

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Jenkins v. Cook, from the Arches Court of Canterbury ; delivered 16th February, 1876.

Present :

ARCHBISHOP OF CANTERBURY.
LORD CHANCELLOR.
ARCHBISHOP OF YORK.
LORD HATHERLEY.
LORD PENZANCE.
LORD CHIEF BARON.
LORD JUSTICE JAMES.
SIR BARNES PEACOCK.
SIR JAMES HANNEN.

IN this case the Appellant, a parishioner in the parish of Christ Church, Clifton, instituted proceedings under the Clergy Discipline Act, in the Court of the Bishop of Gloucester and Bristol, against the Respondent, the vicar of the parish, for an offence against the laws ecclesiastical in refusing to administer to the Appellant the Sacrament of the Holy Communion.

The case was sent by letters of request to the Court of Arches, and on the 16th July, 1875, a sentence was pronounced by the Dean of Arches, dismissing the suit against the Respondent and condemning the Appellant in costs.

From this sentence the Appellant appeals to Her Majesty.

There are no facts in dispute in the case, and the allegations as to the refusal complained of, and as to the grounds of the refusal, are extremely simple.

The Appellant alleges that on the 28th September, 1874, he gave notice in writing to the Respondent of his intention to present himself to receive the Holy Communion at the mid-day service on the following Sunday, the 4th of October, 1874, and that having presented himself accordingly, he was, without lawful cause, repelled, and the Respondent refused to administer the Sacrament to him.

To this allegation the Respondent answers that he on the day in question did refuse to deliver to the Appellant, or to permit the Appellant to receive the elements of the Holy Communion when he presented himself to receive the same, for, and on account of the writing and publishing by the Appellant of certain letters particularly referred to, and for and on account of his causing to be printed and published a certain volume of selections from the Old and New Testaments, and for no other cause or reason whatsoever.

These allegations therefore raise the issue, and the only issue, between the parties. In order, however, to appreciate properly the justification relied upon by the Respondent, it is necessary to refer more particularly to the letters and volume referred to in the defensive allegation, and to the circumstances under which those letters were written.

The Appellant states, and it is not controverted, that he has been a resident parishioner of Christ Church for six years past; that he is a member of the Church of England, and has during that time regularly attended Divine service at the parish church, and has also during that period been in the habit of receiving the Holy Communion in the church monthly; that during his attendance at Divine service he has always conducted himself reverently, joining in the responses in accordance with the directions of the rubric; that he believes in the inspiration of the canonical books of the Old and New Testaments, that Scripture contains all things necessary for salvation, and in the doctrine of the atonement for the sins of mankind by the death of our Lord and Saviour Jesus Christ on the Cross; and he exhibits a Book of Family Prayers compiled entirely from the Liturgy of the Church of England which he has published, and which is regularly used by him at family prayers in his own house.

It appears that the Appellant in the year 1865

had also printed and published a volume entitled "Selections from the Old and New Testaments." This volume has been produced before their Lordships. It consists of extracts or selections from the Bible, apparently arranged for the convenience of reading at family prayers. Many chapters and portions of chapters are omitted, but the volume is a bulky one, although not containing any note, comment, or matter other than the text of the Bible so far as it is given.

It appears, further, that on the 6th July, 1874, in reference to a sermon preached by the Respondent in the parish church, the Appellant wrote to the Respondent a letter as follows :—

"My dear Sir,—

"As one of your parishioners, who accepts his conscience as the voice of God within him, I beg to protest most emphatically against the irreligious tendency of your sermon of last night. I quite believe that you would not willingly deceive others, but it is my opinion that no difficulties as to language or books should stifle what is imprinted in every man's breast by his Maker—that is to say, the knowledge of right and wrong.

"I am,

"My dear Sir,

"Yours very sincerely,

"HENRY JENKINS."

What was the subject or substance of this sermon, or what were the expressions used therein, their Lordships have no means whatever of knowing, and no evidence has been adduced on either side as to it.

It appears that, about two years before this time, the volume of selections had been sent by the Appellant to the Respondent, but the Respondent had laid the volume aside, and apparently had not looked at or examined it.

After, however, receiving the letter of the 6th July, 1874, the Respondent for the first time examined the volume of selections, and, as he states, shortly afterwards called on the Appellant at his residence, in order to communicate with him in reference to the volume. But the Appellant, as the

Respondent alleges, refused to have any communication with him in reference thereto.

At this part of the case the evidence of Mrs. Jenkins may properly be referred to. She states that, on the 20th July she called on the Respondent, and told him she did so, hoping to do away with any unpleasant impression in his mind arising from the Appellant's abrupt manner when the Respondent had called at the Appellant's house. She then asked him if he meant to carry out the threat conveyed in his last remark to the Appellant on that day. The Respondent said he did mean to carry it out most emphatically. "Then he went on; he commenced about the volume of selections that had been sent him two years ago. He said, at the time he received them he thought they were meant for family worship, which I said they were. He had not looked at them, he had put them by on a shelf, or something to that effect, but since his visit to the Appellant he had examined the volume thoroughly from beginning to end, and he found all passages relating to the devil and evil spirits were excluded from the selection." Further on Mrs. Jenkins continues: "I attempted to draw his attention to the Appellant's character and manner of life from his youth up, the honesty of all his motives, and his blamelessness in every condition of life as husband and father, and he said that only made the case more difficult to manage. Then he said, let Mr. Jenkins, as he cannot sit down and talk like a man, write me a letter, a calm letter, and say he believes in the devil, and I will give him the Sacrament."

On the same day, and apparently in consequence of this suggestion of the Respondent that the Appellant should write him a letter, the Appellant wrote to him in these words:—

"My dear Sir,

"Mrs. Jenkins has very kindly called upon you in order to arrange matters, with, I am afraid, very poor success. With regard to my book—'Selections from the Old and New Testaments,'—the parts I have omitted, and which has enabled me to use the book morning and evening in my family, are, in their present generally received sense, quite incompatible with religion or decency (in my opinion). How such ideas have become connected

with a book containing everything that is necessary for a man to know I really cannot say, and can only sincerely regret it.

“ I am,

“ My dear Sir,

“ Yours very sincerely,

“ HENRY JENKINS.”

To this the Respondent replied, by a letter of the 24th July, 1874, as follows :—

“ Dear Sir,

“ It would be a great relief to me if I could find in your letter of 20th instant, or in any other communication written or spoken, something to show that I have misunderstood your opinions, or that you have changed them for the better. Unhappily the conclusion I cannot but form from your letters, words, and printed ‘ Selections from the Old and New Testaments,’ is, that of set purpose you reject very many portions of Holy Scripture. That you have, for instance, cut out, as you have from the Bible what is therein written concerning Satan and evil spirits, is to me terrible evidence of how far you have allowed yourself to go in mutilating the Word of God. Large differences of opinion concerning Scriptural matters no prudent or charitable minister of the Gospel would condemn, but there are perversions and denials which no faithful minister will sanction, lest he allow unbelief a recognized place in the Church of Christ. With such perversions and denials, I grieve to say, I am driven to connect yourself; while they remain not retracted or disavowed you cannot be received at the Lord’s Table in my church. I hope you will feel that my course is directed according to conscience and not by resentment. I quite forgive your behaviour when I called, and although you would then listen to nothing, if you will converse quietly with me my time shall be willingly given for that purpose. May the Spirit of Truth deliver you from the errors you have adopted, and in the hope of seeing this my prayer answered,

“ I remain,

“ Dear Sir,

“ Yours faithfully,

“ FLAVEL COOK.”

In answer to this the Appellant wrote another letter, which is the last that need be referred to, dated the 25th of July, 1874:—

“My dear Sir,

“Thinking as you do, I do not see what other course you could consistently have taken. I shall, nevertheless, come to the Lord’s Table as usual at ‘your’ church, which is also mine.

“I am,

“My dear Sir,

“Yours very sincerely,

“HENRY JENKINS.”

These, then, are the letters written by the Appellant, and this is the character of the volume the writing and publishing of which are stated by the Respondent to have constituted the only cause for which he refused to permit the Appellant to partake of the Holy Communion. The question is, do they constitute a sufficient cause?

The *prima facie* right of a parishioner to partake of the Holy Communion might probably be maintained irrespective of any specific statutory enactment; but as the right is distinctly declared by the Statute 1 of Edward VI, chap. 1, sect. 8, their Lordships may conveniently refer to the words of that enactment as it is set out in page 530 of the first volume of the revised Statutes:—

“And also that the preist which shall ministre the same shall at the least one day before exhorte all psons which shalbe present likewise to resorte and prepare themselves to receive the same, and when the daie prefixed comethe after a godly exhortacon by the minister made, wherin shalbe further expressed the benefitt and comferte promised to them which worthelie receive the saide hollie Sacrament, and daunger and indignacon of God threatened to them w^{ch} shall presume to receive the same unworthelie, to thende that everie man maye trye and examyn his owne conscience before he shall receive the same, the saide minister shall not without lawfull cawse denye the same to any parsons that wool devoutlie and humblie desire it, anny lawe statute ordenance or custome contrarie therunto in any wise notwithstanding.”

In the argument before their Lordships, it has

not been contended that, for the purpose of this case at all events, the "lawful cause" mentioned in the Statute, was to be sought for elsewhere than in the rubric of the Book of Common Prayer prefixed to the Communion Service, or in the Canons of 1603, and their Lordships therefore find it unnecessary to consider whether there could be any further or other "lawful cause" within the meaning of the Statute. Neither is it necessary for their Lordships to decide, and they do not decide, that the Canons, which do not, as such, bind the laity, could, of their own authority, prescribe "causes" which would be sufficient or "lawful" within the meaning of the Statute. In this particular case the "lawful" causes relied upon are that the Appellant must be taken, under the circumstances, to have been "an open and notorious evil-liver" within the meaning of the rubric, and to have been "a common and notorious depraver of the Book of Common Prayer," within the meaning of the 27th Canon. Their Lordships will assume that the last named cause, that mentioned in the Canon, would be, if made out, as valid and lawful a cause as that of being "an open and notorious evil-liver," within the meaning of the rubric.

The learned Judge, from whose sentence the present Appeal is brought, has expressed his opinion upon this point in the following words: "I am of opinion that the avowed and persistent denial of the existence and personality of the devil did, according to the law of the Church, as expressed in her Canons and Rubrics, constitute the promoter 'an evil-liver,' and 'a depraver of the Book of Common Prayer and administration of the Sacraments,' in such sense as to warrant the Defendant in refusing to administer the Holy Communion to him, until he disavowed or withdrew his avowal of this heretical opinion; and that the same consideration applies to the absolute denial by the promoter of the doctrine of the eternity of punishment, and, of course, still more to the denial of all punishment for sin in a future state, which is the legitimate consequence of his deliberate exclusion of the passages of Scripture referring to such punishment."

Their Lordships must, in the first place, observe that the learned Judge appears to have considered that, in the Rubric to which reference is here made, the words defining a cause for repulsion are "an

evil-liver," and, in the Canon, "a depraver of the Book of Common Prayer." This, however, is not the case. The Rubric after stating 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;" proceeds as follows:

"And, if any of those be an *open and notorious* evil-liver, or have done any wrong to his neighbours by word or deed, so that the congregation be thereby *offended*, the Curate, having knowledge thereof, shall call him and advertize him not to come to the Lord's Table until he hath openly declared himself to have truly repented and amended his former naughty life, that the congregation may thereby be satisfied, which before were *offended*; and that he hath recompensed the parties to whom he hath done wrong, or, at least, declare himself to be in full purpose to do so as soon as he conveniently may."

The words again of the 27th Canon, which is the Canon relied on, are these:—"No minister, when he celebrateth the Communion, shall wittingly administer the same to any but to such as kneel, under pain of suspension; nor, under the like pain, to any that refuse to be present at Public Prayers according to the orders of the Church of England; nor to any that are *common and notorious* depravers of the Book of Common Prayer and Administration of the Sacraments, and of the Orders, Rites, and Ceremonies therein prescribed, or of anything that is contained in any of the Articles agreed upon in the Convocation, one thousand five hundred and sixty-two, or of anything contained in the book of ordering the Priests and Bishops; or to any that have spoken against and depraved His Majesty's Sovereign authority in causes Ecclesiastical; except every such person shall first acknowledge to the Minister, before the Churchwardens, his repentance for the same and promise by word (if he cannot write), that he will do so no more, and except (if he can write) he shall first do the same under his handwriting to be delivered to the Minister, and by him sent to the Bishop of the Diocese, or Ordinary of the place. Provided, that every Minister so repelling any, as is specified either in this or the next precedent Constitution, shall, upon complaint, or being required by the Ordinary, signify the cause thereof unto him, and therein obey his order and direction."

The "cause," therefore, which under the Rubric is sufficient to warrant a minister of his own authority, and without any trial, in repelling a parishioner from the Holy Communion is that he is "an *open and notorious* evil liver," who thereby gives offence to the congregation, and, under the Canon, that he is "a *common and notorious* depraver of the Book of Common Prayer."

Their Lordships therefore will proceed to consider whether the Appellant is brought under either of these descriptions. And in the first place their Lordships must observe that if they had here to examine whether the Appellant has in point of fact either entertained or expressed the opinions attributed to him by the learned Judge, or if they were called upon to decide that those opinions or any of them could be entertained or expressed by a member of the Church, whether layman or clergyman, consistently with the law and with his remaining in communion with the Church, they would have looked upon this case with much greater anxiety than they now feel in its decision. They desire to state in the most emphatic manner both that there is not before them any evidence that the Appellant entertains the doctrines attributed to him by the Dean of Arches, and that they do not mean to decide that those doctrines are otherwise than inconsistent with the formularies of the Church of England. This is not the subject for their Lordships' present consideration. What, and what alone, they have to inquire is whether the Appellant can be properly held to be "an open and notorious evil liver" within the meaning of the Rubric, or whether in the words of the Canon he was "a common and notorious depraver of the Book of Common Prayer."

As to the first of these inquiries there is absolutely no evidence whatever that the Appellant was an evil liver, much less an open and notorious evil liver. The term "evil liver," according to the natural use of the words, is limited to moral conduct, and the distinction between conduct and belief is clearly recognized in the Canons, especially in the contrast between the 109th and 110th. Against the moral character of the Appellant there is no evidence, and no imputation; and it appears from statements which are uncontroverted to have been irreproachable. Their Lordships therefore put aside this

justification of the Respondent as wholly inapplicable to the case, and they can only express their regret that through an inaccuracy in the use of words an imputation so misplaced and so irksome in its nature should have been made.

Is, then, the Appellant a common and notorious depraver of the Book of Common Prayer? The only specific reference to the Book of Common Prayer which is traced to the Appellant is the statement that the Book of Family Prayer already mentioned was compiled by him entirely from the Book of Common Prayer, and that in a letter from him to the Bishop, dated in September, 1874, he writes that he values the Book of Common Prayer "only second to the Bible itself."

The mode, however, in which it is said that the Appellant was a depraver of the Book of Common Prayer, is this. It is assumed that all parts of the Holy Bible not printed in the "Selections" are omitted because they are rejected on the ground of the doctrine which they teach, and it is said that some parts so omitted are found in the Book of Common Prayer, or that doctrines in the Common Prayer are supported by some of these omitted passages. And it is contended that omission is rejection, and rejection depravation.

In none of these propositions, nor in their logical connection, can their Lordships concur. Omission is not rejection. If it were, the Lectionary in the Prayer Book would be open to this grave charge. Nor is rejection, however censurable or heretical, necessarily depravation. The terms "deprave or depraver," in their more ancient signification, are now little used; but their meaning in the 16th century may be well collected from the Statute of Edward the Sixth, already referred to, where we find these expressions applied to the Sacrament of the Holy Communion:

"Whatever person shall deprave, dispise, or contempne the saide moste blessed Sacrament by any contemptuouse wordes, or by anny wordes of depravinge, dispisinge, or reviling, shall suffer imprisonment, &c."

But was the Appellant, "*a common and notorious depraver of the Book of Common Prayer?*"

Now it was admitted in the Court below, and in the argument before their Lordships, that the

publishing and circulation of the book termed "Selections" could not possibly amount of itself to a depravation of the Book of Common Prayer, and could not indeed be construed to be an offence of any kind. But it was contended that these selections, coupled with the expressions in the letter of the 20th July, 1874, amounted to the offence in question.

That letter must be construed with reference to the interview between the Respondent and Mrs. Jenkins, which took place on the same day, and out of which interview the writing of the letter arose. It is obvious that the words, "the parts I have omitted," cannot refer to all the portions of the Bible not printed in the Selections; but must be limited to those parts which were more particularly referred to by the Respondent at the interview. Construing the letter in connection with what passed at the interview, the expressions in it, which are not very distinct or intelligible, do not go farther than this, that the construction which the Appellant placed upon certain parts of the Bible not being the same as the construction which, in his opinion, was generally placed upon those parts, he omitted them from his family reading. What his own construction is, or what he supposes to be the generally received construction, is not stated, and it would not be allowable, even if it were necessary, to arrive at either construction by surmise or suspicion.

But it does not appear to their Lordships to be necessary to criticise more minutely the expressions in this letter, for the important question still remains, whatever be the construction of the letter, can the Appellant in consequence of it be said to have been "a common and notorious depraver of the Book of Common Prayer?" Now the letter was not written by the Appellant spontaneously. A message was sent to him through Mrs. Jenkins inviting him to write a letter to the Respondent. It was proposed that the letter should be, and the letter was sent as, a friendly and private, as it was also a solicited, communication. It appears to their Lordships that even were there anything in the letter which could amount to a depravation of the Book of Common Prayer, which they do not suggest or think there is, still it would be impossible to hold

that the writing of such a letter, under the circumstances which they have mentioned, could make the Appellant "a common and notorious depraver."

These observations would dispose of the case, were it not that their Lordships think that they should notice an argument much pressed at the Bar, but to which their Lordships can attach no weight, namely, that by reason of the intervention, or possible intervention, of the Bishop of the Diocese, another remedy was, or might have been, open to the Appellant, and that he ought not to have taken proceedings under the Clergy Discipline Act. This argument in fact divided itself into two parts. It was said, in the first place, that the Respondent had duly reported to the Bishop the grounds on which he had repelled the Appellant from the Holy Communion, and that he was then entitled to wait until he received some order from the Bishop on the subject, and that no such order was given. The other form of the argument was that the Appellant had, under the Rubric and Canons, a right of appeal to the Bishop personally, and that he either had not so appealed, or, if his communications with the Bishop amounted to an appeal, the Bishop had expressed his opinion against the Appellant, and in favour of the Respondent.

As to the first part of this argument, their Lordships are clearly of opinion that the repelling by the Respondent of the Appellant must be judged of at the time when it took place, and could not be affected by anything afterwards occurring between the Respondent and the Bishop. At the time it took place it was either justifiable or unjustifiable. If justifiable, the Respondent is, of course, entitled to succeed; but, if unjustifiable, the Appellant must be immediately entitled to a remedy, and their Lordships can discover nothing which shifts the responsibility from the Respondent and places it upon the Bishop.

Their Lordships also think that the remedy to which the Appellant is entitled is that which in this case he has sought for. He complains that the Respondent has committed an offence against the laws ecclesiastical by wrongfully refusing him admission to the Holy Communion, and he has followed the process prescribed by the Clergy Discipline Act. Their Lordships do not find in the Rubric prefixed

to the Communion Office any indication of an appeal to the Bishop by a parishioner repelled from the Communion. They find that an intimation is to be given to the Bishop by the Minister, but this is apparently for a purpose entirely different, namely, that the Bishop may proceed against the person repelled to punish him *pro salute animæ*. With regard to an Appeal under the Canon, their Lordships do not understand how an Appeal given by a Canon, even if it were given, could take away a higher right to maintain proceedings for a violation of a right protected by Statute. But their Lordships do not understand that the Canon referred to in this case, the 27th, professes to give the repelled person any right of appeal; and even if it did, the Bishop in the present case appears throughout to have expressed the opinion that he ought not himself to decide the question between the Appellant and the Respondent, but that it should be decided in proceedings such as have been taken.

On the whole, their Lordships are of opinion that they must advise Her Majesty to reverse the sentence of the Dean of Arches, and in remitting the cause to admonish the Respondent, the Reverend Flavel Smith Cook, for having, on the 4th of October, 1874, without lawful cause, refused to deliver to the Appellant, or permit the Appellant to receive, the elements of the Holy Communion, and, further, to admonish him to refrain from committing the like offence in future.

Their Lordships have no doubt that the Respondent has acted throughout in good faith, and in the conscientious belief that he was discharging a duty imposed upon him, and they have also not failed to observe that this controversy appears to have been preceded by an uncalled for, and, as they think, uncourteous letter, written by the Appellant to the Respondent, his Minister, protesting against and condemning a sermon preached by him. Their Lordships cannot however hold that there is in these circumstances sufficient to warrant them in departing from the general rule according to which the Respondent must pay the costs in the Court below and on Appeal.

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