Judgment of the Lords of the Judicial Committee of the Privy Council on Motion in the Appeal of Ridsdale v. *Clifton and others, from the Arches Court of Canterbury; delivered Tuesday, 14th March* 1876.

Present:

THE LORD CHANCELLOR.
LORD HATHERLEY.
SIR ROBERT J. PHILLIMORE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.

IN the case in which their Lordships have now to express their opinion an appeal has been instituted against the decision of Lord Penzance, as Judge of the Arches Court, dated 3rd of February 1876, and the matters complained of, with regard to that decision, are these: First, that it pronounces unlawful the wearing of certain vestments; Secondly, that it pronounces as unlawful the use in the Holy Communion of wafer bread or wafers; Thirdly, that it pronounces unlawful the standing by the minister while saying the Prayer of Consecration in the Communion Service at the middle of the west side of the Communion Table, in such wise that during the whole time of the saying of the Prayer he was between the people and the Communion Table, with his back to the people, so that people could not see him break the bread or take the cup into his hand; and, Fourthly, that it pronounces as unlawful the setting up and placing on the top of the screen separating the chancel of the church from the body of the church, and still retaining thereon, a crucifix.

The decree which is thus complained of and appealed against in its form admonishes the present Appellant, the Reverend Charles Joseph Ridsdale, to abstain for the future from the practices and acts set forth in the decree, and from sanctioning and permitting the same; and it also further goes on to direct, affirmatively, the Reverend Charles Joseph Ridsdale to remove or cause to be removed from the top of the screen the figure on the cross fixed thereon.

Now that decree having been made, and notice of appeal having been given, an application was made, as is usual in such cases, for the process which is called inhibition, and citation and monition for process—monition for documents; and against the issuing of that process a caveat has been lodged, which has made it necessary for the Rev. Mr. Ridsdale, the Appellant, to come before their Lordships, and to ask that the process which he seeks should issue. If the process issues in the triplicate form to which I have referred, of inhibition, citation, and monition, the inhibition will restrain the execution of the decree, to which I have referred, pending the appeal; and therefore, in substance, the motion now before their Lordships raises the question whether proceedings in this case under the decree should or should not be stayed pending the appeal.

Now it has been contended, on behalf of Mr. Ridsdale, here, in the very able argument which we have heard, that the issuing of an inhibition, in cases like the present, has always been a matter of course, and is still a matter of course, notwithstanding the provisions of the Public Worship Regulation Act of 1874, and that therefore the caveat against the issuing of the inhibition ought to be removed, and the inhibition ought to issue as a matter of course, as part of the process. That

makes it necessary for their Lordships to consider what the nature and character of the part of the process termed the inhibition, upon the occasion of an appeal, was before the passing of the Act of Parliament to which I have referred. There is no doubt that in every appeal in ecclesiastical cases it was very much a matter of course to issue an inhibition. It was in fact so much a matter of course that it was permitted to the officer of the court to issue the inhibition as part of the process, whenever it was applied for. But their Lordships cannot arrive at the conclusion that because in every case where there was, or appeared to be, a probable cause for litigation, evidenced by the appeal being brought, the issue of this process was so common as to be left as a ministerial act to the officer of the court; they cannot from this arrive at the conclusion that the discretion of the court as to issuing an inhibition was taken away, or that this tribunal or the supreme tribunal for the time being in ecclesiastical cases, where a case was brought pointedly before its notice, would not have it in its power to exercise its discretion as to whether an inhibition staying proceedings should or should not issue. If their Lordships look to authority upon the subject they cannot but think that the expressions of Sir John Nichols, in the case of *Herbert* v. *Herbert*, show very clearly that in his opinion in a proper case the discretion rested with the tribunal to issue, or not to issue, an inhibition; and the authorities which are referred to in the argument, in that case of *Herbert* v. *Herbert*, go very strongly to the same point, especially the passage cited from Ayliffe's Parergon, which is printed at length in a note to the case of *Herbert* v. *Herbert*.

Moreover, upon the reason of the thing, their Lordships also are of opinion that a court which has the right to entertain an appeal must of

necessity have this discretion with regard to the issuing of a process, such as inhibition. The inhibition is only a collateral and incidental part of the process. The main process is that of citation, calling upon the party in possession of the decree to appear before this tribunal, and to defend the decree which he has obtained. It would be a strange thing indeed if that which is ancillary and incidental to the main jurisdiction of the appellate tribunal could not be moulded, issued, or refused to be issued, as the tribunal should think best under the circumstances of the particular case. I have only to add to this, with regard to the position of matters before the passing of the Public Worship Regulation Act, the circumstance that certain Rules were issued by this Board in pursuance of the statute 6th and 7th of the Queen, chap. 28, and that it is necessary to refer to an argument which has been urged with regard to these Rules, that they in some way have made the issuing of an inhibition in this case absolutely necessary. Now the Rules which are material upon this point are the 4th and 5th. The 4th is in this form: "When the Registrar has ascer-" tained that the petition of appeal has been " referred to the Judicial Committee, he may, " on the application of the solicitor, issue the " usual inhibition and citation and monition for " process." He may do this, on the application of the solicitor, issue the triplicate form of process, inhibition, and citation, and monition for process; but if their Lordships are right in considering, as they do consider, that the issue or non-issue of the inhibition was a matter of discretion, of course this reference in the Rules to the usual inhibition, citation, and monition for process must mean triplicate process when it was to be in triplicate; and where, if ever, the Court should hold that the inhibition should not

issue, then the process confined and limited to the citation and monition for process. This 5th Rule is to this effect: "If within one month from "the date of the petition of appeal being "referred to the Judicial Committee the "solicitor for an appellant shall not take out "the inhibition and citation and monition for "process, the appeal shall stand dismissed." Upon that it was argued, that, unless the three-fold process were to issue, Mr. Ridsdale would be deprived of his appeal, and it would be absolutely dismissed in consequence of this Order. Their Lordships cannot adopt that construction of the Rule. In their opinion, if it is in their discretion, as they think it is, to say, on a proper case being presented to them, whether the inhibition shall or shall not issue, the Order that it shall not issue will render the taking out the other two parts of the process, the citation and monition for process, sufficient to save the appeal under this Order. In point of fact, the description of the triplicate process is description only, and does not raise the necessity, as an absolute necessity, that the process should be in that triplicate form.

Now, that being the state of the law, as their Lordships understand it, before the Act for the Regulation of Public Worship passed, their Lordships have to consider the effect of that statute. Their Lordships approach the consideration of the statute, bearing in mind therefore that before it passed the issue of an inhibition, although so common as to be almost matter of course, was still matter of discretion, if the discretion of this Board were called upon to be exercised upon it. The statute of 1874 provides, by the 9th section, what shall be the form of proceedings before the Judge under the Act, or the Judge of the Court of Arches, as the case may be, and it provides that the

Judge shall pronounce judgment on the matter of the representation, and shall deliver to the parties on application, and to the Bishop, a copy of the special case, if any, and judgment. It provides further that the Judge shall issue such monition, if any, and make such order as to costs as the judgment shall require. It provides then, further, that upon any judgment of the Judge, or monition issued in accordance therewith, an appeal shall lie in the form prescribed by Rules and Orders to Her Majesty in Council; and then comes this final sentence in the clause, "The Judge may, on application, "in any case suspend the execution of such "monition, pending an appeal, if he shall think "fit." We find, therefore, in this Act of Parliament, that which certainly did not exist as a power in the Ecclesiastical Judge before the Act passed. Before this Act passed there was no power whatever in the Ecclesiastical Judge to suspend proceedings under his decree pending an appeal. There was, as has been pointed out at the bar, a power somewhat, perhaps, arbitrary in the Judge to keep possession of his decree in the office of the court until an opportunity were given for the dissatisfied party to present a petition of appeal to Her Majesty in Council, and to obtain an inhibition, which, if obtained, would prevent the execution of the decree. But power in the Judge himself to restrain proceedings under the decree during the whole of the appeal did not exist. That was given for the first time by this statute.

Now their Lordships cannot look at this provision in the statute as otherwise than an indication that in the opinion of the Legislature it ought to be considered in each particular case whether the decree made in that case should be executed pending an appeal, or should be stayed pending an appeal. The intimation of the Legis-

lature is distinct, that that is a matter which ought to be entertained as a question of discretion, and brought, at all events in the first instance, for the decision of the Judge himself who has made the decree. That has been done in the present case, and the decision of the Judge in the present case is, for reasons which he has stated, that the execution of no part of his decree should be suspended pending the appeal. Their Lordships are not sitting upon appeal from that order of the learned Judge, because no appeal from that order appears to be given by the Act of Parliament; but they are sitting here considering the application which is now made to them, that in their discretion the inhibition in the present case should not issue restraining the execution of this decree, either in whole or in part, and they are unable to treat the Act of Parliament as doing otherwise than introducing a new element for them to consider in exercising their discretion as to whether the inhibition ought to issue.

Now, therefore, applying those principles to the case which their Lordships have to decide in their opinion, the mode in which they have to look at a case like the present is this: to consider the balance of convenience or inconvenience with regard to the execution of the decree; that is to say, looking at the facts of the particular case, looking at what is ordered by the Court to be done, whether upon the whole it would be better that the decree of the Judge should be allowed to take its course, or whether the things which it orders to be done are in their nature such as that the doing of them would produce so much injury that it would be more desirable that the decree should be stayed until the decision of the final tribunal is known. That is a practice which is well known in other Courts. It is well known, for example, in the Court of Chancery,

where, upon an application to stay the execution of a decree, it has always been considered to be the question for the Court whether the balance of convenience was more in favour of restraining the execution of the decree in the particular case, or more in favour of letting the decree take its course.

Now in the present case, their Lordships do not desire to express, and it would not be proper for them to express, any opinion whatever as to the merits of the appeal, which ultimately will have to be heard from this decree. They give credit for the present purpose to the decree as the decree of the learned Judge by whom it has been made. On the other hand, they give credit to the sincerity of those who have considered that there is ground for impeaching that decree, and who wish to have their case against the decree heard at the proper time. But, on the other hand, treating the decree as at present, until reversed, the order of the Court, and on the other hand treating the appeal as evidence that in the opinion, at all events, of the Appellant there is *probabilis causa litigandi*, they have to look at what are the things which the decree orders to be done or to be left undone. Now in that respect they find a very marked difference between different parts of the decree. With regard to the vestments pronounced unlawful, and which therefore are directed not to be worn; with regard to the use of the wafer bread, which is also pronounced to be unlawful, and which is therefore directed not to be used; with regard to the posture of standing during the Prayer of Consecration at the west side of the Communion Table, which is also pronounced unlawful, and where therefore the minister is directed not to stand at that time; with regard to all these things, their Lordships consider that no inconvenience and no injury which would be irre-

mediable will arise from the decree being obeyed in those matters pending the appeal.

The other point is different. I refer to the part of the decree which pronounces unlawful the setting up and placing on the top of the screen separating the chancel of the church and retaining there a crucifix; and as to this the decree directs the Revd. Charles Joseph Ridsdale to remove or cause to be removed this crucifix from the screen. Their Lordships do not desire to make any difference between this and the other parts of the decree as to what may be termed the merits; that is to say, they do not, by what they are going to order, wish to place that part of the decree in any different position from the other parts of the decree as regards the correctness of the decree itself. They give credit on that part of the decree as they do to the other parts of the decree, to that which is for the present the decision of the Court below, but they see that different consequences may arise, as to this part of the decree, from executing it pending the decree. It is unnecessary to go into what those consequences are, beyond saying that it is, obviously from the nature of the case, at least possible that a subject which ought to be treated with the greatest reverence might be accompanied with feelings of a different kind if the decree were in this respect in the first instance to be executed, and afterwards upon a reversal of that decree the process had to be repeated of making another change.

For those reasons, and for those only, their Lordships desire to make a difference between this last part of the decree and the parts which precede it. And as to this latter part of the decree, they desire that by the inhibition the execution of that part of the decree should be suspended pending the appeal. The inhibition

therefore will go limited in the manner which has been indicated to the last part of the decree, but not so as to restrain the execution of any of the other parts of the decree. With regard to costs, their Lordships do not think it fit to give any costs of this appeal to either side.