THE MINISTRATION OF PRIVATE BAPTISM.

A REPORT

OF

A JUDGMENT

IN THE CASE OF SOMMERVILLE *v.* ROBINSON,

IN THE CONSISTORIAL COURT OF CLOYNE,

DELIVERED AUGUST 2, 1853.

BY THE VENERABLE

SAMUEL MOORE KYLE, LL.D.,

ARCHDEACON OF CORK,
VICAR-GENERAL OF THE UNITED DIOCESES
OF CORK, CLOYNE, AND ROSS.

CORK:

GEORGE PURCELL & CO., 20, PATRICK STREET.

DUBLIN: HODGES & SMITH, GRAFTON STREET.

1853.

SOMMERVILLE *v.* ROBINSON.

The suit at present before the Court is a criminal proceeding, technically described as the Office of the Judge, promoted by the Rev. Henry Sommerville, Rector of Templeroan, and Impropriate Curate of Doneraile, Diocese of Cloyne, against the Rev. John Lovell Robinson, Incumbent of the adjoining parish of Buttevant, also in the diocese of Cloyne. The offence alleged is, that in contravention of the general laws of the Church, and the rubrics of a special service, the Impugnant was guilty of an intrusion on the duties of the Promoter, by privately baptizing the infant child of the Honorable Mr. St. Leger, at that time a resident in Doneraile, without his permission, as minister of the parish, having been first sought and obtained.

On the part of Mr. Robinson, the celebration of private baptism, as alleged, has been admitted, but the circumstances of the case, and the emergency, are pleaded as a full justification, and it is denied that any ecclesiastical offence has been committed calling for the censure of this court, or the imposition of costs.

The general law of the Church, that no clergyman can officiate in the parish of another without his consent, as well as the authority of the Bishop of the Diocese, thus guarding from intrusion the rights of the incumbent, and

ensuring that wholesome discipline, so inseparably connected with the establishment, and so essential to the existence of the parochial system, has been so frequently and so clearly settled, that it is unnecessary to dwell upon the subject. It may be sufficient to refer to some of the most recent decisions on the question,—to the case of *The Office* v. *Nixon*, in this country; and to *Freeland* v. *Neale*, in England, as decided by the late John Nicholl, in 1848, in the Court of Arches. To this law there are certain statutable exceptions, to which it is not necessary to advert in the present case.

The force and validity of the rubrics of the Book of *Common Prayer* of The United Church of England and Ireland, are equally clear and well established. At his ordination, and again at institution to a benefice, every clergyman subscribes the first four canons, the third of which prescribes the use of the *Book of Common Prayer*, and none other. Further, at institution to a benefice, every clergyman is required by statute, publicly before the congregation, to declare his unfeigned assent and consent, "to all and everything contained and prescribed in and by the *Book of Common Prayer*," and consequently to the rubrics which it contains. In addition to this, the Acts of Uniformity, having ratified and confirmed the *Book of Common Prayer*, its rubrics are of as much force as the clauses of any Act now on the statute book. In support of this statement it may be well to quote the language of Sir J. Nicholl in *Kemp* v. *Wickes*:—

"Questions, indeed, have been raised respecting the canons of 1603, which were never confirmed by Parliament, whether they do in certain instances, and *proprio vigore*, bind the laity, but the *Book of Common Prayer*, and therefore the rubric contained in the *Book of Common Prayer*, has been confirmed by Parliament. The rubrics then, or the directions of the Book of Common Prayer, form a part of the statute

Again, in *Mastin* v. *Escott*, Sir Herbert Jenner lays down:

"That as the *Book of Common Prayer*, revised by the Houses of Convocation, and approved by the King, was confirmed by the statute 13th and 14th Charles II., the rubrics form a part of the statute law, to which every person, both clerical and laic, is bound to conform, except in so far as in any particular case, special exemption has been made by any subsequent statutes."

In this country, the *Book of Common Prayer* with all its rubrics, is actually incorporated with, and forms a substantive part of the Irish Act of Uniformity, (17th and 18th Charles II.) as has been demonstratively proved by *Stephens* in his valuable and learned work on *The M.S. Book of Common Prayer for Ireland*.

Fully to understand the question now before the Court, it will be necessary to trace back the origin and character of the service for Private Baptism, and the rubrics, under which the present suit is brought. And here I wish it to be distinctly understood, that I am not called upon, and do not purpose to enter upon the great legal and doctrinal questions, as to the validity and the effects of baptism, which have divided the public mind, and called for the decisions of the highest tribunals of the country. The question I have to decide, relates simply to the mode of administering this sacrament under a special service, the service for "The Ministration of Private Baptism," and whether an offence has been committed by the Impugnant, against its rubrics and the practice of the church.

On inquiry it will be found, I conceive, that this service is exceptional, in its origin, its character, and its forms.

It is well known, that although the rules of the church from the earliest times required the celebration of Baptism publicly in the face of the congregation, as the introduction

into the bosom of the Christian church, yet in cases of [illegible] urgency, when death was apprehended, it was permitted [illegible] be administered privately, by laymen, and even by [illegible] This is abundantly evident from the canons and constitutions of the church, as quoted by Van Espen, Lyndwood, Bingham, Gibson, and others. This also appears from the [illegible] rituals in use in this kingdom. Until the era of the Reformation, the Church of Rome had no uniform ritual, and the [illegible] attempt to remedy the defect was made by the Council of Trent in the session of 1563, but nothing definitive was [illegible] till the use of the *Missale Romanum* was enjoined by Pius V. Before the period of its introduction, each diocese being a complete church in itself, had liberty to adopt its own ritual. Hence different rituals were followed in different places. The most celebrated of these manuals was the Use of *Salisbury*, which was generally adopted throughout England, Wales and Ireland. It is attributed to Osmund, Bishop of Salisbury, who died in 1099, and is based principally on the Sacramentary of Gregory the Great. Amongst the rubrics of the "*Ritus Baptizandi*" in this manual are the following:—

"Non licet aliquem baptizare, in aulâ, camerâ, vel aliquo loco privato, sed duntaxat in ecclesiis—nisi talis aquam emerserit, propter quam ad ecclesiam accessus absque periculo haberi non potest."

Again—

"Non licet laico, vel mulieri, baptizare, nisi in casu necessitatis."*

It is hardly requisite to state, that these regulations are grounded on the doctrine held in the Roman Catholic Church that baptism is absolutely and indispensably necessary to salvation. What are the opinions of the Church of England

on this subject, may readily be collected from the Hampton Court and Savoy Conferences, from her articles and her liturgy. While she enforces under strict penalties the due and regular administration of this sacrament, and provides for cases of emergency—while she pronounces that—

"It is certain by God's word that children which are baptized, dying before they commit actual sin, are undoubtedly saved,"

she gives no authoritative decision as to the fate of those who die unbaptised, or the absolute necessity of this sacrament to obtain eternal life.

But our concern at present, is not with the general question of baptism, nor its results, but with the manner of its celebration, as prescribed in the service for Private Baptism.

This Office was first drawn up, for the Service Book of Edward VI. Its title was—

"Of them that be baptized in private houses in time of necessity,"

and the rubric directs its administration as follows:—

"First, let them that be present call upon God for his grace, and say the Lord's prayer if time will suffer. And then one of them shall name the child, and dip him in the water, or pour water upon him, saying those words, I baptize thee, in the name of the Father, and of the Son, and of the Holy Ghost, Amen. And let them not doubt but that the child so baptized is lawfully and sufficiently baptized, and ought not again to be baptized in the church." *

In this rubric it is to be remarked, that no mention is made of the priest. The person to minister, is said to be "one of them that be present." Until 1575, nothing further was done, when Convocation published certain canons, fifteen in

* Cardwell's two Liturgies of Edward VI., p. 337. Keeling's Liturgiæ Britannicæ, p. 257.

Edward. But as these canons were never validly ratified, they did not alter the law, as established by the twelfth of the canons is remarkable, and pertinent to our present purpose. Speaking of Private Baptism, it enacts that "it is only to be administered by a lawful minister or deacon, called to the sent for the purpose, and none other."* It is to be observed that no reference is here made to the parochial minister. Any lawful minister, or even a deacon, may officiate. It is true that those canons had not the force of law, but they afford important evidence as to the opinion of the highest clerical authority, by whom this special Service was to be administered.

The *Book of Common Prayer*, repealed in the time of Mary, was re-enacted by Elizabeth, without any change in this particular form. On the accession of James the First, the Hampton Court Conference was held in consequence of what was called the Millenary Petition, containing the objections of the Puritan party to the *Book of Common Prayer*. Amongst these objections was one against the Service for Private Baptism, as permitting laymen, and even women, to baptise. The account given by Barlow, in the history of this Conference, is worthy of notice:—

"His Majesty here taking the common Prayer Book, and turning to Private Baptism, willed, that where the words were in the rubric in the second paragraph, *they baptize* and *children*—now it should thus be read, *they cause not children to be baptised*. And again, in the same paragraph, for those words, *then they* minister it, it should be, *the curate, or lawful minister present, shall do it on this fashion*."†

A royal proclamation, was accordingly issued to the

* Collier's Church History, vol. 2. p. 552.
† Cardwell's Conferences, p. 203. 218.

Archbishop of Canterbury and the Commissioners Ecclesiastical, specifying the changes to be made in the liturgy, and amongst these changes is given—

"The whole rubric before Private Baptism to be in these words—of them that are to be baptized in private houses in time of necessity, by the *minister of the parish, or any other lawful minister that can be procured.*"

The liturgy so revised, though acquiesced in and received, was yet not binding in law, as it had not been submitted to convocation and parliament, the King conceiving that under the statute of Elizabeth, he had power to make these alterations of his own authority. It is, however, of great importance in reference to the question before the Court, as showing that there was no intention to restrict the performance of this service to the minister of the parish, when in its celebration, the intervention of a "lawful minister," was for the first time made necessary. In a subsequent rubric, the phrase, "*the lawful minister,*" is used without any limitation. This interpretation is supported by the contemporary testimony of Whitgift, who took an active part in the revision of the liturgy at this time. In his reply to Cartwright, as quoted by Bingham, he says:—

"For in case of necessitie, the curate may be sent for, *or some other minister that may sooner be come by.*"*

At this period then, there is no ground for maintaining, that the performance of the service for Private Baptism was confined to the minister of the parish; it is clear it might be celebrated by "any other lawful minister that could be procured"—"could be sooner come by."

The next revision of the liturgy took place in the reign of Charles the II., 1661, after the Savoy Conference, a Conference again held in consequence of the exceptions of the

* Bingham's Scholastic History of Lay Baptism, p. 123.

Presbyterians against the book of Common Prayer [illegible] of these exceptions was, that "baptism should [illegible] administered in a private place at any time, except by a [illegible] minister"—and the reply of the bishops, was, that it was [illegible] appointed to be done by the "lawful minister." The variations in this service, which resulted from these [illegible] were as follows. The title was altered from that of 1604 [illegible] transferring the words, "The minister of the parish, or [illegible] other lawful minister that can be procured," from the [illegible] to the third rubric, and the words, "*or in his absence*," were inserted after the words, "the minister of the parish." Other words also, referring to the urgency of the case, were added to the same rubric at this time. This was the last revision of the liturgy, and the *Book of Common Prayer*, having been submitted to Convocation, approved by the King, and confirmed by Parliament, became thenceforward a part of the statute law of the land.

On the words, or "*in his absence*," in this rubric of 1661, is grounded the offence, alleged to have been committed by the Impugnant.

Let us inquire, then, whether this rubric was designed to abridge the right of any lawful minister, being "one of them present," to officiate under its provisions, or merely to secure the due and regular administration of this sacrament by a lawful minister, giving to the minister of the parish, if present, preference and priority in point of order. From the original formation of this service, especially designed for cases of danger, or sudden emergency—from the successive liturgies of Edward, Elizabeth, and James—from the contemporary evidence of the canons of 1575—of Archbishop Whitgift, himself one of the revisors of the liturgy of 1604—from the discussions at the Hampton Court and Savoy Conferences,

* Cardwell's Conferences, p.p. 325, 356.

leading to the several alterations in the *Book of Common Prayer*, it is evident that the framers of this service, never intended to confine its ministration to the minister of the parish, as one of his peculiar duties, but only to give him, *when present*, that precedence and priority to which his position entitled him.

Up to 1661 then, it is clear that any "lawful minister" present might celebrate this rite, and the introduction, at this time, of the words relied upon, would seem to be merely directory or explanatory, not prohibitory, giving to the incumbent of the parish, as the minister most likely to be present, his proper precedence, but not depriving, in case he were not present, any other clergyman of an established right and duty. The character of the entire service is marked by haste and urgency, and this character is heightened by another alteration, made at the same period, in the very rubric under consideration. The rubric of 1604, referring to the extent of the prayers to be used, employs the phrase, "*as time will suffer.*" In the rubric of 1661, the words are, "*as time and present exigence will suffer.*" Thus the very rubric that is relied upon, as restricting the celebration of this service, gives additional latitude, and affords additional proofs of its exceptional and emergent nature. The object of the service, as originally framed, was to secure the immediate admission of a child in the peril of death, within the pale of the Christian Church. Its earliest rubric referred to any of those happening to be present on the emergency. Its latest, designed to ensure the due and regular administration of the sacrament, specifies the *lawful minister*. "The minister of the parish, or any other lawful minister that can be procured." Were any other construction to be put on these words, not merely would an established right be taken away, but a necessity would be entailed on the "lawful minister," "one of them present," to inquire in this mom-

of haste and danger, into the nature or the cause of the
of the parochial clergyman—a proceeding
sistent with the spirit of the service, and
during which the child might die, and thus its
wholly defeated.

On considering this service then, in its origin,
struction, and its variations, I conceive that the rubric
on, is not restrictive of the right of any clergyman,
minister, who may be present, to celebrate the Office
Baptism in cases where that service is properly
that it merely gives precedence to the parochial
if present. It is, no doubt, only right and proper
incumbent of the parish, where practicable, should
person to officiate. His locality, as resident upon
his duty, as one whose "office it is to search out the
impotent of his parish," render him the Minister
to be present; but his absence, from whatever cause
arise, is not to deprive a dying infant of the
admission into the flock of Christ, nor to expose
and penalty a Clergyman who yields to the call of
the regulations of the Church. I am of opinion,
that under the Rubrics of the service for the Ministration
Private Baptism, the Promoter has failed to establish
ecclesiastical offence against the Impugnant, as transgressing
the general law of the Church with regard to parochial
rights, or the enactments of the *Book of Common Prayer*.

But even were I not fully borne out in this construction
the service in question and its rubric, yet the urgency and
pressing necessity of the case, would afford ample justification,
under the general law and practice of the church, for the
course pursued by Mr. Robinson, and complained of by
Mr. Sommerville. To shew that the danger of death was
considered as affording ample grounds for deviating from the
established rules and restrictions in the case of baptism, it

may be sufficient to refer to the constitutions of Otho, Othobon, and Peccham, by which permission was given to laymen to administer this sacrament, when peril to life was apprehended. We have seen also, from the earliest liturgy in use, the *Manual of Salisbury*, that such was the practice in these countries. And although from the canon law, and the constitutions quoted by Lyndwood,* it appears the sacraments might not be administered to persons not parishioners, without the consent of the curate; yet this rule did not extend to cases of necessity, and from a constitution of Archbishop Peccham we learn, that in case of necessity, that is, when death was apprehended, even the Eucharist might be administered by any Presbyter. The same general exceptional rule has been fully recognised by the spirit and character of this special service, as part of the *Book of Common Prayer*, while the evidence adduced, has established a clear and incontestible case of necessity within the law, admitted even by the advocates for the Promoter. As well, therefore, under the general, as the special laws of the church, I am of opinion that the Promoter has failed to establish his case.

The question of costs, remains. In criminal cases like the present, the general rule is, where the Promoter fails to prove his case, to dismiss the suit with costs. This was the course followed in *Bennett* v. *Bonaker*, *White* v. *Wilcox*, and *Burder* v. *Hodgson*, and others. It is true, that the question of costs is said to be in the discretion of the court, but that discretion must be exercised according to general rules and former precedents. It is the duty of the court, on the one hand, to protect parties in the fair assertion of their just rights, and on the other hand, to check vexatious litigations. In suits such as the present, great latitude is allowed in pleading personal or vindictive motives, either in reference to the

* Ayliffe, p. 475.

of costs, or the decision of the case. I
my duty obliges me to go into this part of the case, as
a state of things in the parish of Demerara, deeply
deplored, whatever may have been its cause, and
the part of the Promoter, a want of that peace and
towards a neighbouring clergyman, which it was
exemplify by his practice, and inculcate by his
amongst his own parishioners.

It now becomes necessary to examine the motives of
parties in the suit, as far as they can be ascertained from
conduct, and the evidence before the Court. And first, as
the Impugnant. It appears that on Sunday, the 28th
August, 1852, he was sent for to baptize the infant child
the Hon. Mr. St. Leger, and that on his arrival at Demerara
House, he found the family in the deepest affliction and
tress, and was earnestly pressed and entreated by all present
not to lose a moment in baptizing the child, as its death was
momentarily expected, an opinion supported by the two physicians in attendance. Yielding to the urgency of the case
and the pressing entreaties of the family, confirmed by the
medical authority, Mr. Robinson acted as any Christian
minister would have acted under similar circumstances. He
administered the sacrament of baptism, and received the dying
infant amongst the members of Christ's flock. In point of fact
the child survived for two days, but at the precise moment
when the ceremony took place, (and with this period alone
has the Court to deal,) its death was momentarily expected
by all present.

It has been alleged against Mr. Robinson, that, in leaving
his own parish and coming a distance of five miles, he affords
proof of a deliberate design to intrude on the proper and
peculiar duties of Mr. Sommerville. But it should be remembered that Mr. Robinson did not volunteer to enter the parish
of the Promoter; that he was sent for; that, in the words of

the canon of 1575 "he was called to be present for that purpose." Having been sent for, it was his duty as a Christian clergyman to obey the request. There is no evidence to show, that he had any reason to believe his doing so, would be irregular, or give offence. He may have presumed, that Mr. Sommerville was from home, or that he would not, or could not, officiate, or that he would have had no objection to his acting on the occasion. Indeed, he has deposed that he thought Mr. Sommerville would have considered it an act of kindness on his part, under the circumstances of the parish. It is clear, however, that he did not wantonly, and without invitation, enter the parish of the Promoter, and if irregularly, or improperly sent for, that is a matter for which, not he, but the person who sent for him, should be justly held accountable. To dispose, then, of the charge of deliberate intrusion in thus leaving his own parish, any one of these suppositions, (all of which might fairly have been entertained) would be fully sufficient.

When the death of the child took place, two days afterwards, we find Mr. Robinson writing to the Promoter, requesting permission to officiate at the interment of the child, and enclosing a certificate of baptism, to show that it was entitled to Christian burial. The letter and the reply were as follows :—

"Rev. Sir, "*Buttevant, August 25th*, 1852.

"Will you have the goodness to give me permission to officiate at the interment of the infant son of Mr. St. Leger?

"I enclose you a certificate of the child's baptism.

"I remain your obedient servant,

"To Rev. Mr. Sommerville." "John L. Robinson."

Doneraile, August 26, 1852.

"Rev. Sir,

"Mr. Sommerville has written to me, desiring to inform you that, had he known your handwriting, he would have returned your letter unopened.

"I am directed by Mr. Sommerville to state to you that he cannot accede to your request, nor permit you to perform clerical duty within the precincts of his parish.

"I am commanded, moreover, by Mr. Sommerville, to send you back the enclosed certificate.

"I am, Rev. Sir,

"Your obedient servant,

"John B. Bury."

The writer of such a letter, it is evident, could not have been conscious he had committed any offence, or unpremeditably he would have offered an apology and explanation before he sought permission to perform any other of the duties of Mr. Sommerville, while the request itself proves that no continued, systematic, invasion of his parochial rights was contemplated. It is to be lamented that to a letter, so proper in its object, and so courteous in its terms, a reply should have been sent, so unbefitting a gentleman and a clergyman. Mr. Sommerville does not himself condescend to reply to a brother clergyman, but "directs" his parish clerk to acquaint him, that had his hand-writing been recognised, his letter would have been returned unopened.

It has already been seen, that Mr. Robinson did not intend to intrude on the spiritual functions of Mr. Sommerville, but as soon as he learned that what had occurred, was considered by the Promoter as an invasion of his parochial rights, he

ample apology and explanation was offered through the Rev. Mr. Crosby, a mutual friend and a relative of Mr. Commerville. This suitable offer was hospitably declined. Mr. Commerville was surprised any communication should be made to him respecting "that person" or "that individual."

It has been urged also that Mr. Robinson aggravated his abuse by employing the agency of a third person, and not attending Mr. Commerville directly. But when this argument was advanced, merely the letter of the 18th of August was forgotten, which intimated that any letter from the Imprisoned would be returned "unopened." He also claimed the communication therefore unsolicited, but through the mediation of a common friend. It is also urged against the Imprisoned, that on arriving at Commerville House, it was his duty to have inquired into the causes of Mr. Commerville's absence and to have waited him to be seen for. Here again the evidence is conclusive. The death of the child was unexpectedly announced, and those present apprehended that if any delay took place, the child might have died unbaptized. Will any one contend that a Christian minister should have hesitated in a case like this? I apprehend that all will admit, that he only did what his duty called upon him to do.

We come now to the conduct and the motives of Mr. Commerville, so far as they can be collected from his acts, and the testimony before the Court. It is urged on his behalf, that his sole object has been to establish a public right, and his only motive to vindicate the privileges of the clergy. Now let us for a moment inquire, what would be the course adopted in the ordinary proceedings of the world, when an individual considers that another has interfered with his duties, or infringed on his privileges. Would he not, in the first instance, carefully take pains to ascertain, whether those duties and those privileges, were clearly and unquestionably his, or whether they abutted of a doubt? If, on inquiry, he

found that his rights was beyond dispute, would he ...
against the offender with the error, and warn him that ...
repetition of the offence, a sense of duty would constrain ...
to appeal to the laws of the country, to vindicate and defend ...
his just rights? If such would be the usual course in the ...
common concerns of life, should it not be much more likely ...
to prevail, where a brother clergyman was concerned, and ...
thus the painful spectacle be avoided, of litigation between ...
two Ministers of Religion, whose neighbourhood and ...
profession should require peace and harmony! Unhappily ...
this was not the course adopted in the present case. The ...
advice of learned counsel, the mediation of mutual friends, ...
the authority of the Diocesan, were all neglected: the ...
sent suit was instituted, and the Impugnant has been exposed ...
to the anxiety and the expense, of the most tedious and the ...
most costly mode of deciding the question, and trying the ...
disputed right.

Again, it has been urged on the part of the Promoter, that Mr. Robinson was censurable, not only for his intrusion in the parish of Doneraile, but also for neglect of duty as a Christian minister, in not seizing on the opportunity to effect a reconciliation, and restore the harmony and affection, which should exist between a pastor and his flock. It has already been shown, that here, there was no time for delay or exhortation, or in a Christian land, and in the presence of a Christian Minister, a dying infant might have passed away unbaptised. It is, indeed, deeply to be regretted that advantage was not taken of this occasion for healing the dissensions, and removing the ill will that existed in the parish, from whatever cause they arose. But does not this argument apply with greater and more peculiar force, to the Promoter himself? The event that occurred at Doneraile House, could not but have been known to him, as well as to ... By his own admission, he ... of the town.

was the entire day within some hundred yards of the house, ready and willing to officiate if called upon. The attendance of two physicians indicated dangerous illness on the part of the mother, or child, or perhaps both. If in doubt, should he not have made inquiry, as one whose office it is to seek out the sick and the distressed within his cure? The lady, the mother of the dying infant, was a stranger; with her there could have been no ground for offence, no cause for quarrel; whether received or rejected, was it not his duty, without waiting to be sent for, to have visited the sick, and tendered his services as minister of the parish? What a noble opening was here for the blessed work of reconciliation! The hour of danger and distress, with its saddening and chastening influences, would have softened or banished any former feelings of ill-will, and disposed the family to welcome the visit of the minister of religion. But unhappily the golden moments were lost, and the mistaken technicalities of a rubric and the stern rigour of the law, were suffered to take the place of the accents of consolation, and the work of peace.

Had the Promoter been as charitable in construing the motives of his brother clergyman, as he was prompt and extreme in resenting the infringement of a fancied privilege, The Court would have been relieved from the painful duty it has this day to discharge, and the Impugnant from labouring for so long a period, under the imputation of having invaded the parochial duties of another, and transgressed the laws of the church. It has already been shown, that there was nothing in the conduct of the Impugnant, to call for such an extreme and harsh proceeding on the part of Mr. Sommerville. The act was solitary—no other intrusion was ever pleaded; permission to officiate on another occasion was sought in courteous terms, and when it was known offence had been taken, apology and explanation were tendered. There was nothing here to show that systematic, and habit-

ment of parochial rights, which alone could justify such a proceeding as the present—a proceeding without precedent in the records of these Courts.

On reviewing then the whole case—from the unfriendly relations admitted to exist between Mr. St. Leger, the father of the child, and Mr. Sommerville—from the estrangement between him and the Impugnant, in consequence of a difference about a joint parochial charity—from his own acrimonious rejection of apology or accommodation; and, lastly, from his instituting this costly and protracted suit, to vindicate a right, on an occasion, the last, perhaps, that should have been selected: from all these considerations, I cannot conclude, that the Promoter has been actuated solely by a desire to establish a public right, and to protect the privileges of the clergy. I am constrained to think, that he has been influenced by private and personal motives—by a desire rather to punish the offender, than to ascertain the offence. I do not, therefore, see just grounds for deviating from the ordinary precedents in cases like the present, and I dismiss this suit with costs; excepting, however, so much of the costs of the hearing at Cloyne, as refers to the reformation of the 8th, and the expunging of the 13th article of the Impugnant's defensive allegation.