

*Judgment of the Lords of the Judicial Committee of
the Privy Council on the Appeal of Harris
and Clay v. Perkins and Enraght, from the
Court of Arches; delivered July 4th, 1882.*

Present:

LORD BRAMWELL.
SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR HENRY S. KEATING.
SIR JOHN MELLOR.

ASSESSORS.

THE BISHOP OF LONDON.
THE BISHOP OF DURHAM.
THE BISHOP OF LIVERPOOL.

THIS is an Appeal from a judgment of the Arches Court of Canterbury, delivered by the Right Honourable James Plaisted Baron Penzance, sitting as official principal of that Court, upon a motion made in a proceeding commenced by representation against the Respondent Richard William Enraght, who is incumbent or vicar of Holy Trinity, Bordesley, in the county of Warwick, within the diocese of Worcester. The representation was made to the Bishop of Worcester under the provisions of section 8 of the Public Worship Regulation Act of 1874, by John Perkins, who was then the parishioners' churchwarden of Holy Trinity; and it is thus summarised in the words of the Appellant's case:—"It stated in effect that the said Richard William Enraght used certain unlawful eccle-

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“ siastical vestments in, and introduced certain
 “ unlawful ritual practices into, and made
 “ certain unlawful ceremonious gestures during
 “ divine service on several occasions in public
 “ worship at the parish church of Holy Trinity
 “ aforesaid; and, further, as the 9th head of
 “ the representation, that he caused to be sung
 “ the hymn, ‘O Lamb of God which takest
 “ away the sins of the world,’ during the
 “ administration of the Holy Communion at
 “ that church. The representation also stated
 “ as its 14th head that the said Richard William
 “ Enraght had, without lawful authority, unlaw-
 “ fully set up and retained a metal cross on the
 “ communion table in a particular manner.
 “ This representation was made to the Bishop
 “ of Worcester, who transmitted it to the Arch-
 “ bishop of Canterbury, and the said Archbishop
 “ required Lord Penzance to hear it in accor-
 “ dance with the said Act. Lord Penzance
 “ accordingly heard it, and issued a monition to
 “ the said Richard William Enraght to give up
 “ the use of all or most of the vestments,
 “ practices, and gestures of which complaint was
 “ made in the representation, and not to cause
 “ the said hymn, ‘O Lamb of God that takest
 “ away the sins of the world,’ to be sung. Lord
 “ Penzance also ordered the removal of the
 “ said metal cross, but merely on the ground
 “ that it had been placed on the communion
 “ table without a faculty. The said Richard
 “ William Enraght did not then appear.”

John Perkins was the parishioners' church-
 warden at the time the practices complained of
 took place. He was, therefore, perfectly competent
 to institute the proceedings. He was re-elected
 parishioners' churchwarden, and was a church-
 warden at time when the monition was issued;
 but subsequently to that time he ceased to be
 churchwarden. Mr. Clay was then appointed

the parishioners' churchwarden, and Mr. Harris was appointed churchwarden by the incumbent. On the 16th November 1881 a motion was made before Lord Penzance in pursuance of notice served upon the Respondents to the effect "that
" the said Thomas Harris and George Langsford
" Clay, or the said George Langsford Clay alone,
" might be substituted for the said John
" Perkins in the above suit or matter of re-
" presentation; or that the future conduct
" thereof might be given to the said Thomas
" Harris and George Langsford Clay, or the
" said George Langsford Clay alone; or that
" the said Thomas Harris and George Langs-
" ford Clay might be permitted to intervene;"
and for general relief. The motion was heard by Lord Penzance on the 16th November 1881. The said John Perkins appeared by counsel to oppose it. The said Richard William Enraght was served with notice of motion, and was called but did not appear. Lord Penzance refused to grant the motion, and said:—"I am
" of opinion that this Court has no power to do
" what it is asked to do in either of the forms
" in which the application has been made.
" What may be the effect of Mr. Perkins, the
" person who made the representation in this
" suit, having ceased to be churchwarden, and
" having ceased to reside in the parish,—what
" effect that may have on the existing suit,—is a
" matter that I do not inquire into to-day." It is also unnecessary for their Lordships on the present occasion to inquire into that matter. All that they have to deal with is this: whether, upon the construction of the Public Worship Regulation Act of 1874, sections 8 and 9, the suit which was instituted abated in consequence of Mr. Perkins ceasing to be churchwarden and parishioner, and whether the new churchwardens, or either of them, had a right to be substituted or

to take out of Mr. Perkins's hands the conduct of the proceedings in the suit, or to intervene in the suit.

That question depends upon the construction of the 37th & 38th Victoria, cap. 85; and their Lordships think that it is not important to consider whether the proceeding was a civil or a criminal suit under the old law of the ecclesiastical courts. Section 4, which was cited in the course of the argument, says:—"Proceedings taken under this Act shall not be deemed to be such proceedings as are mentioned in the Act of the 3rd & 4th year of the reign of Her Majesty, chapter 86, section 23." That section is to this effect: that no criminal suit or proceeding against a Clerk in Holy Orders of the United Church of England and Ireland for any offence against the law ecclesiastical shall be instituted in any ecclesiastical court otherwise than as herein-before enacted or provided. In other words, proceedings under the Public Worship Regulation Act, 1874, are not to be deemed to be a criminal suit within the meaning of the Church Discipline Act, and may be instituted in the manner directed by the Public Worship Regulation Act. Their Lordships are of opinion that the object of the Public Worship Regulation Act, 1874, was not so much to carry out the wishes of all or even a large majority of the parishioners, as to give an easy mode of compelling obedience to the law. By section 8 it was enacted:—"If the archdeacon of the archdeaconry or a churchwarden of the parish, or any three parishioners of the parish within which archdeaconry or parish any church or burial ground is situate, or for the use of any part of which any burial ground is legally provided, or in case of cathedral or collegiate churches any three inhabitants of the diocese, being male persons of full age, who have signed

“ and transmitted to the Bishop under their hands
 “ the declaration contained in Schedule A. under
 “ this Act, and who have, and for one year next
 “ before taking any proceedings under this Act
 “ have had, their usual place of abode in the
 “ diocese within which the cathedral or colle-
 “ giate church is situated, shall be of opinion ”
 that any of those Acts which are set out in the
 Act have been committed, “ such archdeacon,
 “ churchwarden, parishioners, or such inhabitants
 “ of the diocese, may, if he or they think fit,
 “ represent the same to the Bishop ” by sending
 the Bishop a representation in the form contained
 in the schedule.

There are three classes of persons who are
 authorised to send a representation ; the Arch-
 deacon ; a single churchwarden, not the church-
 wardens as a corporation but a single church-
 warden ; or three parishioners, and if they have
 been inhabitants of the parish during the time
 these practices have been going on, they, or either
 of them, have a right to make a representation
 to the Bishop. In this case the representation
 was made by the parishioners' churchwarden, and
 he had a right at the time when he instituted the
 proceedings to take those proceedings. If three
 parishioners had thought fit they might have
 done so, or the Archdeacon if in an archdeaconry
 might have done so : but neither of these parties
 were bound to do it unless they pleased.

Section 9 gives power to the Bishop to
 refuse to entertain the representation if he
 thinks it is one which ought not to have
 been made. “ Unless the Bishop shall be of
 “ opinion, after considering the whole circum-
 “ stances of the case, that proceedings should not
 “ be taken on the representation (in which case
 “ he shall state in writing the reason for his
 “ opinion, and such statement shall be deposited
 “ in the registry of the diocese, and a copy thereof

“ shall forthwith be transmitted to the person
“ or some one of the persons who shall have
“ made the representation, and to the person
“ complained of), he shall, within 21 days after
“ receiving the representation, transmit a copy
“ thereof to the person complained of and shall
“ require such person, and also the person
“ making the representation, to state in writing,
“ within 21 days, whether they are willing to
“ submit to the directions of the Bishop touching
“ the matter of the said representation, without
“ appeal; and if they shall state their willingness
“ to submit to the directions of the Bishop
“ without appeal, the Bishops shall forthwith
“ proceed to hear the matter of the representation
“ in such manner as he shall think fit, and shall
“ pronounce such judgment and issue such
“ monition (if any) as he may think proper; and
“ no appeal shall lie from such judgment or
“ monition.” Then if the person making the
representation and the person complained of shall
not agree to submit to be bound by the decision of
the Bishop, the representation is to be sent to the
Archbishop, who shall order the Judge to proceed
to hear the matter. Then, “ The Judge, before
“ proceeding to give the notice required by the
“ Act, shall require from the person making the
“ representation such security for costs as the
“ Judge may think proper, such security to be
“ given in the manner prescribed by the rules and
“ orders.” It is said that in the present case no
such security for costs was given, but at any rate
their Lordships may consider the case as if such
security had been given.

‘ The cases which have been cited with regard to
a suit abating by death are not applicable to the
present case. There is nothing in the Act to the
effect that if a churchwarden who makes the
representation ceases to be a churchwarden, or if
he ceases to be a parishioner, he shall not go on

with the suit; and it would be most inconvenient if the case were otherwise. Suppose proceedings are instituted by the parishioners' churchwarden, and he ceases to be the churchwarden, can the incumbent's churchwarden come in and ask to be substituted? Or suppose the succeeding churchwardens do not think that what the clergyman did was unlawful, or are persons who would not, if they had been churchwardens, have made the representation; are they to be substituted, and to be at liberty to refuse to carry on the proceedings? If so, for the year during which they remain churchwardens, the suit might be allowed to cease or drop, and in the succeeding year the next churchwardens would have a right to come in and say, Let us be substituted; your term of office has ceased, and we wish to carry on the proceedings. It would be most inconvenient if proceedings instituted at the pleasure of any of the persons authorised by the Act to make a representation to the Bishop should abate by reason of their ceasing to hold office, or to be parishioners, during the period covered by the suit.

Under these circumstances, their Lordships, agreeing with Lord Penzance that it is unnecessary to say what the effect of Mr. Perkins ceasing to be churchwarden or ceasing to be a parishioner may have upon the suit, are of opinion that no power is given by the Act to substitute succeeding churchwardens for a churchwarden who has instituted a suit for acts committed during the time he was churchwarden; and that the succeeding churchwardens, in the present case, had no interest in the matter which entitled them to intervene in the suit.

Under these circumstances their Lordships will humbly advise Her Majesty that the decision of Lord Penzance be affirmed, and that the Appellant do pay the costs of this Appeal.

