REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

DELIVERED THE 9TH OCTOBER, 1950

IN THE MATTER OF THE HOUSE OF COMMONS (CLERGY DISQUALIFICATION) ACT, 1801

AND

IN THE MATTER OF THE REVEREND JAMES GODFREY MacMANAWAY

Present at the Hearing:

LORD SIMONDS
LORD MORTON OF HENRYTON
LORD RADCLIFFE
LORD JUSTICE TUCKER
THE MASTER OF THE ROLLS
(SIR RAYMOND EVERSHED)

[*Delivered by* LORD RADCLIFFE]

By an Order in Council made on the 21st day of July, 1950, His Majesty was pleased with the advice of His Privy Council to refer to the Judicial Committee for their hearing and consideration the following question of law, viz.:—" Whether the provisions of the House of Commons (Clergy Disqualification) Act, 1801, so far as they apply to persons ordained to the office of priest or deacon disable from sitting and voting in the House of Commons only persons ordained to the office of priest or deacon in the Church of England as by law established, or whether they also disable from so sitting and voting other and, if so, what persons ordained to those offices and, in particular whether, by reason of the fact that the Reverend James Godfrey MacManaway has been ordained as a priest according to the use of the Church of Ireland he is disabled from sitting and voting in the said House of Commons."

The question which is thus referred to Their Lordships for their advice is a question as to the meaning of certain words which are contained in the House of Commons (Clergy Disqualification) Act, 1801, which Act may be conveniently referred to as " the 1801 Act." The crucial phrase consists of the words " having been ordained to the office of priest or deacon." The meaning which these words ought to be understood to bear is not to be ascertained by any process akin to speculation. The primary duty of a Court of law is to find the natural meaning of the words used in the context in which they occur, that context including any other phrases in the Act which may throw light upon the sense in which the makers of the Act used the words in dispute. But the law recognises as legitimate certain other aids to a correct interpretation. For instance, the 1801 Act itself recites that it " is expedient to remove doubts which have arisen respecting the eligibility of persons in Holy Orders to sit in the House of Commons ", and it is desirable to know, so far as it can be known with any precision, what those doubts were, in case the knowledge should prove to be a help in determining the range of the word " ordained " or, alternatively, of the words " priest or deacon ". Again, none of these three words, " ordained ", " priest ", " deacon ", can be said to be truly a term of art in the law of this country, having a fixed and particular connotation, and their significance in the body of the 1801 Act cannot be understood if account is not taken of the general civil and

ecclesiastical status as at that date of such persons as might possibly be embraced within the description " persons in Holy Orders ". Such an account involves consideration of certain then existing Acts of Parliament. There is also a number of Acts of Parliament, later in date than the 1801 Act, to which much attention was directed in the argument before their Lordships. But it is obvious that a subsequent Act of Parliament cannot, generally speaking, afford any useful guide to the meaning of another Act which came into existence before the later one was ever framed. Under special conditions the law does admit a subsequent Act to be resorted to for this purpose. What those conditions are and whether in this case they sanction a reference to such statutes as the Roman Catholic Relief Act, 1829, or the Colonial Clergy Act, 1874—to name only two of the statutes from which, it was said, there could be drawn reliable, though in the result conflicting, indications as to the intention of those who framed and enacted the 1801 Act—are questions which can most satisfactorily be dealt with at a later stage of their Lordships' Opinion.

There is no real difficulty in identifying the general nature of the doubts as to the eligibility of persons in Holy Orders to which the 1801 Act refers. The occasion of the Act itself was the presence in the House of Commons of the then member for Old Sarum, the Reverend Horne Tooke, a priest ordained according to the Order of the Church of England but not at the time holding any ecclesiastical preferment. In 1784 a Mr. Rushworth, who had been ordained deacon according to the Order of the Church of England, had been permitted to take his seat; but only after the question of his eligibility had been referred to and considered by a Select Committee of the House of Commons. The proceedings and Report of this Committee had exposed how ambiguous was the position of any person in Holy Orders, to use for the moment a neutral expression. By ancient constitutional doctrine the clergy of England represented an estate of the realm separate from the Commons: this estate met in the two Provincial Convocations and voted its own taxes. Anyone therefore who might be regarded as a member of a Convocation might at the same time be regarded as ineligible to be a member of the Commons. Certainly, Prebendary Newell in 1553 and Mr. Robson in 1621 were excluded from the Commons on this ground, and the weighty authority of Coke and Blackstone was available in support of the theory that it was because a clergyman had or might have a voice in Convocation that he could not at the same time have a voice in the Commons. But by 1801 this ancient doctrine could hardly be regarded as representing a living principle of the Constitution, for since 1664 the clergy had abandoned any practice of voting their own subsidies to the King and had come under the general taxing power of Parliament, indistinguishably from the laity, while no meeting of a Convocation that had discussed more than formal business had taken place since the early years of the 18th Century. Moreover since the 16th Century there was no longer one homogeneous body of clergy for whom Convocation might, even if only theoretically, be the forum; and in 1801 the Parliament of the United Kingdom was faced with the existence of established churches for England and Ireland on the one hand and for Scotland on the other, of the Scottish Episcopalian Church, which, while not established, had yet a tradition of episcopal ordination, and the Roman Catholic Church whose members might lie under heavy disabilities but whose Orders themselves had a validity which no churchman would be likely to challenge.

Another and, perhaps, a wider consideration dwelt upon the nature of the sacred calling itself, and invoked the ecclesiastical rather than the constitutional law. Was it compatible with the spiritual office to which the priest or deacon was irrevocably dedicated that he should devote himself to such mundane activities as were appropriate to a member of the House of Commons? Canon LXXVI, which had been adopted in the year 1603, had laid it down that " no man being admitted Deacon or Minister shall voluntarily relinquish the same, nor afterwards use himself as a layman ": and it is a matter of some significance that, when Sir James Craddock

was excluded from the Commons in 1661, the ground assigned was not that he had or might have a voice in Convocation, the ground assigned in the two previous cases, but that he was in Holy Orders and " so disabled to sit ". This conception, that the Ministry of the Gospel itself imposed a disqualification for the service of the secular Parliament, appears to have been one that was entertained by the Scottish Parliament prior to the Union with England, and in the year 1700 that Parliament is recorded to have accepted that a Mr. William Higgins had vacated his seat as Commissioner for the Burgh of Linlithgow " upon his being now an actual Minister of the Gospel ".

The doubts, then, which the Parliament of the United Kingdom intended to put to rest by the 1801 Act had not been precisely defined. Clearly, they related to the position of persons in Holy Orders, the phrase used in the long title and in the preamble of the Act, and to the circumstances in which and the conditions under which such persons might be eligible for a seat in the Commons. If the case of England alone is considered, the historical instances in which eligibility had been disputed were indeed elections of priests or deacons of the Church of England as by law established. But their Lordships are satisfied that there is no material in this account of the origins of the Act that would warrant any particular interpretation, restricted or extended, of the words " ordained to the office of priest or deacon " which appear in the body of the Act. The Act is directed to the position of persons in Holy Orders, without qualification: it is to provide a common rule for the constituencies of Scotland and Ireland, as well as England: and the form of words used in the first two sections, " be it declared and enacted ", makes it impossible to predicate how much of the substantive provisions was regarded as merely declaratory of existing law and how much was regarded as creating a new legal rule.

Various possible constructions of the words " ordained to the office of priest or deacon " were suggested to Their Lordships. It was said that they ought to be understood to relate only to such persons as had been ordained to those offices in accordance with the form of making and ordaining priests and deacons which is prescribed by the Book of Common Prayer of the Church of England. This construction would mean that the Reverend MacManaway, who was ordained by a bishop of the Church of Ireland according to the use of that Church was not covered by the Act. Ordination according to the form prescribed by the Book of Common Prayer (and therefore in the manner required to be used in the Church of England by the Act of Uniformity, 1662) was spoken of as " statutory ordination " and it was urged that it would be natural to read words referring to ordination, when used in an Act of the Parliament of the United Kingdom, as referring to ordination in this sense. But Their Lordships are unable to accept this argument, for its foundation appears to them to be unsound. " Ordination " is, admittedly, not a word of art: but in 1801 neither the civil law nor the ecclesiastical law sanctioned the view that in this country a man was not to be regarded as an ordained priest or deacon unless he had received " statutory ordination " or the view that a man who had received episcopal ordination elsewhere was in any sense less completely a holder of the sacred office to which he had been admitted. How this came about can most conveniently be seen by reference to the Restoration settlement.

In 1662 the English Parliament passed the Act of Uniformity. Its main purpose was to make obligatory within any " cathedral collegiate or parish church or chappell or other place of publique worship within this realm " the use of the revised Book of Common Prayer, for the revision of which Charles II had instituted a Commission on his return in 1660. With the new Book of Common Prayer, which was scheduled to the Act, was combined a revised Ordinal for the making, ordaining and consecrating of bishops, priests and deacons. Section 14 of the Act (as originally enacted) introduced this Ordinal by the following provision: " No person whatsoever shall . . . be capable to bee admitted to any parsonage vicarage

benefice or other ecclesiastical promotion or dignity whatsoever nor shall presume to consecrate and administer the holy sacrament of the Lord's Supper before such time as he shall be ordained priest according to the forme and manner in and by the said booke prescribed unlesse he have formerly beene made priest by episcopall ordination upon pain, etc. . . ." The Preface to the Ordinal itself contained a similar injunction:—"No man shall be accounted or taken to be a lawful Bishop, Priest or Deacon in the Church of England, or suffered to execute any of the said functions, except he be called, tried, examined, and admitted thereunto, according to the form hereafter following, or hath had formerly Episcopal Consecration or Ordination."

Now, if the word "formerly" had been taken to refer to nothing more than a date anterior to that upon which the Act of Uniformity came into force, thereby providing exemption only for those of the clergy who had been episcopally ordained in no matter what form before the use of the revised Ordinal became obligatory, there might be ground for saying that by 1801 there was only one form of lawful ordination that could be recognised in England and Wales. And an Irish Act of Uniformity of 1665 had imposed the same system on Ireland until the Union in 1800: the Union itself had created a United Church of England and Ireland, bound by statute to observe the doctrine, worship, discipline and government as by law established for the Church of England. But the word "formerly" has never been understood in that sense. Ecclesiastical lawyers have consistently treated it as affording statutory sanction for what is both the doctrine and the practice of the English Church, namely that any ordination that can properly be described as episcopal is a valid admission of a person to the order of priest or deacon and that, once a person has been ordained priest by such an episcopal ordination, whether within or without the Church of England, he is fully qualified to be admitted to any ecclesiastical promotion or dignity in that Church and to consecrate and administer the sacrament of the Lord's Supper. This principle of the ecclesiastical law is illustrated by the words in which, according to the Order of the Church of England, the Bishop commits authority to the deacon on admission:—"Take thou authority to execute the office of a deacon in the Church of God." Similarly, the priest has committed unto him "the office and work of a priest in the Church of God". The position is summed up in Phillimore's Ecclesiastical Law of the Church of England (2nd Ed.) Vol. I, p. 4:—"the Church of England does not recognise the validity of Holy Orders unless conferred by an episcopal hand, and does always recognise them when so conferred. Consistently with this theory she does not in practice reordain the Clerk who, having been ordained by a Roman bishop, leaves the Church of Rome and desires to officiate in the Church of England. Nor can there be any doubt that the Church of England recognises the validity of the orders conferred by the Greek Church." One of the authorities upon which Phillimore was drawing for his statements was the Codex Juris Ecclesiastici Anglicani of Bishop Gibson, who in his 2nd Edition of 1761 (Vol. I, p. 99) had explained the provisions of S. 14 of the Act of Uniformity, 1662 in the sense which has been set out above. In the light of this Their Lordships are of the opinion that by the year 1801 the phrase "ordained to the office of priest or deacon" had a well-understood meaning and that there is nothing in the words themselves that would justify the restriction of their scope to persons who had been ordained in precise accordance with the form laid down for the Church of England by the Act of 1662 and by the authority of that Church. If the Act were given that restricted meaning, it would have the curious consequence that a person in the actual enjoyment of ecclesiastical promotion or dignity in the Church of England might yet sit and vote in the House of Commons, provided only that the source of his admission to the priesthood lay outside the Church of England itself.

The same considerations lead Their Lordships to reject another argument that was placed before them, to the effect that "ordained to the office of priest or deacon" must mean "ordained to the office of priest

or deacon in a Church by law established ". This reading of the words would cover the case of persons ordained by a bishop of the Church of England for work in that Church prior to the union with Ireland in 1800, the case of persons ordained by a bishop of the Church of Ireland for work in the Church of Ireland prior to the same date, and the case of persons ordained by a bishop of the United Church for work in that Church after 1800; but would not extend, it was argued, to the case of any person, such as the Reverend MacManaway, who had been ordained according to the use of the Church of Ireland after that Church became disestablished on 1st January, 1871. Alternatively, it was said that the phrase covered only those persons who were ministers of an established Church, from whatever Church they might derive episcopal ordination. Their Lordships cannot accept without some reservations the conception that a priest or deacon is ordained in or into any particular Church: a conception which, indeed, conflicts with the prevailing doctrine of ecclesiastical law. Such a phrase may conveniently denote the source from which a person derives his status in Holy Orders, but it is one of the complications inherent in this subject that a person may derive his orders from one Church, even though he ministers in another. However that may be, the Act itself has not spoken of a person ordained to the office of priest or deacon in any particular Church: and that perhaps is the shortest answer to this argument. The phrase that the Act has employed contains no necessary implication either that the person struck at has derived his Orders from one special Church, so long as he can be described as ordained, or that he ministers in one Church rather than another. Considering that the same sections of the same Act do make specific mention of " any person being a Minister of the Church of Scotland ", which was the Church by law established in Scotland, it seems impossible to suppose that, if Parliament had intended to exclude only priests or deacons who had some connection with established Churches, whether in England or Ireland, it would not have found explicit words which were apt to convey such an intention.

Before leaving this branch of the subject it may be well to state what is the position of the Reverend MacManaway in respect of ordination. That he received episcopal ordination is not in dispute: he was ordained priest in the year 1925 by the Bishop of Derry and Raphoe, a diocese in the Province of Armagh in the Church of Ireland. Nor is it in dispute that this ordination would be recognised as validly admitting him to the order of priesthood for the purpose of his holding an English living or other ecclesiastical preferment. It is true that the Church of Ireland has been a disestablished Church since 1871, but in this matter of Holy Orders disestablishment does not seem to have led to any divergence in doctrine or practice. By the Preamble and Declaration adopted by the General Convention of the Church of Ireland in 1870 it was resolved that the Church would maintain inviolate the three Orders of Bishops, Priests or Presbyters, and Deacons in the sacred Ministry and would continue to use the forms and orders of the Prayer Book of 1662, subject to such alterations only as might be made therein from time to time by the lawful authority of the Church. Two revisions have taken place, in 1878 and 1926, but the Order for the ordination of Priests is still in effect the same as that employed by the Church of England and, as in the English form, the priest receives his authority " for the office and work of a Priest in the Church of God ".

It is, of course, permissible to enquire whether there is to be found in other provisions of the 1801 Act some reliable indication that the word " ordained " is being used by the Legislature in a sense which is different from that which it would normally bear. Both section 2 and section 4 were placed before their Lordships as containing such indication. But in truth they are quite inconclusive for this purpose. Section 2 visits upon an ordained person or Minister of the Church of Scotland not merely the deprivation of his seat and a monetary penalty in respect of each

day that he sits or votes as a member of the House but also, as a pendant to the monetary penalty, a permanent incapacity of " taking, holding, or enjoying any Benefice, Living, or Promotion Ecclesiastical, and of taking, holding, or enjoying any Office of Honour or Profit under His Majesty, His Heirs or Successors ". The preferments of an established Church alone are denied to the offender, and it was suggested that this itself shows that only the clergy of the established Church (in whichever of its various senses that phrase may be taken) were the concern of the Act. This however is far from being a necessary inference. Parliament was dealing with persons who had at any rate so far identified themselves with the life of this country as to get themselves elected to the House of Commons ; and, of course, it was not seeking, because it could not seek, to deprive those persons of ecclesiastical or other office in countries outside our own. It disqualified them from two kinds of preferment which enjoyed a special status, ecclesiastical preferment and an office of honour or profit under the Crown: it did not, on the other hand, render them incapable of holding appointments in any religious society whose offices were not included in those terms or of being in gainful employment in the United Kingdom. No doubt the persons most likely to be affected by the Act were the clergy of the established Church and the case of the ordained person elected to the House of Commons who derived his orders from a bishop other than an English or Irish bishop would in any event be a rare one. But the fruits of ecclesiastical promotion or of the office of profit under the Crown were available to all. Their Lordships would therefore think it an unsound process to restrict the meaning of the word " ordained " by any deduction to be made from the contents of Section 2.

Nor does Section 4 elucidate the question. Its purpose is to provide a simple method of proving that a person has been ordained to the office of priest or deacon or is a Minister of the Church of Scotland within the meaning of the Act, and it does this by enacting that " proof of the Celebration of Divine Service according to the Rites of the Church of England or of the Church of Scotland, in any Church or Chapel consecrated or set apart for Publick Worship, shall be deemed and taken to be prima facie Evidence of the fact etc." A section the purpose of which is procedural and nothing more can hardly be a convincing source from which to make deductions as to the interpretation of the Act ; but, putting that aside, it is very difficult to say what argument it tends to support. It seems to suggest that the most obvious test of whether a person is an ordained priest or deacon within the meaning of the Act is that he is celebrating Divine Service according to the rites of the Church of England. So it would be in many cases, whatever view is taken of the scope of the Act. But such a test has no necessary connection with the suggested requirement that to be " ordained " a person must have had " statutory ordination " or the other suggested requirement that he must have been ordained " in " an established Church. It looks rather to a person's active ministry in a Church observing the English rite whatever the source of his Orders. And it is really impossible to work out any meaning of the word " ordained " that would confine it to the holding of a living or to active ministry in the established Church. Indeed it is possible that the real purpose of the section was to provide a ready method of proof in the exceptional case of a person who, though having identified himself with the life and work of the Church in England, had received his Orders elsewhere. However that may be, what matters is that Section 4 cannot be resorted to as giving any clear indication that Parliament had used the word " ordained " in the earlier parts of the Act in any special sense.

Arguments were also addressed to their Lordships which sought to establish the interpretation of the 1801 Act by deductions drawn from the language of later statutes or from the presence in them or absence from them of some particular provision. The law does not in all cases reject such aids to interpretation. In *Ormond Investment Co.* v. *Betts* 1928 A.C. 143 at 156 Lord Buckmaster, after quoting a passage from the

judgment of Lord Sterndale in *Cape Brandy Syndicate* v. *Inland Revenue Commissioners* 1921 2 K.B. 403 at 414, which ran: "I think it is clearly established in *Attorney-General* v. *Clarkson* that subsequent legislation on the same subject may be looked at in order to see the proper construction to be put upon an earlier Act where that earlier Act is ambiguous. I quite agree that subsequent legislation, if it proceed upon an erroneous construction of previous legislation, cannot alter that previous legislation; but if there be any ambiguity in the earlier legislation then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier", proceeded as follows: "This is, in my opinion, an accurate expression of the law, if by 'any ambiguity' is meant a phrase fairly and equally open to divers meanings, . . ." The conditions under which a later Act may be resorted to for the interpretation of an earlier Act are therefore strict: both must be laws on the same subject, and the part of the earlier Act which it is sought to construe must be "fairly and equally open to divers meanings". For indeed it is a large assumption that the framers of successive Acts of Parliament, sometimes separated from each other in point of time by several human generations, have always approached their subject with a consistent mind or have expressed their purpose with a strict nicety of meaning. Resort to a later Act can rarely, if ever, be justified unless the message that it conveys is a plain one, itself, at least, free from ambiguity. Even the favourite argument as to surplusage may sometimes fall on deaf ears. "It is not a conclusive argument as to the construction of an earlier Act," said Lord Haldane L.C., giving the opinion of the Judicial Committee of the Privy Council in *In re Samuel* 1913 A.C. 514 at 526, "to say that unless it be construed in a particular way a later enactment would be surplusage. The later Act may have been designed, *ex abundante cautela*, to remove possible doubts". When arguments, sometimes of subtle import, are based upon enquiring what a later Act might have been expected to contain or to omit if a particular construction of an earlier Act were the correct one, it is well to remember that the one thing which at least is certain amid a good deal that is speculative is that those who framed and enacted the earlier statute, the meaning of which is in question, could by no possibility have foreseen in what terms those who framed and enacted the later statute were destined to express themselves.

These principles, their Lordships think, preclude them from resorting to later Acts to fix the interpretation of the 1801 Act. Firstly, they do not fix it, for nothing emerges from a scrutiny of them that affords a satisfactory guide to what was meant by "ordained" in the Act in question. Secondly, that Act contains no real ambiguity. The real issue as to the phrase "being ordained to the office of priest or deacon" is not which of two different meanings, equally open, is to be attributed to it, but whether the historical context of the Act combined with the context of its own provisions requires that the phrase should be interpreted as subject to an implied limitation.

Their Lordships therefore answer the questions of law referred to them as follows. They will humbly advise His Majesty:—

(1) That the provisions of the House of Commons (Clergy Disqualification) Act, 1801, so far as they apply to persons ordained to the office of priest or deacon, do not disable from sitting and voting in the House of Commons only persons ordained to those offices in the Church of England as by law established;

(2) That those provisions disable from so sitting and voting all persons ordained to the office of priest or deacon, whether by a bishop of that Church in accordance with the form of making and ordaining Priests and Deacons according to the Order of the Church of England, or by other forms of episcopal ordination;

(3) That the Reverend James Godfrey MacManaway is disabled from sitting and voting in the House of Commons by reason of the fact that, having been ordained as a priest according to the use of the Church of Ireland, he has received episcopal ordination.

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In the Privy Council

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DELIVERED BY LORD RADCLIFFE

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