

[Eng. Rep.]

MARTIN V. MACKONOCHE.

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the consecrated elements during the prayer of consecration, and also from using 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."

December, 2, 4.—A motion was now made before the Judicial Committee on the part of the appellants, praying the Committee to declare that the respondent had not complied with this monition, inasmuch as he continued (1), to elevate the cup and paten during the administration of the Holy Communion; (2), to kneel or prostrate himself before the consecrated elements during the prayer of consecration; (3), to use lighted candles on the communion-table at times when such candles were not wanted for the purpose of giving light; the appellants further prayed that the monition might be enforced in such a manner as to the Committee might seem fit.

In support of the motion affidavits were filed, stating, amongst other things, that on certain days therein mentioned, the respondent in celebrating the communion service, when he came to that part of the prayer of consecration, at which the rubric directs the priest to take the paten into his hands, paused in reading the prayer; that during such pause, and before taking the paten into his hands, he bowed himself down to the communion-table, so that his forehead nearly touched it, he then stood upright, and immediately afterwards knelt down upon the steps leading to the communion-table, that, after kneeling for a few seconds, he rose and again stood up and took the paten into his hands, and raised it level with his head; that he then replaced the paten upon the communion-table; that he then again bowed down to the communion-table so that his forehead nearly touched the same; he then again stood upright, and immediately afterwards knelt down upon the steps leading to the communion-table; that after kneeling for a few seconds he again rose, stood up, and proceeded with the said prayer of consecration, until he came to that part at which the rubric directs the priest to take the cup into his hands; he then again paused in reading the prayer; that during such pause, and before taking the cup into his hands, he bowed himself down to the communion-table, so that his forehead nearly touched it; he then stood upright, and immediately afterwards knelt down upon the steps leading to the communion-table; that after kneeling for a few seconds, he again rose and stood up, and took the cup into his hands and raised it level with his head; he then replaced the cup upon the communion-table; he then again bowed down to the communion-table, so that his forehead nearly touched it; he then rose and stood upright, and immediately afterwards knelt down upon the steps leading to the communion-table; that after kneeling for a few seconds he again rose, stood up, and proceeded with the prayer of consecration; that at the commencement of the morning prayer there were eight lighted candles upon a shelf, about six inches above the level of the communion-table, and which appeared to form part thereof, two of such candles being in candlesticks, and six in two candelabra, holding three candles each, such candlesticks and candelabra standing upon the shelf; the eight candles were extinguished immediately before

the commencement of the communion service, up to which time they were kept continuously burning; such candles were not required for the purpose of giving light.

In opposition to the motion affidavits were filed, in which the respondent denied that since the service of the monition upon him, he had ever prostrated himself or knelt upon steps leading to the communion-table or elsewhere when celebrating the Holy Communion, during any part of the consecration prayer; but he admitted that it was his practice, during the prayer of consecration, when celebrating the Holy Communion, and whilst standing before the holy table, reverently to bend one knee at certain parts of the prayer, and occasionally, in so doing, his knee momentarily touched the ground, but such touching of the ground was no part of the act of reverence intended by him; and he alleged that ever since the monition was served upon him he had endeavoured to obey it, and had never, intentionally or advisedly, in any respect disobeyed it, or sanctioned any practice contrary to its provisions. The Rev. H. A. Walker, curate to the respondent, deposed further that, having regard to the position of the celebrating and assisting priests during the consecration prayer as well as to the length and nature of their dress, he did not believe it possible for any person in the body of the church to say whether the respondent did kneel or not.

A. J. Stephens, Q. C. (Archibald and Droop with him), in support of the motion, contended that the monition must be construed in accordance with the Book of Common Prayer; that the elevation of the cup and paten to the level of the head was inconsistent with the directions of the rubric, and in contravention of the monition; that the respondent according to his own admissions, had, during the prayer of consecration, done acts which amounted to a kneeling; and that he had prostrated himself in disobedience to the monition.

Mr. Mackonochie, in person, contended, in opposition, that even if the monition had been disobeyed, the Judicial Committee had no power to enforce obedience to it; and that the monition had not been disobeyed; for the monition could not go beyond the articles, and since the monition he had not done any of the things which had been complained of in the articles, having only elevated the cup and paten to the level of his head, and made genuflexions which were not kneeling, kneeling implying an intentional touching of the ground with the knee; he contended that the monition must be strictly construed, this motion being a criminal proceeding.

A. J. Stephens, in replying, was relieved by the Committee, from the necessity of supporting their power of enforcing obedience to the monition issued.

Lord HATHERLEY, L. C., delivered the judgment of the Judicial Committee.*

In this case a motion has been made calling upon their Lordships to take proceedings in order to enforce the monition which has been served upon the reverend respondent with regard to the execution of a sentence pronounced in the first instance by the Court of Arches. This sentence

* The Lord Chancellor, the Archbishop of York, Lord Chelmsford, Sir James W. Colville, Sir Joseph Napier.