

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Pearse (Clerk) v. the Bishop of Norwich, from the Court of Arches; delivered 6th March, 1869.

Present :

ARCHBISHOP OF YORK.
LORD CHELMSFORD.
LORD WESTBURY.
SIR JAMES P. WILDE.
SIR JOSEPH NAPIER.

THE proceedings which are here under Appeal have been instituted under the Church Discipline Act, and the articles exhibited against the Appellant, a beneficed clergyman, charge him generally with conduct bringing great scandal on the church, and particularly with three distinct offences in the nature of indecent assaults.

It is not contended by the Appellant that the evidence laid before the Court of Arches, if entitled to credit, fails to establish the particular charges against him, or the general one which flows from them.

The only question, therefore, in the suit is, whether credence should be given to the evidence, or to so much of it as will support the several articles of charge.

A question of this kind is eminently fitted for the decision of a jury. But the provisions of the Church Discipline Act do not admit of a resort to that form of Tribunal. It is farther to be remarked that upon such a question as the credibility of witnesses, an Appellate Court, before whom the witnesses do not personally appear, ought to be slow to reverse the decision of a Tribunal which has judged in the light of that advantage.

Much was said in the course of the argument upon
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the proper bearing of the several articles of charge, and the evidence by which they are supported, upon one another; and exception was taken to the Judgment delivered in the Court below, upon the ground that the charges had been improperly brought by the learned Judge under review together in the aggregate, and a general conclusion of guilt deduced.

There can be no doubt that each charge should be considered independently by the Court, and a separate and distinct conclusion arrived at in each instance. Further, if the evidence on any one charge is disbelieved, the fact of the charge having been made ought to have no influence in determining the truth of the other charges. On the other hand, it is not proper (even if it were possible) to consider the credibility of witnesses without any reference to the inherent probability or improbability of the conduct which is imputed to the accused.

In considering whether the act imputed is probable or improbable, it is manifestly not right that it should be weighed and determined in connection with the general good character of the accused, on the one hand, but with the exclusion, on the other, of any misconduct that may have already, in the judgment of the Court, been proved against him.

From considerations of this kind it is tolerably clear that, although there must be separate and distinct evidence upon which to establish each charge, yet that the evidence applicable to the several charges cannot be wholly dissociated, and that whenever a question arises as to the credibility of a witness, it is and must be competent to the Court to consider the probabilities of their statements, and, in so doing, to give weight to any portion of the conduct of the accused which has been plainly proved against him or disclosed by the accused himself.

We proceed to examine the gravest of these charges—that spoken to by the witness Eglington.

Now, the charge made by John Richard Eglington is this, that the Appellant came to his shop to speak about the exchange of some boots; that he was there at least half-an-hour; that while he, Eglington, was looking at the boots, the Appellant put his hand upon him and proceeded to some indecent assaults of the grossest character; that he, Eglington, then thrust himself away, and, getting to the front

door before the Appellant, locked it, detaining the Appellant in the shop against his will; that the Appellant then tried to get out by the back door, a purpose which he could only effect by passing through the room over head, in which a Mrs. Fysh lived; that the Appellant passed up-stairs to Mrs. Fysh's room, the witness following him; that, while in Mrs. Fysh's presence, the witness charged him in general terms with his misconduct; to which the Appellant replied, it was "a lie;" that the Appellant hurried down-stairs and away to his home, the witness saying he should tell his father.

The sequel is soon told. The witness went that same evening to the Appellant's house with his father, the father stopping in the first instance at the gate. The Appellant refused to see him without his father; and the father having been fetched, they were admitted. At this interview the father undoubtedly charged the Appellant with the offence now imputed to him, and said he could not allow such things to go on.

The Appellant denied the charge.

There seems no proof, on the one hand, that either father or son took any immediate steps to bring the Appellant's conduct to trial or punishment, or, on the other, that either of them held the door open for the offer of any reward for silence.

Here, then, is an offence sworn to—complaint openly made of it at the moment to the Appellant himself, and, within a few hours, to two other persons at least—Mrs. Fysh and Eglington's father. If it be not true, it is at least not a tale fabricated at an after period. What reason is there to disbelieve it? None that appears, except the internal unlikelihood of such revolting practices, and the difficulty of imagining that all the indecent details of the story which were elicited on cross-examination could have had place, in spite of the resistance on his own part to which the witness swears. Proper weight ought to be given to both considerations.

But what says the Appellant himself? With the question whether his evidence was admissible this Court has nothing to do. His evidence was tendered and admitted on his own behalf, and he at least cannot now withdraw it from the materials of judgment.

His account is this:—He admits that he was

nearly half an hour in the shop; that he began his interview with the witness by laughing at him about his being recently married; that this went on for some little time, he, the Appellant, walking up and down the shop; that he then stopped opposite a cupboard in which Eglington had been eating his dinner, and said, "I wonder what is in this cupboard," upon which, says he, the witness (Eglington) jumped up and at once accused him of an indecent assault, though he had never touched him.

The locking of the door, and the retreat through Mrs. Fysh's room, are then described by him:—He admits that the boy followed him, and said to Mrs. Fysh, "I accuse Mr. Pearse of interfering with me," or "of assaulting me," to which he answered by a denial, *and nothing more*. Nothing more; for, taking the account from his own lips, it does not appear that he uttered a syllable to Mrs. Fysh in accusation of the boy, or showed or expressed his indignation at the foul charge which had just been maliciously levelled at him.

He goes on to say that, having got home, he shortly returned to speak to Mrs. Fysh. When he got there, he found both Mr. and Mrs. Fysh; and again, in place of an indignant charge against Eglington, he is sworn by Mrs. Fysh (which he has not denied) to have expressed himself thus:—"I hope I have not upset you; you would not like to have these things said about you in the village."

Whatever doubt might have clung to the minds of their Lordships as to the general credibility of Eglington's tale is removed by the tale of the Appellant; and they can come to no other conclusion than that the accusation of Eglington is true.

Such conduct, after the painful investigation of similar charges publicly made in the April previous, would argue the Appellant to be beyond the reach of warning, or bereft of self-control.

Standing alone, it fully justifies the sentence passed in the Court below; and this Court is relieved from the necessity of travelling through the other evidence produced against him.

Their Lordships will recommend Her Majesty to affirm the Judgment of the Court below, and with costs.