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ART. I.—REPORT ON THE ECCLESIASTICAL COURTS.

THE general approval which greeted the first appearance of the Report of the Royal Commission on the Ecclesiastical Courts in certain quarters where the existing Court of Appeal for Ecclesiastical causes is regarded with something more than disfavour, was a strong testimony to the careful and conscientious manner in which so difficult a subject as the remodification of the final tribunal of appeal had been dealt with by the Commissioners. It is no disparagement of their work that the favourable opinion first entertained on the part of a large and important body of Churchmen should have been somewhat rudely shaken, when the recommendations of the Commissioners came to be more fully considered, and were subjected to the trying ordeals of a Church Congress and of several diocesan conferences. Whatever difference of opinion there may be in the minds of earnest and thoughtful Churchmen as to the wisdom, or even the prudence, of some of the recommendations of the Commissioners, there can be no question as to the care and pains with which they have conducted the inquiry into an abstruse and difficult subject, and as to the industry displayed by some among them in a research of no ordinary character. The ability with which the task has been performed has been so fully recognized, that it is unnecessary to do more than to offer our testimony as to the accuracy and utility of the information contained in these blue-books, by specially commending the abstract of evidence of the witnesses examined by the Commissioners, as well as the historical appendices, particularly Appendix I., which contains an account of the Courts that have exercised Ecclesiastical jurisdiction in England from the earliest times up to the year 1832, and is contributed by Professor Stubbs. It is an invaluable contribu-

tion to Church history, even though we may not be prepared to endorse all the conclusions arrived at by the compiler.

To the laity generally we strongly suspect that the complicated procedure of the Ecclesiastical Courts is utterly incomprehensible. Since the jurisdiction in testamentary and matrimonial causes was taken from them in 1857, and suits for defamation were abolished in 1855, and laymen were relieved from proceedings for brawling before Ecclesiastical tribunals in 1860, the occupation of proctors and other Ecclesiastical officers is almost gone. So rapidly did the proctors diminish in number in consequence of this legislation, that the writer of this article, in 1867, moved the insertion of a clause in a Bill before the House of Commons, now 39 & 40 Vic., c. 66, enabling solicitors to practise in all Ecclesiastical Courts except those of London and York, a privilege up to that time confined to proctors. The exception of the Provincial and Metropolitan Courts was removed by subsequent legislation in 1876. Less than thirty years ago oral evidence was unknown in the Ecclesiastical Courts. Witnesses were examined and cross-examined on written interrogatories out of Court at an enormous expense and at the cost of scandalous delay and not unfrequently of an entire failure of justice. The mode of procedure was harassing and intolerable to litigants. The promoter and the defendant suffered alike. Term after term passed before the cause was ripe for hearing and for judgment. It was not till the reign of her present Majesty that an Act was passed permitting oral evidence to be taken in Ecclesiastical Courts, a short time only before their jurisdiction in matrimonial and testamentary causes was transferred to a lay tribunal. During the last twenty-five years the Diocesan Courts have been practically disused save for applications for faculties in matters relating to the church or churchyard.

Before we proceed to consider the recommendations of the Commissioners touching the two main objects to which their attention was specially directed—namely, "to renew the usefulness of our Diocesan Courts,"[1] and to prepare a scheme for the final Court of Appeal—it will not be out of place to take a brief historical survey of the constitution and working of the Ecclesiastical Courts prior, as well as subsequently, to the passing of the Reformation Statutes of the twenty-fourth and twenty-fifth years of King Henry VIII. We do not propose to follow Professor Stubbs in his interesting speculations concerning Ecclesiastical tribunals before the Norman Conquest, though we are disposed to agree with him in the belief, "that the judicial authority of the Bishop, like that of the King in still later times, was inherent in the person rather

[1] Report, p. lii.

than in the Court: and that accordingly, whilst in Visitation or at home, the Bishop might be called on constantly to hear causes with more or less solemnity."[1] These Courts, presided over by the Anglo-Saxon Bishops, whether confining themselves exclusively to Ecclesiastical causes, or exercising jurisdiction in the Shire moots, where ordinary civil and criminal cases arising between laymen were tried, may be regarded as the cradles of English jurisprudence, while from the earliest times they had within them the means, and exercised the right, of enforcing the decrees and sentences pronounced by the Bishops or by the Archdeacons as their executive officers. William the Conqueror granted a charter for establishing Ecclesiastical Courts, distinct from the Court of the Hundred, and enabling Bishops and Archdeacons to exercise coercive jurisdiction. The Commissioners state: "No new code was imposed at the Conquest or later. The laws of the Church of England from the Conquest onwards were, as before, the traditional Church law developed by the legal and scientific ability of its administrators, and occasionally amended by the Constitutions of successive Archbishops, the Canons of National Councils, and the sentences or authoritative answers to questions delivered by the Popes." (Report, p. xviii.) The Archdeacons soon acquired a customary jurisdiction from which there was an appeal to the Bishop's Court; while in order to meet the increase of business, the Bishops instituted Officials, Chancellors, Commissaries, and similar officers, whom they employed as their substitutes, without divesting themselves of the power to act as judges whenever they might think fit to do so. These appointments were nearly coincident with the publication of the *Decretum* of Gratian, the basis of the text of the Roman Church law, and with the revival of the civil law of Justinian, about the middle of the twelfth century. The Report proceeds:

> With the improved organization of Courts was introduced a regular system of appeals. From the Court of the Archdeacon an appeal lay to the Court of the Bishop, and from that of the Bishop to that of the Archbishop, from whom, according to the practice of foreign Churches, lay an appeal to the Pope. Nearly coincident with the growth of this system was the development of the legatine system, by which the Popes attempted to establish in each kingdom a resident representative of their supreme jurisdiction. The English kings struggled against both these practices, forbidding the introduction of legates without their leave, and also prohibiting appeals to Rome . . . . The practice of appeals to Rome lasted until the Reformation, although it was checked in all matters in which the Civil Courts were competent to deal by the Statutes of Præmunire, and gradually, in fact, became restricted to testamentary and matrimonial business. (Report, p. xix.)

Of the principal Courts of the province of Canterbury—the

[1] Historical Appendix I. p. 24.

Court of the Official Principal and the Prerogative Court—our immediate concern is with the first only, the Court of Appeal from the Diocesan Courts of the Province, which was commonly known as the Court of Arches, while the Official Principal bore the title of Dean of the Arches, and as such possessed all the judicial power of the Archbishop. The Chancery Court of York was the Provincial Court in the Northern Province, corresponding with the Court of Arches. The Diocesan Courts were the consistories of the Bishops, from which there was an appeal to the Provincial Court, and in which original causes were heard, as well as appeals from the jurisdiction of the Archdeacons. The Bishop reserved to himself the right of presiding in his Court, as is the case in many dioceses at the present day, the letters patent by which the Official Principal is appointed by the Bishop containing such reservation. The appointment is subsequently confirmed by the Dean and Chapter of the Cathedral in which the Chancellor holds the Consistorial Court. From very early times the procedure of these Courts was based upon the Roman civil law, and has so continued up to recent times. We regret that want of space must prevent us from following the Report in its interesting account of the matters which were subject to Ecclesiastical jurisdiction, and of the limitations to its exercise which were imposed by the Crown. A brief summary must suffice. "Churches, their patronage, furniture, ritual, and revenues; Clergymen in all their relations, faith and practice, dress and behaviour in Church and out; the morality of the laity, their religious behaviour, their marriages, legitimacy, wills, and administrations of intestates; the maintenance of the doctrines of the faith by laity and clergy alike; and the examination into all contracts in which faith was pledged or alleged to be pledged, the keeping of oaths, promises, and fiduciary undertakings," were subject matter of Ecclesiastical jurisdiction. So wide a field could not fail to develop the system of prohibitions and appeals to which recourse was frequently had in order to stay proceedings in the Court of First Instance. Appeals from interlocutory decisions anticipating an appeal from a definitive judgment or final decree could be interposed at every stage of the proceedings so that practically there was no limit to the system of rehearing the matter in dispute. This abuse tended to the complete paralysis of all ordinary Ecclesiastical jurisdiction. To some extent the growing evil was met by the Statutes of Præmunire (25 Edw. III. s. 6. and 16 Ric. II. s. 2, cc. 2, 3), which restrained appeals to Rome without the license of the Crown; while the growing power and constant aggressions of the Ecclesiastical Courts in the reign of Henry

VIII. were checked by Royal Ordinances, confining them in matters of civil interest to jurisdiction in testamentary and matrimonial causes.

Such was the state of the Ecclesiastical Courts in this kingdom when the Reformation Statutes of Henry VIII. came into force. The era of legislative change so vitally affecting the Church of England was coincident with the fall of Cardinal Wolsey and the appointment of Sir Thomas More as Chancellor in 1529. The earlier statutes passed after that date for the reform of the Ecclesiastical laws had reference to probates, non-residence of the clergy and pluralities. In 1531 the Convocation of Canterbury in voting a subsidy to the Crown was compelled to insert in the form of grant a recognition of the King as supreme head of the Church of England, "so far as it is allowed by the law of Christ." The Convocation of York objected to the form of recognition in the Canterbury grant, and only voted their subsidy under protest. In the following year the Act of 23 Hen. VIII. c. 20, was passed, after having been discussed in Convocation. It abolished the payment of annates to the Pope, and made provision for the confirmation and consecration of Bishops within the realm. Professor Stubbs[1] observes: "This Act is remarkable as the first open blow struck in Parliament at the Papacy." The Statute of 24 Hen. VIII. c. 12. prohibited appeals to the See of Rome under the penalties of præmunire, and prescribed the ordinary course of appeal from Archdeacons to the Bishops, from the Bishops to the Archbishops, and from the Archdeacon of any Archbishop to the Court of Arches or audience, and thence to the Archbishop of the province, from whom there was no appeal. In 1534 was passed the Act of 25 Hen. VIII. c. 19, for the submission of the clergy to the King's Majesty. By this Act the clergy were prohibited from making Canons or Constitutions in Convocation without first obtaining the royal assent, under a penalty of fine and imprisonment. Provision is also made in this statute for an appeal to the King's Majesty in the King's Court of Chancery, as well from the Archbishop's Courts as from peculiars and exempt jurisdictions. Upon every such appeal a commission issued under the Great Seal to such persons as might be appointed by the King to hear and definitively determine the same. This tribunal, known as the High Court of Delegates, continued unmodified by subsequent legislation, save during the brief interval of the reign of Queen Mary, until its functions were transferred to the Judicial Committee of the Privy Council in 1832. It was provided by the Act of Submission, "that such judgment and sentence as the

[1] Historical Appendix I. p. 33.

said Commissioners shall make and decree, in and upon any such appeal, shall be good and effectual, and also definitive, and no further appeals to be had or made from the said Commissioners for the same." But, notwithstanding the full and final powers granted to the delegates, it was held by the lawyers in the reign of Elizabeth, that by virtue of the supremacy the power of rehearing the whole case remained in the Crown. Applications for a Commission of Review were not unfrequently made to the King in council, and were referred to the Lord Chancellor, who, after hearing counsel, decided whether the commission should be granted or refused. The Commission of Review was not a Court of Appeal on a particular point, but was authorized to hear the whole cause *de novo*. It is important to bear in mind that the delegates did not publicly state the reasons for their sentence. We come now to the crowning Act of the Reformation, 26 Hen. VIII. c. 1. It is intituled "An Act concerning the King's Highness to be supreme head of the Church of England, and to have authority to reform and redress all errors, heresies, and abuses in the same."[1]

The Royal Supremacy was further defined in the preamble to the Act of 37 Hen. VIII. c. 17, as conferring "power to exercise all other manner of jurisdictions commonly called Ecclesiastical jurisdictions; and that the Archbishops, Bishops, Archdeacons, etc., have no manner of jurisdiction ecclesiastical but by, under, and from the King; and that to him by Holy Scripture, all authority and power is given to hear and determine all causes ecclesiastical, and to correct vice and sin whatsoever; and to all such persons as the King shall appoint thereto." (Report, p. xxxi.)

It is not possible within the limits allowed to us to do more

[1] It enacts: "The King, our Sovereign Lord, his heirs and successors, Kings of this realm, shall be taken, accepted, and reputed the only supreme head in earth of the Church of England called Anglicana Ecclesia, and shall have and enjoy, annexed and united to the imperial Crown of this realm, as well the title and style thereof as all honours, dignities, pre-eminences, jurisdictions, privileges, authorities, immunities, profits and commodities to the said dignity of the Supreme head of the same Church belonging and appertaining; and that our said Sovereign Lord, his heirs and successors, Kings of this realm, shall have full power and authority from time to time to visit, repress, redress, reform, correct, restrain, and amend all such heresies, abuses, offences, contempts and enormities, whatsoever they be, which by any manner spiritual authority or jurisdiction ought or may lawfully be reformed, repressed, ordered, redressed, corrected, restrained, or amended most to the pleasure of Almighty God, the increase of virtue in Christ's religion, and for the conservation of the peace, unity and tranquillity of this realm, any usage, custom, foreign laws, foreign authority, prescription, or any other thing or things to the contrary hereof notwithstanding."

than to refer briefly to the two definitions given by Professor Stubbs in the Historical Appendix I. p. 37, of the power claimed by the King under the title of Supreme Head of the Church. In reference to the first, it seems abundantly clear that Henry claimed the reversion of all the authority which had been usurped or claimed by the See of Rome; but the alternative definition adopted by the Commissioners and embodied in their Report (p. xxxi.), appears to us somewhat involved, and fails to convey the full meaning of the Royal Supremacy as recognised in the Reformation Statutes. It is as follows:

(i.) The complete assertion of all the Royal powers over the clergy and Ecclesiastical things which the laws of England had never ceased to maintain, but which had never, or but grudgingly, been admitted by the curia.

(ii.) The complete recovery from the Papacy of all the authority over the clergy and Ecclesiastical causes which had been usurped by the Popes from the Crown of England, and in which the usurpation had been admitted or acquiesced in by Church and nation.

(iii.) The complete recovery from the Papacy of all authority over the clergy, etc., which had been usurped by the Popes from the Church of England in its metropolitan and diocesan constitution.

(iv.) The assumption of an undefined power and authority in Ecclesiastical matters, which had been assumed by the Popes as Supreme Governors of the Church (but which was strange to the ancient constitution of the Church, and to the liberties of nations), in the character of Supreme fountain of all authority and of Supreme Ordinary of Ordinaries." (Report, p. xxxi.)

The material fact resulting from the struggle persistently carried on between the King and the clergy on the one hand, and between the King and the Papacy on the other, was the indisputable establishment of the Royal Supremacy. In both contests the King's victory was complete. The Royal Supremacy as confirmed by the Statutes of Henry VIII. in all cases whatsoever, was recognised to the fullest extent by the clergy as well as by the laity. After the temporary reversal of the Ecclesiastical legislation of Henry VIII. during the reign of Mary the relations between Church and State, as established at the Reformation, were once more firmly cemented by Elizabeth, and the policy of her father was further developed, the first statute passed in her reign being "An Act restoring to the Crown the ancient jurisdiction over the State Ecclesiastical and Spiritual, and abolishing all foreign power repugnant to the same."

The Statute of Supremacy, however, which had been repealed by her immediate predecessor was not re-enacted; but

the Queen was expressly recognised as *Supreme Governor* in Ecclesiastical as well as in Temporal causes, and provision was made in 1 Eliz. c. 1 for the enforcement of the jurisdiction of the Crown over the State, Ecclesiastical and Spiritual, as well as for the punishment of those who might act in contravention of it. Under the authority of this statute the Queen constituted the Court of High Commission for the execution of the Supreme Ecclesiastical jurisdiction belonging to the Crown, with one special and remarkable limitation contained in section 20 of the Act, which provided that the Commissioners should not adjudge matters to be heresy, unless so declared by the authority of the Canonical Scriptures, or by the first four General Councils, or by Parliament with the assent of Convocation. The Court of High Commission was actively engaged during the reign of Elizabeth, and existed for eighty years, having concurrent jurisdiction with the ordinary Ecclesiastical Courts. It was abolished by the Act of 16 Car. 1. c. 16, from which time the High Court of Delegates remained the only Supreme Court of final Ecclesiastical jurisdiction in England, and heard appeals of every kind, including causes in which questions of doctrine were involved. These latter, however, appear to have been very rare. It seems impossible, therefore, to arrive at any other conclusion than that appeals in doctrine and ritual could be, and were, entertained by this Court, and that it assumed and discharged spiritual functions committed to it as the Supreme tribunal of faith and ritual for the Church of England. On the recommendation of a Royal Commission, the jurisdiction of the Court of Delegates was abolished in 1832, and the ultimate appeal in Ecclesiastical causes was transferred to the Judicial Committee of the Privy Council. The Court of Delegates, though it had been in existence for nearly three hundred years, had not given satisfaction. Bishops, Common Law judges, and advocates practising in the Admiralty and Ecclesiastical Courts were from time to time, as occasion required, selected as Delegates: but, as the principal advocates at Doctors' Commons were generally engaged as counsel in the cases of appeal, the choice was necessarily restricted to some extent to junior advocates, especially during the last century of its existence, when the selection was made almost exclusively from civilians.

That the substituted tribunal of the Judicial Committee of the Privy Council should not have given satisfaction to those who take a limited view of the Royal Supremacy, cannot be matter of surprise, although from the constitution of the Court—comprising Lords Spiritual and Temporal, the Judges in Equity, the Chiefs of the Common Law Courts, the Judges of the Civil Law Courts, and distinguished lawyers, who had

filled judicial situations—it is difficult to conceive a tribunal more competent or more likely to be impartial in deciding appeals in Ecclesiastical causes. The rock upon which it split was the trial of ritual and doctrine. The objection taken to judges, who are not members of the Established Church, sitting in the Final Court of Appeal on the hearing of causes relating to doctrine appears to be not an unreasonable one; but it is an objection which might easily be removed. We are inclined to agree with Dr. Tristram in the evidence which he gave before the Commission (Blue Book, vol. ii. p. 143) that, although the Court has only to deal with questions on the construction of written documents, or questions of fact, upon which a judge who is not a member of the Church of England is just as likely to come to a right conclusion on the matter as a judge who is a member; yet "it would not be seemly that the Sovereign, as the Head of the Church of England, should be judicially advised on matters of doctrine or ritual by a judge who is not a member of the Church."

The Royal Commissioners had no easy task before them in endeavouring to settle permanently the knotty and difficult question of the Tribunal of Final Appeal, even though they were able to take warning from the failure of the Ecclesiastical Courts Commission of 1830-32. Among the witnesses examined by them were some who altogether overlooked the fact that the status of the Church of England, as an Established Church, must be defined and secured by Parliamentary enactments, while others advocated the revival of Synodical trials, and the substitution of the Spiritual for the Temporal power in the Court of Final Appeal. We greatly fear that in the opinion of those who contended "that as an historical fact the transference to the Crown at the Reformation of all appeals, which had previously gone to Rome, was never intended to give to the Crown the consideration of questions of heresy; that such questions had not gone on appeal to Rome, and that they were not heard in Courts, properly so called, but in the Synods of the realm, and were finally settled there,"[1] no Court of Final Appeal, which is likely to obtain the sanction of Parliament, would prove satisfactory. History, as well as the Reformation Statutes themselves, abundantly disprove two of the assertions we have just quoted; for the Statutes of 2 Hen. IV. c. 15, and of 2 Hen. V. c. 7, gave the cognizance of heresy to the Bishops' Commissary as well as to the Bishops, and Professor Stubbs has given[2] numerous instances of authenticated trials

[1] Report, p. v.

[2] Historical Appendix II. p. 52, *seqq.*

for heresy before the Bishop sitting judicially in his Court, or before his Chancellor, though they were more commonly heard in Synod. It is difficult to interpret the Act of Submission, which placed the power of taking cognizance of heresy in the hand of the King, as not giving to the Crown a power of hearing appeals from the action of the Ordinaries. It is undisputed that the King exercised a direct jurisdiction in cases of heresy by means of commissions, directed to individual Bishops and others. In applying the principles we have laid down to the recommendations of the Commissioners, we do not hesitate for a moment to admit that, in our opinion, Supremacy and Establishment are so closely interwoven as to be almost convertible terms. If the Supremacy be disputed by Churchmen, they must be prepared to take the alternative. That alternative is Disestablishment. The Church is undoubtedly in an extremely critical position. What can be more touching than the solemn warning of the Bishop of Liverpool at his late Diocesan Conference?

> It is my firm conviction that we are in great danger, and that unless a God of mercy interposes in some marvellous way our dear old Church cannot live much longer, and must go to pieces and perish. I do not see the slightest likelihood of either of the two great parties or schools of thought in our communions—who are divided about ritualism—giving way or tolerating one another. Now, mind, I am not saying now which is right and which is wrong. The one party seems determined to go back behind the Reformation and reintroduce things which our reformers rejected; the other party is equally determined to stand fast and have no change. There can only be one end to this state of things. If God does not help us, the Church must die. I have no doubt we deserve no better when I think of our past unfaithfulness, and our many sins of omission. But I cannot see the apparently approaching death of such a grand Church as the reformed Church of England, with such vast fields of usefulness open to her, without deep sorrow; and so I say to all, pray, pray, pray for the Church of England.

If the Bishop be right in his surmises, the end is not far off. We take leave to differ from his lordship. We believe the Church will yet weather the gathering storm. The work of the Reformation was done effectually, and by whatever means effected, it cannot now be undone. The submission of the clergy in Henry VIII.'s reign was complete. We fail to see what more they could have surrendered. What Parliament and the Crown may have given back to them in subsequent reigns can be regarded merely as a gift, and as subject to revocation, not as an inalienable right of which they could never have been deprived. What some English Churchmen contend for might have been possible at the Reformation. Now it is too late. "We contend," says the author of a

recent pamphlet on the Report of the Royal Commission, "that subject to the Catholic doctrine of Synods and Councils, which nothing can supersede or modify, the Court of Appeal should be a Spiritual Court, its Judges should be Spiritual persons, and its authority that of the Church."[1] If we were founding a colony, or creating a new empire, the question might be regarded as one of first principle; but in England, more than three centuries after the Reformation, we have no alternative but to consider the Church as a national institution, and the Supremacy as established in all causes whatsoever. After enumerating the main principles of the Court of Final Appeal proposed by the Commissioners, the writer goes on to say: "This is gross Erastianism. Compared with this, the Judicial Committee of the Privy Council is a Catholic Congregation of Rites and Doctrines."[2] We must be content to follow the example of the Royal Commissioners, and to look upon the relations of Church and State, not as they might have been, but as they are.

Passing on, then, to the Recommendations, we find them classed under three heads, viz.: (I.) Procedure in cases of misconduct and neglect of duty; (II.) Procedure in cases of heresy and breach of ritual; (III.) General and Miscellaneous. In cases of discipline it is proposed to restore to the Diocesan Courts the jurisdiction taken from them by the Church Discipline Act (3 & 4 Vict. c. 86), and it is recommended that the Bishop shall sit as judge with a legal assessor, except in cases where he shall call upon his Chancellor to hear the case alone, and that an appeal shall lie from the Diocesan Court to the Court of the Province, and thence to the Sovereign, who shall appoint a permanent body of lay judges, learned in the law, and members of the Church of England, to whom such appeals shall be referred.

In venturing to offer a few criticisms on some of their recommendations, we are only following the example of a majority of the Commissioners themselves; as out of twenty-three who signed the Report, sixteen have done so with reservations of a more or less distinct and definite character. In the main we agree with the Commissioners in thinking that the machinery of the Church Discipline Act of 1840 is cumbersome and costly; that the preliminary Commission is unnecessary, and may well be dispensed with; and that cases of discipline may be heard with advantage in the Diocesan Courts—to which, however, we must add the proviso, that they shall be presided over by a layman learned in the law. In common with some

[1] "The Church in Chancery." London, Pickering and Co., 1883, p. 19.
[2] *Ibid.* p. 20.

of the Commissioners, we are unable to concur in the recommendation that the Bishop should preside as judge in his Diocesan Court, for two reasons: first, because ecclesiastics are not, for the most part, qualified by education or training to interpret the rules laid down for the trial of causes, whether of discipline or of doctrine; and secondly, because we regard the Bishop's office as one of a paternal and pastoral, rather than of a judicial character, while such judicial functions as are inherent in the person of the Bishop may more appropriately be exercised *in camerâ*, as suggested in the Preface to the Book of Common Prayer, than in the seat of judgment. For many centuries the Bishops have delegated their authority in the Consistorial Courts to their Official Principals or Chancellors, and no sufficient cause has been shown for imposing upon them a duty which they have neither the time nor the requisite qualifications to undertake. The objections to the Bishop's veto to the institution of proceedings against a clerk in Holy Orders in cases of misconduct and neglect of duty, as well as in cases of ritual and doctrine, have been so fully set forth and discussed in a late number of THE CHURCHMAN, that we may confine our remarks on that very important point to an expression of opinion that an absolute veto is a power which ought not to be entrusted to the discretion of any single person without the right of appeal. Such a power is liable to abuse, and might be exercised to the prejudice of parishioners to the extent of depriving them of the use of their parish church. Before the passing of the Church Discipline Act (1840) leave to promote the office of the judge in the Ecclesiastical Courts was rarely, if ever, refused. Under the Public Worship Regulation Act (1874) the right of making a complaint and of instituting proceedings against a clergyman was further restrained and limited to certain specified persons or classes of persons, subject also to the Bishop's veto; but we have yet to learn that these provisions have given satisfaction to aggrieved parishioners. It does not appear to us that the apprehension apparently entertained by the Commissioners that clergymen might be subjected to frivolous and vexatious prosecutions, "without any real or substantial ground, upon mere scandal or evil report," is a sufficient reason for conferring upon the Bishop the sole power and responsibility of setting, or of refusing to set, the discipline of the Church in motion. The certainty of a case being dismissed with costs could not fail to act as a wholesome check upon litigious complainants. In spite of these criticisms on the recommendations, bearing upon the proceedings in the Court of First Instance, it is with unfeigned satisfaction that we can give our cordial approval

to the proposed scheme of final appeal to the Crown, with its consequential recommendations, in cases of discipline.

It is difficult to approach the consideration of the second group without some misgivings. The Commissioners enunciate seven propositions as to appeals to the Crown in cases of heresy and breach of ritual; and declare, in terms that can scarcely be misunderstood, that they regard the scheme embodied in them as a whole. Before we proceed to examine those propositions, it is important to observe that the Commissioners recommend that "in every case in which the Bishop refuses to give permission to a complainant to proceed he shall specifically state in writing his reasons for such refusal, and such statement shall be deposited in the Registry of the diocese, and a copy thereof shall be forthwith transmitted to the complainant and to the person complained of." (Report, p. lvii.) If this recommendation is to be considered in the light of a compromise between conflicting opinions, we can only say that we look upon it as one of a most objectionable nature. We fail to see what advantage can accrue to either party, or to the interests of the Church, from requiring the Bishop to assign reasons for an irresponsible veto, which can neither be revised nor reversed. The Bishop is practically constituted judge in the first instance though furnished with merely the particulars of the offence charged; he is empowered to shield, if not to acquit, the person so complained of, and to spare him the annoyance and inconvenience of a trial, while he has not a tittle of evidence to guide him to a right decision. Another—perhaps a more fatal—objection to the veto is, that the Bishop would to some extent be prejudging a case, which, if permitted to proceed, might be tried before him in his Diocesan Court. *Ex debito justitiæ*, then, we must enter our protest against the veto with or without those modifying accompaniments. The observations we have already made in reference to the Bishop sitting as judge in cases of discipline, apply with almost equal force in cases of doctrine. Even more objectionable does it appear to us that the Archbishop should be called upon to depart in any degree from his spiritual character by taking his seat in the Provincial Court for the purpose of accepting Letters of Request from the Bishops of the province, and of trying cases of ritual and doctrine, or of hearing appeals in person from the Diocesan Courts, instead of leaving them to be heard by his Official Principal with as many theological assessors as might be deemed desirable.

The seven propositions of the Commissioners, to which we have referred, are as follows:

An appeal shall lie from the Court of the Archbishop to the Crown, and the Crown shall appoint a permanent body of lay judges learned in the law, to whom such appeals shall be referred.

Every person so appointed shall, before entering on his office, sign the following declaration: I do hereby solemnly declare that I am a member of the Church of England as by law established.

The number summoned for each case shall not be less than five, who shall be summoned by the Lord Chancellor in rotation.

The Judges shall have the power of consulting the Archbishop and Bishops of the province, or, if thought advisable, of both provinces, in exactly the same form as the House of Lords now consults the judges of the land upon specific questions put to them for their opinion; and

Shall be bound so to consult them on the demand of any one or more of their number present at the hearing of the appeal.

The judges shall not be bound to state reasons for their decision; but if they do so, each judge shall deliver his judgment separately, as in the Supreme Court of Judicature and the House of Lords; and

The actual decree shall be alone of binding authority; the reasoning of the written or oral judgments shall always be allowed to be reconsidered and disputed. (Report, pp. lvii., lviii.)

As a whole, there is much to be commended in these resolutions. They may well form the groundwork for legislation; but to require that they should stand or fall together, and to start with the assumption that no emendation whatever is permissible, seems somewhat unreasonable. It may fairly be open to argument, whether the judges should or should not be required to state reasons for their decisions. We express no opinion on that head; but if we understand the concluding resolution rightly, we feel bound to take exception to the enunciation of a new principle which is at variance with the spirit and practice of the laws of this country, and which has nothing in common with the Canon Law to recommend it to our adoption. The principle involved in the recommendation that the judgment should be accepted, while the reasons on which the judgment is founded may be ignored, appears to us dangerous, and calculated to lead to endless litigation and confusion. What the Church stands most in need of is—peace. It is difficult to see how that is to be obtained if the decision of a question which has been pronounced by the Court of Final Appeal, even though it may involve an article of faith, is not to be binding upon the inferior Courts, and if the reasoning of the judgments solemnly delivered by the highest tribunal, even after the advice of the Archbishop and Bishops of the province has been sought and received, may always be reconsidered and disputed.

The general and miscellaneous recommendations call for little remark. They are mostly consequential, and are rendered necessary by the alterations enumerated above. The repeal of the Church Discipline Act, and of the Public Worship Regulation Act, follows as a matter of course the appointment of the Royal Commission. The rehabilitation of the Official Principal of each province, and the enforcement of a strict observance

of certain formalities before the judge enters on his office, as required by the Canons of 1603, and by the ancient laws of the Church, which were neglected on the appointment of Lord Penzance under the provisions of the Public Worship Regulation Act, are the necessary outcome of the revival of the Courts Christian, and of the agitation which, during the last ten years, has shaken the Church to her very foundations. The abolition of imprisonment for refusal on the part of a clergyman to obey the order of an Ecclesiastical Court cannot fail to meet with universal approval; while the substitution of suspension from his office and benefice, and eventually of deprivation in extreme cases of disobedience and contumacy, provides a reasonable and sufficient remedy. The sentences of suspension, deprivation, deposition from the ministry, or excommunication, may well be pronounced by the Bishop of the diocese in the Diocesan Court, and by the Archbishop in the Provincial Court. No scheme for the reform of the Ecclesiastical Courts would be complete which did not contemplate and provide for a more simple mode of procedure than that which may be found elaborated in Oughton. It is proposed, then, that the practice and procedure of these Courts shall be defined by Rules and Orders, to be drawn up by Order in Council, by and with the advice of the Lord Chancellor, the Lord Chief Justice, the Official Principals of each Province, and the Archbishops and Bishops, who are members of the Privy Council, or any two of them, one being the Lord Chancellor or Lord Chief Justice. The Rules and Orders are to lie on the table of each House of Parliament for forty days while Parliament is sitting, during which period they are to be subject to objection, and may be annulled by Order in Council on an address from either House, praying her Majesty to disallow the same.

We cannot conclude these observations without again acknowledging the excellence of many of the recommendations of the Commissioners, as well as the prudence and practical wisdom which have dictated them. The subject was one of surpassing difficulty. The strife between the two extreme parties in the Church raged fiercely, while so much dissatisfaction had been expressed at the constitution of the Final Court of Appeal, and with the Public Worship Regulation Act, as to necessitate the appointment of a Royal Commission. Those who are curious to investigate these matters for themselves will do well to study the evidence in vol. ii. of the Blue Books. The Commissioners have acted wisely in steering a middle course: they have prudently kept clear of Convocation, whether their view that it did not come within the scope of their instructions to make a formal recommendation on the

subject of laying their Report before that body be a correct one or not; they have vindicated the supremacy of the Crown, and, at the same time, have provided a ready means of consulting the spirituality in all questions relating to ritual and doctrine, while they interpose no obstacle to Convocation expressing its opinion on matters of a spiritual nature, so long as they do not trench upon the legislative power of Parliament. While the Report insists upon the full hearing of spiritual matters in the earlier stages of the proceedings by spiritual persons, *i.e.*, by judges appointed under recognised Ecclesiastical authority, the Commissioners evidently recognize the fact that Convocation, as at present constituted, is not, and cannot be, regarded as a true and sufficient representation of the Church of England, by passing over in silence its claim to a voice in the legislation which will be rendered necessary if their recommendations are to be carried into effect. For our part, we desire to see the Church entrusted with a large share of governing power, and with greater control in matters of discipline; but until Convocation fully and adequately represents the clergy and laity of the Church it is idle to suppose that Parliament will permit it to interfere in questions relating to Doctrine and Faith. What course the Government may see fit to adopt no one can safely predict. The difficulties of legislation, especially on Church questions, have been greatly enhanced of late years. We believe that there is one man, and only one, in the House of Commons who could at this moment successfully pilot such a measure as that contemplated in the Report of the Commissioners through Parliament —that man is Mr. Gladstone. In the midst of his other cares and labours we trust he may be able to spare the time necessary for the task, as we feel convinced that he will have the desire to perfect the work he commenced, when he entrusted the consideration of the subject of the constitution and working of the Ecclesiastical Courts to a Royal Commission, by an earnest and well-directed effort to restore to the Church that peace and harmony within herself, and to conciliate towards her that confidence on the part of the country, without which her effective power to deal with those moral evils of the world, which it is her especial mission to combat and to subdue, cannot fail to be dangerously—perhaps fatally—impaired.

C. J. Monk.