

July and on the 14th day of November, 1869, as mentioned in the affidavits; and to the best of my belief, he did not touch the ground with either of his knees at all during that time on the occasions on which the respondent is accused of doing so." Then he further says this: "And having regard to the positions of the celebrating and assisting priests during the consecration and prayer, as well as to the length and nature of their dress, I do not believe that it is possible for any person in the body of the church to say whether the respondent did kneel or not."

Therefore, the case as stated is this, Mr. Mackonochie, being enjoined against kneeling during this prayer, admits a gesture which he contends is not kneeling, but he admits a bowing of his knee, a bowing of it to an extent which the occasions it at times momentarily to touch the ground, a bowing of it to an extent which renders it impossible (according to Mr. Walker's affidavit) for anybody to see whether he is or is not kneeling—that is the distinct statement in the affidavits—viz., that nobody could see whether he is kneeling or not.

First of all their Lordships would consider the literal question which is before them, whether there has been even a literal compliance with the monition in this act of Mr. Mackonochie. Their Lordships are all of opinion that there has not been even a literal compliance; and that bowing the knee in the manner which he has described is kneeling; and that it is not necessary that a person should touch the ground in order to perform such an act of reverence as will constitute kneeling. Of course there may be such a bowing of the knee as would amount to kneeling in the sense of the monition, but Mr. Mackonochie very properly says that he takes no advantage of any suggestion of that sort—there may be an accidental bowing of the knee, arising from fatigue or otherwise; but here is a knee bent for the purpose of reverence and in such a manner that those who behold cannot tell whether or not what Mr. Mackonochie and Mr. Walker call kneeling—that is, touching the ground with the knee, has been arrived at, and indeed Mr. Mackonochie says that at certain times his knee has momentarily touched the ground. This seems to their Lordships to be literally kneeling.

But the case must be put much higher than that, because neither this tribunal nor any tribunal will suffer its orders to be tampered with by mere evasion; and a mere evasion it would be to allow a person when ordered not to kneel (*the whole gist and purport of the order, as I shall presently show, being the kneeling by way of reverence*) to say, "I did all that I could do towards so kneeling; I bowed my knee; I nearly touched the ground with it—I did not quite touch the ground, but I did it in such a manner that all my congregation, all who were attending and seeing that which I did, could not possibly tell whether I were kneeling in that sense or not." It would be intolerable to allow any order to be trifled with in such a manner as must be implied if their Lordships were to give place for a moment to any such argument on the part of Mr. Mackonochie as that this was a compliance with the order.

Now, with reference to this particular matter of kneeling, it is one, undoubtedly, of very great

importance as regards the judgment which has been pronounced, and the occasion of that judgment. We cannot do better, with reference to this part of the subject than call attention to the purport and intent of the Book of Common Prayer, when prescribing what is to be done, and in omitting to prescribe that which it does not intend to be done. For that purpose I will refer to the judgment which was pronounced by Lord Cairns, as the judgment of the Judicial Committee on the former occasion. His Lordship thus expresses himself, in page 7 of that judgment: "Their Lordships are of opinion that it is not open to a minister of the Church, or even to their Lordships, in advising her Majesty, as the highest ecclesiastical tribunal of appeal, to draw a distinction, in acts which are a departure from or violation of the rubric, between those which are important and those which appear to be trivial. The object of a statute of uniformity is, as its preamble expresses, to produce an 'universal agreement in the public worship of Almighty God'—an object which would be wholly frustrated if each minister, on his own view of the relative importance of the details of the service, were to be at liberty to omit, or add to, or alter any of those details. The rule upon this subject has been already laid down by the Judicial Committee in *Westerton v. Liddell*, and their Lordships are disposed entirely to adhere to it: 'In the performance of the services, rites, and ceremonies ordered by the Prayer-book, the directions contained in it must be strictly observed; no omission and no addition can be permitted.'" And then upon this very subject-matter his Lordship further proceeds to say.—

"There would indeed be no difficulty in showing that the posture of the celebrating minister during all the parts of the communion service was, and that for obvious reasons, deemed to be of no small importance in the changes introduced into the Prayer-book at and after the Reformation. The various stages of the service are, as has already been shown, fenced and guarded by directions of the most minute kind as to standing and kneeling—the former attitude being prescribed even for prayers, during which a direction to kneel might have been expected. And it is not immaterial to observe that whereas in the first Prayer-book of King Edward VI., there was contained at the end a rubric in these words:—'As touching kneeling, crossing, holding-up of hands, knocking upon the breast, and other gestures, they may be used or left as every man's devotion serveth, without blame,'—this rubric was in the second Prayer-book of Edward VI., and in all the subsequent Prayer-books omitted."

We may further add an observation as to the extreme care which is taken in the Prayer-book to guard all persons who might feel a scruple with reference to kneeling at the reception of the Holy Communion from any inference that might thereby be raised in their minds of a nature contrary to that which was intended by the Prayer-book itself to be expressed, namely, any intention of adoration of the holy elements. This is most particularly and carefully guarded against, and the reason for such kneeling is explained, and said to be, "for a signification of our humble and grateful acknowledgment of the benefit of Christ, therein given to all worthy receivers, and