ upon commandment from Rome.” — *Donne's Works*, vol. iii. p. 11.

Bishop Cosin, an authority of special significance and weight, because he largely assisted in the compilation of our Prayer Book,\* says: “ In truth we have continued the old religion; and the ceremonies which we have taken from them that were before us are not things which belong to this or that sect, but they are the ancient rites and customs of the Church of Christ, whereof ourselves being a part, we have the selfsame interest in them which our fathers before us had, from whom the same descended to us. To abrogate those things without constraint of apparent harm thence arising had been to alter unjustly the universal practice of the people of God and those general decrees of the fathers, which (in St. Augustin's language) is madness and insolence to do, both in respect of the universal authority of the Church, which no particular Church has power to control, and also in regard of reasons before mentioned.”

Archbishop Bramhall, who wrote in 1677 his “Just Vindication of the Church of England,” &c., says: “ But it is not enough to charge the court of Rome unless we can discharge ourselves, and acquit our own Church, of the guilt of schism which they seek to cast upon us. First, they object that we have separated ourselves schismatically from the communion of the Catholic Church. God forbid! Then we will acknowledge, without any more to do, that we have separated ourselves from Christ, and all His holy ordinances, and from the benefit of His passion, and all hope of salvation.

“ But the truth is, we have no otherwise separated ourselves from the communion of the Catholic Church than all the primitive orthodox fathers, and doctors, and churches did long before us, that is, in the opinion of the Donatists, as we do now in the opinion of the Romanists; because the Romanists limit the Catholic Church now to Rome in Italy, and those Churches that are subordinate to it, as the Donatists did then to Cartenna in Africa, and those Churches that adhered to it. We are so far from separating ourselves from the communion of the Catholic Church that we make the communion of the Christian Church to be thrice more catholic than the Romanists themselves do make it, and maintain communion with thrice so many Christians as they do. By how much our Church should make itself, as the case stands, more Roman than it is, by

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\* Preface to his Notes on the Common Prayer.

“ so much it should thereby become less catholic than it is.”  
—(*Works, folio, Dublin, Chap. IX.*)

“ As for my religion,” said the holy Ken, with almost his latest breath, “ I die in the holy catholic and apostolic  
“ faith, professed by the whole Church before the disunion  
“ of east and west ; more particularly I die in the commu-  
“ nion of the Church of England, as it stands distinguished  
“ from all papal and puritan innovations, and as it adheres  
“ to the doctrine of the Cross.”

Bishop Beveridge compiled, with infinite labour and accuracy, a *Codex Canonum Ecclesiæ Primitivæ vindicatus ac illustratus* :—in his preface to which are these words (s. 6.), “ For  
“ when this our English Church, through long communion  
“ with the Roman Church, had contracted like stains with  
“ her, from which it was necessary that it should be cleansed,  
“ they who took that excellent and very necessary work in  
“ hand, fearing that they, like others, might rush from one  
“ extreme to the other, removed indeed those things, as  
“ well doctrines as ceremonies, which the Roman Church  
“ had newly and insensibly superinduced, and, as was fit,  
“ abrogated them utterly. Yet notwithstanding whatsoever  
“ things had been at all times believed and observed by  
“ all Churches in all places, those things they most reli-  
“ giously took care not so to abolish with them. For they  
“ well knew that all particular Churches are to be formed  
“ on the model of the Universal Church, if indeed, accord-  
“ ing to that general and received rule in ethics ‘ every part  
“ which agreeth not with its whole is therein base.’ Hence,  
“ therefore, these first reformers of this particular Church,  
“ directed the whole line of that reformation which they  
“ undertook, according to the rule of the whole or Universal  
“ Church, casting away those things only which had been  
“ either unheard of, or rejected by the Universal Church,  
“ but most religiously retaining those which they saw, on  
“ the other side, corroborated by the consent of the Uni-  
“ versal Church. Whence it hath been brought to pass,  
“ that although we have not communion with the Roman,  
“ nor with certain other particular Churches, as at this day  
“ constituted, yet have we abiding communion with the  
“ Universal and Catholic Church, of which evidently ours,  
“ as by the aid of God first constituted, and by his pity still  
“ preserved, is the perfect image and representation.”

Observe how Barrow speaks in his *Treatise on the Pope’s Supremacy of the Council of Trent*. “ This new creed,” he says, “ of Pius IV. containeth these novelties and hetero-  
“ doxies ; (1) Nine sacraments ; (2) Trent doctrines of jus-  
“ tification and original sin ; (3) Propitiatory sacrifice of the

“ mass ; (4) Transubstantiation ; (5) Communicating under one kind ; (6) Purgatory ; (7) Invocation of Saints ; (8) Veneration of reliques ; (9) Worship of images ; (10) The Roman Church to be the mother and mistress of all Churches ; (11) Swearing obedience to the Pope ; (12) Receiving the decrees of all synods and of Trent.”

Bishop Sanderson\* believed that “ †all men would be found much mistaken who account all Popery that is taught or practised in the Church of Rome. Our godly forefathers, to whom (under God) we owe the purity of our religion, and some of whom laid down their lives for the defence of the same, were, sure, of another mind, if we may, from what they did, judge what they thought. They had no purpose (nor had they any warrant) to set up a new religion, but to reform the old, by purging it from those innovations, which on tract of time (some sooner, some later) had mingled with it, and corrupted it both in the doctrine and worship. According to this purpose they produced, without constraint or precipitancy, freely and advisedly, as in peaceable times, and brought their intentions to a happy end, as by the results thereof contained in the articles and liturgy of our Church, and the prefaces thereunto, doth fully appear. From hence chiefly, as I conceive, we are to take our best scanning, whereby to judge what is, and what is not, to be esteemed Popery. All those doctrines then held by the modern Church of Rome, which are either contrary to the written Word of God, or but superadded thereunto as necessary points of faith to be of all Christians believed under pain of damnation ; and all those superstitions used in the worship of God which are either unlawful as being contrary to the Word ; or being not contrary and therefore arbitrary and indifferent, are made essentials, and imposed as necessary parts of worship : these are, as I take it, the things whereunto the name of Popery doth properly and peculiarly belong. But as for the ceremonies used in the Church of Rome which the Church of England at the Reformation thought fit to retain, not as essential or necessary parts of God’s service, but only as accidental and mutable circumstances attending the same, for order, comeliness, and edification’s sake ; how these should deserve the name of popish, I so little understand, that I profess I do not yet see any reason why, if the Church had then thought fit to have retained some other of those which were then laid aside,

\* Died in 1663.

† Preface to fourteen sermons.

“ she might not lawfully have so done ; or why the things  
 “ so retained should have been accounted popish. The  
 “ plain truth is this : the Church of England meant to  
 “ make use of her liberty and the lawful power she had (as  
 “ all the Churches of Christ have, or ought to have) of  
 “ ordering ecclesiastical affairs here ; yet to do it with so  
 “ much prudence and moderation that the world might see  
 “ by what was laid aside, that she acknowledged no sub-  
 “ jection to the See of Rome ; and by what was retained,  
 “ that she did not secede from the Church of Rome out of  
 “ any spirit of contradiction, but as necessitated there-  
 “ unto for the maintenance of her just liberty. The  
 “ number of ceremonies was also then very great and  
 “ thereby burdensome, and so the number thought fit to  
 “ be lessened. But for the choice which should be kept  
 “ and which not, that was wholly in her power and at  
 “ her discretion.”

Bishop Smalridge, the accomplished friend of Addison,  
 wrote a sermon on the authority of the governors of our  
 Church, to prescribe rites and ceremonies (vol. 1, p. 145),  
 in the course of which he said :—

“ But because those who allow some rites to be lawful  
 “ may entertain some doubts concerning the use of ours, as  
 “ apprehending them to have some particular faults which  
 “ do not belong to all ceremonies in general, I shall proceed  
 “ to clear those which we of this Church are required to  
 “ observe, from such objections as are brought to prove  
 “ them unlawful and unwarrantable. Those who scruple  
 “ the use of them allege it as one main ground of their  
 “ scruples, that those ceremonies which are used in our  
 “ Church are also used in the Church of Rome, and they  
 “ are therefore cautious of observing them, lest they should  
 “ thereby countenance the errors and corruptions of that  
 “ Church. Now this would be a good argument against  
 “ the usage of such rites, if it could be proved that those  
 “ who err in some things do certainly err in everything ;  
 “ or, that we ought to show our abhorrence of the corrup-  
 “ tions of a Church by condemning and abolishing even  
 “ those usages which have nothing in them but what is  
 “ innocent and incorrupt. But we have not declared war  
 “ against those of that Church as they are Christians, but  
 “ as they are perverters of the Gospel of Christ ; we do not  
 “ profess to differ from them in everything, but only in  
 “ such things wherein we apprehend them to have degener-  
 “ rated from the pure and undefiled Church of Christ.

“ We think that we should not be able to vindicate our-  
 “ selves from the charge of schism, which they bring against



“ us, if whatever doctrine they held, whatever rite they practised, that we should, for no other reason but because they held and practised it, forthwith condemn and reject.

“ The ablest champions for the cause of the Reformation have always thought it the best answer against the charge of schism, to allege and prove that we have no further departed from them than they departed from the pure and primitive Church of Christ. What is contrary to the purity of the Gospel, that we reject; not because popish, but because repugnant to the laws and doctrines of Christ: what is noways contradictory to the simplicity of the Gospel, what may be subservient to piety, that we retain; not because practised by the Church of Rome, but because agreeable to the rules of the Gospel. If there be anything in our ceremonies that is sinful, they ought presently to be abolished, though there was nothing of the same kind practised by those of the Roman communion.\* What is decent and laudable in them cannot lose its worth and value, because others have them in common with us. If it be laid down as a good rule of reformation that we must depart as far as possible from Rome, we must renounce the articles of our creed, because they of that Church profess to believe them; we must declare ourselves Socinians that we may be thought staunch Protestants; and we must renounce the doctrine of the Trinity, because it is held by those who do also hold that of transubstantiation. In the Romish religion there are some things evil, some things good, some things wholly indifferent. Whatever is sinful in that communion we are bound to reject, and have, we think, accordingly rejected; what is good we ought to retain, and therefore do retain; what was indifferent, it was at the discretion of our reformers either to keep or change, as they thought should be more expedient. Private persons may, according to the variety of their judgments, think some things might have been kept which were left off, or some things might have been dropped which are still kept; but unless they can prove those that have been abolished to be necessary, or those that are reserved to be unlawful, they are bound quietly to submit to the abolition of the former, and to the usage of the latter.”

Bishop Bull writing in 1705 on “ *The Corruptions of the Church of Rome*, in answer to the Bishop of Meaux’ queries,” thus maintains the true position of our Church :

\* About this time Archbishop Tenison wrote a remarkable “ Discourse of Idolatry ” (Chap. XII., p. 279), and upon this principle vindicated the use of images and pictures in the Church of England.

“ I proceed to the bishop’s questions: He asks me what  
 “ I mean by the Catholic Church? I answer, What I mean  
 “ by the Catholic Church, in the book, which he all along  
 “ refers to, I have already shown, and the very title of the  
 “ book sufficiently declares. If he asks me what I mean by  
 “ the Catholic Church, speaking of it as it now is? I  
 “ answer, By the Catholic Church, I mean the Church  
 “ Universal, being a collection of all the Churches through-  
 “ out the world, who retain the faith (*ἀπαξ*) once delivered  
 “ to the Saints (Jude 3.); that is, who hold and possess in  
 “ the substance of it, that faith and religion which was  
 “ delivered by the Apostles of Christ to the first original  
 “ Churches, according to Tertullian’s rule before mentioned.  
 “ Which faith and religion is contained in the Holy Scrip-  
 “ tures, especially of the New Testament, and the main  
 “ fundamentals of it comprised in the canon or rule of faith,  
 “ universally received throughout the primitive Churches,  
 “ and the possession thereof acknowledged to be a sufficient  
 “ tessera or badge of a Catholic Christian. All the Churches  
 “ at this day which hold and profess this faith and religion,  
 “ however distant in place, or distinguished by different  
 “ rites and ceremonies, yea, or divided in some extra-funda-  
 “ mental points of doctrine, yet agreeing in the essentials of  
 “ the *Christian* religion, make up together one Christian  
 “ Catholic Church under the Lord Christ, the supreme  
 “ head thereof. The Catholic Church under this notion is  
 “ not a confused heap of societies separated one from  
 “ another.”—These are important words.—“ But it seems, no  
 “ other union of the Church will satisfy the bishop, but an  
 “ union of all the Churches of Christ throughout the world,  
 “ under one visible head, having a jurisdiction over them  
 “ all, and that head the Bishop of Rome for the time being.  
 “ But such an union as this was never dreamed of amongst  
 “ Christians for at least the first six hundred years, as shall  
 “ be shown in its due place.”

In addition to this mass of evidence derived from the  
 writings of English Divines, I may cite the following testi-  
 monies to the same effect from the works of three distin-  
 guished foreigners, who watched with deep interest the form  
 which the Reformation of the Church took in England,  
 Isaac Casaubon, Hugo Grotius, and Saravia:

Casaubon [ad Salmas Epist. 837, p. 489, A.D.] 1612:  
 “ Quod si me conjectura non fallit, totius Reformationis  
 “ pars integerrima est in Anglia, ubi cum studio veritatis  
 “ viget studium antiquitatis.”

Casaubon [Epist. ad Cardinal Perron, p. 494]: “ Parata  
 “ est Ecclesia Anglicana fidei suæ reddere rationem, et

“ rebus ipsis evincere, auctoribus Reformationis hęc instituta  
 “ non fuisse propositum novam aliquam ecclesiam condere,  
 “ ut imperiti et malevoli calumniantur; sed quę erant  
 “ collapsa, ad formam revocare quàm fieri posset optimam;  
 “ optimam autem judicarunt nascenti Ecclesię ab Apostolis  
 “ traditam, et proximis seculis usurpatam.”

Hugo Grotius [Epist. ad Boetsaeler, Ep. 62, p. 21, ed. 1637]: “ Certum est mihi *λειτουργίαν* Anglicanam, item  
 “ morem imponendi manus adolescentibus in memoriam  
 “ Baptismi, auctoritatem Episcoporum, et Presbyteria ex  
 “ solis Pastoribus composita multaque alia ejusmodi satis  
 “ congruere institutis vetustioris Ecclesię, a quibus in Galliã  
 “ et Belgio recessum negare non possumus.”

[Epist. ad Corvinum, Epist. p. 434]: “ Qui illam  
 “ optimam antiquitatem sequuntur ducem, iis non eveniet  
 “ ut multum sibi ipsis sint discolores. In Angliã vides  
 “ quam bene processerit dogmatum noxiorum repurgatio;  
 “ hęc maxime de causã, quod qui id sanctissimum negotium  
 “ procurandum susceperunt, nihil admiserint novi, nihil sui,  
 “ sed ad meliora secula intentam habuere oculorum aciem.”

Hadrian Saravia, the friend of Hooker: “ Among others  
 “ that have reformed their churches, I have often admired  
 “ the wisdom of those who restored the true worship of  
 “ God to the Church of England,—who so tempered  
 “ themselves, that they cannot be reprov'd for having  
 “ departed from the ancient and primitive customs of the  
 “ Church of God; and that moderation they have used,  
 “ that by their example they have invited others to  
 “ reform, and deterred none.” (*Wordsworth, Theophilus Anglicanus*, p. 171.)

In 1851 the Archbishops of Canterbury and York and twenty bishops published a statement in which they set forth “ the undoubted identity of the Church before and  
 “ after the Reformation;” and that at the Reformation the English Church rejected certain corruptions and established “ one uniform ritual,” but “ without in any degree  
 “ severing her connexion with the ancient Catholic Church.” (*Phillimore's International Law*, vol. ii. p. 422, and the *Guardian*, April 2, 1851.)

In 1867, eight primates and sixty-eight bishops assembled from all parts of the globe, under the presidency of the Metropolitan of Canterbury.

The resolutions of this conference were prefaced by the following introduction:

“ We, Bishops of Christ's Holy Catholic Church, in  
 “ visible communion with the United Church of England  
 “ and Ireland, professing the Faith delivered to us in Holy

“ Scripture, maintained by the Primitive Church, and by  
 “ the Fathers of the English Reformation, now assembled,  
 “ by the good providence of God, at the Archiepiscopal  
 “ Palace of Lambeth, under the presidency of the Primate  
 “ of all England, desire, first, to give hearty thanks to  
 “ Almighty God for having thus brought us together for  
 “ common counsels and united worship; secondly, we desire  
 “ to express the deep sorrow with which we view the divided  
 “ condition of the flock of Christ throughout the world,  
 “ ardently longing for the fulfilment of the prayer of our  
 “ Lord, ‘ That all may be one, as Thou, Father, art in me,  
 “ ‘ and I in Thee, that they also may be one in Us, that the  
 “ ‘ world may believe that Thou hast sent me;’ and, lastly,  
 “ we do here solemnly record our conviction that unity will  
 “ be most effectually promoted by maintaining the Faith in  
 “ its purity and integrity, as taught in the Holy Scriptures,  
 “ held by the Primitive Church, summed up in the Creeds,  
 “ and affirmed by the undisputed General Councils.”

But after all no argument for the continuity of the Church of England can be stronger than that which is derived from the structure, order, and contents of the Prayer Book. It contains the Breviarium, in which towards the end of the 11th century had been inserted all the offices of the canonical hours, called also *Portiforium* and in England *Portuary*, the *Missale* or the service for the Holy Communion, and the *Ordinale*, which is referred to under the name of the “*Pie*” in the preface. There were various “*Uses*” or Prayer Books in England, known as the *Salisbury*, the *York*, the *Bangor*, and the *Hereford Uses*, and others. The most celebrated appear to have been the *Portiforium* or *Breviary of Sarum*, which contained the *Daily Services*,—the *Sarum Missal*, which contained the *Holy Communion Service*,—and the *Sarum Manual*, a book of occasional offices. These books of devotion seem to have been compiled by *Osmund*, Bishop of *Salisbury*, about the time of the *Conquest*; and in 1531 a reformed edition of the *Sarum Portiforium* was reprinted, and shortly afterwards a reformed *Missal* was published. There were also *Primers*, which contained, in a vulgar tongue, large portions of the *Service* in use amongst the people. In 1536 the *Roman Breviary* was reformed, and published by a Spanish Bishop, *Cardinal Quignonez*; and in 1544 *Hermann*, Archbishop of *Cologne*, whom the Pope during the early sittings of the Council of *Trent* deprived,\* published a reformed ritual.†

In 1542 *Henry VIII.* directed convocation to consider

\* *Istoria del Concil. Trident.*—*Sarpi*, lib. II. § 59.

† See Preface to *Annotated Book of Common Prayer*.

the revision of the books of devotion then in use in this country. It is probable that the fruit of their labours, as well as the other works to which reference has been made, were laid before the royal visitors appointed by Edward VI. in January 1546-7, and the Committee of Convocation, to whom the preparation of the Prayer Book of 1549 was intrusted.

The whole Prayer Book in fact, with very inconsiderable exceptions, consists of a translation of the ancient liturgies, and especially of the liturgy used by the Western Church. And we learn from the preface to the Prayer Book that the object was to restore that "godly and decent order of the ancient fathers" which had been broken, and to introduce an order of prayer and reading of Holy Scripture "agreeable to their mind and purpose;" and that all suggested alterations which "secretly struck at some laudable practice of the whole Catholic Church of Christ" were rejected; and that the calendar contained a "table of feasts, vigils, fasts, and days of abstinence," which were in accordance with primitive and catholic use; while the ornaments of the Church and the vestments of the ministers were such as to present to the people some of the most prominent features of the ancient service, and were for this reason the ground of unceasing attack from the Puritans, and the disciples of the Genevan school. And it is the observation of Mr. Hallam, while speaking of the Roman Catholics, "that it was always held out by our Church, when the object was conciliation, that the liturgy was essentially the same with the mass book."—(*Constitutional History*, vol. i., p. 86.)

These premises, which I have stated at some length, lead me to the conclusion that no sound argument against the lawfulness of the matters objected to in these articles can be deduced from the mere fact of their identity with the ceremonies in use before the Reformation.

#### *Argument from Disuse.*

I will next consider the argument founded on the alleged *de facto* disuse, since the reformation, of the ceremonies or ornaments complained of in these articles.

It assumes this kind of shape:

"If these things were legal they would have been in use; their non-usage is almost fatal to their claim of legality; the presumption of law is strongly against them; and in order to refute that presumption a continuous usage must be established by those who maintain their lawfulness."

This argument seems to have been in the mind of the Judge of the Consistory of London in the Knightsbridge

Church cases, though at the same time he strenuously asserted that no provision of statute or lawful canon could be abrogated by non-user. The doctrine of desuetude he repudiated, as unknown to the law of England.

This argument from the long disuse of ornaments and observances recently revived cannot be altogether passed over.

The fact of disuse raises a practical prejudice, if not a legal obstacle to all such revivals. The consideration of the causes which have induced it has a bearing upon the discussion of the questions which I am to adjudicate.

The argument appears to me to admit of two distinct answers.

In the first place it proves too much ; for perhaps there is no historical fact more certain than this, namely, that the law derived from the rubrics and canons has never, at any period since the Reformation, been universally and duly obeyed. The proposition is startling, but I think unquestionably true. The instances of disobedience are striking, if not many ; take, as one example, the vestments of the clergy.

The rubric of Edward VI. provides :—

“ And here it is to be noted, that such ornaments of the Church, and of the ministers thereof, at all times of their ministration, shall be retained, and be in use, as were in this Church of England, by the authority of Parliament, in the second year of the reign of King Edward the Sixth.”

And the Judicial Committee of the Privy Council, in *Westerton v. Liddell*, most deliberately and emphatically decided that—

“ The rubric to the Prayer Book of January 1st, 1604, adopts the language of the rubric of Elizabeth ; the rubric to the present Prayer Book adopts the language of the Statute of Elizabeth ; but they all obviously mean the same thing, that the same dresses and the same utensils or articles which were used under the first Prayer Book of Edward VI. may still be used.” Their lordships say, “ No difficulty will be found in discovering amongst the articles of which the use is there enjoined, ornaments of the Church, as well as ornaments of the ministers. Besides the vestments differing in the different services, the rubric provides for the use of an English Bible,” &c. (*Liddell v. Westerton, Moore's Report, p. 156-9.*)

The dresses of which the use is prescribed in the first Prayer Book of Edward VI. are thus ordered :—

“ Upon the day, and at the time appointed for the minis-

“tration of the Holy Communion, the priest that shall execute the holy ministry shall put upon him the vestures appointed for that ministration; that is to say, a white albe plain, with a vestment or cope.”

“And whensoever the bishop shall celebrate the Holy Communion in the Church, or execute any other public ministration, he shall have upon him, beside his rochette, a surplice or albe, and a cope or vestment, and also his pastoral staff in his hand, or else borne or holden by his chaplain.”

The canons of 1603 could not alter or affect the positive provisions of a Statute; but, on the supposition that they alone were to be consulted, the use of the surplice in parish churches is distinctly enjoined by them (Canon 58). Nevertheless I well recollect that when Bishop Blomfield published his celebrated charge in 1842, the expression therein of his opinion, that the preacher ought to wear the surplice rather than the gown in the morning service, raised a storm of religious controversy and excited feeling upon which a sober-minded man now looks back with surprise and regret. And I cannot but agree with his biographer, that “it will hardly be denied, that the great principle for which Bishop Blomfield contended, that in Divine service all things should be done *decently*, but *in order*, is now acted upon in the Church of England to an extent, which, twenty years ago, would hardly have been expected by men of calm judgment, and which, thirty years ago, would by most have been pronounced impossible.”\*

The same canons enjoined the use of copes in cathedrals (canon 24), a special prayer called the bidding prayer to be used by all ministers before every sermon (canon 55), a passing bell to be tolled for every dying parishioner (canon 67); that “upon every Sunday or Holyday” the minister shall “under pain of suspension and excommunication, for half an hour or more, examine and instruct the youth and ignorant persons in his parish in the Ten Commandments, the Articles of the Belief, and in the Lord’s Prayer; and shall diligently hear, instruct, and teach them the Catechism set forth in the Book of Common Prayer” (canon 59); that a particular dress, minutely specified, shall be worn by ecclesiastical persons on a journey (canon 74); that the Litany shall be said or sung wherever appointed by the Prayer Book, more particularly upon Wednesdays and Fridays, though they be not holydays (canon 15).

The rubric directs that the holy elements shall be placed

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\* Memoir of Bishop Blomfield, Vol. 2, p. 64.

upon the Table of the Lord at a particular part of the service; but till lately, and before the decision of the Privy Council in favour of the use of the credence table, this rubric was generally disobeyed. The rubric is express in its directions, that "unless the minister be otherwise reasonably hindered," he shall perform daily service; that "the feasts shall be observed," in which category are included all Sundays, and certain feasts and saints days; and there is also a careful table of the vigils, fasts, and days of abstinence to be observed throughout the year; that "so many as intend to be partakers of the Holy Communion shall signify their names to the curate at least some time the day before." Private baptism, which was only to be allowed for "great cause or necessity," had so generally superseded public baptism, that the late Bishop of London was compelled expressly to forbid his clergy to baptize privately except in cases of necessity; and, indeed, of all these precise orders, of which the catalogue is not exhausted, having for their object the spiritual edification of members of the Church, how very few, till lately, within our own memory, have been obeyed, and how much more common has been the breach than the observance of them.

It is true that Mr. Mackonochie is not charged with any disobedience to the law in these respects; his offence is that of unauthorized addition, of doing too much and not too little in his ministrations in the Church; but I refer to this notorious fact of general disobedience to the law in these respects, because a revived obedience to it, not unnaturally, excites the surprise and sometimes the anger of persons who have been habituated to a more relaxed and less careful system. A compliance with the law has the effect of novelty upon them, and they are apt to consider as illegal not the desuetude of a prescribed usage, but the restoration of it.

This argument of disuse was most strongly urged in the Knightsbridge Church cases as conclusive against the Cross and the Credence Table; and it was truly said that the instances in which any trace of them could be substantiated by evidence, since the Reformation, were very few and inconsiderable,—not half-a-dozen I believe in number, and it was contended that such disuse amounted to a practical rejection of them by the Church. And this argument prevailed with the judges of the Consistory of London and of the Arches Court, who accordingly pronounced these things to be unlawful. But it did not avail before the Judicial Committee of the Privy Council, who, looking to their innocent and primitive use, reversed the sentence of these Courts and pronounced them to be lawful.



The mere fact, therefore, that the practice complained of is novel, furnishes by no means an irrefragable argument that it is unlawful, and it can afford, in truth, but little assistance in solving the question whether the practices charged against Mr. Mackonochie are or are not contrary to the law.

In the second place the alleged disuse or desuetude must be measured by a reference to the history of the institution during the period in which it has prevailed. The questions, —has that institution been during this period in its normal condition? has it been in a state of unconstrained freedom? of undisturbed liberty of action? or has it during this period been from time to time turned aside from its natural course? has it been oscillating between peril and disquiet and the apathy which is so often their reactionary successor? has it manifested, wherever it has been in a state of freedom, peace and vigour, a desire to restore and reserve as much as it could of a lawful inheritance which had been forcibly put in abeyance, and had that desire and endeavour always accompanied a revival of life and energy? These are questions which must be answered before the argument from disuse can be properly estimated. A careful examination of the history of this country, and more especially of that part of it which relates to the Church, affords some explanation of the careless and imperfect compliance with the directions and orders of the Prayer Book to which I have adverted. To enter at length into this history would far exceed the limits of my present judgment, but I will make a very cursory reference to the principal epochs.

From the reign of Edward VI. to the reign of Her present Majesty the intervals during which the Church has been undisturbed by troubles from within or without have been few.

During the short reign of Edward VI. she underwent various trials. Her worship and her ritual were twice dealt with by Parliament, and not only her revenues but the ornaments and treasures within her fabrics were scandalously plundered in order to fill the purses of the corrupt courtiers, of a precocious, well meaning, but prejudiced and narrow-minded boy, who, during the few years of his reign, was little more than an instrument in the unscrupulous hands of the religious and political factions which surrounded and besieged his throne.

I will borrow the language of Fuller in his Church History of Britain (*Book VII. p. 401*).

Speaking of the year 1549, this quaint but faithful historian says—

“ Come we now to the saddest difference that ever happened in the Church of England, if we consider either the time how long it continued, the eminent persons therein engaged, or the dolefull effects thereby produced. It was about matters of conformity. Alas! that men should have lesse wisdome than locusts; which when sent on God’s errand, ‘ did not thrust one another’ (Joel ii. 8), whereas here such shoving, and shouldring, and hoising, and heavings, and justleing, and thronging, betwixt Clergie-men of the highest parts and places. For now nonconformity in the daies of King Edward was conceived, which afterward in the reign of Queen Mary (but beyond sea at Frankford) was born, which in the reign of Queen Elizabeth was nursed and weaned, which under King James grew up a young youth, or tall stripling, but towards the end of King Charles his reign, shot up to the full strength and stature of a man, able, not only to coap with, but conquer the hierarchie its adversary.”

Speaking of the year 1552, the same historian says—

“ Lately information was given to the king’s councell, that much costly furniture, which was embezelled, might very seasonably (such the king’s present occasions) and profitably be recovered. For private men’s halls were hung with altar-cloathes, their tables and beds covered with copes, instead of carpets and coverlets. Many drank at their daily meals in chalices, and no wonder if it came to the share of their horses to be watered in rich coffins of marble. And, as if first laying of hands upon them were sufficient title unto them, seizing on them was generally the price they had payed for them. Now although four years were elapsed since the destruction of colledges and chanteries, and much of the best Church ornaments was transported beyond the seas, yet the Privie Council thought this very gleaning in the stubble, would richly be worth the while, and that, on strict inquisition, they should retrieve much plate in specie and more money for moderate fines on offenders therein. Besides, whereas parish churches had still many rich ornaments left in the custody of their wardens, they resolved to convert what was superfluous or superstitious to the king’s use. To which purpose commissions were issued out to some select persons in every county, etc.”

It was probably a like spirit of avarice which, using the honest fanaticism of the Geneva divines as its instrument,

dictated the destruction of all the ancient service books as well as images, by the Order in Council of December 24, 1549, and the 3rd and 4th of Edw. VI. c. 10.

The bindings and cases of these books of devotion were often studded with gems and of great value; and the images from their costly material, as well as their careful execution, offered a tempting prey to the spoiler.

During the succeeding reign of Mary the Church was altogether driven from her sanctuary. Elizabeth, indeed, exerted the great sagacity which she possessed in laying deep and wide the foundations of the establishment to which the Church was restored. But the foreign element, which the persecutions of Mary had much increased, began to ferment, and to wage a ceaseless war with the principles upon which the Church had been reformed, and though the masculine sense and vigorous hand of this great Queen restrained the attacks of the innovators from Geneva and Germany, she was obliged to tolerate a practical laxity in all that related to the ritual of the Church, in order to secure the maintenance of the Catholic doctrine.

It cannot be doubted from her resolute retention of the ornaments of her Chapel, including lights and a crucifix, from her avowed belief in the Real Presence, as well as from her language and conduct, that her desire and intention were to embrace the Lutheran and the Romanist within the wide and liberal pale of the National Church.\*

And I may observe in passing, that it was in the same spirit of liberality and comprehensiveness that our Bishops in 1661, said, "It was the wisdom of our Reformers to draw up such a liturgie as neither Romanist nor Protestant could justly except against; and therefore, as the first never charged it with any positive errors, but only the want of something they conceived necessary, so it was never found fault with by those to whom the name of Protestants most properly belongs, those that profess the Augustine Confession; and for those who unlawfully and sinfully brought it into dislike with some people, to urge the present state of affairs as an argument why the book should be altered to give them satisfaction, and so that they should take advantage of their own unwarrantable

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\* The rubric, commonly called the black rubric, after the Communion, in the second Prayer Book of Edward VI., explained that no adoration was due to the *real* and essential presence. Elizabeth struck it out. The rubric reappears in the last Prayer Book with the very material alteration of "or unto any *corporal* presence of Christ's natural flesh or blood."

“acts, is not reasonable.”—(*Lathbury's History of the Book of Common Prayer, chap. 13, p. 324.*)

Bishop Sandys writes to Archbishop Parker: “The last book of service is gone through with a proviso to retain the ornaments which were used in the 1st and 2nd year of King Edward until it please the Queen to take further order for these. Our gloss upon this text is that we shall not be forced to use them, but that others in the meantime shall not convey them away, but that they may remain for the Queen.” *Strype Ann., v. 1., P. 1., p. 122. Burnet, v. 1., P. 2., p. 465.*

The Puritans rejected with scorn the toleration which the Queen and Walsingham, with a rare wisdom unknown to their age, were ready to extend to them. Bishop Madox cites a declaration of this party as follows:—

“As for you dear brethren, whom God hath called into the brunte of the battle, the Lord keep you constant, that ye yield neither to toleration, neither to any other subtil persuasions of dispensations or licences, which were to fortify their Romish practices; but, as you fight the Lord's fight, be valiant. The matter is not so small as the world doth take it; it will appear, before all be ended, what an hard thing it is to cut off the rags of the Hydra of Rome. Let us not make the heritage of God as a bird of many colours, holding of divers religions; but rather let us take away, if we can, the names, memories, and all monuments of Popery.” The Bishop goes on to say, “Who were meant by this description in the year 1570 needs no explanation. The bishops and clergy of the Church of England were then constantly represented as bearing the names and supporting the monuments of Popery. Agreeably to this exhortation of yielding to no toleration, nor accepting any indulgence, in all their petitions, admonitions, supplications, etc., we see nothing of a toleration for themselves only, but their single request or command, in whichever style they speak, is, the absolute overthrow of the established Government and worship, and the introduction of their own with penalties, even sharp punishments to be inflicted upon those who did not comply with it.” (p. 289.)

In 1597 Hooker wrote the fifth book of his *Ecclesiastical Polity* in which he vindicated the rites and ceremonies of the Church of England against the attacks of the Puritans, and pointed out with a prophetic spirit, the confusion which would ensue “if it should be free for men to reprove, to disgrace, to reject, at their own liberty, what they see

“ done and practised according to order set down.”—  
(*E. P., Book V. c. 10.*)

In the reign of Elizabeth's successor, the Hampton Court Conference, and the canons of 1603, aided by the disposition of James, and the great power of his prerogative which then rested on the Statute of Elizabeth, and the general tranquillity of the country, enabled the Church to put in force, in some degree at least, the provisions of her ritual.

The leaven of the Puritans, however, was at work, and is well illustrated by the language which they held respecting our Prayer Book at this time. I refer again to Bishop Madox (p. 73):—

“ But Mr. Neale tells us, it would have obviated many  
“ objections, if the Committee had thrown aside the Mass  
“ Book, and composed an uniform service in the language  
“ of Scripture.” This was an objection frequently made by  
the Puritans, with great variety of very severe and very  
coarse expressions. Thus in their first admonition to the  
Parliament, “ Remove (say they, in great warmth) homilies,  
“ articles, injunctions, and that prescript order of service  
“ made out of the Mass Book.” In their second admonition  
to the Parliament they express themselves after this manner:  
“ We must needs say as followeth, that this book is an  
“ imperfect book, culled and picked out of that Popish  
“ dunghill, the Portuise and Mass Book, full of all abomina-  
“ tions.” Another of them is pleased to deliver his opinion  
in the following words: “ The whole form of the Church  
“ Service is borrow'd from the Papists, pieced and patched,  
“ without reason or order of edification. Their famous  
leader, Mr. Cartwright, likewise declares his and his  
brethren's displeasure upon this head: “ Before I come to  
“ speak of prayers (says he) I will treat of the faults that  
“ are committed almost throughout the whole liturgy  
“ and service of the Church of England, whereof one is  
“ that which is often objected by the authors of the admo-  
“ nition, that the form of it is taken from the Church of  
“ Antichrist.”

During the early part of the reign of Charles I. the advance in ritual restoration was rapid, and was accompanied by great imprudence and little knowledge of, or attention to, the actual circumstances of the State. The Puritan religious element allied itself with the political element; and so it came to pass that a literal and strictly legal compliance with the rubric formed no insignificant part of the impeachment which brought about the judicial murder of Archbishop

Laud, one of the most distinguished writers against the pretensions of the Papacy.\*

Then was the wisdom, as well as the piety, of the principles upon which our Church was reformed demonstrated. In Protestant Germany and in Geneva, where the Apostolical order and primitive usages had been, from whatever causes, neglected or abandoned, and in this kingdom during the troubles of the civil wars almost every variety of sect which the vanity, presumption, and ignorance of man, under the influence of unchecked religious excitement could devise, sprang into existence.

All these,

“Who thought religion was intended  
For nothing else but to be mended,”

and whom the poem of Butler has rescued from oblivion, have furnished to Rome her strongest weapon for the defence of abuses equally without warrant from Scripture and tradition, and for attack upon the purer branches of the Catholic Church.

At the restoration, the Church, with the full and hearty consent of the people, restored, with few exceptions, the primitive ritual, of which Cranmer and Ridley, the chiefs of a noble army of martyrs, had approved.

But the impoverished condition of the clergy, the dilapidated state of the desecrated Churches, the profligacy (a reaction from Puritanism) and poverty of the landowners, combined to prevent that moderate amount of ritual developement which a strict obedience to the direction of the rubric required.

\* Whitelock. (Memorials of the English Affairs. Folio. Tonson, 1732.)

Anno 1643, p. 75.—The Commons “ordered copes and surplices to be taken away out of all Churches.”

Anno 1644, p. 86.—Laud on his trial; objected to him “that he caused superstitious pictures, images, and crucifixes to be set up in many churches, and in the King’s chapel caused a popish crucifix to be hung up over the altar upon every Good Friday, which had not been there before since the reign of Queen Mary.” . . . . “and his consecrating of churches, tapers, and candlesticks, organs, and particular prayers for those purposes.”

The Commons “ordered the taking away of all such pictures, images, and crucifixes in the King’s chapel at Whitehall.”

Page 91.—“The Earl of Newcastle desired a treaty, which was admitted, and he demanded to march away with bag and baggage, etc., and that all within the town should have liberty of conscience, the prebends to enjoy their places, to have common prayer, organs, copes, surplices, hoods, crosses, etc.”

“These things were denied by the Parliament,” etc. This was at York, June 1644.

“August 1644, p. 98.—Col. Middleton sent up to the Parliament from Sarum many copes, surplices, tippetts, hoods, plate, and the picture of the Virgin Mary, taken there; other relies being divided among the soldiers.”

Lord Macaulay's picture of the miserable status of the parochial clergy during the 17th century (*History of England*, Vol. I., p. 327) is probably painted in too dark colours: but there is no doubt that it was one highly unfavourable to ritual ornament either in the dress of the priest or in the furniture of the church.

It was seldom that men connected with noble families entered into Holy Orders, and the adoption of that profession by Herbert was a remarkable phenomenon of the time.

Then came the struggle of James II., by God's good providence defeated, to reimpose the yoke of Rome upon the liberties of our Church.

The very learned Cave, in his *Epistle Dedicatory to the History of the Fathers of the Church in 1683*, observes,—

“ The Church of England, incomparably the best part of  
 “ the Catholic Church at this day visible upon earth, is  
 “ miserably torn in pieces, hated, and maligned; secretly  
 “ undermined by enemies from abroad, and openly assaulted  
 “ by pretended friends at home. *Altar* is erected against  
 “ *altar*, and private congregations kept up in opposition  
 “ to the publick constitution. The liturgy and forms of  
 “ Divine administration derided, odiously traduced, and run  
 “ down with nothing but noise and clamour. The rites and  
 “ institutions, though the same that were used in the primi-  
 “ tive ages of Christianity, derided as antichristian. The  
 “ discipline and authority weakened, and, by the obstinacy  
 “ and perverseness of men, made ineffectual.”

The great defection of the non-jurors, who were much attached to ritual observances, among whom were some of the most pious and learned prelates of the realm, at the beginning of William III.'s reign, must, I think, have been unfavourable to ritual observances in the Church Establishment which they had left.\*

As we enter on the 18th century we trace the gradual increase of disobedience to all directions of the Church which

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\* Mr. Hallam observes: “ Eight Bishops, including the Primate and several  
 “ of those who had been foremost in the defence of the Church during the  
 “ late reign, with about four hundred of the Clergy, some of them highly  
 “ distinguished, chose the more honorable course of refusing the new oaths:  
 “ and thus began the schism of the Non-jurors, more mischievous in its com-  
 “ mencement than its continuance, and not so dangerous to the government of  
 “ William III. and George I. as the false submission of less sincere men.”  
 Having alleged reasons in favour of the imposition of the oath, he adds in a  
 note: “ Yet the effect of this expulsion was highly unfavourable to the new  
 “ government; and it required all the influence of a latitudinarian school of  
 “ Divinity, led by Locke, which was very strong among the laity under  
 “ William, to counteract it.”—(*Constit. Hist.*, Vol. III., p. 108, 7th ed.)

had for their object not merely the ornament but the decency of Divine worship.

In 1710 good Bishop Fleetwood, in his charge to his clergy, observed, "that unless the good public spirit of building, repairing, and adorning churches prevails a great deal more among us, and be more encouraged, an hundred years will bring to the ground an huge number of our churches."

"During the reigns of the two first Georges, and the beginning of the third, a decay of piety and learning, with brilliant exceptions indeed, went hand in hand with slovenliness of ritual and habitual indifference to rubrical injunctions upon this subject; and in 1751, that is 40 years afterwards, not many months before his death, that great prelate, Bishop Butler, whose "Divine Philosophy" has charmed educated men of all creeds, referring to these words of Bishop Fleetwood, uttered this lamentation, "This excellent prelate made this observation forty years ago; and no one, I believe, will imagine that the good spirit he has recommended prevails more at present than it did then."

In another part of the same charge he says: "Nor does the want of religion in the generality of the common people appear owing to a speculative disbelief or denial of it, but chiefly owing to thoughtlessness and the common temptations of life. Your chief business, therefore, is to endeavour to beget a practical sense of it upon their hearts as what they acknowledge their belief of, and profess they ought to conform themselves to. And this is to be done by keeping up, as we are able, the form and face of religion with decency and reverence, and in such a degree as to bring the thoughts of religion often to their minds; and then endeavour to make this form more and more subservient to promote the reality and power of it. The form of religion may indeed be where there is little of the thing itself, but the thing itself cannot be preserved amongst mankind without the form.

"That which men have accounted religion in the several countries of the world, generally speaking, has had a great and conspicuous part in all public appearances, and the face of it has been kept up with great reverence throughout all ranks, from the highest to the lowest; not only upon occasional solemnities, but also in the daily course of behaviour. In the heathen world, their superstition was the chief subject of statuary, sculpture, painting, and poetry. It mixed itself with business, civil forms, diver-



“ sions, domestic entertainments, and every part of common  
 “ life. The Mahometans are obliged to short devotions five  
 “ times between morning and evening. In Roman Catholic  
 “ countries people cannot pass a day without having religion  
 “ recalled to their thoughts, by some or other memorial of  
 “ it, by some ceremony of public religious form occurring  
 “ on their way; beside their frequent holidays, the short  
 “ prayers they are daily called to, and the occasional devo-  
 “ tions enjoined by their confessors. By these means their  
 “ superstition sinks deep into the minds of the people, and  
 “ their religion also into the minds of such among them as  
 “ are serious and well-disposed. Our reformers, considering  
 “ that some of these observances were in themselves wrong  
 “ and superstitious, and others of them made subservient to  
 “ the purposes of superstition, abolished them, reduced their  
 “ form of religion to great simplicity, and enjoined no more  
 “ particular rules, nor left anything more of what was  
 “ external in religion, than what was in a manner necessary  
 “ to preserve a sense of religion itself upon the minds of  
 “ the people. But a great part of this is neglected by the  
 “ generality amongst us; for instance, the service of the  
 “ Church, not only upon common days, but also upon Saints  
 “ days, and several other things, might be mentioned. Thus  
 “ they have no customary admonition, no public call to  
 “ recollect the thoughts of God and religion from one  
 “ Sunday to another.”

“ Indeed in most ages of the Church the care of reason-  
 “ able men has been, as there has been for the most part  
 “ occasion, to draw the people off from laying too great  
 “ weight upon external things, upon formal acts of piety.  
 “ But the state of matters is quite changed now with us.  
 “ These things are neglected to a degree which is and  
 “ cannot but be attended with a decay of all that is good.  
 “ It is highly seasonable now to instruct the people in the  
 “ importance of external religion.

“ And doubtless under this head must come into considera-  
 “ tion a proper regard to the structures which are consecrated  
 “ to the service of God. In the present turn of the age  
 “ one may observe a wonderful frugality in everything  
 “ which has respect to religion, and extravagance in every-  
 “ thing else. But amidst the appearance of opulence and  
 “ improvement in all common things, which are now seen in  
 “ most places, it would be hard to find a reason why these  
 “ monuments of ancient piety should not be preserved in  
 “ their original beauty and magnificence. But in the least  
 “ opulent places they must be preserved in becoming repair,

“ and everything relating to the Divine service be, however, decent and clean, otherwise we shall vilify the face of religion, whilst we keep it up. All this is, indeed, principally the duty of others ; yours is to press strongly upon them what is their duty in this respect, and admonish them of it often, if they are negligent.”—(*Works, Vol. 2., pp. 315, 317.*)

Then followed the great schism of which the pious Wesley was unwillingly and unwittingly the leader, but of which the apathy and sloth of the Church was the true cause. A resuscitation of Christian life was afterwards brought about by a school in the Church which, though with little knowledge of or care for ecclesiastical traditions or primitive usage, yet almost within the memory of the present generation represented the earnestness and energy of the establishment. Both these events were unfavourable to the maintenance of ritual observances.

The piety of this school is not incompatible with superior erudition and historical knowledge in persons more susceptible to the influences of external rites and ceremonies. A school has sprung up in our memory, which, having first restored the true ecclesiastical architecture in our churches, proceeded to inquire into the real meaning of the rubrical directions in our Prayer Book, examined them by the light of history and tradition, and arrived at the conclusion that a bare and unattractive service, sordid furniture, and the absence of all that was beautiful in art in the Temple of God, was not a necessary condition of a Church which had thrown off the corruptions and novelties of Rome. The Prayer Book referred them to the custom and usage which prevailed in the second year of Edward the Sixth. In the Lutheran and Swedish services they found crucifixes, incense, lighted candles, and gorgeous dresses. They thought it obvious, therefore, that no necessary connexion subsisted between these ornaments and usages of primitive antiquity, and the mediæval and false claims of the Papacy.

Recognizing the spirit of this movement in the Church, the late Bishop of London, in his charge in 1842, used this emphatic language :—

“ Every clergyman is bound by the plainest obligations of duty to obey the directions of the rubric. For conforming to them, in every particular, he needs no other authority than that of the rubric itself. We ought not to be deterred from a scrupulous observance of the rights and customs prescribed or sanctioned by our Church by a dread of being thought too careful about the externals of religion. If we are not to go *beyond* her ritual, at least

“ we ought not to fall *short* of it ; nor to make her public services less frequent, nor more naked and inexpressive, than she intends them to be.”

Again he says,—

“ An honest endeavour to carry out the Church’s intentions, in every part of public worship, ought not to be stigmatized as Popish or superstitious. If it be singular, it is such a singularity as should be cured, not by *one* person’s desisting from it, but by *all* taking it up. When I have been asked, whether I approved of certain changes in the mode of celebrating divine service, which were spoken of as novelties, but which were in fact nothing more than a return to the anciently established order of the Church, my answer has been, far from questioning the *right* of the clergy to observe the rubric in every particular, I know it to be their *duty*; and the only doubt is, how far are *we* justified in not *enforcing* such observance in every instance.”—(pp. 30, 31.)

Bishop Stanley, in his charge in 1845, says, “ Speaking of the decorations of churches, I am aware of the reply ; they pander, it is said, to idolatry, and may again become the object of superstitious worship. In a former age, when the minds of men were under the control of a superstitious and designing priesthood, such reasoning might have weight, but I must confess I cannot now hear it without mingled sentiments of pain and surprise.” \* \* \* “ We need not,” he concludes, “ like the Puritans of old, banish the influence of art from the sphere of religion, and return to that rude spirit which went forth as the destroyer of all that was beautiful, glorying in its barbarous mutilations.”

I will conclude my observations on this subject in the words of the oldest and certainly not the least able and learned of our prelates. In 1851 the Bishop of Exeter said, (from Appendix A. to the report of the Ritual Commission, page 122) “ Let me make one general remark. Where the congregation consists mainly of the poorest orders, there we commonly observe a great love of a majestic and even elaborate service. The ornaments of their church ; the storied glass ; the painted, and it may be gilded, walls ; the table of the Lord elevated above the rest, and decked with sober yet costly furniture ; the pealing organ ; the chanted psalms ; the surpliced choristers ; the solemnity of the whole ritual—gladdens, while it elevates their minds ; they recognize in it their own high privilege as Christians, and rejoice to find themselves equal participants with their richest neighbours in the homage thus paid to the common Lord and Father of all. In truth,

“ when we consider the little which the poor man has to  
 “ delight his heart and touch his imagination in his own  
 “ squalid home, we ought to rejoice that he can find enjoy-  
 “ ment in the house of prayer, his Father’s house. For this  
 “ reason few occurrences have affected me more than the  
 “ lamentations of the poor worshippers, in one of the districts  
 “ of the metropolis, when they saw, or thought they saw, at  
 “ the dictation of a riotous and lawless mob of strangers,  
 “ the approaching surrender of the ritual which they loved,  
 “ and which was their weekly, to many among them the  
 “ daily, solace of that poverty to which the providence of  
 “ God had consigned them.”

It was in this spirit that the Church of St. Alban’s was, we know, built. In this spirit we must all hope that its services have been conducted. But it remains to be seen whether they have or have not gone beyond those bounds of ritual observance which the law of our Church has set.

*General Principles for the Construction of Rubrics.*

In the foregoing observations I have dealt with two heads of the arguments urged by the Counsel for the Promoter, which for the sake of clearness I will repeat; namely,—

That these particular practices are by necessary implication prohibited, inasmuch as they are connected with Roman or Popish doctrines.

And that as such they have, as a matter of fact, been disused ever since the Reformation.

I am of opinion that neither of these arguments can avail to prove that the practices complained of are illegal. I have now to consider the two other heads of their argument; namely,

That, as by these practices a new rite or ceremony has been added to those which are prescribed by the Statutes of Uniformity, such practices are unlawful.

And that these particular additions are expressly prohibited.

The due consideration of these arguments renders it expedient that I should previously determine upon what principles the rubrical directions of the Prayer Book should be construed.

It has been argued on the one side that the legal effect of express directions in the rubric is to shut out every rite, ceremony, utensil, or ornament which is not the subject of such express provision, or by necessary implication directly subsidiary to it. It has been argued, on the other side, that every ancient Catholic rite, ceremony, utensil, or ornament which is not the subject of an express prohibition is lawful.

I am not disposed to assent to either of these propositions in their full latitude.

I believe the following rules to be well founded in principle, reason, and law, and I shall endeavour to guide myself by them; namely, that what is expressly prohibited is prohibited altogether, and may not be evaded by any contrivance which, under a different name or appearance, attains the same end; that whatever is expressly ordered may not be evaded by an illusory or partial compliance; that whatever is subsidiary to what is ordered, and whatever being in itself decent and proper in accordance with primitive and catholic use, and which is not by any fair construction necessarily connected with those Roman novelties which the Church "cut away and clean rejected" (to use the language of the Prayer Book) at the Reformation, is, under restrictions to be mentioned, lawful.

There are, in other words, three categories of these things,

- (1.) Things lawful and ordered.
- (2.) Things unlawful and prohibited.
- (3.) Things neither ordered nor prohibited expressly, or by implication, but the doing or use of which must be governed by the living discretion of some person in authority.

*Construction of Rubric as to the Discretion of the Ordinary.*

I wish to say a word first upon this last category.

The compilers of our Prayer Book, and the Legislature which clothed it with the authority of a Statute, were well aware that such a living discretion was indispensably necessary for the government of the Church in the performance of her Divine service, as well as in the due discharge of her other functions.

In the preface concerning the service of the Church, it is stated that "nothing can be so plainly set forth but doubts may arise in the use and practice of the same;" accordingly the first and every subsequent Prayer Book, including the present one, provided what must have been intended and believed to be a sufficient remedy for the evil which was thus contemplated as of possible, perhaps probable, occurrence.

It is important to notice the nature and character of the remedy proposed. It was one in perfect accordance with the principle upon which the order and discipline of the Church had, in obedience to the will of Christ, been founded by his Apostles; a principle which recognized the apostolical order of bishops as necessary for the due constitution of the Church; and in perfect accordance with the great principle of

the Reformation of the Church in England, that a duly consecrated bishop had a Divine authority, perfect and complete in itself, and wholly independent of the previous consent or subsequent ratification of that authority by the Pope.

The remedy was as follows: "to appease all such diversity (if any arise), and for the resolution of all doubts concerning the manner how to understand, do, and execute the things contained in this book, the parties that so doubt or diversely take anything shall always resort to the bishop of the diocese, who by his discretion shall take order for the quieting and appeasing of the same; so that the same order be not contrary to anything contained in this book, and if the bishop of the diocese be in doubt, then he may send for the resolution thereof to the archbishop."

The words of this order deserve the closest attention; it provides "for the resolution of all doubts concerning the manner how to understand, do, and execute the things contained in this book;" terms which certainly appear to comprehend every conceivable difficulty or doubt which could possibly arise. The authority which is to resolve these doubts and remove these difficulties, is that officer in whose hands, previously to the statutory enactment of any Prayer Book, the Church had placed a supreme command over all that relates to her ritual.—"The parties that so doubt or diversely take anything shall always resort to the bishop of the diocese." The mode of resolution is not stated, but the language is such as to render it improbable that any formal proceedings in a court were contemplated. "The bishop by his discretion shall take order for the quieting or appeasing of the same,"—large, and, I think, wise expressions, making reference to a living authority, such as the nature of the thing seems to demand, and the Church had always recognized as having the power to deal with the circumstances of each case as they arose. Was there any limitation to this authority?—One only, it appears; that his order "shall not be *contrary* to anything contained in this book;" leaving, therefore, in my judgment, within the domain of his authority that third category to which I have referred, namely, "things neither ordered nor prohibited expressly or by implication."

Was there any provision for controlling the exercise of this discretion?—Yes, a provision not inserted it is true in the first Prayer Book, but equally in accordance with the discipline of the Catholic Church and with the denial of papal pretension,—the provision "that if the bishop be in doubt he may send for the resolution thereof to the archbishop."

Some construction must be placed upon this order. There are but three possible constructions which occur to my mind: one, that the order merely means that the minister or "party" may quiet his own conscience by having recourse to the private advice of the Ordinary, which advice, when given, he is conscientiously bound to follow; a second construction is, that the order contemplates formal proceedings in the ecclesiastical courts of the diocese and the province; the third is, that which I have suggested.

It is certainly remarkable that as far as I am aware this order has never yet received any judicial interpretation. I remember very well arguing before a very learned ecclesiastical judge, Sir Herbert Jenner Fust, in "the Stone Altar case;" (it was brought into the Court of Arches by appeal from the sentence of the Court of Ely, which Court had affirmed the legality of the stone altar,) that the question was one to be decided according to the discretion of the Ordinary, according to this order; and, in his judgment, Sir H. J. Fust said, "After much consideration now given, I am of opinion the matter is *not* one of discretion but of law. Were it otherwise I should be desirous of consulting the wish of the parish."—(1. Robertson's Reports, p. 255.) It was clearly, therefore, the opinion of Sir H. J. Fust, who was perfectly conversant with ecclesiastical law and practice, that this order was not to be treated as a dead letter, although, after much reflection, he was of opinion the questions as to the material and position of the altar-table did not come within its purview. The structure of a stone altar he conceived to be "contrary" to the provisions of the Prayer Book. And in *Westerton v. Liddell*, the Lords of the Privy Council, after deciding that it was lawful to place upon the holy table cloths of various colours, observed, "whether the cloths so used are suitable or not is a matter to be left to the discretion of the Ordinary."—(*Moore's Report*, p. 188).

There is a difficulty arising out of this construction, from the consideration of which I must not shrink. It may be said that the bishop, when he had taken order for appeasing the doubt, would have no legal means of enforcing that order, and that for the purpose of such enforcement he must have recourse to his court. But it appears to me that, on the supposition that the matter was one on which he could exercise his discretion, he could clothe his order with the character of a monition, and that a disobedience to such monition would subject the person disobeying to the penalties of contumacy.

I should observe that the canon law unquestionably

placed in the hands of the bishop the authority to govern all questions of ritual.

“Et quidem” (Van Espen says) “quia dispares diversarum nationum mores et ingenia diversos ritus et cæremonias, ut in politicis ita in ecclesiasticis exigunt, hinc in ritibus magna ecclesiarum varietas; præsertim quia nullo extante de his Christi vel Apostolorum præcepto, libera potestas episcopis relicta erat, id sentiendi et decernendi quod unicuique salvâ fide magis expediens videbatur.”

And citing the decree of a synod he says: “Novæ cæremonia nullæ in ecclesiis recipiantur sine episcopi judicio.”—(*Van Espen, vol. i., pp. 411, 412.*)

Upon this construction of this rubrical order, it will be my duty to consider whether any of the charges preferred against Mr. Mackonochie ought to have been dealt with by the discretion of the Ordinary, and not to have been made the subject of a criminal proceeding against him in this or in any other Court.

#### *Construction of Rubrics generally.*

With respect to the two other categories of rubrics, namely, those which relate to things lawful and ordered, and things unlawful and prohibited, there is a question *in limine* which must be considered. Is there a *common law* of the Church unwritten, living by usage, though partly expressed, perhaps, by judicial decisions; but still more, to use a common expression, taken for granted by all authorities in Church and State—filling up the void of positive provision in statute or formulary—a necessary part of an organized religious system and establishment, rendering the practical working of it possible, and, on the whole, harmonious?

That there has been such a usage in the Church at large, from its earliest foundation, is certain. “We know no such customs, neither we nor the churches of God,” was the language which we learn from inspired authority she used as her shield against the earliest assaults upon her integrity. “Let the ancient customs prevail” was the maxim, fatal to the mediæval and modern pretensions of Rome, which the Church enunciated in her earliest œcumenical council. The canon law of the Western Church fully recognizes custom and usages as a distinct source of ecclesiastical jurisprudence. Was the branch of this Church, which the constitution and the legislature have established in this kingdom devoid of this subsidiary aid to her discipline and government?

In the case of *Willson v. McMath* (3 Phillimore, 78) a



very curious question was raised, whether the minister, as such, has a right to preside at a vestry meeting.

Sir John Nicholl, the Official Principal of the Archbishop of Canterbury, observed: "The case is said to be a new one, so far as regards any *express* law, or any judicial decision on the subject. There is no statute, no canon, no reported judgment, either expressly affirming or expressly negating the right. It nevertheless may exist as a part of the common law of the land, as a part of the *lex non scripta*, which is of binding authority, as much in the ecclesiastical as in the temporal Courts. Indeed, the whole canon law rests for its authority in this country upon received usage; it is not binding here *proprio vigore*. Moreover, this Court upon many points is governed, in the absence of express statute or canon, by the *jus tacito et illiterato hominum consensu et moribus expressum*."

"It is true that generally the existence of this *jus non scriptum* is ascertained by reports of adjudged cases; but it may be proved by other means: it may be proved by public notoriety, or be deducible from principles, and analogy, or be shown by legislative recognitions. Published reports of the decisions of the Ecclesiastical Courts (with one very recent exception) do not exist; and if they did, yet the particular right in dispute may never have been so much as doubted or questioned before." Upon this principle, in the time of James I., the King's Bench refused to prohibit the Ordinary from compelling a woman to be churched in a veil, because it was certified by divers bishops to be the common custom of the Church of England.\*

There is, therefore, a common law of the Church which runs by the side of the statute law, and which must assist in the construction of it.

It is often said that a rubric should be construed on the same principles as an Act of Parliament; but admitting this to be so, it is obvious that there are peculiar difficulties incident to the construction of a rubric which seldom, or in a much less degree, beset the construction of an ordinary statute. And it will appear from what has been already said, that the right understanding of the rules supplied by the rubric for the regulation of the services may often require a reference to the sources not only of historical, but to a certain extent theological knowledge.

There is one important rule applicable to the construction of all instruments, namely, that the construer should endea-

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\* Vin. Abr. 17, p. 231, tit. "Prerogative of the King." "Ordinary and power of the Ordinary." Burns' Eccles. Law., Ed. Phill., p. 318.

vour to place himself in the position of the framer of the instrument, and to gather from all the circumstances which surrounded him at the time when he framed it, and from the context of other portions of the instrument, what the real meaning and intention was, if the language which he has used have left that meaning and intention doubtful or obscure.

In the case of *Escott v. Mastin* (4 Moore's Reports, P. C., p. 323), in which a question as to the lawfulness of baptism, administered by a layman with water and the invocation of the Trinity, was mooted, the Lords of the Privy Council observed as follows:—

“ The 68th canon being that upon which this proceeding  
 “ is grounded, it is necessary to consider what the law was at  
 “ the date of the canon, the year 1603. Without distinctly  
 “ ascertaining this, we cannot satisfactorily determine what  
 “ change the rubric of 1661, adopted into the 13th and  
 “ 14th Charles II. cap. 4., made, and in what state it left  
 “ the law on this head; because it is very possible that the  
 “ same enactment of a statute, or the same direction in a  
 “ rubric, bearing one meaning, may receive one construction  
 “ when it deals for the first time with a given subject-matter,  
 “ and have another meaning and construction when it deals  
 “ with a matter that has already been made the subject of  
 “ enactment or direction; and this is most specially the  
 “ case where the posterior enactment or direction deals with  
 “ the matter without making any reference to the prior  
 “ enactment or direction. Still more it is necessary to note  
 “ the original state of the law, when it is the common law  
 “ that comes in question, as well as the statute.

“ The words are plainly directory, and do not amount to  
 “ an imperative alteration of the rule then subsisting. If  
 “ lay baptism was valid before the new rubric of 1661, there  
 “ is nothing in that rubric to invalidate it. Generally  
 “ speaking, where anything is established by statutory pro-  
 “ visions, the enactment of a new provision must clearly  
 “ indicate an intention to abrogate the old, else both will  
 “ be understood to stand together if they may. But, more  
 “ especially, where the common law is to be changed—and,  
 “ most especially, the common law which a statutory pro-  
 “ vision had recognized and enforced—the intention of any  
 “ new enactment to abrogate it must be plain to exclude a  
 “ construction by which both may stand together. This  
 “ principle, which is plainly founded in reason and common  
 “ sense, has been largely sanctioned by authority. The  
 “ distinction which Lord Coke takes in one place between  
 “ affirmative and negative words, giving more effect to

the latter (Coke, Littleton, 115, a), has sometimes been “denied, at least doubted, (W. Jones, 270, Lovelace’s case, before the Windsor Forest Court, in 1632, in which there is a *dictum* of Lord Chief Justice Richardson,) Mr. Hargrave thinks upon a misapprehension (Note 154). But the rule which is laid down in 2nd Inst., 200, has been adopted by all the authorities, that ‘a statute made “in the affirmative, without any negative expressed or “implied, doth not take away the common law.’ So *Comyn’s Digest*, Parliament, R. 23; and he cites the case *De Jure Ecclesiastico*, in 5th Rep. 5, b, which lays down “the rule in terms.”

Let me apply this rule to the subject before me. The first Prayer Book of Edward VI. contains only one prohibition, the Elevation of the Blessed Sacrament; but it contains various directions respecting the articles to be used in the administration of the Holy Communion. It has been pointed out that the enumeration of these articles could not be exhaustive, inasmuch as the indispensable article of “a fair linen cloth” is omitted from it.

The argument is, I think, valid; the officiating priest must have supplied this article, and the legislature must have intended him to supply it.

He must have looked to an unwritten *use*, the foundation of a common law for the Church, not less than for the State.

Just as much as it must have intended by the rubric in our present Prayer Book: “The priest shall then place “upon the table so much bread and wine as he shall think “sufficient,” that there should be a table or place from which the elements should be then brought; and therefore the Judicial Committee of the Privy Council, reversing the sentence of the Consistory of London and the Court of Arches, decided that the Credence Table, which supplied this want, was a lawful ornament. Those who compiled the first Prayer Book of Edward VI. were not inventing a ritual for the first time, but were constructing one from the various service books, some English and some foreign, which they had before them. This ritual was to be placed in the hands of persons conversant with the older service books; and it seems highly unreasonable to suppose that it was not competent to the priest to supply any accidental omission in the new ritual by a reference to the previously existing usage and practice. In the same way, in the Sarum Missal no mention is to be found of the two lights to be placed upon the altar, but there is no doubt that the constitution which ordered those two lights was legally binding upon, and must have been a part of the furniture of, those churches

which adopted the use of Sarum, at least in the province of Canterbury. Another illustration is furnished by the very remarkable fact that the second Prayer Book of Edward VI. omitted all reference to the manual acts, ordered in the first and last Prayer Book, attending the consecration of the Holy Elements; and that during the whole period which elapsed between the date of the second Prayer Book in 1552 and that of the present Prayer Book in 1661, the officiating priest was left without any direction upon this subject in the Prayer Book which he was to use. Now, one of two consequences must follow: either the cup was never taken in the hand, the bread never broken, as at present, or these manual acts were done without any specific order in the Prayer Book, as a matter of recognized usage and custom. No proof has been laid before me, and I can find none, as to the omission of these necessary acts during a period of more than a century, and I think the inference that they must have been still practised is reasonable and sound.

And in this opinion I am strengthened by observing that at the Savoy Conference the Dissenters objected, "that the manner of the consecrating of the elements is not here" (*i.e.*, in the consecration prayer) "explicite and distinct enough, and minister's breaking of the bread is not so much as mentioned." The bishops replied by conceding "that the manner of consecrating the elements be made more explicit and express," which was the origin of our present rubric.—(*Cardwell, Conferences, pp. 321, 363.*)

The opinion of Bishop Cosin (vol. 5, p. 65, ed. 1854), a high authority upon this subject, appears to me sound. "The book" (he says) "does not everywhere enjoin and prescribe every little order that should be said or done, but takes it for granted that people are acquainted with such common and things already used as such. Let the Puritans, therefore, give over their endless cavils, and let ancient custom prevail, the thing which our Church chiefly intended in the review of this service." This reasoning, therefore, brings me to the conclusion, that from the mere silence of the rubric a positive prohibition cannot in all cases be inferred.

Something more is required to render the article supplied illegal. For instance, the mention of the article in a former Prayer Book, and the omission of it in the present, may furnish a presumption that it was intentionally rejected, even when it be in itself innocent, or apparently expedient. Or the article must have, as has been already observed, some necessary connection with a use inconsistent with the

principles upon which the formularies of the Church are founded.

I must repeat that the rubrics with respect to decorations and furniture of the church are not exhaustive. This point has been decided by the Judicial Committee of the Privy Council. They allowed on this principle the use of the cross and the credence table and the various coloured clothes for the Holy Table. They allowed also the use of a moveable ledge for the purpose of holding candlesticks upon the Holy Table. This question came before their lordships as a corollary to their principal decision on the Knightsbridge Church cases. It was contended that the monition of the Court with respect to St. Barnabas Church had not been obeyed as to the Holy Table or as to the cross.

The act on petition alleged, that the monition was still in part uncomplied with in the following particulars:—First, that the metal cross which was standing in the church or chapel, on or attached to the super-altar, on the stone altar, which formerly stood therein prior to the delivery of the judgment of the Judicial Committee on the 21st of March 1857, was then placed on the sill of the great eastern window of the church or chapel of ease of Saint Barnabas, above the table then used as a Communion Table in the church or chapel. Second, that the table which had been substituted in the church or chapel for the stone altar which formerly stood therein was not a flat table, but had an elevation or structure placed thereon, so as to resemble what is generally known and described as a super-altar in Roman Catholic churches or chapels.

The answer on behalf of the Hon. and Rev. Robert Liddell and the then Chapel wardens to this act on petition, denied that the monition was in any part uncomplied with, and pleaded; first, that the metal cross which was on the 27th of March 1857 standing in the church or chapel of Saint Barnabas (attached to the ledge of wood at the back of the stone altar, which then stood in the chancel of the church or chapel) was at the present time placed on the sill of the centre compartment of the eastern window of the chancel of the church or chapel, five feet ten inches above the surface of the Communion Table standing there, and wholly disconnected therewith; secondly, that the table which had been substituted in the church or chapel for the stone altar which formerly stood therein was a flat moveable table of wood; and that the elevation or structure alleged in the second article of the act on petition as placed thereon was simply a moveable ledge of wood placed in order that two candlesticks might stand thereon at the back of the table,

and that the ledge was always raised up before the celebration of the Lord's Supper, in order that the decree of the Court might be complied with, namely, that a fine linen cloth should cover the Communion table at the time of the ministration of the Lord's Supper, and that the cross was in the church or chapel at the time of the consecration thereof, and then formed one of the ornaments of the church or chapel.

Their Lordships were of opinion, "that no disobedience, "no impropriety, no irregularity, has been established; and "that the present application, therefore, failed."\*

In the same spirit, usages not prescribed by the Prayer Book during the service have been allowed,—such as turning to the east while the creeds are read, the "Glory be to Thee, Oh Lord" before the reading of the Gospel, and the expression of thanks after the reading of it, the use of hymns—a use perhaps not only not ordered, but contrary to the order of the Prayer Book; and an inscription on a tombstone of "pray for the soul" of a departed person has been, by express judicial decision, pronounced not to be "contrary to the articles, canons, constitutions, doctrine, and "discipline of the Church."—(*Brecks v. Woolfrey*, 1 Curteis Rep., 880.)

And here I will notice what I may call the churchwarden argument. It has been said that one test of the legality of ornaments is whether the churchwardens can or cannot be compelled to provide them. I am of opinion, however, that this is not a conclusive test. The law upon this subject was well and clearly laid down by Dr. Lushington,†—namely, that there are two classes of expenses for parochial purposes; one, necessary expenses, which the churchwardens may defray of their own authority out of a rate, without the sanction of the vestry; another, expenses not absolutely necessary, a class which requires, if they are to be defrayed out of a rate, the previous sanction of the vestry. Under this latter category would fall all expenses incurred for furniture of a decorative kind, which would also require the sanction of the Ordinary.

#### *The Special Charges considered.*

Having thus considered the principles of law which ought to guide me in adjudicating the charges preferred against the Reverend Defendants in the cases before me, I will now

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\* Judgment delivered by Lord Justice Knight Bruce, 14th June 1861, on appeal to the Judicial Committee of the Privy Council from the Arches Court of Canterbury. The Hon. and Rev. Robert Liddell, William Parkes, and George Evans, Appellants, and James Beal, Respondent.

† 1 Burns' Eccl. L., p. 388 a.—ed. Phillimore: "Gathercole v. Wade."

consider and pronounce judgment upon each individual charge, which, for the sake of convenience, I will arrange in the following manner:—

First, the Elevation of the Blessed Sacrament, including the Kneeling;

Secondly, the use of Incense during the administration of the Holy Communion;

Thirdly, the Mixing the Water with the Wine during the administration of the Holy Communion;

Fourthly, the special charges against Mr. Simpson;

Fifthly, the use of Lights during the administration of the Holy Communion.

*Elevation; as to Mr. Mackonochie.*

*3rd Article.*—The third of the articles in this suit charges the Defendant, “That he, the Defendant, had in his said Church, and within two years last past, to wit, on Sunday the 23d of December, on Christmas Day last past, and on Sunday the 30th December, all in the year 1866, during the prayer of consecration, in the order of the administration of the Holy Communion, elevated the paten in a greater degree than by merely taking the same into his hands, as prescribed by the Book of Common Prayer, and in a greater degree than is necessary to conform with the requirements of such book, and permitted and sanctioned such elevation; and taken into his hands and elevated the cup during the prayer of consecration aforesaid in a manner contrary to the said statutes, and to the said Book of Common Prayer, and permitted and sanctioned the cup to be so taken and elevated; and knelt or prostrated himself before the consecrated elements during the prayer of consecration, and permitted and sanctioned such kneeling or prostrating by other clerks in holy orders.”

*Answer.*—To this article the Defendant has answered, “That whilst he admits that he, the Defendant, did on the said two Sundays, and on Christmas Day, during the prayer of consecration, kneel, and sanction kneeling by other clerks, before the Lord’s Table, he denies that his said party did on the said two Sundays, and on the said Christmas Day, kneel or prostrate himself before the consecrated elements, or permit and sanction such kneeling or prostration by other clerks in holy orders, as in the 3rd Article pleaded. And he further alleges that whilst he admits that he did on the said two Sundays and Christmas Day, in the said 3rd Article mentioned, elevate and sanction the elevation by other clerks of the paten and cup above

“ his head, as in the said 3rd Article pleaded, yet that  
 “ such elevation of the paten and cup has been wholly dis-  
 “ continued by the said Defendant during the administration  
 “ of the Holy Communion ever since the said 30th December  
 “ 1866, and long prior to the institution of this suit; that  
 “ such practice was discontinued in consequence of legal  
 “ advice, and in compliance with the expressed wish of the  
 “ Lord Bishop of the diocese of London, and with a resolu-  
 “ tion of convocation, as was well known to the promoter of  
 “ this suit before he instituted the same.”

*4th Article.*—The *fourth* Article alleges “ that such eleva-  
 “ tion of the cup and paten, and such kneeling and prostrat-  
 “ ing, are severally unlawful additions to and variations from  
 “ the form and order prescribed and appointed by the said  
 “ statutes, and by the said Book of Common Prayer and  
 “ administration of the sacraments and other rites and  
 “ ceremonies of the Church, and are contrary to the said  
 “ statutes, and to the 14th, 36th, and 38th of the said con-  
 “ stitutions and canons, and also to an Act of Parliament  
 “ passed in a session of parliament holden in the 13th year  
 “ of Queen Elizabeth, cap. 12., and to the 25th and 28th of  
 “ the articles of religion therein referred to.”

*Answer.*—The Defendant to this article answers, “ That  
 “ he denies that the elevation of the paten and the taking  
 “ and the elevation of the cup so discontinued as aforesaid,  
 “ and the kneeling and prostrating charged in the said third  
 “ article, are severally unlawful additions to and variations  
 “ from the form and order prescribed and appointed by the  
 “ said statutes, and by the said Book of Common Prayer and  
 “ administration of the sacraments and other rites and cere-  
 “ monies of the Church, or that they are contrary to the said  
 “ statutes, and to the 14th, 36th, and 38th of the said con-  
 “ stitutions and canons, and also to an Act of Parliament  
 “ passed in a session of parliament holden in the 13th year  
 “ of Queen Elizabeth, cap. 12., and to the 25th and 28th  
 “ articles of religion therein referred to, as in the 4th article  
 “ alleged.”

The elevation of the Blessed Sacrament was not incorpo-  
 rated formally into the law of the Western Church before  
 the beginning of the 13th century. The account given  
 by Cardinal Bona is clear and concise (*Rerum Liturgicarum*,  
 lib. II., cap. 3, § 2): “ Latini peractâ consecratione, Græci  
 “ paulo ante communionem, ut ex Liturgiis Jacobi, Basili,  
 “ et Chrysostomi manifestum est, corpus Dominicum et  
 “ calicem elevant, ut a populo adoretur. Idque ab antiquo  
 “ tempore fieri solitum indicant scriptores Græci.” He then  
 cites a variety of authorities in support of this position, and



mentions the introduction of the custom of ringing a bell at the time of the elevation, at first as it should appear in order to excite the devotions of the faithful, and not for the purpose of the worship of the Host (p. 349).

It was not till the year 1217, during the Papacy of Honorius III., that this peculiar doctrine of elevation became part of the canon law.

In lib. III., tit. XLII., Decret. Greg., cap. X., the decree upon the subject is as follows :

“ Sane, cum olim (*ut infra*). Ne propter incuriam Sacerdotum divina indignatio gravius exardescat, districte præcipiendo mandamus, quatenus a Sacerdotibus Eucharistia in loco singulari, mundo et signato semper honorifice collocata, devote ac fideliter conservetur. Sacerdos vero quilibet frequenter doceat plebem suam, ut, cum in celebratione missarum elevatur hostia salutaris, se reverenter inclinet, idem faciens, cum eam defert Presbyter ad infirmum. Quam in decenti habitu superposito mundo velamine ferat, et referat manifestè ac honorifice ante pectus cum omni reverentia et timore, semper lumine præcedente, cum sit candor lucis æternæ, ut ex hoc apud omnes fides et devotio augeatur. Prælati autem hujusmodi mandati graviter punire non differant transgressores: si et ipsi divinam et nostram volunt effugere ultionem.”\*

William, Bishop of Paris, soon after the beginning of the 13th century, made an order that, “Sicut alias statutum fuit, in celebratione missarum, quando corpus Christi elevatur, in ipsâ elevatione vel paulo ante campana pulsetur, ut sic mentes fidelium ad orationem excitentur.”

And Archbishop Peccham, who was consecrated in the year 1278 and died in the year 1292, appears to have first introduced into England this custom by the following constitution† :

“ Altissimus,” *et infra*. “ In elevatione corporis Christi ab una parte ad minus pulsantur campanæ, ut populares, qui celebrationi missarum non valent quotidie interesse, ubicunque fuerint, sive in agris sive in domibus, flectant genua, indulgentias concessas a pluribus episcopis habituri.”

\* The title of the chapter is :—“ Eucharistia debet munde servari, et in ejus elevatione et delatione populus debet se inclinare : et cum defertur ad infirmum, debet deferri in decenti habitu, et cum lumine, transgressores vero graviter sunt puniendi.”

† The title of this constitution is :—“ In elevatione corporis Christi pulsantur campanæ, ut officio interesse nequeunt, saltem genua flectant. Nec ministratur corpus Domini, nisi eis quos constat confessos esse, et parochianos ejus, in qua recipiant, ecclesia ; nisi permissionem habeant, aut peregrini sint, aut necessitas urgeat.”

Lyndwood (writing, it is to be observed, about 1430) has this gloss: "*Elevatione, quæ fit ut populus illud adoret.*"

This passage appears to me to dispose of the argument addressed to me by the leading counsel for Mr. Simpson, "that it had been the invariable practice of the Church of England not to connect adoration with elevation."

Nor am I satisfied by the difference between the canon of the Sarum use and that of the Roman Missal upon this point, that at the time of the Reformation the adoration was separated from the elevation of the Host. The true proposition is that the original practice, in England as in other countries, had been to stir up the devotion of the people to God by the elevation of the Blessed Sacrament, until in this, as in so many other instances, the Church, or perhaps more strictly speaking the Curia, of Rome introduced an unwarrantable innovation upon an ancient and laudable usage.

The first prohibition of this custom, of elevating the Host in order that *it* might be adored, is to be found in the Order of the Communion of Edward VI. which was published in 1548, and preceded the first Book of Common Prayer. The last "note" to that order, after providing for the case in which it has become necessary to consecrate more wine than had been originally consecrated, contains these words, "and without anylevation or lifting up." This prohibition would seem from the context to be limited to the case of an additional consecration of wine. In the first Prayer Book, after the prayer of consecration, follow these words: "These words before rehearsed are to be said, turning still to the altar, without any elevation, or showing the sacrament to the people."

The Council of Trent, by the 6th canon of the 13th session, passed the 11th of October 1561, decrees: "Si quis dixerit, in sancto eucharistiæ sacramento Christum unigenitum Dei Filium non esse cultu latriæ, etiam externo, adorandum, atque ideo nec festiva peculiari celebritate venerandum, neque in processionibus secundum laudabilem et universalem ecclesiæ sanctæ ritum et consuetudinem solenniter circumgestandum, vel non publice, ut adoretur, populo proponendum, et ejus adoratores esse idololatrias, anathema sit."

The liberal mind and strong sense of Luther appear in his treatment of this question of elevation. In the "Formula Missæ et Communions" for the church at Wittemberg he gives this direction: "(IV.) Finitâ benedictione chorus cantet sanctus et sub benedictus *elevetur* panis et calix, ritu hætenus servato, vel propter infirmos qui hac repentinâ (mutatione) hujus insignioris in missâ ritûs forte

“offendentur, præsertim ubi per conciones vernaculas docti fuerint quid eâ petatur elevatione.” (Cod. Liturg. II. 87, ed. Leipsic, 1848.) Daniel, the learned German editor of the Codex Liturgicus, observes, that the elevation was for a long time not only tolerated but approved of and defended by Luther. He thought it right that when the Sacrament was lifted up a bell should ring; for the priest and the bell spoke the same language, namely, “Hearken, ye Christians, and behold, then take and eat, take and drink, this is the body and blood of Christ.” Afterwards Luther placed the elevation “inter adiaphora quæ possunt servari vel omitti ad habitum ecclesiarum,” and discontinued it in the church at Wittemberg. The rite appears to have prevailed during the sixteenth and seventeenth centuries in the churches of Sweden and Denmark.

By the 28th of the Thirty-nine Articles, which became part of the Statute Law in 1571, though passed in Convocation with the consent of the Crown in 1562, it is declared, “That the Sacrament of the Lord’s Supper was not by Christ’s ordinance reserved, carried about, lifted up, or worshipped.”

It is true that these words contain a declaration only, and no specific order; but looking to the spirit as well as to the letter of our present Prayer Book, as well as to this Article, and to the documents which illustrate the early period of the Reformation, it appears to me clear that those who guided the Church of England through this process of restoration to primitive antiquity were of opinion that the elevation was so connected with the repudiated doctrine of Transubstantiation, as distinguished from the Real Presence, that it ought not to be suffered to remain. And I am confirmed in this opinion by the authority of some of the greatest divines in our Church, of whom I will only cite two; one, the learned Grabe; the other, who received the thanks of Christendom for his defence of the Nicene Creed,—Bishop Bull.

The former says, “But if it should be asked, of what use the said form, with such annotations, can be at present, when it is out of use, I answer, that it will serve, at least to show, to the honour of our forefathers, the first reformers of this Church, how near they, concerning the celebration of that most holy Sacrament, kept to the primitive institution of it by our blessed Saviour, and to the practice of His Holy Apostles and the first Apostolical Churches, although they changed and threw out many abuses and corruptions of this sacred ordinance which were crept in afterwards, and at last established by Popish decrees and

“ councils of later ages. Such was, in the whole, the use  
 “ of an unknown tongue in this holy office. . . .  
 “ And not to mention the *elevation* of the consecrated  
 “ elements to be worshipped by priest and all people  
 “ as Jesus Christ Himself, both God and man in person,  
 “ whom the Church of Rome believeth to be substantially  
 “ and wholly present under the outward figures of bread  
 “ and wine.” (*Grabe, M. S. Adversaria.*)

Bishop Bull, in a portion of his answer to the Bishop of Meaux, who had expressed his surprise that he was not a Romanist as well as a Catholic, says, “ Come we now to  
 “ the principal part of the Christian worship, the holy sacra-  
 “ ment of the Eucharist. How lamentably hath the Church  
 “ of Rome vitiated the primitive institution of that most  
 “ sacred rite. She hath taken from the laity the blessed  
 “ cup, contrary to our blessed Saviour’s express command  
 “ as expounded by the practice of the apostles, and of the  
 “ universal church of Christ for the first ten centuries, as  
 “ hath been above observed.

“ All the learned advocates of the Roman Church, with  
 “ all their sophistry, have not been able to defend her in  
 “ this matter from manifest sacrilege, and a violation of the  
 “ very essentials of the sacrament, as to the laity adminis-  
 “ tered, nor can they prove it so administered to be a  
 “ perfect sacrament. He that would see this in a short  
 “ compass fully proved, and all the weak evasions of the  
 “ Romanists obviated, may consult our learned Bishop  
 “ Davenant. Besides, the whole administration of it is so  
 “ clogged, so metaphorized and defaced by the addition of  
 “ a multitude of ceremonies, and those some of them more  
 “ becoming the stage than the table of our Lord, that if the  
 “ blessed apostles were alive and present at the celebration  
 “ of the mass in the Roman Church they would be amazed  
 “ and wonder what the meaning of it was; sure I am they  
 “ would never own it to be that same ordinance which they  
 “ left to the churches.

“ But the worst ceremony of all is the elevation of the  
 “ Host to be adored by the people as very Christ himself  
 “ under the appearance of bread, whole Christ, Θεάνθρωπος,  
 “ ‘ God and man,’ while they neglect the old *sursum corda*,  
 “ the lifting up of their hearts to heaven where whole  
 “ Christ indeed is.”

The kind of elevation which it is charged that at one time Mr. Mackonochie practised, and as to which witnesses were examined before me, amounts upon the evidence to the following acts, that after the consecration, both of the bread and of the wine, he elevated the paten and the cup respec-

tively for an appreciable time, after which there was a pause before the service was continued; this evidence was taken at the beginning of the cause; but during the progress of the argument, at the desire and with the consent of both counsel, Mr. Mackonochie was examined by me upon the single point, whether when the elevation was made his face was or was not towards the people, Mr. Mackonochie said, "I do not turn round to the people, and I never have done so during any time of the consecration prayer."\*

This elevation Mr. Mackonochie asserts, and it is not denied, that he discontinued after conference with his diocesan, and upon the other grounds to which I have already referred, before the institution of this suit.

I am very glad that he did so, because in my judgement that kind of elevation was unlawful, and I must and do admonish Mr. Mackonochie not to recur to it.

His present practice is not complained of, and some elevation the rubrics of the present communion service must contemplate when they order as follows, "Here the priest shall take the paten into his hands;" that is, into both his hands; subsequently to which he is ordered to break the bread. So also when he is directed to take the cup into his hand there must be some elevation from the Holy Table.

#### *Elevation; as to Mr. Simpson.*

It is alleged in the 5th article filed against Mr. Simpson in the suit of *Flamank v. Simpson*, that he, Mr. Simpson, has, within two years last past, in the said parish of East Teignmouth, in the public celebration of the Holy Communion, after the Prayer of Consecration, raised the paten with both hands over his head, and the cup in like manner. And that such elevations of the paten and cup are unlawful additions to and alterations of the form and order prescribed and appointed by the said Book of Common Prayer and Administration of the Sacrament, and other rites and ceremonies of the Church, and are contrary to the said statute law, constitutions, and canons.

Mr. Simpson, in the fourth answer filed by him, denies that he has, as in the said 5th article alleged, within two

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\* I have said "with the consent and desire of both counsel," because such was the fact; but if Mr. Mackonochie was by law an incompetent witness their consent in a criminal case would not render his evidence admissible; but I venture to think that he was a competent witness, and am emboldened to hold this opinion, though it be at variance with that of my predecessor, in consequence of the observation made by the Lords of the Privy Council in "*Berney v. The Lord Bishop of Norwich*," a case in which Judgement was delivered on the 28th February 1867.

years last past, so raised the paten with both hands over his head, and the cup in like manner. But he says that he has, within the time aforesaid, in the reading the Prayer of Consecration so raised the paten on pronouncing the words "Do this in remembrance of me;" and he has so raised the cup on pronouncing the words "This is my blood of the New Testament which is shed for you and for many, for the remission of sins."

It clearly follows, from what I have said as to Mr. Mackonochie, that the elevation practised by Mr. Simpson is unlawful, and must be discontinued.

### *Kneeling.*

With respect to the charge against Mr. Mackonochie of kneeling or prostration before the Eucharist, I observed during the course of the argument that no charge of adoration of the Holy Sacrament itself, or of our Lord's body being present after a corporal manner in the Holy Sacrament, was contained in these Articles; that if it was intended to charge Mr. Mackonochie with either kind of adoration, the rules of pleading in criminal cases in this Court would have required that such adoration should have been distinctly and plainly averred.

The argument before me was confined to the allegation of improper or excessive kneeling; the evidence as to the fact was very far from being clear; Mr. Mackonochie was asked no question himself upon the subject.

Mr. Beames said, that after the elevation of the cup, Mr. Mackonochie prostrated himself on his knees with his head to the ground, and then that he knelt immediately after the cup was replaced, and that there was the same kneeling after the elevation of the paten. It was clear, however, from the evidence of this witness that Mr. Mackonochie remained on his knees, and that his head did not touch the ground, and that he did not really prostrate himself, supposing that such a gesture of devotion to be, which I do not pronounce it to be, illegal.

The only other witness, the Reverend Henry Malins, deposed that the clergy, already kneeling, threw their bodies forwards, and that the consecrating clerk knelt in the middle of the prayer, and then went on with the prayer. But on further examination he said that he was behind him all the time, that he could not in fact say that he prostrated himself, but to use his own words "there was a somewhat excessive bending forwards." He said he was kneeling himself at the time, and that it was his own practice, when not assisting, to kneel during the prayer of consecration.

It is true that the Rubric does not give precise directions that the celebrant himself should kneel at the times when it appears that Mr. Mackonochie does kneel; but I am very far from saying that it is not legally competent to him, as well as to the other priests and to the congregation, to adopt this attitude of devotion. It cannot be contended that at some time or other he must not kneel during the celebration, although no direction as to his kneeling at all are given by the Rubric.

It is observable that at the Savoy Conference the Puritans asked to have it considered "Whether it will not be fit to insert a rubrick touching kneeling at the communion, that is, to comply in all humility with the prayer which the minister makes when he delivers the elements."

No notice of this request was taken by the bishops unless it be considered to be included in their concession, "That the general confession at the communion be pronounced by one of the ministers, the people saying after him, all kneeling humbly upon their knees." (*Cardwell's Conferences*, pp. 275, 363.)

Moreover, in my opinion, if Mr. Mackonochie has committed any error in this respect, it is one which should not form the subject of a criminal prosecution, but belongs to the category of those cases which should be referred to the Bishop, in order that he may exercise thereupon his discretion, according to the Rubric to which I have already referred.

#### *Incense.*

The charge against Mr. Mackonochie as to the use of incense is twofold; the first part relates to what is technically called "censing persons and things," and is as follows:

*7th Article.*—The 7th article alleges, "that the said Defendant has in his said Church, and within two years last past, to wit, on Sunday the 23rd December, on Christmas Day last past, and on Sunday the 30th December, all in the year 1866, used incense for censing persons and things in and during the celebration of the Holy Communion, and permitted and sanctioned such use of incense."

*Answer.*—And the Defendant in answer to this article says, "that he admits that he (the Defendant) on the Sunday the 23rd December, on Christmas Day last past, and on Sunday the 30th December, used incense for censing persons and things in and during celebration of the Holy Communion, and permitted and sanctioned such use of

“incense;” but he alleges, “that ever since the 30th December 1866 he, the said Defendant, as was well known to the promoter of this suit prior to the institution thereof, desisted from so doing, and has ever since discontinued the said ceremony on being apprized by the opinion of counsel that such usage was of a doubtful legality, and that he has never since re-introduced the said ceremony, as appears in the published address of the said Defendant, dated January 1867, and exhibited and appended to the articles brought in and admitted in the cause.”

I should here observe, that an objection was taken on behalf of Mr. Mackonochie that this charge of censuring persons and things was not specified in the decree issued under the Letters of Request, and therefore, that according to the practice of this Court, it could not be preferred in the articles. My learned predecessor overruled this objection, and I thought it right, whatever my opinion might be, to abide by his decision.

It appears that Mr. Mackonochie has discontinued, though under protest, this particular use of incense, upon the same grounds and for the same reasons that he discontinued the elevation, and also before the institution of this suit.

The other part of the charge relates to another use of incense, and is laid in the following words:

*8th Article.*—The 8th article alleges, “that the said Defendant has in his said Church, and within two years last past, to wit, on Sunday the 13th day of January A.D. 1867, unlawfully used incense in and during the celebration of the Holy Communion, and permitted and sanctioned such unlawful use of incense.”

*Answer.*—To this the Defendant has answered, “that he admits that he has in his said Church, to wit, on Sunday the 13th day of January A.D. 1867, caused and allowed incense to be burnt during the reading of the prayer of consecration, and afterwards until the time for the administration of the Communion to the people, and permitted and sanctioned such use of incense, but that he denies that he used the same unlawfully, or that such use is unlawful.”

*9th Article.*—The 9th article charges, “that such uses of incense as in the two preceding paragraphs alleged are severally an unlawful addition to and variation from the form and order prescribed and appointed by the said Statutes, and by the said Book of Common Prayer and administration of the Sacraments and other rites and



“ceremonies of the Church, and are contrary to the said Statutes, and to the 14th, 36th, and 38th of the said constitutions and canons.”

*Answer.*—The Defendant in his plea has answered, “that he denies that such use of incense as in the 7th and 8th articles alleged are severally an unlawful addition to and variation from the form and order prescribed and appointed by the said Statutes, and by the said Book of Common Prayer and administration of the Sacraments and other rites and ceremonies of the Church, and are contrary to the said Statutes, and to the 14th, 36th, and 38th of the said constitutions and canons, as in the 9th article alleged.”

The objection is not taken to the general use of incense for the purposes of ornament or fumigation of the Church, for which purposes it appears to have been used at various times since the Reformation, and especially by the saintly Herbert to whom Mr. Coleridge referred :

“The country parson,” Herbert says, “hath a special care of his church, that all things there be decent and befitting his name by which it is called. Therefore, first, he takes order that all things be in good repair, as walls plastered, windows glazed, floor paved, seats whole, firm, and uniform, especially that the pulpit and desk, and communion table and font, be, as they ought, for those great duties that are performed in them. Secondly, that the Church be swept and kept clean, without dust or cobwebs, and at great festivals strewed and stuck with boughs, and perfumed with incense. Thirdly, that there be fit and proper texts of Scripture everywhere painted, and that all the painting be grave and reverend, not with light colours or foolish antics. Fourthly, that all the books appointed by authority be there, and those not torn or fouled, but whole and clean, and well bound ; and that there be a fitting and sightly communion cloth of fine linen, with a handsome and seemly carpet of good and costly stuff or cloth, and all kept sweet and clean in a strong and decent chest, with a chalice and cover, and a stoop or flagon, and a basin for alms and offerings ; besides which, he hath a poor man’s box conveniently seated to receive the charity of well minded people, and to lay up treasure for the sick and needy. And all this he doth, not as out of necessity, or as putting a holiness in the things, but as desiring to keep the middle way between superstition and slovenliness, and as following the Apostle’s two great and admirable rules in things of this nature ; the first whereof is, ‘ Let

“ all things be done decently and in order;’ the second,  
 “ ‘Let all things be done to edification.’ ”

(*Works of G. Herbert, vol. II. chap. xiii. p. 192.*  
*Title—“ A Priest to the Temple.”*)

The burning of frankincense, probably on account of the grateful odour which it emits, and the graceful form which it assumes, may be traced, as an accompaniment of prayer, thanksgiving, and sacrifice, to the very earliest antiquity. All classical readers are aware of the *βαμύς θυήεις* of Homer,\* and of the “centum aræ Sabæo thure calentes.”† The use of incense in the Jewish worship was divinely ordained.‡ Nadab and Abihu were stricken with death because “they took either of them his censer and put fire therein, and put incense thereon, and offered strange fire before the Lord.”§ And Aaron, when he “made an atonement for himself and his house,” was directed to “take a censer full of burning coals of fire from the altar of the Lord.”|| Solomon provided “censers of pure gold for the temple of the Lord.”¶

And it was truly urged that Zachariah was burning incense according to the custom of the priest’s office, in the Temple of the Lord,\*\* when he received the message from the angel; and that in many places in Holy Writ prayer is symbolized by incense. It appears to have been very early in use, though the exact date of it is uncertain, among the Christians; it is mentioned in the apostolical canons, and there is no doubt that it is warranted by the authority of the primitive Church.

It certainly was in use in the Church of England in the time of King Edward the Sixth’s first Prayer Book. The visitation articles of Cranmer as to forbidding the censuring to certain images, &c., supplies one of the proofs of this fact. On the other hand the use of it during the celebration of the Eucharist is not directly ordered in any prayer book,

\* Iliad, VIII. 48.

† Virg. Æn. I. 420.

‡ Incense.—Dictionary of the Bible.

Looking upon incense in connexion with the other ceremonial observances of the Mosaic ritual, it would rather seem to be symbolical, not of prayer itself, but of that which makes prayer acceptable, the intercession of Christ. In Rev. viii. 3, 4, the incense is spoken of as something distinct from, though offered with, the prayers of all the saints (Luke i. 10.), and in Rev. v. 8. it is the golden vials, and not the odours or incense, which are said to be the prayers of saints. Psalm cxli. 2. at first sight appears to militate against this conclusion; but if it be argued from this passage that incense is an emblem of prayer, it must also be allowed that evening sacrifice has the same symbolical meaning.

§ Lev. x. 1.

|| Lev. xvi. 12.

¶ 1 Kings vii. 50.

\*\* St. Luke c. 1.

canon, injunction, formulary, or visitation article of the Church of England since the Reformation. Bishop Andrewes, a very high authority, appears to have used it, though in what way is not clear, in his own private chapel; and probably traces of the use of it may be found in the private chapels of other bishops, and in the Royal Chapels.

It is not, however, necessarily subsidiary to the celebration of the Holy Communion, and it is not to be found in the rubrics of the present Prayer Book, which describe with considerable minuteness every outward act which is to be done at that time.

To bring in incense at the beginning or during the celebration, and remove it at the close of the celebration, of the Eucharist, appears to me a distinct ceremony, additional and not even indirectly incident to the ceremonies ordered by the Book of Common Prayer.

Although therefore it be an ancient, innocent, and pleasing custom, I am constrained to pronounce that the use of it by Mr. Mackonochie in the manner specified in both charges is illegal, and must be discontinued.

*Mixing Water with the Wine.*

*Article 10.*—The 10th article against Mr. Mackonochie alleges, “that he, the Defendant, has in his said church, and  
“within two years last past, to wit, on Sunday the 23rd day  
“of December, on Christmas Day last past, on Sunday the  
“30th day of December, all in the year of our Lord 1866,  
“and on Sunday the 13th day of January A.D. 1867,  
“during the celebration of the Holy Communion, mixed  
“water with the wine used in the administration of the  
“Holy Communion, and permitted and sanctioned such  
“mixing, and the administration to the communicants of  
“the wine and water so mixed.”

*Answer.*—The defendant admits this article to be true.

*Article 11.*—The 11th article states, “that such mixing  
“and administration of the wine and water is an unlawful  
“addition to and variation from the form and order pre-  
“scribed and appointed by the said statutes, and by the  
“said Book of Common Prayer and administration of the  
“Sacraments and other rites and ceremonies of the Church,  
“and is contrary to the said statutes, and to the 14th, 20th,  
“21st, 36th, and 38th of the said constitutions and canons.”

*Answer.*—The defendant has denied in his plea, “that  
“such mixing and administration of the wine and water, as  
“in the said 10th article alleged, is an unlawful addition to  
“and variation from the form and order prescribed and ap-  
“pointed by the said statutes, and by the said Book of

“ Common Prayer, and administration of the Sacraments  
 “ and other rites and ceremonies of the Church, and is  
 “ contrary to the said statutes, and to the 14th, 20th, 21st,  
 “ 36th, and 38th of the said constitutions and canons, as in  
 “ the said 11th article alleged.”

There is a similar charge against Mr. Simpson.

It appears that from a very early period—the precise date is uncertain—a custom prevailed amongst Christians of adding a very small quantity of water to the wine which forms one element of the Blessed Sacrament. This custom, whether it arose from a belief that the wine used by the Jews at the Passover, and by our Lord at the last Supper, was mingled with water, or from some reason symbolical of His passion, is wholly unconnected with any Papal superstition, or any doctrine which the Church of England has rejected. It has the warrant of primitive antiquity and of the undivided Church in its favour.

The whole subject will be found discussed with his usual perspicuity and subtilty by Thomas Aquinas in the third part of his *Summa Theologica*, quæstio 74, “*De materiâ Eucharistiæ quantum ad speciem;*” which is divided into eight articles; the sixth of which is, “*Utrum sit admiscenda aqua;*” the seventh, “*Utrum aqua sit de necessitate hujus sacramenti;*” the eighth, “*De quantitate aquæ quæ apponitur.*” With regard to the sixth, he decides “that some water shall be mingled with the wine; with regard to the eighth, that it should be a very small quantity, “*paululum aquæ,*” and for this reason, “*quia si tanta fieret appositio aquæ ut solverentur species vini, non posset perfici sacramentum.*” And in accordance with this view, with regard to the seventh, it is important to observe that he decides, that “*aquæ admixtio non est de necessitate sacramenti.*” The mingling of water, therefore, with the sacramental wine is clearly within that category of ceremonies as to the adoption of which each branch of the Church has its own liberty.

In our own Church this custom prevailed before the Reformation; and in the first order of the communion, which preceded the first Prayer Book, the rubric directed that the priest should “*bless and consecrate the biggest chalice or some fair and convenient cup or cups full of wine with some water put unto it;*” and the rubric to the Communion Service of the first Prayer Book directs that the minister shall “*take so much bread and wine as shall suffice for the persons appointed to receive the Holy Communion*”  
 . . . . . “and putting the *wine* into the chalice or else

“ in some fair and convenient cup prepared for that use (if the chalice will not serve), putting thereto a little *pure and clean water*, and setting both the bread and *wine* upon the altar.” It is clear, therefore, that under the word “ *wine* ” might be comprehended the wine and water ; and in a subsequent rubric at the end of the service the direction is, that the pastors and curates shall find at their costs and charges “ sufficient bread and wine for the Holy Communion.”

In all subsequent Prayer Books the mention of water is omitted ; perhaps from the omission in the second Prayer Book no argument unfavourable to the use of water could fairly be drawn, as no manual acts of consecration are prescribed in that book. But in the present Prayer Book the manual acts are advisedly specified with great distinctness and particularity ; exact directions are given when the priest shall take into his hands the bread and the wine, when he shall place them on the table, and how he shall administer them ; and I must bear in mind that the compilers of our present Prayer Book had before them the first Prayer Book of Edward VI., and carefully considered the rubrics which it contained ; and in my opinion the legal consequence of this omission, both of the water and of the act of mixing it with the wine, must be considered as a prohibition of the ceremony or manual act of mixing the water with the wine during the celebration of the Eucharist.

I am by no means insensible to the very remarkable argument addressed to me by the Admiralty Advocate with respect to the analogy between the blood and water used in the prototypal service of the Passover, and the wine and water in the Eucharist ; and, as I have already observed, the mingling a little pure water with the wine is an innocent and primitive custom,\* and one which has been sanctioned by eminent authorities in our Church, and I do not say that it is illegal to administer to the communicants wine in which a little water has been previously mixed ; my decision upon this point is, that the mixing may not take place during the service, because such mixing would be a ceremony designedly omitted in and therefore prohibited by the rubrics of the present Prayer Book.

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\* The Poet Spenser thus describes his *Fidelia* :—

“ Shee was arrayed all in lilly white,  
 “ And in her right hand bore a cup of gold,  
 “ With *wine and water* fill'd up to the hight.”

F. Q., Book 1, Canto 10, St. 13.

*Charge against Mr. Simpson of placing the Alms upon a Stool.*

The 6th article alleges that Mr. Simpson has, within two years last past, in his said parish church, on receiving the alms collected at the offertory, placed the said alms (and the basin containing them) on a stool instead of on the Holy or Communion Table, and that such placing of the alms on a stool, and not on the Communion Table itself, is an unlawful alteration in and deviation from the form and order prescribed and appointed by the said Book of Common Prayer, &c.

Mr. Simpson, in his answer, admits that he has so placed the said alms, and the basin containing them, on a stool used as a Credence Table instead of on the Holy Communion Table; but he denies that he has done so otherwise than to obtain more room upon the said Holy Communion Table. His counsel very properly stated that Mr. Simpson had done wrong, that he regretted having done so, and submitted himself to the judgement of the Court.

The 7th article filed against Mr. Simpson, namely, that he wilfully omitted the word "all" in saying the last prayer in the Order of Morning and of Evening Prayer, has been abandoned, and I need not again advert to it.

*Lighted Candles on the Holy Table.*

*Article 5.*—The 5th article against Mr. Mackonochie alleges, "that the Defendant has in his said Church, and within two years last past, to wit, on Sunday the 23d December, on Christmas Day last past, on Sunday the 30th December, all in the year of our Lord 1866, and on Sunday the 13th day of January in the year of our Lord 1867, used lighted candles on the Communion Table during the celebration of the Holy Communion at times when such lighted candles were not wanted for the purpose of giving light, and permitted and sanctioned such use of lighted candles."

The answer to this article alleges, "that such charges are, in part, untruly pleaded, for the party proponent (the Defendant) alleges that on the said three Sundays and Christmas Day, in the said 5th article mentioned, the said lighted candles were not placed on the Communion Table, but upon a narrow moveable ledge of wood, resting on the said table, and that the said candles were so placed and kept lighted, not during the celebration of the Holy Communion only, as falsely suggested in the said 5th article, but also during the whole of the reading of the Com-

“ munion Service, including the Epistle and Gospel, and  
 “ during the singing after the reading of the Nicene Creed,  
 “ and during the delivery of the sermon.”

*Article 6.*—The 6th article alleges, “ that the use of such  
 “ lighted candles is an unlawful addition to, and variation  
 “ from, the form and order prescribed and appointed by the  
 “ said statutes, and by the said Book of Common Prayer,  
 “ and administration of the Sacraments and other rites and  
 “ ceremonies of the Church, and is contrary to the said  
 “ statutes, and to the 14th, 36th, and 38th of the said con-  
 “ stitutions and canons.”

And the Defendant, in answer to this, “ denies that the  
 “ use of such lighted candles is an unlawful addition to, and  
 “ variation from, the form and order prescribed and ap-  
 “ pointed by the said statutes, and by the said Book of  
 “ Common Prayer, and administration of the Sacraments and  
 “ other rites and ceremonies of the Church, and is contrary  
 “ to the said statutes, and to the 14th, 36th, and 38th of the  
 “ said constitutions and canons, as in the said 6th article  
 “ alleged.”

A similar charge has been made against Mr. Simpson.

There is no express direction in the Rubrics, or in the Statutes of Uniformity, or in the Canons of 1603 for the use of lights at all on the holy table. Nor is there, in these documents, any express prohibition of this ornament of divine service; and, adhering to the principle which has guided my judgement in the matters of the elevation, the mixing of water with wine, and of the incense, it becomes my duty to consider whether the use of lights on the holy table falls under the category of things indirectly, or by necessary implication, prohibited upon the grounds which have been stated, or whether it be lawful either as indirectly ordered or innocently subsidiary to divine worship. But there is also another consideration peculiar to this subject, and which must in some degree distinguish the treatment of this ornament from that which the others have received, namely, the important consideration whether the use of lights has not been ordered by competent authority, and whether that order must not, upon legal principles of construction, be deemed a part of the present law of the church.

The Rubric directs, “ that such ornaments of the church  
 “ and the minister thereof shall be retained and be in use as  
 “ were in this Church of England by the authority of Par-  
 “ liament in the second year of the reign of King Edward  
 “ the Sixth.” The Judicial Committee of the Privy Council have instructed me as to the legal meaning of the word

“ ornament ” in this Rubric.\* Their Lordships say as follows :  
 “ All the several articles used in the performance of services  
 “ and rites of the Church are ‘ ornaments.’ Vestments,  
 “ robes, cloths, chalices, and patens are amongst Church  
 “ ornaments ; a long list of them will be found extracted  
 “ from Lyndewood in Dr. Phillimore’s edition of Burn’s  
 “ Ecclesiastical Law (Vol. I. pp. 375, 6, 7). In modern  
 “ times organs and bells are held to fall under this  
 “ denomination.” Their Lordships go on to say, and  
 I invite particular attention to their language, “ When  
 “ reference is made to the first Prayer Book of Edward  
 “ the Sixth, with this explanation of the term ‘ ornaments’  
 “ no difficulty will be found in discovering, amongst the  
 “ articles of which the use is there enjoined, ornaments of  
 “ the Church as well as ornaments of the ministers.  
 “ Besides the vestments differing in the different services,  
 “ the rubric provides for the use of an English Bible, the  
 “ new Prayer Book, a poor man’s box, a chalice, a corporas,  
 “ a paten, a bell, and some other things.” “ That these

\* Their Lordships refer to Forcellini’s lexicon for the meaning of Orna-  
 mentum ; it is clearly explained in Lyndwood :

*Lyndwood*, p. 52. (*Walterus*.) “ Sint (sc. Archidiaconi) Ecclesiarum  
 “ Rectores ;” *et infra*. “ Provideant Archidiaconi ut lintamina et alia  
 “ (<sup>m</sup>) ornamenta altaris, sicut decet, (<sup>n</sup>) sint honesta ; ut libros habeat ecclesia  
 “ idoneos ad psallendum pariter et legendum : et ad minus duplicia sacerdotalia  
 “ vestimenta : et ut honor debitus divinis officiis in omnibus impendatur.  
 “ Præcipimus etiam ut qui altari ministrat, suppellicio induatur.”

(Gloss.) (m.) *Ornamenta altaris*. Qualia sunt frontilia, cortinæ, et cætera  
 hujusmodi.

(n.) *Sicut decet*. Hæc decencia respici debet secundum qualitatem ecclesiæ  
 et ipsius facultates ; ut scilicet secundum quod ecclesia magis abundat in  
 facultatibus, sic meliora et preciosiora habeat ornamenta.

Pp. 49, 50. (Title.) *De Officio Archidiaconi*. Archidiaconi est prospici-  
 “ cere ut Sacramenta ritè conserventur et administrentur, atque potissimum  
 “ Eucharistia et sanctum oleum sub clavibus custodiantur. Ornamenta quoque  
 “ Ecclesiarum ab eodem visitentur, et possessiones recenseantur.”

*Stephanus*. “ Habeant etiam Archidiaconi in scriptis redacta omnia  
 “ ornamenta (<sup>t</sup>), et utensilia (<sup>u</sup>), Ecclesiarum. Vestes quoque et libros, que  
 “ singulis annis suo faciant conspectui præsentari, ut videant quæ fuerunt  
 “ adjecta per diligentiam personarum ; vel quæ tempore intermedio per ipsarum  
 “ malitiam vel imperitiam deperierunt.”

(Gloss.) (<sup>t</sup>) *Ornamenta*. Quæ sic dicta sunt, quia eorum cultu Ecclesiæ  
 ornantur et decorantur. Sunt namque ornamenta secundum *Jamen*. decus,  
 gloria, laus, dignitas, sive preciosa vestimenta seu jocalia, quorum cultu Ecclesiæ  
 decorantur.

(u.) *Utensilia*, i. e. ad utendum apta sive necessaria. Hæc autem alibi  
 vocantur Cimelia, sicut legitur *extra de offi. Arch. c. ea quæ et 12 q. 2 Apos-  
 tolicos*. Et per hæc Utensilia intelliguntur vasa Ecclesiæ quæcunque, sacrata  
 vel non sacrata.

(*Constitutio Domini Othonis*), p. 52. “ De Archidiaconis quoque statuimus  
 “ ut ecclesias utiliter et fideliter visitent, de sacris vasis et (<sup>e</sup>) vestibus,  
 “ et qualiter diurnis et nocturnis officiis ecclesiæ serviatur, et generaliter de  
 “ temporalibus et spiritualibus inquirendo.”

(Gloss.) (e.) *Vestibus*. Repete *sacris*, dictis vulgariter vestimentis.  
 supple, et cæteris ecclesiæ ornamentis.



“ articles were included in the term ‘ornaments of the  
 “ Church’ at the period in question is clear from two docu-  
 “ ments nearly contemporaneous, one before and the other  
 “ after the establishment of the first Prayer Book.

“ In a letter of the council to Crammer, dated the 30th  
 “ April 1548, to be found in Strype’s ‘Memorials of Cram-  
 “ mer,’ vol. ii. p. 90, they complain of the conduct of  
 “ certain churchwardens, who sent away their chalices,  
 “ crosses of silver, bells, and other ornaments of the Church ;  
 “ and in a commission in 1552, 1 Card. Doc. Ann., p. 112,  
 “ No. xxvii. (Ed. 1844), the commissioners are enjoined to  
 “ leave ‘in every church or chapel of common resort one,  
 “ two, or more chalices or cups, according to the multitude  
 “ of people in every such church or chapel, and also such  
 “ other ornaments as by their discretion shall seem requisite  
 “ for the Divine Service in every such place for the time.’”  
 (*Westerton v. Liddell, Moore* 157-8.)

Edward the Sixth succeeded to the throne on January 28, 1546-7. His Privy Council showed an early intention of carrying much further the Reformation began in the preceding reign. For this object homilies were composed, mixed commissions of clergy and laity were formed, with circuits assigned to them and large visitatorial powers.

These royal visitations superseded and practically inhibited for a time diocesan visitations.

In 1547 the royal injunctions, the subject of so much discussion during the course of the argument, were issued. I refer to a very curious and rare edition with which I have been furnished, printed in London in 1547, contemporaneously therefore with the issue of the injunctions themselves. The injunctions begin as follows :

“ The Kynges mooste royal majestie, by the advice of his  
 “ most dere uncle the Duke of Somerset, Lorde Protector  
 “ of all his realmes, dominions, and subjectes, and governor  
 “ of his most roiall persone, and the residence of hys moste  
 “ honorable counsail, inteñdyng the advauncemēt of the true  
 “ honor of Almighty God, the suppression of idolatrie, and  
 “ supersticiō, throughout all hys realms of dominions, and to  
 “ plant true religion, to the exterpaciō of all hipocrisy,  
 “ enormities, and abuses, as to hys duety apperteineth ;  
 “ doth minister unto his loving subjectes, these godly  
 “ injunctiōs, hereafter folowīg : Whereof, parte were genē  
 “ unto them heretofore, by authoritie of his most derely  
 “ beloved father, Kyng Henry the eighte, of most famous  
 “ memorie and parte are nowe ministered and geven by hys  
 “ Majesty ; all which injunctions, his highness willeth and  
 “ cōmañdeth his saied louing subjectes, by his supreme

“authoritie, obediently to receoue, and truly to observe  
 “and kepe, euery mā in their offices, degrees, and states, as  
 “they will avoyde his displeasure, and the paynes in the  
 “same injunccions hereafter expressed.”

The reference to the injunctions issued by Henry the Eighth is important, in its bearing upon an argument presently to be noticed.

I pass on to the injunctions more immediately affecting the present subject. Their general object it will be seen is to remove all ornaments that relate to superstition or idolatry.

“Besides this, to the intent that all supersticion and  
 “hypocrisy, crept into diverse mennes hartes, may vanyshe  
 “away, thei shal not set furthe or extolle any images,  
 “reliques, or miracles, for any superstiō or lucre, nor  
 “allure the people be any inticementes, to the pylgrimage  
 “of any saint or ymage; but reprovyn̄g ȳ same, they shall  
 “teache, that al goodnesse, health, and grace, ought to be  
 “both asked and loked for only of God, as of the varye  
 “author and geuer of the same, and of none other.

*Item.*—“That they, the persones above rehersed, shall  
 “make or cause to bee made in their churches, and every  
 “other cure thei have, one sermō, every quarter of the yere  
 “at the least, wherein they shall purely and syncerely,  
 “declare the woorde of God; and in the same, exhorte their  
 “hearers to the woorkes of faythe, mercye, and charitie,  
 “specially prescribed and commanded in scripture, and that  
 “woorkes devised by mannes phātasies, besides scripture, as  
 “wanderyng to pilgrimages, offerying of money, cādelles or  
 “tapers, to reliques, or images, or kissing and lickyn̄g of  
 “the same, praying upon beades, or such lyke superstiō,  
 “have not only no promise of reward in scripture, for doyn̄g  
 “of the: but cōtrariwise, great threates and maledicciōs of  
 “God, for that they bee thynges, tendyng to idolatry and  
 “superstiō, which, of al other offences, God Almighty  
 “doth most detest and abhorre for that the same diminishe  
 “moste his honor and glory.”

The next injunction is the one which affects the question as to the lawfulness of these lights.

*Item.*—“That suche images as thei knowe in any of their  
 “cures, to bee, or have been so abused with pilgrimage or  
 “offrynges, of any thyng made thereunto, or shal bee here-  
 “after censed unto, thei (and none other private persones)  
 “shall for the advoyding of that moste detestable offence of  
 “idolotrie, furthewith take downe or cause to bee taken  
 “downe, and destroye the same, and shall suffre from  
 “hensefurthe, no torches, nor candelles, tapers, or images of

“ ware, to bee sette afore any image or picture, but onely  
 “ twoo lights upon the high aulter, before the Sacrament,  
 “ whiche, for the significacion, that Christe is the very true  
 “ light of the worlde, thei shall suffre to remain still:  
 “ admonishyng their parishioners that images serve for no  
 “ other purpose, but to bee a remembrance, whereby, man  
 “ maie bee admonished of the holy lifes and conversacion of  
 “ them that the said images doo represent; whiche images,  
 “ if they doo abuse for any other intent, they commit  
 “ idolotrie in the same, to greate daunger of their soules.”

A variety of questions arise upon the subject of these injunctions; but they may be all, I think, comprehended under the following heads:—

1. Were these injunctions lawfully issued under statutable authority?
2. If so, were they subsequently abrogated by statutable authority?

It could not have been accurately said, and it has very properly not been contended by the counsel for the promoter that any judgment has been given upon this subject which is binding upon this Court.

In the Saint Barnabas case, the use of lighted candles during the Holy Communion Service, an opinion, which will presently be considered, adverse to their legality was expressed by the learned Judge of the Consistory of London, but during the progress of the suit it appeared that as a matter of fact the candles were not lighted as alleged, and no decree was made by the Court. The legality of lighted candles on the Holy Table therefore was not directly submitted to the judgment of the Court of Arches or of the Privy Council: but it will be seen that the latter tribunal expressed an opinion both in favour of the lawfulness of the Injunctions and of the Candlesticks upon the Holy Table.

First, let me consider whether these injunctions were lawfully issued? The question is one of no mean difficulty. To define with certainty the exact legal limits within which the Crown might in the time of Edward VI. exercise its prerogative in relation to the Church, is a task which no one cognizant of the difficulties which surround the subject would willingly undertake.

It is said in the books that the Crown has power to *visit, reform, and correct* abuses in the Church by the ancient law\*

\* 2 Roll. Abr. 230. Prerogative le Roy. (E.) *Quel person visitera.*

(1) Per l'auncient Ley de Realm le Roy ad power de visit reform et correct toutes abuses et enormities en l'Eglise (Davis 1, Proxyes, 4.)

(2) Per le statute temps H. 8. le corone fuit lorsque remit et restore a son auncient jurisdiction que fuit usurp per l'Evesque de Rome. (Davis 1, Proxyes 4.)

of the realm. What this power was, however, is very uncertain. When Henry the Eighth procured from Parliament the title of Supreme Head of the Church (though in fact, whatever servile courtiers might say, he did but regain the position from which the Pope had expelled the Crown) he no doubt asserted that this authority required no sanction of Parliament for its exercise, but it is remarkable that he obtained that sanction as well as that of convocation for almost every important act which he did to the church.

In truth our XXXVIIth Article of the Civil Magistrates fixes the bounds of the Royal authority in matters of religion:—

“The Queen’s Majesty hath the chief power in this realm of England, and other her dominions, unto whom the chief government of all estates of this realm, whether they be ecclesiastical or civil, in all causes doth appertain, and is not, nor ought to be, subject to any foreign jurisdiction.

“When we attribute to the Queen’s Majesty the chief government, by which titles we understand the minds of some slanderous folks to be offended, we give not to our princes the ministering either of God’s word or of the Sacraments, the which thing the injunctions also lately set forth by Elizabeth our Queen do most plainly testify, but that only prerogative which we see to have been given always to all godly Princes in Holy Scripture by God Himself; that is, that they should rule all estates and degrees committed to their charge by God, whether they be ecclesiastical or temporal, and restrain with the civil sword the stubborn and evil doers. The Bishop of Rome hath no jurisdiction in this realm of England.”\*

When Cranmer was persecuted under the form of a trial at Oxford, Dr. Martin, who appeared as his judge, asked him (I take the account from the last volume of the Dean of Chichester’s work), “Who was the supreme head of the Church of England?” The Archbishop was glad to have an opportunity of explaining his former rather strong assertions on this point. “Marry,” he said, “Christ is head of

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\* The Abbé Fleury quite understood this position. (Disc. sur l’Hist. Eccles., Dissert. IX.) “Le titre de *Chef de l’Eglise* que les Anglicans ont donné à leur Roi, ne doit pas être pris à la rigueur. En lui donnant cette qualité, il ne prétend point qu’il puisse exercer les fonctions ecclésiastiques, donner la mission aux Evêques et aux Prêtres, administrer les sacremens, en un mot, qu’il soit le principe de la puissance spirituelle. Il ne lui donne point d’autre autorité dans les matières de la religion, que celle de faire des lois pour maintenir le bon ordre de l’Eglise, de soutenir et appuyer celles qui sont faites par les Evêques, d’assembler des conciles, de contenir les ecclésiastiques comme des laïques dans la soumission due au Prince, à l’exclusion de toute puissance étrangère.”

See too the first canon of 1603.

“ this member, as He is of the whole of the body—of the  
 “ universal Church.” “ Why,” quoth Dr. Martin, “ you  
 “ made King Henry the Eighth supreme head of the  
 “ Church.” “ Yea,” said the Archbishop, “ of all the *people*  
 “ of England, as well ecclesiastical as temporal.” “ And  
 “ not of the Church?” asked Martin. “ No,” said Cranmer,  
 “ *for Christ is only* head of this Church, and of the faith  
 “ and religion of the same. The king is head and governor  
 “ of his people, which are the visible Church.” “ What!”  
 quoth Martin, “ You never durst to tell the King so?”  
 “ Yes, that I durst,” quoth he, “ and did, in the publication  
 “ of his style; *wherein he was named supreme head of the*  
 “ *Church there was never other thing meant.*”—(*Hook, Lives*  
*of the Archbishops of Canterbury, Vol. II. (n.s.) p. 373.*)

It is, to say the least, extremely doubtful whether, at any period of our constitution, the Crown had power to issue, of its own authority, injunctions of this kind.

It becomes, therefore, important to consider the language of what is called the Supremacy Act.

The Statute of 26 Hen. VIII. cap. 1. was passed A.D. 1534, and enacts as follows:

“ Albeit the King’s Majesty justly and rightfully is and  
 “ ought to be the supreme head of the Church of England,  
 “ and so is recognized by the clergy of this realm in the con-  
 “ vocations, yet nevertheless for corroboration and confirma-  
 “ tion thereof, *and for increase of virtue in Christ’s religion*  
 “ *within this realm of England, and to repress and extirp all*  
 “ *errors, heresies, and other enormities and abuses heretofore*  
 “ *used in the same, be it enacted by authority of this present*  
 “ Parliament, that the King our Sovereign Lord, his heirs  
 “ and successors, kings of this realm, shall be taken, ac-  
 “ cepted, and reputed the only supreme head on earth of  
 “ the Church of England, called *Anglicana Ecclesia*, (2) and  
 “ shall have and enjoy, annexed and united to the imperial  
 “ crown of this realm, as well the title and style thereof, as  
 “ all honours, dignities, preheminences, jurisdictions, privi-  
 “ leges, authorities, immunities, profits, and commodities to  
 “ the said dignity of supreme head of the same Church  
 “ belonging and appertaining; (3) and that our said Sove-  
 “ reign Lord, his heirs and successors, kings of this realm,  
 “ shall have full power and authority from time to time  
 “ to *visit, repress, redress, reform, order, correct, restrain,*  
 “ *and amend* all such errors, heresies, abuses, offences, con-  
 “ tempts, and enormities, whatsoever they be, which by any  
 “ manner, spiritual authority, or jurisdiction, ought or may  
 “ lawfully be reformed, repressed, ordered, redressed, cor-  
 “ rected, restrained, or amended, most to the pleasure of

“ Almighty God, the increase of virtue in Christ’s religion, and for the conservation of the peace, unity, and tranquillity of this realm, any usage, custom, foreign laws, foreign authority, prescription, or any other thing or things to the contrary hereof notwithstanding.”

There is no doubt that under the authority of this Statute the three royal injunctions in the years 1536 and 1538 were issued. The statute of 21 Hen. VIII. cap. 8., intituled “ An Act that Proclamations made by the King shall be obeyed,” commonly called the Proclamation Act, was not passed till the year 1539.—(*Strype’s Memorials*, 1 Pt. 1. 494–7.)

Strype remarks “ that these last injunctions were given out by reason of the negligent observation of the former, which the clergy took little heed to.”

There is no reason for surprise, therefore, in finding some of them repeated in the next reign (*see* p. 496 in fine), such especially as that which orders the ministers to preach against “ offering candles and tapers to relicks.”

It has been argued by Mr. Stephens, adopting the opinion of Sir John Dodson, that this statute, as well as every statute “ relating to doctrine or other matters of religion,” has been repealed by 1 Edward VI. c. 12., passed in the year 1547. The proposition appeared to me at the time, having regard to the necessary consequences flowing from it, to be of an alarming character; and, after very mature deliberation, I have arrived at the conclusion that it cannot be sustained. The section which it is alleged possesses this great power of abrogation and repeal (section 2.) is as follows:—“ And allso be it enacted by thauctoritie aforesaide, that all Actes of Plament and Estatutes towchinge mencyoninge or in anny wise concernynge religion or opinyons, that is to saie aswell the Statute made in the first yere of the reigne of the King’s noble progenitor Kinge Richarde the Second, and the Statute made in the second yere of the reigne of King Henry the Fifthe, and the Statute allso made in the xxv<sup>th</sup> yere of the reigne of Kinge Henry theight concerninge punishment and reformaçon of Heretykes and Lolardes, and everie provision therein conteyned, and the Statute made for the abolishment of diversitie of opinions in certaine artycles concernynge Christian Religion cōmonlie called the Sixe Articles, made in the Plament begonne at Westmestre the xxvij<sup>th</sup> daie of Apryll in the xxxj<sup>th</sup> yere of the reigne of the moste noble and victorious Prynce of moste famous memorie Kinge Henry theight, father to our saide moste drad Sovereaigne Lorde the Kinge that now is, and allso the Acte of Plament

“ and Statute made at the Parliament begonne at Westmestre  
 “ the xvj daye of Januarye in the xxxij<sup>th</sup> yere of the reigne  
 “ of the saide late King Henry theight, and after that  
 “ proroged unto the xxij<sup>th</sup> daye of Januarye in the xxxiiij  
 “ yere of the reigne of the saide late King Henry theight,  
 “ touchinge, mentioninge, or in anny wise concerninge  
 “ bookes of the Old and New Testament in Englishe, and  
 “ the pryntinge, utteringe, selling, giving, or delivering of  
 “ bookes or writings, and reteyninge of Englishe bookes or  
 “ writings, and reading, preaching, teaching, or expownding  
 “ of Scripture, or in anny wise touching, mentionyng, or  
 “ concerninge anny of the same matters: And also one  
 “ other Statute made in the Parliament holden at Westmestre  
 “ in the xxxv<sup>th</sup> yere of the reigne of the saide late King  
 “ Henry theight, concerninge the qualificacon of the Statute  
 “ of Sixe Articles, and all and everie other Acte or Acts  
 “ of Parliament concerninge doctryne and matters of religion,  
 “ and all and everie braunche, artycle, sentence, and matter,  
 “ paynes, and forfeitures conteyned, mentioned, or in anny  
 “ wise declared in anny of the same Acts of Parliament or  
 “ Estatutes, shall from hensfurthe be repealed and utterlie  
 “ voyde, and of none effecte.”

It was truly observed by Mr. Hannen that the object of this Statute is to repeal laws which inflicted severe punishments and penalties, imprisonment, fine, and death, on account of opinions entertained “ concerning doctrine or matters of religion,” such as had been enforced in the reigns of Richard II., Henry V., and Henry VIII., against heretics of various kinds.

If the wider signification which has been contended for be given to this statute, it would in truth repeal the principal statutes enacted during the reign of Henry VIII. for establishing the independence of the Church of England.

It will be difficult to maintain that the statutes against the payment of annates (23 Hen. VIII. c. 20.), the restraint of appeals (24 Hen. VIII. c. 12.), and even the Act of Supremacy (25 Hen. VIII. c. 19.), would not fall under the category of enactments concerning “ doctrine or matters of religion:” but in truth the number of Statutes which this construction would repeal might amount to forty-two, and certainly would include a great many of grave importance.\* I remember that Sir W. Maule (one of the members of the Judicial Committee) observed, “ that if there were anything in Magna Charta about religion, it would on this construction be “ repealed.”

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\* Perry on Lawful Church Ornaments, App. pp. XI.—XXXV.

I am of opinion that the operation of this statute of Edward VI. must be confined within the limits which I have stated, and that it has not repealed any power to issue Royal Injunctions which Henry VIII. derived, either from the Supremacy or the Proclamation Statute.

The legal authority of these Injunctions of Edward VI. was discussed in the "*Westerton v. Liddell*" cases. The judge of the Consistory of London held that the burden of proving their legal authority lay upon those who asserted it, and that the burden had not been discharged, and he treated the Injunctions as invalid; and on that ground, among others, decided that the "Cross" was not a lawful ornament of the Church.

The Court of Arches, however, held that Edward VI. had power to issue these Injunctions under the authority of the Proclamation Act, 31 Henry VIII. cap. 8., and the learned judge decided that the Cross was an illegal ornament because it was forbidden under the name of an "Image" by these very Injunctions of Edward VI.

When the case of *Westerton v. Liddell* was appealed to the Judicial Committee of the Privy Council they decided that the Cross was a lawful ornament, and that it was not an "Image" forbidden by these Injunctions. (*Moore*, 161 *in fin.*)

In arriving at this conclusion they certainly treated the Injunctions as valid, whether or not they agreed with Sir John Dodson's opinion that their validity was derived from the powers conferred on the Crown by the Proclamation Act: and referring to the 28th section of these very Injunctions, they say, "The section could not mean that all candlesticks should be removed from Churches, for two were to be retained" (namely, by the third section) "on the High Altar." (*Moore*, 165, 166.)

If this be so, their decision is binding upon me, and the general question as to the legal validity of these Injunctions has been decided in the affirmative. It may be as well, however, to look a little more closely into this question.

It has been argued that these Injunctions were not lawfully issued under the Proclamation Act, because it related only to temporal and not to spiritual matters, and also because the orders which it prescribed for the preparation and issue of instruments under its authority were indispensable conditions, and had not been complied with.

Mr. Stephens, in his argument upon this subject, laid down four propositions. First, if these Injunctions were issued under the Proclamation Acts, nevertheless, upon the repeal of those Acts in November 1547, they were not in force by the authority of Parliament in the second year of Edward VI.



Secondly, if they were intended to be issued under the Proclamation Acts of Henry VIII., they were not issued in accordance with their provisions, (1.) because there is no time limited during which the Injunctions were to continue in force; (2.) because the copies of those Injunctions which were printed and circulated were not signed by 13 members of the King's Council, as required by 31 Henry VIII. cap. 8., and there is no evidence of their having been proclaimed in accordance with the 3rd section of that Statute. Thirdly, that instead of the punishment by fine and imprisonment which the Council, under section 4 of 31 Henry VIII. cap. 8., were empowered to inflict, the Injunctions of 1547 only threatened ecclesiastical punishments, which the Council had no power to inflict under the Proclamation Act; and those ecclesiastical punishments are to be inflicted by the ordinary, and not by the 13 members of the King's Council. Fourthly, it appears from the earliest historians of the reformation, Fox, Fuller, and Heylin, that the Injunctions were not issued under the Proclamation Act, but by virtue of the King's supremacy.

From the first of these propositions I have already expressed my dissent. With regard to the second, I think there is every presumption of law, and that a court of justice must, after this distance of time, act upon that presumption, that these Injunctions were signed by the requisite number of members required by this Statute, and the absence of a specified time during which the Injunctions were to be in force would not, in my opinion, invalidate their validity. As to the objection that they were not duly proclaimed in the market place by the sheriff, the clause which requires this seems to me directory only, and to whatever penalty non-compliance with it might render the sheriff amenable, such non-compliance would not invalidate the Injunctions. The contrary position was, indeed, maintained by Bishop Gardner\* when he was imprisoned for disobedience to these Injunctions, which he considered to have been issued under the Proclamation Act. It is remarkable, however, that he does not dispute the power of the Crown to issue the Injunctions, nor that the proper number of counsellors had not signed the instrument, but maintains that he ought not to be imprisoned by virtue of the Proclamation Act; and it might be that the Injunctions were valid under the "Supremacy Act," but that the additional power of secular punishment given by the Proclamation Act could not be put in force against him, and that he was only liable to ecclesiastical punishment

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\* Collier's *Eccl. Hist.*, Vol. V. p 199.

under the Injunctions. This was probably the opinion of Fox, Fuller, and Heylin, to whom Mr. Stephens referred in his fourth proposition.

I have made these observations upon the Proclamation Act out of deference to the argument which was addressed to me; but after all, whether these observations are well founded or not is of small moment, because it seems to me impossible to doubt that these Injunctions were recognized by the Legislature, not only because they would derive validity from the Supremacy Act, but also because they are specially recognized in the first Prayer Book, which is part of the first Statute of Uniformity, in the following words: "Upon Wednesdays and Fridays the English Litany shall be said or sung in all places after such form as is appointed by the King's Majesty's Injunctions, or as is or shall be otherwise appointed by His Highness."—(*Liturgical Services*, p. 97, *Rubric after the Communion Service*.)

I should mention that in the year 1548–49 the Visitation Articles for the diocese of Canterbury in the second year of Edward VI. repeat this Injunction in the following inquiry: "Whether they have not . . . destroyed in their churches, chapels, and houses all images, all shrines, coverings of shrines, all tables, candlesticks, trindles or rolls of wax, pictures, paintings, and all other monuments of feigned miracles, pilgrimages, idolatry, and superstition, so that there remain no memory of the same in walls, glass windows, or elsewhere;" and also the inquiry: "Whether they suffer any torches, candles, tapers, or any other lights to be in your churches, but only two lights upon the high altar."—(*Cardwell, Doc. Ann.* p. 49.)

Before I leave this subject let me observe that I cannot find that the legal authority of these Injunctions *per se* was ever seriously questioned before the judgment of Dr. Lushington in the St. Barnabas case. Nor am I aware of any statute,—none has been cited to me,—by which they have been deprived of their original authority. There were many occasions on which those who were adverse to them would gladly have impugned their original validity, and there was no lack of learned advisers versed in legal and constitutional lore to have prompted or maintained such a proposition.

In the interval between 1547 and 1549 no objections whatever appear to have been taken to these Injunctions; but in that year a paper appears, the authority of which is extremely questionable; it was unsigned, and the author is unknown: it is headed "Articles to be followed and observed according to the King's Majesty's Injunctions and Proceedings;" and the second of these Articles forbad, among a variety of other

things, "setting any light upon the Lord's board at any time."—(*Card. Doc. Ann. v. 1, 75.*)

It is clear, however, that these Articles (perhaps Visitation Articles, and only binding, like those of Ridley in 1550, if at all, in a particular diocese,) cannot affect the question of whether lights were an ornament "in use in this Church of England by authority of Parliament in the second year of the reign of King Edward the Sixth."

Here I must notice two remarkable letters which throw the light of contemporary history on this subject; the first is a letter written by Martin Bucer and Paul Fagius to the ministers at Strasburg ("Original Letters" published by the Parker Society, p. 535); it is dated April 26, 1549. "We yesterday waited upon the Archbishop of Canterbury, that most benevolent and kind father of the Churches, who receives and entertains us as brethren. The cause of religion as far as appertains to the establishment of doctrines and the definition of rites is pretty near what could be wished."

"As soon as the description of the ceremonies now in use shall have been translated into Latin we will send it to you. We hear that some concessions have been made both to a respect for antiquity and to the infirmity of the present age, such, for instance, as the vestments commonly used in the Sacrament of the Eucharist and the *use of candles*, so also in regard to the commemoration of the dead and the use of chrism, for we know to what extent or in what sort it prevails. They affirm there is no superstition in these things, and that they are only to be retained for a time, lest the people, not having yet learned Christ, should be deterred by too extensive innovations from embracing His religion, and that rather they may be won over."

The second letter is from John Hooper to Henry Bullinger, 7th December 1549 (Original Letters, Parker Society, page 71); it is, "The altars are here in many churches changed into tables. The public celebration of the Lord's Supper is celebrated three times a day. Where they used heretofore to celebrate in the morning the Mass of the Apostles, they have now the Communion of the Apostles; where they had the Mass of the Blessed Virgin, they have now the Communion, which they call the Communion of the Virgin; where they had the principal or High Mass, they now have, as they call it, the High Communion. They *still retain their vestments and the candles before the altars.*"

Surely during the reign of Elizabeth the legal invalidity

of these injunctions would have been urged by those who were adverse to the use of lights.

Bishop Cox, writing to Gualter on February 12, 1571, says of the Queen, that she "has always been so exceedingly scrupulous in deviating even in the slightest degree from the laws prescribed." (*Zurich Letters, 1st series, No. XCIV., p. 234.*) And it is an admitted fact that the two lights were used in her Chapel at the celebration of the Holy Communion. It is no less certain that many of her counsellors, temporal and spiritual, pressed her to discontinue the use of these lights, an object they were most anxious to effect, but in no one single instance did they ever allege to Her Majesty that the burning of these lights upon the Holy Table was contrary to the law. I say this with some confidence, not only because I have been unable to find any instance myself, but because the leading counsel for the promoter, whose industry and whose acquaintance with these subjects no one will gainsay, having been so good, in compliance with my request, as to make search into the authorities upon this point, was unable to find that any such argument had ever been adduced.

The lawfulness of placing these two lights upon the Holy Table appears to me established by these Injunctions, unless they are, as has been contended, by necessary implication abolished, inasmuch as they are significant of a Papal superstition, which was rejected by the Church at the time of the Reformation.

To this argument there are various answers :

First. These lights, in their original institution, were not significant of any rejected Papal superstition, but of the fundamental truth of Christianity, namely, the light of the Gospel. The origin of them in the canon law I will presently refer to.

Secondly. They were suffered to remain because of their strictly Evangelical character ; they were for the honour of Christ, not of the Blessed Virgin or of Saints, as lights on bye altars might be.

About the year 376 (A.D.) Vigilantius spoke with derision of the practice of Christians to burn candles during Divine Service at mid-day. Saint Jerome wrote a defence of the Church, and of this practice :

" Non diffiteor (he says) omnes nos, qui in Christo credimus, de idololatriæ errore venisse, nō enim nascimur, sed renascimur Christiani, et quia quondam colebamus idola, nunc Deum colere nō debemus, ne simili eum videamur cum idolis honore venerari ? Illud fiebat idolis, et iccirco detestandum est ; hoc fit martyribus, et iccirco

“ recipiendum est nam et absq; martyrum reliquiis per  
 “ totas orientis ecclesias, quando legendum est evangelium,  
 “ accenduntur luminaria, jam sole rutilante, non vtiq; ad  
 “ fugandas tenebras, sed ad signum lætitiæ demonstrandum,  
 “ unde et virgines illæ evangelicæ semper habent accensas  
 “ lampades suas; et ad apostolos dicitur: *Sint lumbi vestri*  
 “ *præcincti, ut lucernæ ardentes in manibus vestris.* Et  
 “ de Joanne Baptista: *Ille erat lucerna ardens, ut lucens:*  
 “ ut sub typo luminis corporalis illa lux ostendatur, de qua  
 “ in psalterio legimus: *Lucerna pedibus meis verbum tuum*  
 “ *Domine, ut lumen semitis meis.*” (*Hieronym. Stridonensis*  
 “ *Opera.*” *Adversus Vigilantium, t. 1, p. 160, ed. Colon.*  
 1516.)

Dr. Donne, in his defence of the use of lights in the daytime during Divine service relies much upon the early Christian practice :

“ I would not (he says) be understood to condemn all  
 “ use of candles by day in Divine service, nor all churches  
 “ that have or do use them, for so I might condemn even  
 “ the primitive church in her pure and innocent estate. And  
 “ therefore that which Lactantius, almost three hundred years  
 “ after Christ, says of those lights, and that which Tertullian,  
 “ almost a hundred years before Lactantius, says in repre-  
 “ hension thereof, must necessarily be understood of the  
 “ abuse and imitation of the Gentiles therein; for that the  
 “ thing itself was in use before either of these times I think  
 “ admits little question. About Lactantius’ time fell the  
 “ Eliberitan Council, and then the use and the abuse was  
 “ evident; for in the 34th canon of that council it is for-  
 “ bidden to set up candles in the churchyard; and the  
 “ reason that is added declares the abuse . . . . .  
 “ that the souls of the faithful departed should not be  
 “ troubled. Now the setting up of lights could not trouble  
 “ them, but these lights were accompanied with superstitious  
 “ invocations, with magical incantations, and with howlings  
 “ and ejaculations which they had learned from the Gentiles,  
 “ and with these the souls of the dead were in those times  
 “ thought to be affected and disquieted. It is in this cere-  
 “ mony of lights as it is in other ceremonies; they may be  
 “ good in their institution, and grow ill in their practice.  
 “ So did many things which the Christian church received  
 “ from the Gentiles in a harmless innocency degenerate  
 “ afterwards into as pestilent superstition there as amongst  
 “ the Gentiles themselves. For ceremonies which were  
 “ received but for the instruction and edification of the  
 “ weaker sort of people were made real parts of the service  
 “ of God and meritorious sacrifices. To those ceremonies,

“ which were received as helps to excite and awaken devotion, was attributed an operation and an effectual power, even to the ceremony itself, and they were not practised, as they should, *significativè*, but *effectivè*, not as things which should signify to the people higher mysteries, but as things as powerful and effectual in themselves as the greatest mysteries of all, the Sacraments themselves. So lights were received in the primitive church to signify to the people that God the Father of Lights was otherwise present in that place than in any other; and then men came to offer lights by way of sacrifice to God; and so that which was providently intended for man, who indeed needed such helps, was turned upon God, as though He were to be supplied by us. But what then? Because things good in their institution may be depraved in their practice . . . shall therefore the people be denied all ceremonies for the assistance of their weakness? . . . We must not be hasty in condemning particular ceremonies, for in so doing, in this ceremony of lights, we may condemn the primitive church that did use them, and we condemn a great and noble part of the reformed church which doth use them at this day.”—(*Dr. Donne’s Sermons*, p. 80, fol., 1640. Vol. I. 15 Oct.)\*

Thirdly, as to the averment that the words “before the Sacrament” denote the *reserved Sacrament*.

\* Luther allowed the use of these lights, see his *Deutsche Messe*, 2 Codex Liturgicus, p. 97.

*Des Sontags fur die leyen, ib.* p. 108.

Da lassen wyr die Messegewand, altar, liechter noch bleyben, bis sie alle werden, oeder uns gesellet zu edern, wer aber hie anders vil faren, lassen wyr geschehen.

Editor’s note.—Gerberus, l. c., p. 459. “Die lichter oder wacks-keitzen, die wir bey der handlung des heiligen nachtmals anzünden, sind auch unter die ceremonien zu rechnen.” P. 132.—*Auch sollen die gewonlichen liechter, zu den bovis, messen, und andern empten, auch sonst des winters zur nothnift gebrand werden*, was aber darüber sonst sonderliche liechter des sonderschaften und gülden, oder entzeler personen verhanden, sollen abgethan, und was etwan darauff gewand sol nach befehl der visitation zu hesserm brauch gefurt werden.

*Wie man die krancken communiciren sol.*

P. 432. Editor’s note.—“In deme also de Pfarrhere solckes, also hyr vör hir steit, mit dem volcke, unde mit dem krancken rüdet, let ne dorch den cöstes, de alle wëge mit gan schal, bereiden einen disch, mit brodt unde wyn, mit einem reinen doke bedecket, unde bereidet das up dat brodt in der patene, den wyn in dem ketke, etc.” P. 3. 563.—*Multi alii libri mentionem faciunt candelarum in celebratione sacramenti accendendarum.* Gb. p. 487. Es sind aber die ceremonien bey communion derer patienten nicht allenthalben einerley. An manchen orten werden noch 2 lichter angezündet und auf den tisch gesetzt, auch ein crucifix dazu, andere aber lassen diese dinge weg, und achten sie nicht, wie si denn auch nicht nöthig seyn.

The practice of reserving the Holy Sacrament, it has been truly said, is unlawful according to the present law of the Church of England.

In the Office for the Communion of the Sick in the Prayer Book of Edward VI. it is provided by the prefatory rubric as follows: "And if the same day there be a celebration of the Holy Communion in the Church, then shall the priest reserve (at the open Communion) so much of the Sacrament of the body and blood as shall serve the sick person, and so many as shall communicate with him (if there be any); and so soon as he conveniently may, after the open Communion ended in the Church, shall go and minister the same, first, to those that are appointed to communicate with the sick (if there be any), and last of all to the sick person himself."—(*Liturgical Services. Ed. Camb., 1844, p. 141.*)

In the present Prayer Book it is ordered: "And if any of the bread and wine remain unconsecrated, the curate shall have it to his own use; but if any remain of that which was consecrated, it shall not be carried out of the Church, but the priest, and such other of the communicants as he shall then call unto him, shall, immediately after the Blessing, reverently eat and drink the same."

The light which burnt before the reserved Sacrament was generally a lamp.

This light was continually burning, and therefore probably oil was used, whereas these two lights were only burning during the celebration.

The lights before the reserved Sacrament appear to have been always of an uneven number when the light was not, as it usually was, single.

The lights "before the Sacrament" in England were necessarily, for mystical reasons, or more properly fancies, enumerated by Lyndewode, but which it is not necessary to recapitulate here, made of wax.

The words "before the Sacrament" are omitted in Cranmer's Visitation Articles intended to execute the injunction, but that clearly means "tempore quo missarum solennia peraguntur," while the ceremony was being performed. The candles might be lighted before the elements have been consecrated, and before the Sacrament is therefore complete, "accedit verbum elemento et fit sacramentum," as Saint Augustine says, but they are not the less burning before it when it is complete.

The reserved Sacrament was not in the time when Lyndewode wrote his Commentary (in 1430) placed upon the "High Altar." It was one of the usages peculiar to the

Church of England to suspend the reserved Sacrament above the altar.

The account given by Lyndewode clearly shows that *two wax* candles (the number and the quality it is important to notice) ought properly to accompany every celebration of the Mass, because Christ is the splendour of eternal light.

In a constitution of Archbishop Walter, under the following title, "Sacerdos curet, ut omnia Eucharistiæ deservientia sint integra et munda, atque verba consecrationis debite pronunciet, nec celebret antequam matutinas primam et tertiam perlegerit, nec sine clerico superpellicio induto, nec sine tunica, nec in peccato mortali," we find this order :

*Lyndwood, p. 236, Walterus.*—"Nullus insuper sacerdos parochialis præsumat missam celebrare, antequam matutinale persolverit officium, et primam et tertiam de die. Item nullus clericus permittatur ministrare in officio altaris, nisi indutus sit superpellicio, et tempore quo missarum solennia peraguntur, accendentur (n) duæ candelæ, vel ad minus una."

Upon this constitution the gloss of Lyndwood is as follows : (n) *Duæ candelæ.*—"Est enim a parte juris ordinatum quod sacerdos sine lumine ignis non celebret missam. (*Extra eo c. ult. ubi de hoc.*) Si tamen faciat, nihilominus conficit, licet graviter peccet, secundum *Hostien.* ibi, et concordant alii *doctores.* Et nota, quod candelas in celebratione missæ arsuras convenit esse de cerâ potius quam de aliâ materiâ. *Candela namque sic ardens significat ipsum Christum, qui est splendor lucis æternæ. (Extra eo c. sane.)\**

The Devonshire rebels, when in 1549 they demanded the restoration of Roman Catholic rites, drew up a series of articles in which their grievances were stated, they said in their 4th article :

"We will have the Sacrament hang over the high altar, and there to be worshipped, as it was wont to be ; and they which will not thereto consent, we will have them die like heretics against the Holy Catholic Faith."

The answer of Cranmer is very remarkable :

"Is this the Holy Catholic Faith, that the Sacrament should be hanged over the altar and worshipped ? and they

\* Unde et candela in sui compositione significat Christum propter tria : componitur namque candela ex cera, lychno, et lumine. Sic quoque Christus constat ex carne virginea sine semine generatus, sicut procedit cera ex ape sine generatione vel coitu apis. Lychnus, qui est candidus, significat in Christo animam candore innocentie adornatam. Lumen vero significat ejus divinitatem carni unitam. De his sic dicitur *Cantic. 5* : "*Dilectus meus candidus propter animam candidam et rubicundus propter divinitatem fulgidam. Electus ex millibus propter carnem sine peccato genitam.*"



“ be heretics that will not consent thereto . . . . .  
 “ Innocent III., about 1215 years after Christ, did ordain  
 “ that the Sacrament and Chrism should be kept under lock  
 “ and key. But yet no motion he made of hanging the  
 “ Sacrament over the high altar, nor of the worshipping of  
 “ it. After him came Honorius III., and he added further,  
 “ commanding that the Sacrament should be devoutly kept  
 “ in a clean place, and sealed, and that the priest should often  
 “ teach the people reverently to bow down to the Host when  
 “ it is lifted up in the mass time, and when the priest should  
 “ carry it to the sick folks. And although this Honorius  
 “ added the worshipping of the Sacrament, yet he made no  
 “ mention of the hanging thereof over the high altar as your  
 “ article proposeth. Nor, how long after, or by what means,  
 “ that came first up into this realm, I think no man can tell.  
 “ And in Italy it is not yet used until this day.”—(*Strype’s*  
*Cranmer, App. 97.*)

The inference to be drawn from this letter is that the two lights ordered by the injunctions of 1547, and which Cranmer had enforced by his Visitation Article in 1548, could not have been placed before the reserved Sacrament, inasmuch as the complaint of the rebels in 1549 is that the Sacrament was not suspended over or placed upon the High Altar. It is remarkable that Dr. Rock, whose knowledge as an antiquarian in the matter of Church rites and ceremonies is supposed to be considerable (*The Church of our Fathers, Vol. III., Part II., p. 208*), says, “ That the first  
 “ wooden or stone tabernacle resting on the Altar seen in  
 “ this land was put up in Queen Mary’s reign.”

It appears from Lyndewode’s gloss upon the Provincial Constitution of John of Peccham that according to the English custom the reserved Eucharist was placed in a *Pyx*, and the *Pyx* in a *Tabernaculum*, and the *Tabernaculum*, instead of being placed stationary as it afterwards was in conformity with later Roman usage upon the Altar, was hung up over it. And in support of Dr. Rock’s assertion that in Queen Mary’s reign the reserved Sacrament was placed upon the Altar is the inquiry of Cardinal Pole in 1557, “ Whether  
 “ they do burn a lamp or a candle before the Sacrament ;” and referring to his Injunctions in 1566 this would appear to have been “ a tabernacle set in the midst of the High  
 “ Altar.”

With respect to the custom of the Greek Church, Goar says :

“ A lamp, kept perpetually burning, is suspended in such  
 “ a manner as to hang between the Altar and the place for  
 “ the Blessed Sacrament, and is regarded by the Greeks as

“ a becoming token of reverence towards the word of God  
 “ inscribed within the sacred volume, and the Word made  
 “ flesh, Christ Jesus dwelling us, but veiled under the  
 “ appearance of the sacramental species.”—(*Goar, Euchal.*  
*Græc. p. 15. Hierurgia, p. 507.*)

I was referred by Mr. Prideaux to a treatise in French upon the exposition of the Holy Sacrament of the Altar. It was published in 1673, and the account which the author, a Roman Catholic of course, gives of the practice as to the reserved Sacrament, the importance especially of having a lamp perpetually burning before it, is interesting, and bears upon the subject now under consideration. “ Néanmoins,” (says this author) “ on ne se met pas en peine comment la  
 “ tres-Sainte Euchariste est logée dans les Églises de la cam-  
 “ pagne, ny comment elle est portée aux malades, dans presque  
 “ tous les villages, où elle y est portée dans un si pauvre  
 “ appareil, qu’il est plutost capable d’exciter de la douleur  
 “ et de l’indignation dans le cœur des veritables fideles, que  
 “ de la devotion et du respect. La plus part de ces Eglises  
 “ sont ou désolées, ou decouvertes, ou sans lambris, ou sans  
 “ vitres, ou sans luminaires, ou sans livres, ou enfin destituées  
 “ sans ornemens nécessaires pour celebrer dignement les  
 “ saints mystères, et les divins offices. Leurs vaisseaux  
 “ sacrez ne sont que d’estain, ou de cuivre, ou mesme de  
 “ plomb en quelques endroits; leurs tabernacles, sont ou  
 “ rompus, ou difformès, ou mal-ornez; ou enfin leurs fabriques  
 “ n’ont point de revenu pour entretenir une lampe toujours  
 “ ardente devant le Sanctuaire où repose l’Eucharistie. Et  
 “ l’on fait tous les jours de grandes dépenses dans les villes  
 “ pour l’exposition frequente de ce divin mystere.” The author regrets this expense, and continues: “ Ne vaudroit-il  
 “ pas mieux les employer à la decoration, ou aux reparations  
 “ des eglises de la campagne, et à l’achat des vaisseaux  
 “ sacrez, des livres, des meubles et des ornemens dont elles ont  
 “ si grand besoin? N’a-ce pas esté l’intention de Paul III.  
 “ qu’elles y fussent employées, comme on le peut voir par les  
 “ paroles de sa bulle que nous avons rapportées?”—(*Traité*  
*de l’exposition du St. Sacrament de l’Autel, ed. 1673,*  
*p. 171.*)

It is surely most improbable that Cramer, who was advancing tentatively in the path of reform, and who was the real author of the Injunctions, should have ordered two lights to be continued perpetually burning before the Reserved Sacrament, having regard to his desire to abrogate the custom of reservation, and also on account of the expense which the ordering would have entailed upon the parishioners.

Gavanto (vol. 5, p. 65), writing in Italy his "*Praxis Compendiaria Visitationis Episcopalis*," and describing the duties of the bishop on his visitation, under the heading "De Sanctissimâ Eucharistiâ," says:

"Observet Episcopus, et Notarius describat, an sint, qualia sint, quæ sequuntur;" and among these articles is to be found "Basim Tabernaculi vacuum" and "Lampadem ardentem," which is clearly the one lamp before the Reserved Sacrament.

Symbolism and the worship of symbols are distinct things, "is confirmat usum qui tollit abusum."

I am disposed to assent to the opinion expressed by Mr. Stephens in his elaborate and useful edition of the Book of Common Prayer:

"It may, however," that learned person says, "be argued that a distinction is to be taken between (1) the lights burning before shrines and images, (2) the symbolical lights formerly placed on the altar during the communion, and (3) those which are for actual use for the decent enlightenment of the house of God. The lights mentioned in King Edward's Injunctions are not to be confounded with the lamp or cresset, a single light, burning before the suspended Pyx. King Edward's mention of the Sacrament appears to be merely circumstantial: *two* lights (which are known to be of wax, not *one* lamp,) were to be on the altar before the Sacrament or Pyx, 'for the signification that Christ is the very true light of the world.' The Pyx was then considered to contain the actual body of Christ. The removal of the Pyx, in consequence of the purified doctrine of the Church, did not weaken the force or propriety of the symbol, as Christ is spiritually present in His own house. It is to be remarked that Archbishop Cranmer omits the words 'before the Sacrament.'"—(*Book of Common Prayer, vol. 2, p. 1120.*)\*

The usages with respect to the custody of the Reserved Sacrament appear then to have been these:

- (1) The use which Lyndewode refers to as existing in Holland, Portugal, and other places, and which apparently existed too in Italy, of keeping it in a place in the wall under lock and key:
- (2) The peculiar English custom of suspending it in a Pyx in a Tabernaculum *over* the High Altar:
- (3) Cardinal Pole's order in Queen Mary's time, that it should be placed *upon* the Altar.

\* Dr. Hook seems to be of the same opinion on this point. See his Church Dictionary, article "Lights."

In *Westerton v. Liddell*, Dr. Lushington came, apparently not without reluctance, to the conclusion that candlesticks upon the Holy Table were lawful ornaments.

It seems to me difficult to suppose that the use of candlesticks does not bear witness to the partial retention,—no uncommon fact in the history of ritual observances,—of the custom of burning lights upon the altar embodied in the earliest usages of the Church in the provincial constitutions of our own country, and in the Injunction of 1547.\*

I should not omit to notice the argument, much referred to by counsel, from the inventories made by order of the Government of Edward the Sixth, in order to stop the wholesale sacrilege and plunder of the furniture and goods of parish churches by those who humbly imitated the rapine which, on a large scale, had been carried on by the courtiers, out of their zeal for the Reformed Religion.

I am not inclined to rely very much, on the one hand, upon the fact that certain ornaments are proved by these inventories to be *de facto* in existence after the second year of Edward the Sixth, nor, on the other hand, that only certain of these ornaments were retained, by the commissioners who caused these inventories, for the use of parish churches.

However, the fact is not to be laid wholly out of consideration that two or three years after the date of the first Prayer Book there should be in 21 counties no less than 1,400 churches which possessed each two candlesticks. Such is the result I believe of an investigation of the inventories in the Record Office, which were taken in 1552, when the second Prayer Book was in course of preparation.

Inasmuch, therefore, as I think that the Injunctions which order these two lights were issued under statutable authority and have not been directly repealed by the like authority; inasmuch as they are not emblematical of any rite or ceremony rejected by our Church at the time of the Reformation, inasmuch as they are primitive and catholic in their origin, evangelical in their proper symbolism, purged from all superstition and novelty by the very terms of the Injunction which ordered their retention in the Church, I am of opinion that it is lawful to place two lighted candles on the Holy Table during the time of the Holy Communion “for the signification that Christ is the very true light of the world.”

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\* It is true that candlesticks possess, as Archdeacon Freeman observes, (*Rites and Ritual*, p. 76,) a symbolism of their own, and that St. John saw in his vision “golden candlesticks,” not burning candles or lamps (*St. John*, v. 35; *Rev.* v. 8; viii. 3.)

*Conclusion.*

These are the conclusions at which I have arrived, and this is the Judgment which I am about, in formal language, to pronounce, after a most anxious, painful, and I may be allowed to add, conscientious, however inadequate, examination of the law applicable to the facts of the case. I have not been able to conceal from myself that this exposition of the law may wound the feelings of some, whose love for the Church of Christ is as unquestionable as their loyalty to the Church of England,—men, who think no ornament too costly, no service too magnificent, for the house of God,—capable of any act of self-denial and self-sacrifice to promote these objects,—to whom it may at first appear harsh and illiberal to be told that the sentence of the law bids them forego any symbolical act, or incident of Divine worship, with which they have accustomed themselves to associate in any way the administration of the Blessed Sacrament of the Body and Blood of our Lord; but I have good hope that further and deeper consideration will convince them of the truth of the proposition, which I stated at the outset of my Judgment, that no matter of doctrine or faith is affected by this decision, the true result of which is simply to pronounce, that by those statutes, ordinances, and canons, which form the compact of union between the Church and the State in this country, it has been determined that certain usages, however in themselves innocent, laudable, and primitive, shall, for the sake of general peace and harmony, form no part of the rites and ceremonies of the Church of England.

In *Westerton v. Liddell*, the Privy Council said, “Their Lordships are not disposed in any case to restrict within narrower limits than the law has imposed, the discretion which within those limits is justly allowed to congregations by the rules both of the Ecclesiastical and the Common Law Courts.”

The basis of the religious establishment in this realm was, I am satisfied, intended by the constitution and the law to be broad and not narrow. Within its walls there is room, if they would cease from litigation, for both parties; for that which is represented by the promoter and for that which is represented by the defendant; for those whose devotion is so supported by simple faith and fervent piety that they derive no aid from external ceremony or ornament, and who think that these things degrade and obscure religion; and for those who think with Burke, that religion “should be performed, as all public solemn acts are performed, in

“ buildings, in music, in decorations, in speech, in the dignity  
 “ of persons according to the customs of mankind taught  
 “ by their nature, that is, with modest splendour and un-  
 “ assuming state, with mild majesty and sober pomp ;” who  
 sympathize with Milton the poet rather than with Milton  
 the Puritan ; and who say that these accessaries of religious  
 rites,—

“ . . . . . dissolve them into ecstacies,  
 “ And bring all Heaven before their eyes.”

Saint Chrysostom and Saint Augustine represented  
 different schools of religious thought ; the Primitive Church  
 held them both. Bishop Taylor and Archbishop Leighton  
 differed as to ceremonial observances, but they prayed for  
 the good estate of the same Catholic Church ; they held the  
 same faith “ in the unity of spirit, in the bond of peace, and  
 “ in righteousness of life ;” and the English Church con-  
 tained them both.

There is surely room for both the promoter and the defen-  
 dant in this Church of England, and I should indeed regret  
 if, with any justice, it could be said that this Judgement had  
 the slightest tendency either to injure the Catholic founda-  
 tions upon which our Church rests, or to abridge the liberty  
 which the law has so wisely accorded to her ministers and  
 her congregations.

I must say a word as to costs. This is a matter to be  
 governed by the discretion of the Court, that is, by a dis-  
 cretion judicially exercised.

In the case of *Martin v. Mackonochie*, it appears that the  
 promoter is not a churchwarden, nor a resident parishioner.  
 Of the five charges brought against Mr. Mackonochie, in  
 which I include the excessive kneeling, upon three there  
 have been adverse decisions to Mr. Mackonochie. With  
 respect to the *elevation*, Mr. Mackonochie submitted the  
 question to his Ordinary, and discontinued, under his direc-  
 tion, the practice before the institution of this suit, though,  
 it is true, he has done so under protest.

With respect to the *incense*, he had discontinued, though  
 also under protest, the censing of persons and things, before  
 the institution of this suit.

With respect to the *excessive kneeling*, I have decided  
 that it was a matter that ought to have been referred to the  
 discretion of the Ordinary.

With respect to the *mixing water with the wine*, the  
 decision is in favour of the promoter ; and with respect to  
 the *lights*, in favour of the defendant.

Taking all the circumstances into my consideration, I shall make no order as to costs in this case.

In the other case of "Flamank *v.* Simpson," the circumstances are materially different. Mr. Flamank is a churchwarden, and Mr. Simpson does not appear to have submitted to the control of his Ordinary any of the practices for which he has been articed in this Court. Upon the question of "lights" the decision is in his favour, and another of the charges was abandoned at the hearing. No expense has been incurred by the examination of any witnesses, and I think I shall, upon the whole, do justice by condemning Mr. Simpson in a sum of 80*l.* *nomine expensarum.*

I admonish Mr. Mackonochie to abstain for the future from the use of incense, and from the mixing water with the wine, as pleaded in these Articles. And I further admonish him not to recur to the practices which he has abandoned under protest, with respect to the elevation of the Blessed Sacrament, and the censuring of persons and things.

I admonish Mr. Simpson to abstain for the future from the elevation of the Blessed Sacrament, from mixing water with the wine, and from placing the alms upon a stool, as pleaded in these Articles.

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## NOTE.

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The Editor has been favoured with the following addition to the series of historical facts noticed by the Judge, in his discussion of the argument drawn from the disuse of ceremonies. It appears that there was a time when the observance of Good Friday had almost wholly ceased in England. The then Archbishop of Canterbury, Archbishop Cornwallis, and Porteus Bishop of London, set themselves to revive the observance, which has been maintained ever since; and it is instructive to notice the feeling with which this revival was met. We extract the following from *Restituta*, edited by Sir Egerton Brydges, Vol. IV., p. 416: “It is inconceivable “the clamour, uproar, and rage which the order from the “Archbishop to observe decently Good Friday, in 1777, “gave to the faction: for many weeks together the presbyterian newspapers were full of abuse and lies relating to “Archbishop Cornwallis and his family; and when one “expected it should have subsided, two months after the “day was observed, out comes the following long and “severe paragraph in the London ‘Evening Post’ of “May 29, 1777: ‘On the late announcing a sort of outlandish name, one Porteus, to an English Bishopric, I naturally asked what was become of all our old learned and venerable English Clergy, of the best families, that they were all passed over with so much *contempt* and *injustice*? I was informed that the young Prelate was a man distinguished by His Majesty’s own judgment, and exalted by his mere personal favour, as one of the most promising talents and disposition to fill the sacred office in a manner the most suitable to his own *pious* feelings and sentiments, and the mild and liberal plan of government adopted by him. A *countenance* and a *character* so clear of cynical and ecclesiastical pride and austerity could not escape the penetrating observation and the generous sympathy of the Royal Patron. A Charles has had his favourite Laud. Similar characters and principles will always attract each other. It has indeed been insinuated, that, over and above the great merit of *Scottish extraction*

“ and interest, he has distinguished himself as a ministerial  
“ writer in the public papers almost as much as by the  
“ stretch of Church power and arrogance in shutting up the  
“ city shops on *Good Friday*; which, as a sanctified, hypo-  
“ critical triumph over both reason and Scripture,—the  
“ civil and religious right of Englishmen,—could not but be  
“ highly acceptable to tyrants and hypocrites of every  
“ denomination, particularly at Court. By this experiment  
“ on the tame and servile temper of the times, it is thought  
“ the *Host* and *Crucifix* may be elevated to prostrate  
“ crowds in dirty streets some years sooner than could have  
“ been reasonably expected. And when a Wedderburne  
“ shall be keeper of the King’s conscience and seals, and a  
“ Porteus of the spiritual keys, as the *alterius orbis papa*,  
“ there is no doubt but our consciences, and our property  
“ too, will be effectually taken care of.’ ”

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