

believer in the Lord. Who can calculate the invisible spread of the truth of God? and who knows but that some of us may live to witness the day when the wave of the Gospel spreading from the Niger on the west shall meet the wave from the Victoria Nyanza on the east, and the voice of a great multitude, like the sound of many waters, be heard rising from the centre of Africa to the praise and glory of a faithful and promise-keeping God?

Thus wonderfully have old Scott's words at the commencement of the enterprise proved true:—"What will be the final issue—what the success of the mission, we know not now. I shall know hereafter. It is glorious and shall prevail. God hath said it, and cannot lie."

EDWARD HOARE.

ART. V.—THE ROYAL SUPREMACY AND THE FINAL COURT OF APPEAL.

THREE hundred years ago the question of the Royal Supremacy, and the Final Court of Appeal in causes ecclesiastical, was a leading subject of controversy between Cartwright, the celebrated Puritan, and Hooker.

The ground taken by the Puritans, who wished for a further reformation in the Church, and are styled in the following quotation "authors of Reformation," is thus stated by Hooker:—

This power being some time in the Bishop of Rome, who by sinister practices had drawn it into his hands, was, for just considerations by public consent annexed unto the King's Royal seat and Crown. From thence the authors of Reformation would translate it into their *National Assemblies or Synods*; which *Synods* are the only help which they think lawful to use against such evils in the Church as particular jurisdictions are not sufficient to redress. In which case our laws have provided that the King's supereminent authority and power shall serve.—*Eccles. Polity*, Book VIII. chap. viii. 5. Oxford. 1850.

Again, Hooker says:—

Unto which supreme power in kings two kinds of adversaries there are that have opposed themselves; one sort defending "that supreme power in causes ecclesiastical throughout the world appertaineth of divine right to the Bishop of Rome;" another sort, that the said power belongeth "in every national Church unto the clergy thereof assembled." We which defend as well against the one as the other, "that kings within their own precincts may have it," must show by what right it may come unto them.—Chap. ii. *ut supra*.

It is remarkable that the same ground is now taken in the controversy which has broken out on this subject during the

last few years. Dr. Phillimore, in his paper read at the late congress in Swansea, says:—

Let the appeal be to the Synod of the Province presided over by the Metropolitan. And if further appeal be required, let the appeal be, while Christendom unhappily remains divided, to a Synod of the whole Anglican communion.

Our present system of ecclesiastical judicature is the same in all its essential principles as that which was assailed by Harding, the Jesuit, and Cartwright, the Puritan, and which was defended by Jewel and Hooker. If the suggestions of Dr. Phillimore, and those whom he represents, were carried into effect, the establishment of the episcopate as a final court of appeal would form a new point of departure for the Church of England. In order to prove this, it is only necessary to give a brief statement of historical facts.

A supremacy in causes ecclesiastical as well as civil had been exercised by Christian kings from the earliest days of the union of Church and State. And so the 37th article ascribes to the Crown "that only prerogative which we see to have been given always to all godly princes in Holy Scripture by God himself;" and the second canon of 1604 attributes to the Crown "the same power and authority in causes ecclesiastical that the godly kings had amongst the Jews and Christian emperors of the primitive Church." Hooker, in reply to Cartwright, who objected to the Royal Supremacy, contends that such power was exercised by "David, Asa, Jehosaphat, Ezekias, Josias, and the rest." "They made those laws and orders which sacred history speaketh of concerning matters of mere religion, the affairs of the temple, and the service of God."—*Eccles. Polity*, chap. i. *ut supra*. He adds:—"According to the pattern of which example the like power in causes ecclesiastical is, by the laws of this realm, annexed to the Crown."—*Ibid*.

The Bishop of Rome had infringed upon the rights of the Crown, and usurped the supremacy in England as in other lands; but he was not permitted to exercise an undisputed sway. The Constitutions of Clarendon in the 12th century are an evidence of the energy with which the Royal rights were asserted even in days of darkness and superstition. "It will be observed," writes Dr. Hook, "that these Constitutions contained nothing novel; they were only the ancient principles of the realm and Church of England, as laid down by William the Conqueror and enforced by Lanfranc." The *Quarterly Review* quotes these words of Dr. Hook, and remarks that "the stringent enactments of Henry VIII. were the final and violent solution of a controversy which had existed in England for centuries."—No. 296. October, 1879. P. 549.

The usurped supremacy of the Bishop of Rome was finally abolished in this realm of England by the statutes 24 and 25 of Henry VIII. The 24th enacted that ecclesiastical causes, and causes relating to matrimony, divorce, tithes, and oblations should be finally determined in the ecclesiastical courts; the same Act, however, provided that in such causes above specified as related to the Crown, appeals should be made to the Upper House of Convocation. But the 25th statute aforesaid abolished the appeal to Convocation, the effect of which is that all appeals must be carried to the Crown. That the laws do not admit of an appeal to Convocation was ruled in the case of *Gorham v. Bishop of Exeter*. Sir Fitzroy Kelly moved in the Queen's Bench, April 15th, 1850, for a rule to show cause why a prohibition should not be issued to the Dean of Arches and the Archbishop of Canterbury to prohibit them from requiring the institution of the Rev. Gorham to the Vicarage of Bramford Speke. Sir Fitzroy contended that in matters touching the Crown the appeal lay to the Upper House of Convocation. The rule was refused by the Queen's Bench unanimously. Lord Campbell, in pronouncing judgment, said that the statute of Henry VIII. "enacts that from the Archbishop's Court a further degree in appeals for all manner of causes is given to the King in Chancery where a commission shall be awarded for the determination of such appeal and no further."—*Brooke's Six Judgments*, p. 40. This decision was confirmed in the Court of Common Pleas and Exchequer.

The Supremacy of the Crown is exercised by delegation. Dr. Stephens says:—

Henry VIII. assumed the whole supremacy in England which had been vested in the Roman Pontiff; and delegated this authority to a single person with the title of "Lord Vicegerent." In the reign of Elizabeth, Parliament entrusted the jurisdiction to a body of men, and empowered the Queen to appoint a commission for the exercise of it.—*Preface to Book of Common Prayer, with Notes*, p. 127.

In hearing appeals, the Crown exercised its jurisdiction until the reign of William IV. through "the Court of Delegates." This Court was constituted, as Dr. Stephens says, "for each separate case by commission under the Great Seal." The Court was empowered to give a definitive sentence, an option being reserved to the Crown of rehearing the case on petition. Hooker gives the rationale of this:—

As, therefore, the person of the king may for just considerations, even where the cause is civil, be notwithstanding withdrawn from occupying the seat of judgment, and others under his authority be fit, he unfit himself to judge; so the considerations for which it were haply not convenient for kings to sit and give sentence in spiritual courts where causes ecclesiastical are usually debated, can be no bar to that

force and efficacy which their Sovereign hath over these very consistories, and for which we hold, without any exception, that *all Courts are the King's*.—Chap. vii. *ut supra*.

The King acts by delegation in civil and ecclesiastical courts, it not being “convenient” for him to sit in person.

It is important to observe that the delegated authority of the Crown was not confined in ecclesiastical courts to ecclesiastics. It is a remarkable fact, as shown by Fremantle, that from the year 1619 to 1639, a period during the greater part of which Laud was at the zenith of his power, the Court of Delegates consisted of laymen exclusively in 982 cases out of 1080.¹ But the High Commission and Courts of Delegates through which the King exercised his authority were, notwithstanding, regarded as ecclesiastical courts. King Charles I. issued a proclamation in the thirteenth year of his reign, declaring that the proceedings of his Majesty's ecclesiastical courts and Ministers are “according to the laws of the realm.” This proclamation expressly refers to “the High Commission, and *other* ecclesiastical courts” (Sparrow's collections). The declaration of King Charles I., prefixed to the articles, refers to “the Church's censure in *our* commission ecclesiastical.”

The Royal Supremacy, acting through the High Commission and Court of Delegates, was received with a general consent by the Church of England, the Puritans alone objecting. The Convocation in 1562 set forth the thirty-nine articles which require the clergy to accept the Supremacy. The Puritans, in 1571, complained of the imposition of the articles, and petitioned Parliament against the action taken by the High Court of Commission in this matter. In their petition they state that “the ministers of God's Holy word and sacraments were called before her Majesty's High Commissioners and enforced to subscribe unto the articles, if they would keep their places and livings. The petition states that “some, for refusing to subscribe,” were “from their offices and places removed.” In the presence of these facts, without a word of reservation, the canons of 1604, and even those of 1640, affirmed the Supremacy. The latter gave the following threat:—

If any parson, vicar, curate, preacher, or any other ecclesiastical person whatsoever, any dean, canon, or prebendary of any Collegiate or Cathedral Church, any member or student of College or Hall . . . shall publicly maintain or abet any position or conclusion in opposition or impeachment of the aforesaid explications, or any part or article of them, he shall forthwith *by the power of his Majesty's Commissioners* for causes ecclesiastical, be excommunicated till he repent, and sus-

¹ See Introduction to the “Six Judgments,” by Brooke, p. 39. London. 1879.

pended two years from all the profits of his benefice, or other ecclesiastical, academical, or scholastical preferments; and if he so offend a second time, he shall be deprived from all his spiritual promotions, of what nature or degree soever they be.

Amongst the explications enforced by the threat of "the power of his Majesty's Commissioners" is the following:—"A supreme power is given to this most excellent order (of kings) by God himself in the scriptures, which is that kings should rule and command in their several dominions all persons of what rank or estate soever, whether ecclesiastical or civil."

The Bishops in their articles of visitation inquired whether there were any who denied the Royal Supremacy. The following is an example from the articles of Archbishop Laud:—

Whether any parson in your parish do write, or publicly or privately speak against the King's supremacy, or against the oath of supremacy or allegiance.

Bancroft, Bishop of Oxford, inquired whether the minister before the sermon—

Prayed for the King as King of Great Britain and Defender of the Faith, and in all causes, and over all persons within his Highness' dominions, as well ecclesiastical as temporal next and immediately under God, supreme Governor.—*Second Ritual Report.*

After the secession of the Puritans from the Church, inquiries relating to the Royal Supremacy gradually ceased, as no longer necessary. Unhappily, in these our days, they need to be revived.

In 1830 a Royal Commission recommended the transfer of authority from the Court of Delegates to the Judicial Committee of the Privy Council. The Commission consisted of the Primate, Dr. Howley; the Bishops of London, Blomfield; Durham, Van Mildert; Lincoln, Kaye; St. Asaph and Bangor, and several laymen, including Dr. Lushington, the Dean of Arches. This Commission in its Second Report, gave full consideration to the question of clerical offences, and refers to the advancing of doctrines not conformable to the articles of the Church. Mr. Joyce could hardly have given due consideration to this fact when he attributed to a mistake the referring of ecclesiastical appeals to the Judicial Committee of the Privy Council. By statute 3 and 4 Victoria, all Archbishops and Bishops being Privy Councillors were placed on the committee for hearing appeals ecclesiastical. The reasons for the abolition of the Court of Delegates were very forcible. The constitution of the Court was fluctuating, and considerable expense as well as delay attended the issue of separate Commissions. Moreover, the judges were not required to give reasons, and their judgments on appeal to the Crown were reversable.

It is important to remember that the Court is limited in its jurisdiction, as it appears from the following passage in the Gorham judgment, quoted with approval in subsequent judgments :—

This Court, constituted for the purpose of advising her Majesty on matters which come within its competency, has 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 her articles and formularies.—*Six Judgments*, p. 35 *ut supra*.

Hooker refers to this fact as follows :—

What Courts there shall be, and what causes shall belong to each Court, and what judges shall determine of every cause, and what *order* in all judgments shall be kept; of these things the laws have sufficiently disposed; so that his duty which sitteth in every such Court is to judge *not of* but *after* the said laws.—*Ibid.* chap. viii. 3.

In passing, it may be remarked that Hooker ascribes to the laws the right of settling the question of courts and modes of procedure.

Another change was made on the occasion of the enactment of the Judicature Bill, which had been introduced in 1873. It was provided that the Bishops should sit as assessors. By an Order of Council, Nov. 28, 1876, it was settled that the presence of at least three Bishops should be necessary, one of whom must be the Archbishop of Canterbury, or the Archbishop of York, or the Bishop of London.¹ During the discussions which

¹ The following quotation from the Order of Council shows that care has been taken for impartiality in the attendance of the Bishop :—

“ 1. The Archbishop of Canterbury, the Archbishop of York, and the Bishop of London shall be *ex officio* assessors of the Judicial Committee of her Majesty's Privy Council on the hearing of ecclesiastical cases according to the following rota, that is to say, the Archbishop of Canterbury from this day until the 1st January, 1878; the Archbishop of York from the 1st of January, 1878, till the 1st of January, 1879; and the Bishop of London from the 1st of January, 1879, to the 1st of January, 1880, and so on by a similar rotation for the period of one year each.

“ 2. The other bishops of dioceses within the provinces of Canterbury and York shall attend as assessors of the Judicial Committee on the hearing of ecclesiastical cases according to the following rota, that is to say, from this day, until the 1st of January, 1878, the four bishops who on this day are the four junior bishops for the time being; seniority for the purpose of this order to be reckoned from the date of appointment to the episcopal see; from the 1st of January, 1878, till the 1st of January, 1879, the four bishops who on the 1st of January, 1878, shall be the four bishops next in order of seniority; and from the 1st of January, 1879, till the 1st of January, 1880, the

took place in the Legislature, an attempt was made to exclude the Bishops from the Final Court of Appeal, but the Primate and others successfully resisted the effort. Here, as in other cases, at this juncture, Dr. Stephens rendered valuable service to the Church by an able pamphlet which he addressed to the Archbishop of York on this subject.

As now constituted the Court is the best which has yet existed.

It combines men who are learned in the law with Bishops as assessors. The rubrics are intimately connected with Acts of Parliament. The ornaments rubric until 1662 expressly referred to the Act; its interpretation involves an elaborate legal investigation, for which the judges are best qualified. The judgments already given bear evidence of this. The law judges, from their mental training, are the least likely to give a partial decision. Dr. Pusey goes so far as to say that even "those without the Church are often better, because more disinterested, judges of the Church's doctrine than biassed members of the Church." Who can suggest a better? The Bishop of Oxford in his paper on "The Ecclesiastical Courts and final Courts of Appeal," read in the late Congress, does not venture to make a positive suggestion. He says:—

Again, there must be an appeal in the last resort;—to whom? To the Privy Council, as now? or to the Upper House of Convocation? or to the whole Bench of Bishops? or to judges specially appointed by the Crown? How difficult it is to meet with anything like agreement in the answer to be given to these questions, or to any one of them! Yet, until we are agreed, it is idle to expect that any improvement in the constitution of the Courts can be obtained.

Dr. Pusey, in a letter addressed to Canon Liddon in 1871, expresses his difficulties as follows:—

But as to the Court itself, my friend, Sir J. T. Coleridge, reminds us of the difficulty in which we are placed; if we would get rid of this Court, we must be subject to another; and alludes to some of the difficulties in the Court to which we once looked, a Provincial Council of Bishops. Certainly I felt the difficulties which he suggests when we proposed it twenty-one years ago. If the Provincial Synod should decide wrong, the consequences would be far graver.—Letter to Canon Liddon, appended to Canon Liddon's letter to Sir J. T. Coleridge, p. 63. London, 1871.

The Doctor abandons the idea of constituting the Provincial Synod as a Court of Appeal, and says:—

four bishops who on the 1st of January, 1879, shall be the four bishops next in order of seniority, and so on by a similar rotation until the senior bishop for the time being is reached, when the rotation shall be carried back to and again commenced with the junior bishop."

I should myself prefer that the Church of England should volunteer to place itself herein on the same footing as every other religious body in England. The State will interfere in every case where property is concerned; and no harm would have ensued had the State, as the State, retained to Mr. Wilson or Dr. R. Williams their respective incomes and parsonages. The mischief in all these decisions has been the quasi-ecclesiastical character of the Court, given to it by the presence of Archbishops or Bishops. Any increase of the ecclesiastical element, any reference to irresponsible theologians as assessors, any selection of Bishops as judges, would only make things worse. No one would have been disturbed by any judgment which Lord Campbell or Lord Westbury, or Lord Cairns might have thought right to give, as civil judges. What shook minds through and through, when our eyes were opened by the Gorham judgment to the claims made by this Court, and what sent so many of our friends from us, and turned servants and sons of the Church into its deadliest antagonists, was that a State-appointed Court claimed, in the name of the Church, the supervision and determination of its doctrine. A judgment in the Court of Queen's Bench might injure discipline; it could not in any way commit the Church. It would be an interpretation of her formularies by civil judges pronouncing upon her teaching, but not in her name. In such case it would not matter whether the judge was of some dissenting body (as the lay members of the Judicial Committee may, anyhow, mostly be). Those without the Church are often better, because more disinterested judges of the Church's doctrine than biased members of the Church.—Ibid. p. 63.

In accordance with these views the effort was unsuccessfully made to exclude the Bishops from the Court. Dr. Pusey does not hesitate to say that his objection to the Court arose from the Gorham judgment, and does not disguise his motives in recommending that the Court should be divested of its ecclesiastical character. Such a Court could not, he thinks, "commit the Church," or possess any force in *foro conscientiarum*: in plain language, this is to say that the Church ought not to have such a court of final appeal as would speak in the name of the Church, and fairly claim the assent of her clergy! This is certainly a startling position. The admission of such a principle would indeed be calculated to turn "sons and servants of the Church into its deadliest antagonists;" it would act in favour of Dissent on the one hand, and the Papacy on the other. But a fallacy lies at the bottom of the Doctor's argument when he refers to "a State-appointed Court," as claiming "in the name of the Church the supervision and determination of its doctrine." He ignores the fact that the Church *has sanctioned* the Royal Supremacy, and the Courts by which it acts. We have already shown that the Church of England in her Synods, having before her the Royal Supremacy as it was exercised in the Courts of High Commission and Delegates, gave her sanction. Dr. Pusey seems

to forget that the Bishops of the Church have not only accepted, but supported, the action taken by the Crown in the Courts. Their very visitation articles bore upon the subject. The Doctor himself has solemnly assented to the discipline of "this Church and realm."—*Ordination of Priests.*

In every way the Church of England is identified with the Royal Supremacy. Reception is the highest sanction which a Church can give to its laws and Courts. Hooker says that "the canons even of general councils have but the force of wise men's opinions concerning that whereof they treat *till they be publicly assented unto* where they are to take place as laws, and that in giving such public assent as maketh a Christian kingdom subject unto those laws, the King's authority is the chiefest."—Book viii. chap. vi.

Dr. Newman, now Cardinal, on the occasion of the definition of the Pope's infallibility, said: "This (reception), indeed, is a broad principle by which all acts of the rulers of the Church are ratified. But for it we might reasonably question some of the past council or their acts."—*Letter to the Duke of Norfolk.*

There is, therefore, no valid ground for the protests of the English Church Union which passed the following resolution:—

That any Court which is bound to frame its decisions in accordance with the judgments of the Judicial Committee of the Privy Council, or any other secular Court, does not possess any spiritual authority with respect to such decisions. That suspension *a sacris* being a purely spiritual act, the English Church Union is prepared to support any priest not guilty of a moral or canonical offence who refuses to recognise a suspension issued by such a Court.

The Court with its Episcopal Assessors is not "a Secular Court," but the Council advising the Crown which is supreme in all causes ecclesiastical. The protests of the *English Church Union* would apply with even greater force to the Court of Delegates, which in numerous instances consisted simply of the law judges, but which was defended by Hooker and other champions of the Church against Puritanists and Romanists. The High Commission, as representing the Crown, suspended *a sacris* clergymen who did not conform to the laws, and yet in the presence of this fact the Canons of 1604 ratified the Supremacy, and the Canon of 1640 threatened against the disobedient the power of his Majesty's Ecclesiastical Commissioners. In point of fact, the government of the Church is now much more favourable to the clergy than it was under the Tudors or Stuarts. The High Court of Commission was abolished in the year 1640, and has never been revived.

The position assumed by the English Church Union is utterly inconsistent and untenable. The Bishop of Bath and Wells truly says:—

It was important to note further that if the arguments of the President of the English Church Union were sound, the Church of England is at this moment in a state of anarchy; there is actually no tribunal of any kind whatsoever which by its judgments can protect her doctrines or discipline or the rights of her members to have the authorised services performed in the parish church. A devout English Churchman might go to his parish church any Sunday morning, and find the worship of the Virgin Mary going on, or the celebration of mass according to the Roman canon; or, on the other hand, a Socinian or infidel service, and he could get no redress, because the appeal might be carried to the Privy Council, and the decisions of the Privy Council forsooth are not binding on the consciences of Churchmen. Whether or not that was consistent with any theory or practice that had been known in the Church of England since the Reformation, he left to all men's common sense to decide.

These remarks of the Right Reverend Prelate are very forcible, and deserve special attention. The present system of judicature is in accordance, as the Bishop of Gloucester observes, with "the long descended relations of Church and State."¹ It is too late in the day for clergymen to turn round and repudiate the judicature of Church and State. Have they not solemnly promised at their ordination to minister the doctrine, sacraments, and the discipline of Christ as the Lord hath commanded, and as this Church and *realm* hath received the same?" The words of Whitgift, addressed to the Puritans who were unwilling to conform, are applicable in this case:—

You complain much of unbrotherly and uncharitable entreating of you, of removing you from your offices and places. Surely in this point I must compare you to certain heretics that were in Augustine's time, who most bitterly, by sundry means afflicting and molesting the true ministers of the Church, yet for all that cried out that they were extremely dealt with and cruelly persecuted by them; or else unto a shrewd and ungracious wife, which, beating her husband, by her clamorous complaints maketh her neighbours believe that her husband beateth her; or to him that is mentioned in Erasmus' Colloquies, that did steal and run away with the priest's purse, and yet cried always as he ran, "Stay the thief! stay the thief!" and thus crying escaped, and

¹ The Bishop of Lincoln says:—

"In England the supreme human authorities, under Christ, over all powers, spiritual as well as temporal, and in all causes, ecclesiastical as well as civil, is vested in the Sovereign.

"This is affirmed by the Church of England in her Articles (Art. XXXVII.), and also in her Canons (Canon I, 2, 36).

"Therefore, they who appeal to the authority of the Church and to her Canon Law are bound to acknowledge the Royal supremacy, properly understood, and he that resists that authority in anything which is not plainly repugnant to the law of God, not only resists the law of the State, but of the Church; he resists God, from whom all the authority of rulers and laws is derived."—*Letter to Canon Hole.*

yet he was the thief himself. You are as gently entreated as may be, no kind of brotherly persuasion omitted towards you, most of you as yet keep your livings, though some one or two be displaced, you are offered all kinds of friendliness, if you could be content to conform yourselves, yea, but to be quiet and hold your peace. You, on the contrary side, most unchristianly and most unbrotherly, both publicly and privately, rail on those that show this humanity towards you, slander them by all means you can, and most untruly report of them, seeking by all means their discredit. Again, they, as their allegiance to the Prince and duty to laws requireth, yea, and as some of them by oath are bound, do execute that discipline, which the Prince, the law, and their oath requireth; you, contrary to all obedience, duty, and oath, openly violate and break those laws, orders, and statutes, which you ought to obey, and to the which some of you by oath are bound. If your doings proceed indeed from a good conscience, then leave that living and place which bindeth you to those things that be against your conscience; for why should you strive, with the disquietness both of yourselves and others, to keep that living which by law you cannot, except you offend against your conscience? Or what honesty is there to swear to statutes and laws, and when you have so done, contrary to your oath to break them, and yet still to remain under them, and enjoy that place which requireth obedience and subjection to them? For my part, I think it much better, by removing you from your livings, to offend you, than by suffering you to enjoy them, to offend the Prince, the law, conscience, and God. And before God I speak it, if I were persuaded as you seem to be, I would rather quietly forsake all the livings I have than be an occasion of strife and contention in the Church, and a cause of stumbling to the weak and rejoicing to the wicked. I know God would provide for me, if I did it *bona conscientia* ["of good conscience and unfamed zeal."] Yea, surely I would rather die than be the author of schisms, a disturber of the common peace and quietness of the Church and State. There is no reformed Church that I can hear tell of, but it hath a certain pre-script and determinate order, as well touching ceremonies and discipline as doctrine to the which all those are constrained to give their consent that will live under the protection of it; and why then may not this Church of England have so in like manner? Is it meet that every man should have his own fancy or live as him list? Truly, I know not whereunto these your doings can tend, but either to anabaptism or to mere confusion."—*Works*, vol. iii. p. 320, P.S.

What the Church of England now needs is not organic change, but submission to the laws and obedience to authority. Without this, we have reason to apprehend the most lamentable results.

R. P. BLAKENEY.