Christian men out of the Educational Department, and the tenets of Bradlaugh or Francis Newman find acceptance with the young Brahmans, trained under our Government professors and masters. Let us then plead for the healing of the bitter waters by the establishment of voluntary Bible classes in Government schools, try to improve the finances of India by withdrawing from opium, and reducing our expenditure on ourselves and our armies, and by promoting the irrigation and communications of the country. Finally, and above all, let all our old Indians consider themselves bound by a silent compact in a voluntary prayer union, that the divine blessing may rest on every European employed in India, that our officers may be peace and our exactors righteousness, and at length the New Covenant promise be fulfilled in our eyes that all shall know God from the least to the greatest.

ART. III.—THE STRUGGLE FOR THE NATIONAL CHURCH.

II. THE MEANS AND PROSPECT OF ENFORCING THE LAW.

IT seems to be supposed that because the proceedings under the Church Discipline Act and the Public Worship Regulation Act have turned out cumbrous and expensive, and, it is said, dilatory and uncertain, therefore those Acts are worse specimens of legislation than their companions in the volumes of the Statute Law which have not been made the subject of such animated contests in the Courts. No idea could be more unfounded. There is scarcely one of our Procedure Statutes which would have come scatheless out of such an ordeal as the unfortunate Public Worship Regulation Act has undergone. We are not concerned to defend this "common whipping-boy" of legislation, as it has been most justly called; but merely to remind an indignant public that they were not necessarily the greatest sinners upon whom the tower of Siloam fell. The Judicature Act, for instance, which was passed in 1873, contained a series of new rules for simplifying the procedure of the Courts of Common Law and Chancery. This production of Lord Selborne's was found to be absolutely unworkable; and a new and revised set of rules was set afloat by the Act of 1875. The writer of this Paper has had the curiosity to count up the number of reported decisions on doubtful points in these rules, which have been noted up against them by a practising barrister of his acquaintance, and it may interest the lay reader to hear that, in a space of time less by one year than the Public Worship

Act has been in existence, the number of cases amounted to more than 400. The writer is assured that each of these cases represents some ambiguity in the language, which might have been easily provided against beforehand by the framers of the rules, if only it had been foreseen. It must be remembered that these rules were not pitchforked into existence, as the Public Worship Regulation Act was, amid the howling tempest of contending parties, but were tenderly nurtured to a mature birth by a few carefully selected experts in the quiet of their chambers. If each of these 400 points had been litigated with the same perseverance and the same pecuniary resources which have been lavished on the Public Worship Regulation Act, let any one ask himself What would have been said of the success of our great judicial reform?

Whatever fault we may find with the pitfalls left in the Public Worship Act, those pitfalls have now been at great expense pretty well lighted up and fenced off by legal decisions; and we ought (if we are wise) to think many times before throwing away these results to embark again on the same process.

The Ritualists determined to dispute every possible point; and when people do this, being perfectly within their right, their opponents must meet them, and are also perfectly within their right in doing so. A point settled, however, is a point closed, until the Legislature again opens the floodgates of confusion.

The process of settling the law, civil as well as ecclesiastical, is continually going on, and one by one the doubtful points are freed from doubt; but the Legislature from time to time thinks it can hasten the process, and the usual result of impatience invariably follows. Whatever may be the advantages of fresh legislation, it always creates doubtful law.

Now we are not going to vindicate the character of the Public Worship Act, even including the result of the decisions upon it, as a legislative achievement; but what we do say is, that we ought to be very careful in our next efforts in that direction to maintain the ground already won—to amend, in fact, and not to reform.

One great error in this Act is indeed, from the point of view of scientific legislation, an error of principle. It is a maxim in legislating on procedure that the law should always be invoked on the responsibility, as well as at the risk, of the party; that one party or the other should be responsible for each one of the preliminary steps, so that if any step is wrong the litigant should only have himself to blame. It is so in all our civil procedure. You issue a writ against your opponent; you must see for yourself that it is in the right form; if it is irregular, no one is to blame but yourself. Your opponent has

to put in his defence in a certain time; if he fails to do so, it is his own fault. But the Public Worship Regulation Act violates flagrantly this elementary maxim. The complainants transmit their "representation" to the Bishop; but so far as the Act is concerned, except when they adopt the *forum domesticum* of their Diocesan, they do not hear of it again till the judge receives it for trial. In the meanwhile, the Bishop is to do this, the registrar that; the papers are to be "transmitted" hither and thither; Bishops are to be appointed to act for other Bishops, and all this according to fixed times and seasons; and if any of these steps miscarry, the unfortunate complainants have to bear the costs, as well as the disappointment, of a failure which has occurred through the laziness, inattention, or stupidity of somebody over whom they have no control whatever. No doubt, in practice, the solicitor attending to the case keeps his eye on his offspring, following it about and attending on it at more or less distance, according to the courtesy of the official for the time being in charge of the papers; but this is purely a matter of favour on his part.

Hence arose (as might have been expected) the first miscarriage under the Act. Proceedings were taken against Mr. Bodington, of St. Andrew, Wolverhampton, in February, 1877. He took no notice of the proceedings, but Lord Penzance felt compelled to dismiss the suit, because in the course of the previous proceedings—by reason of a muddle between the Bishop and the Archbishop—the "representation" had not been transmitted to the defendant within the twenty-one days specified by the Public Worship Regulation Act. Many have been the miscarriages of proceedings under this Act, and much money and trouble have been wasted in settling doubtful points and ambiguities contained in it. But the Archbishop was more or less responsible for the Act, and it was no doubt felt to be the duty of loyal Churchmen under those circumstances to do their best to make it workable. Here, however, was the first mishap.

Then came the cases of Mr. Dale, of St. Vedast, and Mr. Tooth, of Hatcham. Mr. Dale's practices had brought upon him monition and inhibition. It turned out that the patronage of the church had been originally in the Archbishop of Canterbury and the Dean and Chapter of St. Paul's alternately; but during Mr. Dale's incumbency the share of the Chapter had been transferred to the Bishop of London, who, as Bishop of the diocese, was Mr. Dale's ordinary. Now the Act directs the Bishop of the diocese to require the parties in the first place to submit to his decision, and if they do not, then he is to "transmit the representation" to the Archbishop, who in his turn is to require the judge to hear the matter at any place within the diocese or province or in London or Westminster. It is also

enacted that if the Bishop is patron, the Archbishop shall act for him; and if the Archbishop is patron, the Crown may appoint an Archbishop or Bishop instead. In this case the Archbishop required the judge to hear the matter "at any place in London or Westminster, or within the diocese of London, as you may deem fit;" and offered him for the purpose the library of Lambeth Palace. Now, legally, Lambeth is not in London, nor in Westminster, nor in the diocese of London. The Queen's Bench Division decided that upon the legal construction of the Act, the Bishop, being interested in the patronage, was incapacitated from "transmitting the representation" to the Archbishop, and that the judge could not sit at Lambeth. So Mr. Dale got off. Similarly, in Mr. Tooth's case, the fact that the judge sat at Lambeth was held to invalidate the whole of the proceedings.

The mistake of the Legislature consisted not only in taking the responsibility for the preliminary steps out of the hands of the litigant, but also in not drawing a clear line between irregularities which are of sufficient importance to invalidate the whole of the proceedings, and those of minor importance, which ought to admit of being set right or waived, where it can be done without injustice to either party. Any of our readers will be told by his solicitor that this distinction holds in all the temporal Courts; and if the solicitor practises also in the Ecclesiastical Courts, he will be able to tell the same story of their practice before 1874. But this distinction is ignored in the Public Worship Regulation Act. Take the case of the judge sitting in the wrong place; this may possibly be very important where both parties are willing to appear in Court; for it might be a grave hardship to a man, whether plaintiff or defendant, to be obliged (we put an extreme case) to follow the judge about the country, wherever the salubrity of the climate or the convenience of the judge's own domestic arrangements should lead him. But when the defendant does not appear, and is content that the case should be heard in his absence, what on earth can it matter to him whether the judge sits at London or San Francisco? No doubt the other party may have reason to complain, but if he also is content to waive the irregularity, why should he not do so? Rules of procedure, whether laid down by statute or otherwise, are intended to promote justice and to prevent injustice; and it is a serious error to introduce a technicality which serves neither of these purposes.

Here, then, is another matter on which the Public Worship Act may be usefully amended. We do not indeed feel clear that the Act was properly interpreted in either of these two cases of Dale and Tooth. They were only decisions of the Court of first instance, and no appeal was brought. That, however,

does not lessen the desirability of altering language which was even susceptible of the construction there put upon it.

It is an extremely fortunate circumstance that, in 1874, the Legislature entertained sufficient doubt as to the success of the new procedure which they were providing, to leave the old procedure under the Church Discipline Act of 1840 still open as an alternative. The proceedings against Mr. Mackonochie, as well as those against Mr. Edwards, of Prestbury, have always been under the Church Discipline Act. In THE CHURCHMAN of April last the proceedings against Mr. Mackonochie were related down to the time when (in December, 1874) he was condemned for the second time. The monition and suspension ordered were not published till June, 1875, and it was not till March, 1878, that any notice was taken of his continued refusal to give back to his parish the old service of the church of which he had so long deprived it. The judge, being loth to press him, refused on that occasion to do more than warn him again; but on the 11th of May, 1878, the warning being as usual disregarded, the judge suspended him for three years. He might have been "signified" and sent to prison, but advantage was taken of the fact that the proceedings were under the old practice and not under the Public Worship Act, and the more lenient sentence was inflicted.

Then commenced the litigation in the Common Law Courts as to the validity of this suspension. Mr. Mackonochie, or the English Church Union in his name, appealed to the temporal Courts. Application was made on their behalf to the Queen's Bench Division for a prohibition against this last suspension. It was a delicate and subtle question, depending for its solution on a number of abstruse legal technicalities. Suffice it to say, that in all probability there would have been no fault to find with the sentence if, instead of being a sentence of suspension, it had been "significavit" and imprisonment; nor any fault to find with the actual sentence of suspension if it had been applied for in a fresh suit against Mr. Mackonochie, instead of in the suit then already existing—viz., that in which the monition had been issued in 1875. In the Queen's Bench Division the majority of the judges—viz., the late Lord Chief Justice Cockburn and Mr. Justice Mellor—thought that the objections were valid, and that the sentence of suspension passed by Lord Penzance ought to be prohibited; while Mr. Justice Lush, who has since been promoted to the Court of Appeal, was of a contrary opinion. The case was appealed, and of the five judges who heard the appeal, three—viz., Lord Coleridge and Lords Justices James and Thesiger—upheld Lord Penzance's sentence, and reversed the decision of the Queen's Bench Division, but only by a majority of one, inasmuch as the Lords Justices

Brett and Cotton agreed with the Court below. Taking the two Courts together, there were four judges on one side and four on the other. The Ritualists have appealed to the House of Lords, but their appeal has not yet been decided by that august tribunal. The result of this appeal will also settle whether Lord Penzance or the late Lord Chief Justice Cockburn was right in the dispute between them over the ecclesiastical procedure.[1]

Meanwhile, in order to avoid the doubt so raised, a fresh suit was commenced against Mr. Mackonochie in 1878; but when the case had been heard, and everything was ripe for sentence, the Court of Arches refused to pass a sentence of deprivation. We need not explain the grounds on which Lord Penzance came to this conclusion. For some reason or other, which, though possibly justifiable, is none the less to be lamented, no appeal was brought from this refusal; and Mr. Mackonochie is left for the present to do as much harm as in his uncontrolled discretion or indiscretion he shall think fit. Under these circumstances there is, of course, very little reason why he should have presented his appeal to the Lords against Lord Penzance's suspension, which expires of its own accord this month of May; but doubtless those who found the money for the costs in the first instance thought that there was a chance of getting it back again. If that appeal is unsuccessful, there seems no reason why the former suit against Mr. Mackonochie should not be utilized to procure deprivation in a summary way. The doubts which in former cases have been thrown out as to the possibility, or at all events the propriety, of depriving in a summary way, without a fresh suit, for continued disobedience, must be reconsidered in the light thrown upon the whole question by more recent investigations and discussions. But this, of course, is for Mr. Martin and his advisers to consider.

The proceedings against Mr. Edwards, of Prestbury, who has changed his name to De la Bere, were actually commenced so long ago as 1874. Their commencement had been delayed by unsuccessful applications by Mr. Edwards to the Vice-Chancellor Bacon and to the Court of Appeal in Chancery, to stop them by prohibition on technical grounds; applications characterized by the latter Court as "quite unfounded and absolutely frivolous." Many of the charges involved the same points as were at that time being contested in Mr. Ridsdale's case, and after the evidence had been taken in the Court of Arches, the suit stood

[1] Since this paper was written the judgment of the House of Lords has been given on Mr. Mackonochie's appeal. It is a unanimous judgment against Mr. Mackonochie, and in support of Lord Penzance's jurisdiction.

over by the consent of both parties until after the Ridsdale judgment. At last, in July, 1877, the Court of Arches gave judgment against Mr. Edwards for the usual nonconformities. Instead, however, of the simple monition not to repeat the offences, which, so long as there was any decent ground for holding that the Ritualists had *bonâ fide* doubts as to the law, and for believing their own assertion that they would obey it when finally ascertained, had been considered sufficient sentence, the counsel for the parishioners asked the judge to decree a sentence of suspension in the first instance, and so save the expense and delay of a second application, such as had been found necessary in the Purchas and Mackonochie suits, in case Mr. Edwards was really going to defy the law. The judge assented to this course, and after giving the gentleman an opportunity of saying whether he was or was not going to conform to the Liturgy, of which opportunity he did not think fit to avail himself, suspended him for six months. By this time the legality of enforcing a monition by suspension in a summary way without a fresh suit had been questioned, as we have already described, in the proceedings against Mackonochie; but the course taken in *Combe* v. *Edwards* avoided this difficulty. It should be observed, however, that it could not have been done if *Combe* v. *Edwards* had been a suit under the Public Worship Regulation Act, which prescribes monition alone as the sentence to be pronounced in the first instance. However, Mr. Edwards took no notice of his suspension, but continued to officiate with all his illegalities as before. Application to enforce the sentence was made to the Court in June, 1878. By this time, however, the question, whether the sentences of the Court could be enforced at all without a fresh suit, was being hotly contested in the Common Law Courts in the case of *Martin* v. *Mackonochie*, and the Dean of Arches thought it better to wait till the point was settled. As we have mentioned, the point could not be considered settled so long as Mr. Mackonochie's appeal to the House of Lords had not been decided; and accordingly a fresh suit was instituted against Mr. De la Bere, seeking to have him deprived of his benefice of Prestbury for his continued disobedience and contempt of the decrees of the Court.

With much reluctance, Lord Penzance, on the 21st of December last, decided that deprivation of his benefice was the proper sentence to inflict on this man, who would not carry out, on his part, the terms and undertakings on the faith of which he had obtained the benefice; and on the 8th of January in this year, sentence of deprivation was formally and solemnly pronounced. But the difficulties of the unfortunate parishioners of Prestbury are not yet over; for immediately on the sentence being pro-

nounced, Mr. De la Bere applied, as Mr. Mackonochie had done before, to the temporal Courts for protection. He says the sentence of deprivation is void, and ought to be prohibited, for two reasons: first, because Lord Penzance sat at Westminster when he delivered his judgment; and secondly, as it appears, because the original sentence of suspension, which was passed in the first suit in 1877, was bad by reason of the opportunity given to the defendant, before the sentence of suspension was pronounced, of saying whether he would or would not conform to the Liturgy; and inasmuch as one of the offences charged in the second suit was the offence of officiating while under this suspension, therefore, says Mr. De la Bere, the sentence of deprivation passed in the second suit was partly for doing what was really no offence, and consequently the deprivation itself is null and void. Many strange surprises turn up in the vicissitudes of legal warfare; but we think there need be no apprehension felt as to the result of Mr. De la Bere's objections. As to the first point, the judge must have known well, after the cases of Tooth and Dale, how important a technicality is the spot where he places his chair; and we think that he would not have willingly thrown on the parishioners the unnecessary expense and delay of fighting a doubtful point, and consequently that he must have considered the question, and come to a clear conclusion; that any objection to his sitting at Westminster would be untenable. The other objection must surely be too far-fetched to succeed.[1]

By far the most serious blot yet discovered in the existing law of ecclesiastical procedure is that which was brought to light by the Bishop of Oxford's case. It looks as if the English laity had actually no means of enforcing any duty upon any clergyman; as if it is to be a matter of grace and favour on the part of the Bishop of the diocese, whether the parishioners shall or shall not be allowed to claim in a legal manner what is after all their own birthright.

The circumstances of the case were somewhat special, and it is necessary to bestow a little attention upon them before we can understand the exact effect of the decision. Mr. Carter, the rector of Clewer, in the diocese of Oxford, was a notorious non-conformist, and Dr. Julius, one of his parishioners, was minded to attempt the restoration of the Church Service. For this purpose he applied to the Bishop of Oxford to allow proceedings,

[1] Whatever may be thought of the Public Worship Act, we really fail to see that there is any ground for saying that the Church Discipline Act is unworkable. The Bishop of Peterborough, indeed, is reported to have said in the late debate in the Lords that it has been found to be unworkable; but his Lordship's language, perhaps, may be taken to mean only that the Act required some amendment. If so, we agree with him.

not under the Public Worship Act (which distinctly gives a veto to the Bishop), but under the Church Discipline Act. This Act in effect says that in such a state of things "it shall be lawful" for the Bishop *either* to issue a commission of inquiry, *or* to send the case at once by letters of request to the Court of Appeal of the province. The Bishop of Oxford refused to take either course, contending that he had an uncontrolled discretion under the language of the Act. Dr. Julius, on the other hand, contended that, under the Act, it was the Bishop's duty to do one thing or the other—either to issue the commission, or to send up the case by letters of request; and being also advised that the proper way of enforcing this duty was by applying for a mandamus to the Queen's Bench Division, moved accordingly. This application was, as every one knows, acceded to in the Queen's Bench Division; but their decision was reversed on appeals to the Court of Appeal and the House of Lords; and consequently Dr. Julius failed in his attempt to compel the Bishop of Oxford to do his duty.[1]

This episcopal veto is, indeed, a new discovery; and if there are no means of getting over it, the Legislature must provide a

[1] When we say his duty, we refer to the solemn undertaking given by the Bishop at his consecration, to correct and punish the disobedient and criminous within his diocese, "according to such authority as you have by God's Word, and as to you shall be committed by the ordinance of this realm." It is difficult to conceive language better calculated to call attention to the candidate's duty of using both his spiritual influence and his statutory powers. Most wisely and sensibly this is combined with the duty of maintaining quiet and peace; so that the Bishop is not to feel himself compelled by his oath to rush into litigation if he can attain his end by the influence of persuasion. This is the true discretion vested in the Bishop; and no doubt the framers of the Church Discipline Act intended to leave this discretion exactly as it was before, and accordingly used the words "it shall be lawful." It is contrary to common sense to suppose that they intended to relieve Bishops of the duty cast upon them at their consecration, inasmuch as no alteration was made in the Consecration Service. Bishop Mackarness never attempted to deny that Mr. Carter was "disobedient and criminous," but took his stand on the non-obligatory force of the words of the Statute. It seems that in argument each side relied solely on the Church Discipline Act, and that the state of the law before that Act, so far as it could be ascertained, was only referred to by way of illustration. When Lord Justice Bramwell asked how there could be any third alternative between holding that the words "it shall be lawful" were compulsory, and holding that they gave the Bishop an absolute discretion, he was in effect assuming that there was no duty cast upon the Bishop unless it could be found in the language of the Act itself. It is not a little remarkable that nobody pointed out the duty cast upon him by his consecration oath, which would seem to suggest a very sufficient explanation of the purely permissive language of the Act of Parliament. The late Dr. Stephens could have done so; but unfortunately he had died before the case came to the Lords. Perhaps something may be ascribed to the absence from the House of Dr. Julius' two leading counsel when their turn to reply came.

remedy. The Church Discipline Act was passed in 1840. The mandamus in the Bishop of Oxford's case was applied for in 1879. What is the explanation of the circumstance of no Bishop attempting to obstruct the course of justice during the thirty-nine years since the Act was passed?[1] Must it not be one of two things, either that the Bishops have felt it to be their duty not to do so, or that prosecutions have not been of the frivolous and vexatious character which is said to need the check of the episcopal veto? If the former explanation is correct, it follows that the sense of even the Episcopal Bench has admitted the right of the people to enforce their just claims in the manner provided for that purpose by the law of the land; if the latter, then that the pretended fear of vexatious litigation is based on no foundation of experience. If the Bishops had this discretion before the passing of the Church Discipline Act, the dilemma only becomes so much the more forcible from the greater length of time elapsed.

It is, perhaps, hardly necessary to say that we are very far from finding fault with the decision of the House of Lords. If we may say so without presumption, it seems perfectly correct upon the arguments before them. Dr. Julius' argument came to this, that the words "it shall be lawful" in the Act meant "it shall be obligatory." It lay upon him to make this out; and he failed. That is all. We assert that a "dispensing power," whether claimed by King or Bishop, is, on far higher grounds than the language of the Church Discipline Act, unconstitutional; and we use the word unconstitutional in the sense of Hallam's definition—viz., "A novelty of much importance, tending to endanger the established laws."[2]

We maintain that the rights of the people rest on grounds independent of the Church Discipline Act; that these rights are recognized in the consecration oath of the Bishops, and even in the Church Discipline Act itself.

This last remark requires a little explanation, and the explanation will incidentally suggest a method, which we do not remember to have seen noticed elsewhere, whereby justice and

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[1] The case of Mr. Randall is no exception. The Bishop did indeed refuse to allow a suit, but on the ground that Mr. Randall had discontinued his illegal proceedings. The object of the proposed suit had been already attained. There was obviously no violation here of the Bishop's consecration oath to correct offenders.

[2] Even the Public Worship Regulation Act of 1874, while it gave an episcopal veto in the case of proceedings under it, provided, by way of a safeguard, that the reasons for the exercise of the veto should be put in writing and deposited in the registry. But there is no such safeguard in the Church Discipline Act.

right may yet be obtained, even if a Bishop shall again refuse his aid in a proper case.

The 19th section of the Church Discipline Act contains the following language :—

> Nothing hereinbefore contained shall . . . . prevent the Archbishop of the province from citing any such clerk before him in cases and under circumstances in and under which such Archbishop might, before the passing of this Act, cite such clerk under and in pursuance of a Statute passed in the 23 Henry VIII. intituled "An Act that no man shall be cited out of the diocese where he or she dwelleth, except in certain cases."

The Statute of Henry VIII. here mentioned recites, in its preamble, the evil against which it was directed—viz., that people were cited out of their own dioceses to the Courts of the Archbishops ; and enacts that no person thenceforth shall be so cited out of his own diocese, except in certain cases.

We need not go through these excepted cases ; the case of an appeal is one of them, and the case of letters of request is another. The particular exception to which we desire to call attention is as follows :—

> In case that the Bishop, or other immediate judge or ordinary, dare not nor will not convent the party to be sued before him.

Now the jurisdiction of the Court of Arches has, ever since the time of Henry VIII., been limited and bounded by this Statute. It will be observed that the Statute is, in the language of lawyers, a *disabling*, not an *enabling* Statute. It does not *give* any jurisdiction to the Archbishop's Court, but cuts down the previously existing jurisdiction to the limits specified in the excepted cases. It would seem to follow, therefore, that under this Statute of Henry VIII. the Arches Court has original jurisdiction when the Bishop will not or dare not act. This original jurisdiction is recognized and preserved by the 19th section of the Church Discipline Act, and would seem to be still available in such a case as that of Mr. Carter, of Clewer.

However, it is enough for our present purpose to point out that both the Statute of Citations and the Church Discipline Act do, in fact, recognize the impropriety of the Bishop refusing justice, inasmuch as they provide an alternative remedy for the aggrieved party in such a case.

It will be of extreme importance to bring these constitutional rights and remedies clearly before the Commission which is about to be appointed. Nothing is more likely than that some of the less used remedies provided by the Ecclesiastical law may be overlooked or forgotten. This must not happen if it can be helped ; for there are minds so constituted as to be

more impressed by the fact that our mediæval ancestors did effectually provide against injustice, than by any common-sense reflections that injustice ought to be provided against. For the benefit of such people it is essential to bring out clearly before the Commissioners, and so before the public, that this notion of a Bishop's veto on the course of justice receives no sanction from precedent or history. We are perfectly prepared to argue the question on those grounds alone, if necessary. To any one but moderately acquainted with constitutional history and law it will appear strange enough, while to one who adds to that a familiarity with the old ecclesiastical law it will appear perfectly astounding, that a superior should lay claim—not to pardon the offence of an inferior against other people, but—to take a side,[1] and burke at the outset even the investigation of the charge.

But it is after all a question to be settled on the most elementary considerations of common sense. The bishop who claims to veto an investigation has either discovered the merits of the case by proper investigation, or he has not. If he has not, what right has he either to punish or to acquit? If, on the other hand, his investigation of the case has been sufficient to discover the truth, why should not the same method be extended to other tribunals now fettered by what are thus shown to be unnecessary legal technicalities? These technicalities, the rules of evidence and the order and form of proceedings, have no magical sanctity; they are justifiable only so far as they tend to elicit the truth, and prevent the prejudice arising from irrelevant considerations. If they are, after all, useless for insuring a fair trial, why not abolish them altogether? If a better mode of trial is *ex certâ scientiâ et mero motu* of the judge, why keep up any technicalities at all? It would be far cheaper to proceed in such a summary way before Lord Penzance. It would be far easier to procure evidence by merely reading a few paragraphs from a newspaper, than to insist on *vivâ voce* evidence on oath, with the sanction of a possible prosecution for perjury as the fate of a false witness.

And this extraordinary hole-and-corner veto is put forward as conducing to justice, when applied in favour of one side only, though the very men who claim it would be the first to denounce it if there was any prospect of its being applied against them, as well as in their favour. Not even a Ritualist would care to trust himself for good or for ill to episcopal "discretion."

The very fact that the claim to interfere is made in favour of the clergy alone, shows that it is not seriously believed by anybody to conduce to justice or any other good purpose. It is mere

[1] *Litem suam facere.* The right of pardon stands on a different footing altogether, and must not be confounded with it.

"esprit de corps;" the natural wish of one professional man to stand by his professional brethren "through thick and thin," as the saying is. But the Bishops are not made "judges in Israel" for the purpose of indulging in feelings of this kind.

It really does seem absurd, at this end of the nineteenth century, to have to argue before English Bishops for the constitutional right of Englishmen to the English Church. What in the world are the Bishops and clergy paid for, if not for the benefit of the Church, of which, let it be observed, they form but a very small fraction? The Church requires certain services from the clergy, and the episcopal government of the clergy is for the good of the Church, and not primarily for the good of the clergy. No doubt this truth was not unquestioned before the Reformation; but it cannot be too often impressed on the public that, since that time at all events, the position of the clergy, Bishops included, has been (and is intended to remain) that of ministers, not masters; and that the great Statute to which appeal is so frequently made, has for its object, as well as its title, the Submission of the Clergie, not of the Church.

The views of the Church at large on this matter cannot be better expressed than in the language of one who derives from his position a title to speak in the name of the laity, and from his antecedents and character a right to be heard by the Governors of the Church. We allude to the present Lord Chief Justice of England, Lord Coleridge, who expressed himself as follows:—

> The strong and sensible observations of Lord Stowell in Mr. Stone's case were indeed made in a case of doctrine, but they are to the full as true in a case of ritual practices, whether these ritual practices are or are not performed for the sake of the doctrines which they express. "That any clergyman should assume the liberty of inculcating his own private opinions in direct opposition to the doctrines of the Established Church, in a place set apart for its own public worship, is not more contrary to the nature of a National Church than *to all honest and rational conduct.* It would be a gross contradiction of its fundamental purpose to say that it is liable to the reproach of persecution, if it does not pay its ministers for maintaining doctrines contrary to its own."

And again:—

> I am really unable to see the hardship or absurdity of an officer of the Church being forced his whole life long to obey on a particular matter the law of his society, when it has once been declared to him by proper authority.

Is this, or is it not, true? Is it, or is it not, common sense?

So again, Lord Selborne, the Lord Chancellor, said, in his speech on the Archbishop's motion for a Royal Commission,

that it was quite clear we ought to make obedience a condition on which clergymen could hold their preferments. Lord Selborne's title to be heard on such a subject with respect is certainly not inferior to that of Lord Coleridge.

The Bishops must look to it that they do not allow their notions of public virtue and public duty to fall behind those of their flocks. Nobody wants to punish a Ritualist, however strongly the Ritualists may assert the contrary; we only want our Church services. We certainly do not want to imprison anybody, if we can get our Church services in any other way. We do not want to prevent Ritualists, or any other Dissenters, from enjoying the form of worship which pleases them, but we want our own. Lord Selborne says it would be much better if the period allowed by the Public Worship Regulation Act within which the clergyman must conform, had been three weeks instead of three years. This we cordially agree to, and not the less cordially because, if the period had been only three weeks, Messrs. Dale and Enraght would never have been sent to prison last year.

The proposed Commission will do good if it enables some of the Bishops to shake off a little of the timidity which has allowed them as a body to coquette with this impossible claim. To inquire, and inquire, and again to inquire, has ever been the refuge of weak statesmen, because it has the appearance of care and circumspection. A council of war has a proverbially bad name. There is really nothing to fear. It is clear that Ritualistic dissent must die in the next generation at least; for whatever excuse may be made for those of the Ritualistic clergy who were ordained before the law was ascertained, that excuse cannot avail the young men who, from henceforth, present themselves for ordination, and know perfectly well that they are undertaking to obey the law laid down by the recent decisions. They cannot take orders with a lie in their mouths.

The Bishops must choose one thing or the other; they cannot be allowed to blow both hot and cold. If they can persuade the Legislature that they are the persons who should be responsible for the clergy doing their duty, be it so; let them have the responsibility. But they cannot be also irresponsible; the laity in that case must have their remedy against the Bishops instead of against the clergy. The laity require certain duties from the clergy, and so long as these duties are supplied, it is to a great extent immaterial who is responsible for supplying them. We by no means admit, however, that the laity are not interested in the government of the clergy by the Bishops; on the contrary, they are deeply interested in being served by ministers in an independent and legally secure position. They are deeply interested in preserving the clergy from sinking into

a state in which they could be bullied by their superiors, as liberal Romanists have been in France. But until there is some chance of the Bishops offering to take upon themselves the responsibility to the laity of keeping the clergy in order out of their own resources, we need not further discuss this alternative.

Art. IV.—THE INTRODUCTORY ADDRESS;

Or, the Exhortation at the commencement of Morning and Evening Prayer.

THE frequent repetition of any passage may produce two very opposite effects on the mind. It may lead to such an intimate acquaintance with both the detail and the spirit of the passage as we shall never gain by a single hearing; or it may produce such a habit of unthoughtful listening as will lead us never to give any serious attention to the real meaning of the words. We have a most remarkable illustration of this latter tendency in our use of the Address at the commencement of Morning and Evening Prayer. We have all heard it thousands of times, and we are all in the habit of standing up respectfully while it is read Sunday after Sunday, and in some cases day after day, at church; but it is a question whether out of the multitude of either readers or hearers there are very many who have given any very careful attention to its meaning. It is generally supposed to be an introductory address to the public worship of the day—something, that is, which may prepare the mind for the various services in which we are about to engage; so that it may possibly appear to some to be an act of great presumption if I venture to suggest that it is nothing of the kind, and that it was introduced into our Prayer-Book for a wholly different purpose.

To prove my point let us first recall the history of its introduction. In the Prayer-Book of A.D. 1549 the morning and evening services commenced with the Lord's Prayer, and there was no public confession of sin. I fear, therefore, that we must give up the beautiful theory that our services have been constructed as one harmonious whole, beginning with confession of sins and ending with thanksgiving; for until A.D. 1552 there was no separate act of confession in either the morning or evening services. The reason was that until that time the Church of England had taken no decided line on the subject. Our Reformers had not fully emerged from Popery, and the old practice of auricular