

The Legal News.

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THE MACKONCHIE CASE.

We had occasion, in an early issue of the present volume, to advert to a remarkable judgment of the Superior Court, at Quebec, which expressly overruled and set at defiance a judgment of an appellate tribunal, the Court of Queen's Bench. A somewhat similar incident has caused some sensation in England. It has occurred in one of the famous ecclesiastical suits which seem to upset the minds of learned judges as well as of common mortals. The Rev. Mr. Mackonochie, some time ago, was suspended from his clerical functions for three years, for contempt of the Court of Arches in refusing to obey a decree directed against his ritualistic practices. The Court of Arches, in this proceeding, was acting in accordance with the law as it had been laid down in judgments of the Judicial Committee of the Privy Council, and Lord Penzance little dreamed that the authority of his decree could be questioned. But resort was had to the Queen's Bench Division of the High Court of Justice, and this tribunal, to the surprise of the public and the bar, has ordered a writ of prohibition to issue against the enforcement of the decree of suspension.

The *Times* thereon remarks: "A much more important issue than the enforcement of Lord Penzance's decree is indirectly involved. A majority of the Court of Queen's Bench have repudiated principles of law established by judgments of the Judicial Committee of the Privy Council, and have substantially ignored the legal authority of that high appellate tribunal. The revocation of the sentence passed upon Mr. Mackonochie implies that Lord Penzance was mistaken as to the powers of his office, and that the Judicial Committee of the Privy Council shared in the responsibility for his mistake. This decision reverses the judgments of the Privy Council in a manner so bold that the Lord Chief Justice felt bound to justify it by contending that it was the judicial duty of the Queen's Bench in the exercise of its power of prohibition to review the acts, and if

it seemed right, to reverse them, of every tribunal not a branch of the High Court."

The name of the Lord Chief Justice (Sir Alexander Cockburn) carries great weight, and Mr. Justice Mellor concurred with him in his startling assumption of authority. But it should be mentioned that Mr. Justice Lush dissented, and he put his dissent upon the easily understood ground that the Queen's Bench Division cannot override the authority of the Privy Council. "Are we to understand," his lordship remarked, "that a single Division of the High Court of Justice can or will set aside the laws settled by a tribunal of independent jurisdiction, hitherto enjoying universal respect for the importance and value of its decisions? To this extent the Lord Chief Justice at least is prepared to go. To stop short of it would be, he affirms, a dereliction of judicial duty."

AMELIORATION OF CRIMINAL LAW.

The nineteenth century has been prolific in discoveries and inventions; it has exhibited an amazing bound in improvements of many orders. And not least among the things to be put to its credit is the amelioration of the Criminal Code. However often repeated, some of the illustrations of this great change do not cease to be startling. Is it not marvellous to find that Lord Ellenborough, so late as the year 1810, a period within the memory of many still not very old, resisted the abrogation of the death penalty for stealing in shops to the value of five shillings? And the reasoning on which he based his protest is hardly less extraordinary. "My lords," he said, "if we suffer this bill to pass, we shall not know where to stand—we shall not know whether we are on our heads or on our feet. If you repeal the Act which inflicts the penalty of death for stealing to the value of five shillings in a shop, you will be called upon next year to repeal a law which prescribes the penalty of death for stealing five shillings in a dwelling house, there being no person therein; a law, your lordships must know, on the severity of which, and the application of it, stands the security of every poor cottager who goes out to his daily labor. He, my lords, can leave no one behind to watch his little dwelling, and preserve it from the