

*Reasons for the Report of the Lords of the  
Judicial Committee of the Privy Council on  
the Appeal of The Reverend Stewart Smyth  
v. The Bishop of St. Albans, from the Con-  
sistory Court of the Diocese of St. Albans ;  
delivered 7th August 1895.*

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Present :

THE LORD CHANCELLOR (LORD HERSCHELL).  
LORD WATSON.  
LORD HOBHOUSE.  
LORD MORRIS.  
SIR RICHARD COUCH.

Ecclesiastical Assessors :

THE ARCHBISHOP OF CANTERBURY.  
THE BISHOP OF WAKEFIELD.  
THE BISHOP OF CHESTER.

[*Delivered by Lord Herschell.*]

In this case a complaint was made by the Respondent in the Consistory Court of St. Albans against the Appellant, under the Clergy Discipline Act 1892. There were several charges, but the Chancellor of the Diocese by whom the case was tried found only one of them proved—that relating to drunkenness on the 24th of May 1894. The sentence pronounced in respect of this charge was deprivation.

The Appellant has been in Holy Orders for 22 years, and down to the period covered by the charges made against him, his character had been high and unimpeached. It is clear that he was not addicted habitually to taking alcoholic

liquor in excess. On the occasion in question he travelled with his wife and son in the train which leaves Liverpool Street at 8.28 p.m., and is due at Silvertown at 8.55 p.m. The only other passenger in the carriage with them was Miss Taylor, a member of the Appellant's congregation. There is some question whether the journey took place on the evening of the 24th or of the 25th of May. It will be necessary to refer to this hereafter. There is no doubt that so far as regards the occurrences connected with the journey, the witnesses are all speaking of the same occasion. Miss Taylor's evidence was to the following effect. The Appellant got into the carriage in which she was seated; he stumbled as he got in; he passed her and went to the further side of the carriage; when he shook hands with her and said "Good evening" there was a strong smell of spirits, and he did not speak in his usual voice; throughout the journey he kept swaying to and fro, and beating his stick on the floor of the carriage; he said little, his wife and son talked to her incessantly all the way; on the arrival of the train at Silvertown the Appellant got out very quickly and she saw him going down the platform as quickly as he could get along; he did not walk in his usual way, he was staggering.

The next witness was Mr. Spinks, a schoolmaster. He entered the train at Stratford Market Station, and went into the next carriage to that in which the Appellant was seated. He saw the Appellant's face; he had a ruddy complexion, and the witness' attention was drawn to a sleepy look in his eyes. When Mr. Spinks got out, on arriving at Silvertown, he saw the Appellant making his way to the outlet, walking with an unsteady gait. He came to the conclusion that the Appellant was

intoxicated because of his unsteady gait and of his son's condition. Having regard, he said to the proper way the vicar had always behaved, he would not have come with his son in the condition in which he was if he had not been intoxicated. Miss Taylor, who had said nothing about the son's being the worse for liquor, on being recalled confirmed Spinks' statement. It may be observed, in passing, that this evidence as to the intoxication of the son is of the slenderest description and is not altogether consistent with the statements of the next witness, Mr. Saxe. He is a stationer and had travelled by the same train. His account was that he saw the Appellant outside the station walking towards the vicarage; a lady had hold of his right arm; he was rather unsteady in his walk; his son who came running after him took hold of his other arm, and all the way to the vicarage he was gesticulating; his condition could not have been from any other cause than intoxication; no amount of pain could have accounted for his walk; he judged that he was intoxicated by his walk and speech; when they came to the vicarage they put the Appellant inside in a way he thought not proper for a gentleman of his standing. This was the whole of the evidence on which the Appellant was convicted of drunkenness and deprived of his benefice. Their Lordships cannot help remarking that it appears to them to be of a very slender character to support a decision of such moment.

The Appellant and his wife and son were called as witnesses. They all stated that the Appellant had in the course of the day taken no intoxicating liquor except one glass of beer, and that the son had been even more abstemious, not having taken any. They denied that there was any foundation for the allegation that either

father or son was under the influence of liquor. The learned Chancellor practically discarded this evidence as worthless, not merely on the ground that it proceeded from interested persons, but because he thought that circumstances which will be adverted to presently cast suspicion on their testimony. No doubt when facts are deposed to by witnesses, apparently truthful, about which they cannot be mistaken, and of the significance of which there can be no question, the counter-evidence of witnesses deeply interested cannot be received otherwise than with hesitation. If one of two sets of witnesses must be speaking falsely it is more probable that those who have an interest in perverting the truth are perjuring themselves, than those who have no such interest. But their Lordships have not to deal with any such case. Miss Taylor and Mr. Spinks may be intending to tell the truth, and yet the Appellant may not have been intoxicated on the occasion in question. That he was intoxicated is only an inference drawn from the facts to which they depose. The Appellant to a large extent admits the facts. He admits that during the journey he was swaying backwards and forwards in the manner described. Of what was this the symptom? He alleges that he had been and was suffering from pain in the stomach, and that this was the cause of the conduct which Miss Taylor observed. When this was put to her she at once rejected it as a possible cause. Their Lordships do not see why. It appears to them to be rather indicative of pain than of intoxication. Again, he hurried out of the carriage in the direction of his house, with unsteady gait. Is this an impossible or even an improbable phenomenon in the case of a man suffering from gripes? Their Lordships think not. It is true that Miss Taylor states that when the Appellant spoke she noticed a smell of spirits. May she

not have been mistaken ? It must be remembered that acts of the Appellant, which are not in dispute, impressed her with the conviction that he was intoxicated, and every one knows how often, when a person is possessed by a conviction, the imagination comes into play and assists to strengthen and confirm it. This particular piece of evidence, therefore, does not strike their Lordships as very weighty.

Mr. Spinks' evidence is open to the same remarks as Miss Taylor's. His observation that the Appellant's face looked ruddy and his eyes sleepy is, in their opinion, deserving of even less weight than the statement of Miss Taylor just referred to. A passing glance at the face of a passenger in a railway carriage, with the aid only of the artificial light available on the occasion, does not appear to afford the means for a judgment of any value on the question whether the passenger was intoxicated.

All the criticisms which their Lordships have offered upon the nature and weight of the evidence given by Miss Taylor and Mr. Spinks apply equally to that of Mr. Saxe. His opportunity for watching the behaviour of the Appellant was very limited indeed. He did not see the Appellant until he was outside the station. Their Lordships were informed that the distance from the station to the vicarage was only about 50 yards. Walking at a moderate pace it would require scarcely more than half a minute to traverse that distance. What did he see during that short interval of time, accepting his evidence as accurate ? A man walking unsteadily and gesticulating, assisted by his wife and son. Where is the inconsistency between this story and that of the Appellant, supposing him to have been suffering as he describes ? Whilst, however, their Lordships accept without hesitation the evidence of Miss Taylor and Mr. Spinks as conveying no more than a true

representation of the impression left on their minds by the occurrences of the evening, they are unable to take the same view of Mr. Saxe's statements. When the question arose whether the occasion on which the witnesses travelled together was the 24th or 25th of May, Mr. Saxe was recalled on that point. He stated that it was on the 24th, that he remembered calling on the occasion on a customer named Edwards, and that he received an order and entered it at the time in his order book. He produced the book and pointed out the entry, headed 24/5, *i.e.* the 24th of May. His attention was drawn to the fact that the dates of entries on the following page had been altered. He asserted that the alterations had not been made to suit his evidence, but were made at the time the orders were given. In answer to the Chancellor he said the first of these entries had been altered from 25/5 to 24/5, that the next 25/5 had been refreshed, while the next, 28/5, had been altered from 27/5. The Chancellor considered his explanation satisfactory. Their Lordships are quite unable to take that view. When the entries were examined through a magnifying glass it became clear beyond controversy that the witness' explanation was false, that dates earlier than the 24th had been in existence on the page following that on which Edwards' alleged order was entered as of that day, and that dates subsequent to the 24th had been written over these earlier dates so that the entry of Edwards' order was made to appear in its correct place. Unfortunately these entries were not subjected to any similar scrutiny in the Consistory Court. But in view of the facts revealed when the book was examined by their Lordships, they feel it quite impossible to place any reliance on Mr. Saxe's testimony.

Their Lordships have pointed out that the evidence of Miss Taylor and Mr. Spinks, in so

far as it incriminated the Appellant, rests on inferences rather than facts. They may be truthful witnesses, and yet he may not have been intoxicated. On the other hand, not only the Appellant but his wife and son must have wilfully perjured themselves if the Appellant was under the influence of liquor. They described the events of the day. Whether they were giving a true account, or whether on the contrary sufficient time was occupied in drinking to produce intoxication, must have been known to them. Is it more probable that the witnesses for the prosecution were mistaken in supposing that the Appellant and his son were intoxicated, or that a clergyman who for upwards of 20 years had borne an unblemished character should return to his vicarage on the occasion in question in a drunken condition accompanied by his wife and son, and that all three of them should agree upon a false story and commit deliberate and wilful perjury in order to screen him? Their Lordships cannot doubt that this question ought to be answered favourably to the Appellant. The Chancellor was however of opinion that there were circumstances disclosed by the evidence which cast suspicion on the Appellant's story.

The witnesses for the prosecution asserted that the 24th of May was the date on which the journey took place; the Appellant and his wife and son alleged that it was on the 25th of that month that they were in London together and returned in the company of Miss Taylor. The Chancellor came to the conclusion that the correct date was the 24th. Their Lordships are not satisfied that this was the case. There is strong evidence that the Appellant together with his wife and son travelled from London on the evening of the 25th. It may be added here that if this was the occasion on which Miss Taylor

was in the carriage with them, the evidence of the railway servants, and Morris, the hair-dresser, affords strong corroboration of the Appellant's statement that he was not intoxicated on that occasion. It is quite true that the Appellant and his wife and son may have visited London together on the 24th also, but it is not likely that the same members should have been there together and returned by the same train on two successive days. The Chancellor was no doubt much influenced by the testimony of Mr. Saxe. He fixed the day by reference to an order he had received and an entry then made in the book which he produced. But their Lordships have already given their reasons for discarding this evidence as worthless. What remains? Only the statements of Miss Taylor and Mr. Spinks. The former does not fix the date by any circumstance except that she said shortly afterwards that the Appellant had evidently been keeping the Queen's birthday. She was not asked about the matter until months later. She then said that it was "on or about" the 24th of May, but afterwards she was positive it was on that day. She came from London every evening, and she admits that she may have travelled from London by the same train on the 25th. It is obvious that the statement about keeping the Queen's birthday might as well have been made on the day after that anniversary as on the day itself. Mr. Spinks gave no more conclusive reason for knowing that the day was the 24th. So far from thinking it satisfactorily proved that the date of the journey in question was the 24th, their Lordships regard the weight of evidence as favouring the view that it was the 25th. They lay no stress upon the evidence adduced with the view of showing that the Appellant could not have been in London with his wife and son on the 24th, but

they ought to notice one incident in connection with that evidence. It was alleged that on that day the Appellant had been in London with his sister, and had purchased a bonnet for her. A receipt for the price of the bonnet was produced, dated the 24th of May. It appears that Miss Smyth went to the shop where the bonnet had been purchased, produced the shop label which she had detached from the bonnet, stated that the bonnet had cost 15s. 6d., and that it had been bought on the 24th of May, and asked for a duplicate receipt. An attendant at the shop remembered Miss Smyth, and finding that a bonnet had been sold on that day for 15s. 6d. gave the duplicate receipt which was produced in Court. It turned out on investigation, and when the bonnet was produced, that the bonnet sold on the 24th of May was not that purchased for Miss Smyth. The Chancellor said that this evidence certainly would not lead him to attach much value to the evidence of the Appellant or his family in contradiction of the testimony of the witnesses for the prosecution. Their Lordships cannot share this view. They see no reason to doubt that the witnesses for the defence honestly believed that the bonnet was purchased on the 24th. It was quite natural that Miss Smyth should in that belief endeavour to obtain evidence of it. It is greatly to be regretted that the attention of the Appellant was not called to the charge against him until months after the event. He was thus placed at a great and unfair disadvantage. It is difficult for anyone to recall with accuracy what has been done on a particular day months previously. It was only natural that the receipt obtained by Miss Smyth should have been used as it was. It turned out to be worthless, but their Lordships do not see in the circumstances anything to cast discredit on the Appellant or his wife or his son.

The same observation applies to the alleged copy of the bill for the luncheon of which these persons partook on the 25th. If the Appellant had been better acquainted with the laws of evidence he would have recognized how worthless it was, but their Lordships do not think there was any intention to deceive or mislead the Court. Too much importance seems to have been attached to these incidents. Their Lordships think that the learned Chancellor erred in regarding the case as one to be determined by a conclusion as to the truthfulness of the witnesses for the prosecution on the one side and of the principal witnesses for the defence on the other, and in not giving sufficient weight to the consideration that an impression may well be conceived falsely though honestly that a person is under the influence of liquor when he is in reality suffering from indisposition.

These are their Lordships' reasons for their report to Her Majesty, that the judgment appealed from should be reversed, and that the Respondent should pay the costs of this appeal, and also the costs in the Consistory Court.

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