The Story of High Church Agitation for an Ecclesiastical Court of Final Appeal.

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ITS starting-point is the famous Gorham case (1848-1850). And the importance of the judgment of the Final Court of Appeal in the Gorham case to Evangelicals lies in the fact that it was the first legal recognition given by supreme State authority to the Evangelical school as being a real part of the Church of England.

Previous to that judgment, Evangelical interpretation of Anglican doctrine was treated by Churchpeople who were not Evangelicals as something unnatural and almost criminal. Since its pronouncement the Evangelical view has been respected, and by some large-hearted High Anglicans welcomed as being at least the aspect under which God's truth is seen by other Church minds.

The battle represented by the Gorham case began in the Court of Arches. Dr. Philpotts, the bellicose Bishop of Exeter, had refused to institute the Rev. G. C. Gorham, a former Fellow of Queen's College, Cambridge, to the living of Bramford Speke, on the ground that he held views on the subject of Infant Baptism which were contrary to the standards of the English Church. Gorham was, therefore, compelled to take legal steps to secure possession of his benefice.

When the case came on (1848), the Bishop held that all infants are, as such, duly qualified for Baptism, and that consequently all infants, when baptized by a lawful minister, are spiritually regenerated in and by the act of Baptism.

Gorham, on the other hand, maintained by his Counsel that "the blessing of a new birth (or spiritual regeneration) may precede, or accompany, or follow the administration of the sacrament; that the regenerating grace of God is not absolutely tied to Baptism, and does not so necessarily accompany it as that every infant baptized with water in the name of the Holy

Trinity, is thereby made a partaker of spiritual life, as well as admitted into the outward and visible Church of Christ; for that right reception is requisite as well as due administration; and as a prerequisite to the beneficial administration, there *must be* made on the part of the infant a declaration of faith and a promise of future obedience."[1]

In support of this view, the language of the 25th, 26th, and 27th of the Thirty-nine Articles was brought forward. It was urged that in these, right reception of the sacraments is emphasized as the supremely important thing.

The Court of Arches pronounced against Gorham (1849). Appeal was then made to the Judicial Committee of the Privy Council, and on March 8, 1850, the Court, which consisted of six lay Judges, with the two Archbishops (Dr. Sumner and Dr. Musgrave) and the Bishop of London (Dr. Blomfield), reversed by a majority of seven to two the decision of the lower Court. The dissenting Judges were Bishop Blomfield and Vice-Chancellor Bruce.

The Court affirmed that "the doctrine held by Mr. Gorham is not contrary or repugnant to the declared doctrine of the Church of England."

It was also careful to declare that it had "no jurisdiction or authority to settle matters of faith, or to determine what ought, in any particular, to be the doctrine of the Church of England. Its duty extends only to the consideration of that which is by law established to be the doctrine of the Church of England, upon the true and legal construction of the Articles and formularies."

It is not too much to say that, had judgment in the Final Court of Appeal gone against Gorham's view of Infant Baptism, the Evangelical school would have been forced out of the National Church. Indeed, conferences were held by the Evangelicals of that day to prepare for the contingency, and Henry Venn had drawn up a Constitution of a committee of

[1] "The Argument of Dr. Bayford on behalf of the Rev. G. C. Gorham," published by Seeley, 1849.

clergy and laity, who were to act in the event of secessions of Evangelicals becoming imminent.[1]

It was not Evangelicals, however, who were confounded by the decision of the Final Court of Appeal; it was their opponents, the High Church party. They also began to talk of setting up "a free Episcopal Church,"[2] and it was only at the agonized call of Keble that the movement was stopped.[3]

Bishop Blomfield's advice to those High Churchmen who besieged him with angry protests was that they should begin to work to secure a differently constituted Court of Final Appeal for ecclesiastical cases. To encourage them, he himself led the way by introducing, in 1850, a Bill into the House of Lords for the purpose. His proposal was that cases which in any way affected the doctrine of the Church of England should be removed from the Privy Council to the Upper House of Convocation. Fifty-one votes were cast for it, and six against it.

Next to the Gorham case, the judgment of the Privy Council which most exasperated High Churchmen was that in the case of "Essays and Reviews" (1864). It acquitted the writers of the charge of heresy. High Churchmen now became fierce in their demands for a Court of Appeal which they could respect.

It is significant, however, to note that this judgment (much as many Evangelicals dreaded it) constituted what Lord Morley calls "a chapter of extraordinary importance in the general history of English toleration,"[4] and further, it represents the first legal standing given to the Broad Church school within the borders of the National Church. Whatever, therefore, High Churchmen may say, the much-abused Privy Council, in its dealing with Church cases, has produced far-reaching and, on

[1] Stock's "History of the C.M.S.," vol. ii., p. 4.
[2] *Vide* "Life of Bishop Blomfield," p. 303.
[3] "Life of Keble," by Rev. Dr. Lock, p. 158.
[4] "Life of Gladstone," vol. i., p. 316, popular edition.

the whole, beneficial results to the cause of religion generally by what may be called the formal and legal establishment in the State Church of two distinct schools[1] of religious thought, which up to the time of their respective judgments had been permitted to exist in the Church on terms of begrudged sufferance only. Whether a Final Court of Appeal composed of ecclesiastics would ever be able to point to two such monumental and impressive issues of its daring in the face of popular clamour is a matter very much open to doubt.

While High Churchmen were smarting under the blow of the "Essays and Reviews" judgment, Evangelicals and Nonconformists were growing furious in two other matters. One was the Papal Aggression in 1850, the other was the rise, about the same time, of the new Ritualistic party as represented by such men as the Rev. W. J. Bennett, of St. Paul's, Knightsbridge. Bishop Blomfield strove in vain to induce the latter to put away the strange and "histrionic" practices, as the Bishop called them, which he had introduced into his Church. Other Bishops soon found themselves compelled to take similar steps. And so the conflict between the Bishops and the Ritualists went on until, in 1867, the nation, alarmed by the lengths to which the new Roman and Ritualistic zeal had reached, became ready to accept the sternest measures to repress the invaders.

Lord Shaftesbury was not slow to take the opportunity. He began to prepare a Bill to check the excesses of Ritual in the State Church. The Bishops were willing to help him. Bishop Wilberforce, however, headed them off from their intention. "I set before them," he wrote, "the ignominy of the course; its shameless party spirit; the suicide of the English Episcopate being dragged at the tail of Lord Shaftesbury."[2]

[1] It is sometimes maintained that the judgment of the Privy Council in the Bennett case on June 8, 1872, gave *locus standi* in the National Church to the new Ritualists, and thereby increased the comprehensiveness of the State Church. In that case their doctrine of the Real Presence was challenged. The defendant, however, escaped by reason of the doubts which the Judges had of his meaning. On the other hand, they rebuked the Judge of the Court of Arches (Sir R. Philimore) for saying that Mr. Bennett's view was the doctrine of the Church. *Vide* Perry's "English Church History," Third Period, p. 414.

[2] "Life," vol. iii., p. 206.

Mr. Gladstone was also called in to assist, and between the two men the Bishops were persuaded "to drop the Bill and propose a Commission."

The Commission was appointed (1867), and reported in August of the same year dead against the new Ritualism. Lord Shaftesbury promptly tried to get something done. The Government would not move, and therefore Lord Shaftesbury proceeded to act. In 1869 he brought in a Bill for "The Uniformity of Worship." A Select Committee smothered it. Lord Shaftesbury then brought in a Bill framed on the lines of the report of the Select Committee. Bishop Wilberforce supported it. "He was delighted," he said, "to see a layman making laborious efforts to remedy the evils that existed." The meaning of this surprising change came out later. Four times the Bill was brought forward, and after being passed by the Lords in 1872, failure to get time for it in the Commons befell it.

In the next year (1873) the great Judicature Bill, which dealt with the whole system of English Courts of Law, was carried through Parliament by the efforts of Lord Selborne, a prominent and truly great High Churchman. At first it was not intended to make any change in the constitution of the Final Court of Appeal in causes ecclesiastical. The subject, however, was forced to the front by Bishop Wilberforce, Mr. Gladstone, and others. These were anxious that the Final Court of Appeal for Church cases should be an exclusively Lay Court. The purpose of this was to deprive the Court of any appearance of having Church sanction and authority. Whenever any point of doctrine arose, the Lay Court of Appeal was to ask the Bishops, "What is the doctrine of the Church of England on that question? The fact of this answer," said Bishop Wilberforce, "would satisfy the Church that her *doctrines* remained intact under the legal decision."

An arrangement of this kind, he was confident, would have saved the Church "from the great schism under which we have ever since" (the Gorham judgment) "languished." [1]

[1] "Life," vol. iii., p. 109.

Such was the *imperium in imperio* which Bishop Wilberforce asked should be created, in order that the State Church might herself pronounce finally in all disputed points of her own teaching. With his usual sanguine feeling he foresaw no serious difficulty as likely to arise from a plan which involved a divided supremacy between the King of the State and the Church of the State, and he was quite sure it would work.

His own reference to the inevitable outcome of the plan in a case like the Gorham case, however, is not encouraging to those who are not High Churchmen. And what Evangelicals are bound to take note of is that similar references to the Gorham case are continually being made by important representatives of the High Church party.

Archbishop Tait opposed Bishop Wilberforce's plan, and defended the mixed constitution of the Privy Council as being both historical and practical. He expressed his astonishment "that in the quarter where it might least be expected there seemed to have been a sudden conversion to the opinion that all ecclesiastical matters ought to be submitted to a purely lay tribunal. . . . He could not help thinking that there was something at the bottom of it." He believed that in all periods of the history of the Church these tribunals had been mixed, and his advice to the House of Lords was that in these things we should not rashly change our old institutions.[1] The Archbishop's words prevailed, and the proposal was rejected.

Bishop Wilberforce, however, had another and most powerful wire to pull. It was the influence of Mr. Gladstone. To him he at once wrote urging that he should try and get the provision inserted in the Judicature Bill when it came before the Commons. Mr. Gladstone agreed, and succeeded in persuading the Cabinet to accept it.

When Archbishop Tait discovered what had been done, he indignantly protested. "To alter the constitution of the Church, as it has come down to us from the Reformation," he wrote to Mr. Hardy, the Minister in charge of the Bill, "with-

[1] "Life," vol. ii., pp. 118, 119.

out any consultation with the heads of the Church, and after the protests raised against the proposed measure in the House of Lords by the two Archbishops and the Bishop of London, is a very serious matter." The Archbishop's intervention again carried the day.

When the Bill came back to the Lords, it was amended. It was decided that Bishops should sit in the Court of Appeal, when it had to deal with ecclesiastical cases, not as Judges, but as assessors, for the purpose of advising the Court in matters affecting the Church.

A few years later the Court was again remodelled, but the changes made concerned the lay Judges only.

We come now to the Public Worship Regulation Bill of 1874, the most abused of all the efforts made in these modern times to help the English Church in her sore need of more expeditious and less costly methods of administering disciplinary law. Archbishop Tait, who introduced it, was soon to realize, as Lord Shaftesbury had done before him, that he who attempts to reform Church Courts of Law has a heart-breaking task before him. The situation called for some effort of the kind. Evangelicals and extreme Protestants, both represented by Lord Shaftesbury, had failed in the repeated attempts made to get some more effective means of Government at work in the Church. High Churchmen, represented by Bishop Wilberforce, Mr. Gladstone, and Lord Salisbury, were unsuccessful in like manner. In the meantime the scandal of illegal Ritual, and the defiant attitude of the worst offenders both towards the Bishops and also towards the nation's Supreme Court of Law, were deeply offending all classes of people.

The Archbishop was careful to proceed constitutionally. On January 12 and 13, 1874, the Bishops met at Lambeth. After discussing the best line of action, it was agreed that the two Archbishops should draw up a Bill, in which the advice of Convocation, given four years before, should be incorporated.

The Bill, when produced, contained provisions for new

Diocesan Courts to be presided over by the Bishops. Each Court was to consist of three incumbents and five lay Churchmen elected respectively by the Clergy and by the Churchwardens of the Diocese. The elected members were to hold office for five years. Cases of Ritual irregularity might be referred to such Courts by the Bishop. The Bishop's admonition or order after trial in the Diocesan Court was to have the force of law. Appeal, however, could be made to the Archbishop. No appeal was to be allowed either to the Privy Council, or elsewhere, when the Archbishop had given judgment.[1]

This and other proposals in the Bill pleased neither High Churchmen nor Evangelicals. Dr. Pusey denounced them in the *Times* as being oppressive. Lord Shaftesbury and Dean Close, on the other hand, urged that more drastic treatment of persistent Ritual offenders was necessary.

On April 20, 1874, Archbishop Tait introduced the new Bill. He pointed out that its purpose was not to make "any change in the laws ecclesiastical." Its object was "to remove certain difficulties in the way of the administration of those laws, when clearly declared." He then gave instances of such difficulties.

He described the things which the new Ritualists were introducing into the service for Holy Communion—invocations to the Virgin Mary and the Twelve Apostles, Altar Cards mounted as Triptychs, inaudible prayers by the Priest alone, and the like—all which things it was not possible for the Bishops to deal with satisfactorily as the administration of the law then stood. He had hoped that the plan proposed by the Bishops for an elected Diocesan Council of Commissioners or Assessors in every Diocese, by which Ritual and other such cases could be dealt with by each Bishop locally, would have been generally welcomed. But the objections to it had forced him to give up the idea, and to fall back for an alternative mode of appointing assessors, as provided in the Church Discipline

[1] "Life of Archbishop Tait," vol. ii., p. 191.

Act passed thirty-five years before. He combated the suggestion that the new Bill would operate against Ritualists only. He maintained that the Bill would also "enforce a due and reverent celebration of the worship of God by those who have erred in a slovenly and imperfect mode of performing Divine Service." It was not from such a quarter, however, that the necessity for the Bill came.[1]

The Archbishop's action in laying open to the House of Lords the new kind of Ritual and doctrinal offences, with which the Bishops had to deal, infuriated the Ritualists to angry resistance. In this they were supported by High Churchmen, who regarded the Bill as dangerous.

Lord Shaftesbury now came forward. He was anxious to get rid of ecclesiastical Judges entirely, and to substitute lay Judges in their room. He therefore moved that a lay Judge should be appointed by the two Archbishops, who should hear all representations under the Act without the intervention of Diocesan Courts, or by the preliminary Commission of Inquiry proposed by the Bishops.

The two Archbishops were thus placed in a position of great difficulty. They could not pass their own Bill without Lord Shaftesbury's aid, and to refuse his amendment meant that no immediate legislation for their purpose would be possible. At the same time they foresaw that Lord Shaftesbury's plan would give great offence to High Churchmen. Later on it turned out that Lord Shaftesbury was acting under the prompting of another stalwart Evangelical—Lord Chancellor Cairns—who had previously assured him of "the support of the whole Government."[2] This, together with the certainty that if the Bishop's own Bill were thrown out, a more unsatisfactory Bill would afterwards be introduced and passed by a strongly Protestant and impatient House of Commons, decided the Archbishops. They spoke against Lord Shaftesbury's amendment, but accepted it when a division became inevitable.

[1] "Life of Archbishop Tait," vol. ii., p. 200.
[2] "Life of Lord Shaftesbury," vol. iii., p. 347.

The two Archbishops and thirteen Bishops voted for it. Only two Bishops voted against it. The majority for Lord Shaftesbury's amendment was 112 to 13. On the question of a Bishop's power to veto threatened legal proceedings in Ritual disputes which the Bill provided, Archbishop Tait stood firm. Lord Shaftesbury inveighed against it, and High Churchmen petitioned Parliament to remove it from the Bill. It cannot be said that the Episcopal power of veto has justified itself. It has again and again made a forced peace, when battle would have been more natural and wholesome. Certainly it has not conciliated the Ritualists, and it has done much to inflame their opponents. The recent Royal Commission on Ecclesiastical Discipline (1906) has recommended that the veto should be abolished.

When the Bill came before the House of Commons, Mr. Gladstone brought forward six long resolutions against it. His political followers, however, warned him that they could not support them. He thereupon withdrew them. His great rival, Mr. Disraeli, who had been waiting to see how the House would receive the Bill, now became fervid in his zeal for it. In his speech he described it as one which was "to stamp out Ritualism." The words stung, and have never been forgiven.

At last the Bill passed without even the challenge of a division. On August 5, 1874, the Legislature had finished with it, and a few days later the Royal Assent passed it into law. Certain well-known objections have since been shaped and assiduously circulated against the P.W.R. Act. Of these the most vehemently urged is that which condemns the jurisdiction and authority in spiritual cases of the lay Judge appointed by the Act. Little was said of such an objection, however, while the Bill was under discussion. Lord Salisbury thought that the Judge should be appointed by the Crown, and other High Churchmen supported Lord Shaftesbury's amendment in preference to the Archbishop's proposal for Diocesan Courts and the Episcopal Assessors, as suggested in the original Bill prepared by the Episcopate.

Another stock objection relates to the alleged manufacture of "aggrieved parishioners." In reply to this it may be said that, if there has been any improper working up of a case, under the Act, by prompting complainants, this can hardly be said to be a peculiar failing of Evangelicals and Protestants. It is in the human nature of Ritualists, as well as in that of their opponents. On the other hand, it ought to be borne in mind that in many rural parishes an "aggrieved parishioner," for the purpose of the Act, is an impossibility; and yet the people of the parish may be groaning under the infliction of the parson's Ritual eccentricities.

A further objection is that the P.W.R. Act has produced a large number of the Ritual troubles, which it was intended to prevent. The answer to this has been given by the present Archbishop of Canterbury, Dr. Davidson. He has pointed out that the true explanation of the increase of Ritual prosecutions, which immediately followed the passing of the P.W.R. Act, is that they were due to the spirit which made the Act necessary. For the first sixteen years after the Act was passed, only seven or eight prosecutions took place under its provisions. Many people, he says, have been misled by the clamour raised to think that they were ten times more.[1]

(*To be continued.*)

Prayer-Book Revision: Suggestions from the American Prayer-Book.

By the Rev. ROBERT R. RESKER, A.K.C.

THE conservative instinct which makes us shrink from modernizing an old church—an instinct with which we all sympathize—also influences many minds in regard to suggestions for making the Book of Common Prayer more suitable for the needs of the present day. In addition to this, the

[1] "Life of Archbishop Tait," vol. ii., p. 227.