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Whitwell, Derbys.
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John Yates
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THE ROYAL COMMISSION ON
ECCLESIASTICAL DISCIPLINE AND
THE ORNAMENTS RUBRIC

BY THE SAME AUTHOR.

SEVENTH EDITION.

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**THE
REFORMATION SETTLEMENT:**

Examined in the Light of History and Law.

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THE ROYAL COMMISSION

AND

THE ORNAMENTS RUBRIC

BY THE

REV. MALCOLM MACCOLL, D.D.

CANON RESIDENTIARY OF RIPON

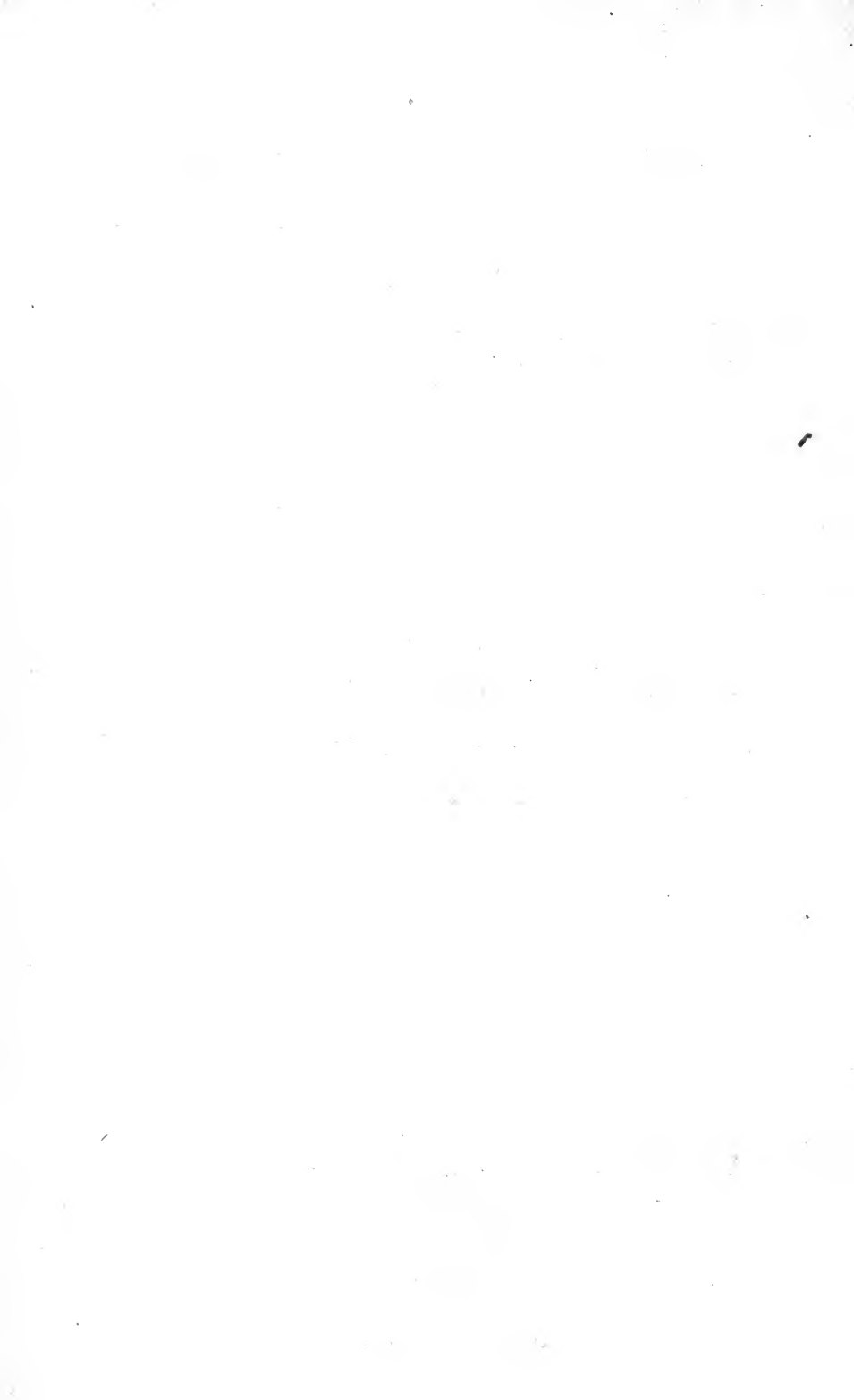
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Page 195, headline: *for* Martin *read* Mastin

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INTRODUCTION

THE Royal Commission on Ecclesiastical Discipline did me the honour of inviting me to give evidence as to the meaning, in my opinion, of 'the second year' in the Ornaments Rubric and in the Elizabethan Act of Uniformity which ratified it. On my accepting the invitation I was asked to send the Commissioners a summary of the points on which my opinion was based, which of course I did. Meanwhile a copy of my book on the *Reformation Settlement* was supplied to each of the Commissioners without my knowledge, and I thus found myself unexpectedly cross-examined on various points in a book which I had not read for five years. My examination, or rather cross-examination, lasted five days, and I had to come up in mid-winter from various parts of Yorkshire where I had promised to help some of the clergy. My books, moreover, were packed up, preparatory to removal to a new home. I was thus unable to make any preparation for each day's examination, even if I knew, which I did not, the questions which were to be put to me. On two evenings only I had time

to consult books in a club library, and verify my recollections. Under pressure of cross-examination from able and learned men like Sir Lewis Dibdin, Sir Edward Clarke, and Dr. Gibson (now Bishop of Gloucester), I was induced to make

Errata.

As the author's reference to some of his examiners on p. xv has been misunderstood by one of his reviewers, he wishes to say emphatically that he was treated by all the commissioners with great courtesy and consideration. All he meant, as he goes on to explain, was that one or two of his examiners seemed to him occasionally not to give its proper weight to one class of evidence which he placed before them; and this he attributed to unconscious bias due to imperfect acquaintance with some of the facts or to an imperfect knowledge of the canons which govern the interpretation of ecclesiastical law.

the Commission has been formally presented. The Chairman courteously allowed me to possess a copy of the official report of my examination, and I give it in full in the Appendix, so that the reader may be able to judge for himself how far I have been successful in vindicating my accuracy against its impugners.

I am sure that the Commissioners intended to be perfectly fair. But those of them—a small minority—who took the leading part in my ex-

amination seemed to me to forget the purpose for which they were appointed, which was to inquire impartially into facts and present a report based upon those facts. I was there by invitation of the Commission to give such information as I might possess on a disputed point in ecclesiastical history. I held no brief for any person or party, and I told the Commission what I believed to be true, quite regardless of any private opinions or predilections of my own. If I were an Agnostic in matters of religion I should have given precisely the same evidence, for truth and justice are independent of personal opinions and beliefs. Yet I found myself cross-examined by some of the Commissioners as if the Commission were a judicial tribunal and I a hostile witness in a criminal prosecution. They seemed to me less intent on getting at the plain facts and forming an independent judgment on them than on finding evidence in support of a foregone conclusion.¹ The reader, however, has the means of judging for himself in the short-hand report of my examination, which he will find in the Appendix. The great difficulty in matters of controversy—and perhaps in religious controversy more than in any other—is to exclude unconscious bias and secure what Sir George Cornewall Lewis calls ‘the requisite indifference’; by which he means indifference to all considera-

¹ I except from this criticism the Primate, the Bishop of Oxford, Sir John Kennaway, Mr. Talbot, Mr. Prothero, and Lord St. Aldwyn.

tions except truth and justice. The passage is worth quoting :—

It is universally admitted that no man ought to be a judge in his own case. But, if the case were not his own, his competency to form a judgment upon it might be indisputable. So if any political measure be proposed which affects the interest of a profession it may happen that persons belonging to that profession, though peculiarly competent to form an opinion respecting it, on account of their experience and knowledge, are disqualified on account of the probable bias of their judgment by personal considerations; and that the *requisite indifference* is only to be found among those who do not belong to the profession. Such outlying persons may be the only impartial judges in the matter. . . . The operation of a personal interest in perverting the judgment is so insidious, that great honesty, combined with perpetual vigilance, is necessary in order to guard against its influence. Men utterly incapable of telling a deliberate untruth, or deliberately expressing an insincere opinion, are nevertheless liable to be warped by personal interest in the deliberate formation of opinions. When a strong bias of this sort exists, their minds, ready to receive every tittle of evidence on one side of a question, are utterly impervious to arguments on the other. Hence we see opinions, founded on a belief (and often a radically erroneous belief) of self-interest, pervade whole classes of persons. Frequently the great majority of a profession, or trade, or other body, adopt some opinion in which they have, or think they have, a common interest, and urge it with almost unanimous vehemence against the public advantage. On occasions of this kind, the persons interested doubtless convince themselves of the reasonableness of the view which they put forward; they are guilty of no hypocrisy or insincerity; but their judg-

ment is warped by their belief as to their interest in the question.¹

But the bias of self-interest is not always by any means the most powerful bias. Many a man who would instantly repel the promptings of self-interest is easily influenced by loyalty to a great cause, or institution, or political party. The Judicial Bench is in this country proverbially free from the temptation of perverting justice through self-interest. But is it equally free from perverting justice through the subtle influence of unconscious bias? Have not judges been accused even in our own time of yielding to this temptation? Let me give some examples. Lord Selborne, when he sat in the House of Commons in 1868 as Sir Roundell Palmer, offered a strenuous opposition to the transference of election petitions from the House of Commons to the judges on the ground of what he thought the inevitable political bias of the judges. These are his words :—

Judges, like other men, have their politics, but at present cases in which political bias might be supposed to affect their minds were rare, although in these cases they frequently gave their judgments according to their politics.²

And is it not true that no general election has passed since then without accusations of partisan-

¹ *The Influence of Authority in Matters of Opinion*, p. 34.

² *Hansard*, third series, cxii. 286-7.

ship against some of the judges' decisions in election petitions?

When the Supreme Court of Judicature Act was before the House of Commons, and it was proposed by the Government to give discretionary power to the judges in the matter of assessing costs and in a few other particulars, the Bar flew to arms in dismay, and proclaimed its profound distrust of the impartiality of our judges in cases where their political sentiments were likely to be strongly engaged. Let the following extracts from the speeches of two distinguished members of the House of Commons, afterwards elevated to the judicial bench, suffice by way of example. Mr. Lopes said: ¹—

When the proper time came he should move an amendment that the bill of exceptions should be preserved. Again, under the Act of 1873 and this Bill, if a judge misdirected a jury, or improperly received or rejected evidence, a new trial was not to be granted unless the Court before whom the case came should be of opinion that the miscarriage of justice was caused by the misdirection—unless the jury had been affected by it. Judges were so apt to think they were right when they were wrong that this would be a very dangerous inroad indeed. Hitherto, save in a few very exceptional cases, costs always followed the event, and in no case was the successful party deprived of his costs; but the Bill proposed to give a judge absolute discretion, so that a judge who disapproved a verdict might order a successful defendant to bear the costs of an action.

¹ See *Times* of July 6, 1875.

Mr. Watkin Williams used even stronger language, as the following extract from his speech will show :—

These Rules and Orders would be made by the judges and would come into operation, and then in the month of March or next Easter the House might interfere. But suppose the judges abolished meanwhile trial by jury. The Lord Chancellor might order cases to be tried by a judge instead of before a jury, and when the matter came to be discussed in Parliament all manner of proceedings would be taken under these Rules and Orders, and they would be told that the greatest inconvenience would be caused by the House repealing them. He trusted that the House would never part with this power. It might be said that the judges would never do these things. Wouldn't they? The first thing done by these Rules and Orders was to abolish the bill of exceptions which had been granted to suitors by Edward I., to prevent caprice and the exercise of what was called 'discretion' on the part of the judges. The bill of exceptions was one of the rights of the suitor. *The judges ought to administer the law, and ought not to have the 'discretion' which would enable them to alter it.* Another exceptional feature in the Rules and Orders was the power given to the Common Law judge over costs. The power of giving costs would be in the discretion of the judges, and it would totally alter the relations between the judges and the Bar. It was right that in Equity cases the judge should have the power of deciding as to the payment of costs, because he has the whole case before him. But imagine a case of libel, or of interference with personal liberty, which would come before a jury. If the judge took a view opposed to that of the jury, he might avenge himself—and it was necessary to speak out on this subject—by punishing the counsel, the suitor, and the jury,

because he differed with them in opinion. At present, if a judge manifested caprice or lost his temper during a trial, the counsel bore it patiently because they knew that the judge was subject to the laws. If he was wrong in his ruling they tendered a bill of exceptions: and if he overrode counsel they had the jury to appeal to. The Rules and Orders would alter all this, and produce changes such as no one at present realised.

Mr. Justice Neville, whose appointment to the judicial bench has been hailed with satisfaction by the Bar and Press, said in the course of a speech in the House of Commons some twenty years ago that—

He had never assented to the argument so often heard in the House, that because a man was made a judge one must treat it as certain that no prejudice on his part will interfere with the soundness of his judgments.

One of the ablest and most learned, and certainly one of the most conscientious, lawyers who ever adorned bench or senate, was the late Lord Herschell; yet he, great as was his admiration of British justice in general, did not hesitate to impeach the findings of British judges on occasions on which their political feelings were strongly enlisted on one side. In a debate in the House of Lords, on March 21, 1890, on the Special Commission to inquire into the conduct of Mr. Parnell and some of the Irish Nationalists, Lord Herschell said:—

I know it was said the tribunal was non-political. Non-political judges who have never mixed in politics

have their views as strong as other men, and I have heard the bitterest things said against them. I am not saying that they always act on them, but when men closely connected with politics and political life come into controversy, I should consider it wholly material that the case should not be determined by those whose political prepossessions were either one way or the other. I differ from no one in admiration of the judges and of their inviolate integrity, but when it is said their political prejudices never bias their judgment, that is so completely contradicted by matters within my own experience that I am unable to agree with it. I maintain it is in the highest degree dangerous that a party should select a tribunal and nominate its members, and should take no care that the tribunal should be impartial in the sense of bias, or that if there was bias one way there should be bias the other.

Since members of the Bar themselves, who have the best opportunity of knowing, are thus suspicious of the partiality of judges under stress of political or party bias, is it so very strange that laymen should occasionally distrust the partiality of judges on questions of religion? If, as Lord Chancellor Selborne said, 'Judges, like other men, have their politics, which are apt sometimes to bias their judgment,' may we not say that judges, like other men, have their theological prejudices also, which are at least as likely as their politics to sway their minds in the direction of their prejudices?

John Stuart Mill has some excellent observations on the indirect power of bias to warp the mind in weighing evidence—all the more potent

because indirect, and therefore unsuspected. Bias, he says, is not 'a direct source of wrong conclusions.' If it were, an honest man would detect it at once and avoid being influenced by it:—

'The most violent inclination to find a set of propositions true will not enable the weakest of mankind to believe them without a vestige of intellectual grounds, without any, even apparent, evidence. It can only act indirectly'—and therefore all the more dangerously—'by placing the intellectual grounds of belief in an incomplete or distorted shape before his eyes. It makes him shrink from the irksome labour of a rigorous induction when he has a misgiving that its result may be disagreeable; and in such examination as he does institute, it makes him exert that which *is* in a certain measure voluntary, his attention, unfairly giving a larger share of it to the evidence which seems favourable to the desired conclusion, a smaller to that which seems unfavourable. And the like when the bias arises not from desire, but fear.'¹

This unsuspected influence of unconscious bias is, I believe, largely responsible for the extraordinary distortions of law and history which pervade some of the judgments in ecclesiastical matters which have been delivered by the Courts, and especially by the Judicial Committee of the Privy Council, during the last half-century. Ignorant of scientific theology and ecclesiastical law, and very little versed in ecclesiastical history, they have regarded the Church as a secular rather than as a divine organisation, and have shown

¹ *System of Logic*, ii. 286.

themselves impatient of any views or practices which seemed to them calculated to imperil the existence of an institution so august and useful. They have therefore framed their judgments mainly with a view to averting the peril. Mr. Gorham was supposed to represent the Evangelical party, and it was feared that the condemnation of his doctrine would cause a serious secession and jeopardise the Church as an Establishment. To ward off that catastrophe the plain language of the Prayer-Book was distorted into a sense flagrantly contrary to its plain meaning. The Prayer-Book says: 'We beseech Thee, for Thine infinite mercies, that Thou wilt look upon *this* child; wash him and sanctify him with the Holy Ghost.' 'Almighty and immortal God, the aid of all that need, the helper of all that flee to Thee for succour, the life of them that believe, and the resurrection of the dead, we call upon Thee for *this* infant, that he, coming to Thy holy baptism, may receive remission of his sins by spiritual regeneration.' 'Give Thy Holy Spirit to *this* infant, that he may be born again, and be made an heir of everlasting salvation.' 'Regard, we beseech Thee, the supplications of Thy congregation; sanctify this water to the mystical washing away of sin, and grant that *this* child, now to be baptized therein, may receive the fulness of Thy grace, and ever remain in the number of Thy faithful and elect children.' Then, after baptism: 'Seeing now,

dearly beloved brethren, that *this child is* regenerate and grafted into the body of Christ's Church.' 'We yield Thee hearty thanks, most merciful Father, that it hath pleased Thee to regenerate *this* infant with Thy Holy Spirit, to receive him for Thine own child by adoption, and to incorporate him into Thy holy Church.'

Is it possible to express the doctrine of baptismal regeneration in language more plain and unambiguous? Not baptismal regeneration in general, let it be observed, but baptismal regeneration in the case of every infant baptized. It is for the regeneration of '*this child*,' '*this present* infant,' that minister and congregation pray. It is for the actual regeneration by baptism of '*this child*' that the minister and congregation give thanks after baptism. 'These words,' says an honest witness, whose own bias was in a contrary direction, 'to all minds not sophisticated appear to assert the regenerating virtue of the Sacrament.'¹ Yet the Judicial Committee decided that the words just quoted do *not* teach baptismal regeneration. The words, they affirmed, do not go further than a charitable hope that the child may be and has been regenerated. Mr. Gorham taught a doctrine of baptismal regeneration by predestination and election. Not every child was regenerated in baptism, but only such children as had been predestinated by Almighty God to receive the gift of 'prevenient

¹ Macaulay's *History of England*, iii. 473.

grace' before baptism, 'to make them worthy,' thus representing God as an arbitrary and capricious Deity, bestowing and withholding grace solely on grounds of pure favouritism. There was, therefore, such a thing as baptismal regeneration in the abstract, but it was impossible to predicate it in the concrete of any child in particular. And this doctrine the court affirmed not to be contrary to the formularies of the Church of England! It was evidently a judgment of policy, not of law and justice. Is it surprising that a court of law which could conscientiously reverse the meaning of plain language in this way, 'doing evil that good might come,' should fail to command the confidence or even respect not only of those whom it wronged, but of a large section of impartial persons in addition? It is the business and duty of a court of justice to declare what the law is, not what, in the opinion of the court, it is expedient that the law should be. A judicial tribunal has nothing to do with consequences, and when it allows consequences to influence its judgment it ceases to be a court of justice. It no longer administers law, but makes it.

Twenty-one years later Mr. Bennett was tried on the charge of teaching erroneous doctrine concerning the Eucharist. He had certainly used crude and careless language which could not be defended on theological grounds. But, acting on sound advice, he discarded his own language in

favour of words suggested by Dr. Pusey. 'My meaning,' Mr. Bennett explained, 'and that which passed through my mind in writing the original passages, was precisely the same as that which is now conveyed in the words substituted.' And he adds :

The three great doctrines on which the Catholic Church has to take her stand are these: 1. The real objective Presence of Our Blessed Lord in the Eucharist. 2. The sacrifice offered by the priest. 3. The adoration due to the Presence of Our Blessed Lord therein.

The court, though censuring Mr. Bennett's language, acquitted him of contravening the doctrine of the Church of England on the points on which he had been impeached. But if his condemnation did not embrace that of the High Church party, with disastrous consequences to the Church, it is probable that the result would have been different.

Some years previously a clergyman of the name of Dunbar Heath was tried for heresy on the subject of the Atonement. Deprived by the Dean of Arches, Dr. Lushington, he appealed to the Judicial Committee. In the interim he took some pains to explain himself to his diocesan and to the Court of Appeal, but without avail. I quote the last paragraph of their Lordships' judgment:—

Their Lordships have had their attention directed to a letter addressed by Mr. Heath to the Lord Bishop of Winchester on January 2, 1860, in which he states that,

if he has laid down any doctrine or position at variance with the Articles or formularies, he has done so unwittingly and in error, and in which he requests his diocesan to point out in what respects he has done so, that he may correct whatever error he has fallen into. Another and more formal document has also been brought before their Lordships, in which Mr. Heath has stated that, if it appears to the Ordinary, and to the Official Principal of his Grace the Archbishop of Canterbury, that his language does contain or teach a doctrine directly contrary or repugnant to any of the Thirty-nine Articles of Religion, he expresses his regret and revokes his error.

I knew Mr. Dunbar Heath, who was a Broad Churchman. He was a Fellow of Trinity College, Cambridge, and was Senior Wrangler of his year. But the effort to obtain that distinction had apparently exhausted his intellectual energy. I have seldom met a man of a more confused mind. He was always in the clouds when he joined in the discussions of a literary society of which we were both members, and he seemed to labour under an incurable incapacity to give intelligible expression to his ideas. He was emphatically a man towards whom every possible indulgence should have been shown on a charge of heresy. He offered to withdraw any expressions to which the court or his diocesan objected, and to substitute other expressions of which the court might approve. But he had no backing. No party felt itself involved in his condemnation. His overtures were accordingly rejected and the sentence of deprivation was con-

firmed. Mr. Gorham was acquitted in spite of his flat contradiction of the formularies which he had subscribed. Mr. Bennett was allowed to substitute orthodox language for that which had been impugned. Both had a numerous and powerful party behind them, and serious consequences might have followed the condemnation of either. Mr. Dunbar Heath's condemnation carried no consequences except to himself; there would be no secession, and the Church Establishment would receive no shock.

But in some of their decisions in ecclesiastical matters the Judicial Committee erred from their ignorance of the subjects with which they had to deal. A few instances will show the almost incredible character of that ignorance.

In *Westerton v. Liddell* the court said that the first Prayer-Book of Edward VI. 'spoke of the rite itself as the Lord's Supper, commonly called the High Mass.' This blunder betrays ignorance of the very rudiments of liturgiology.

Again, comparing and contrasting the first and second Prayer-Books of Edward VI., the court said:—

But by the time when the second Prayer-Book was introduced, a great change had taken place in the opinion of the English Church, and the consequence was that, on the revision of the Service, these several matters were completely altered; the use of the surplice was substituted for the several vestments previously enjoined; *the prayer*

*for consecration of the elements was omitted, though in the present Prayer Book it was restored.*¹

Just imagine a final Court of Appeal seriously declaring that the Prayer of Consecration in the Prayer-Book was omitted for a hundred years, from 1552 to 1662. One can see how the court fell into this error. In Cardwell's 'Two Books of Common Prayer compared with each other' the contents of these Books are put in parallel columns, and the parts which the two Books have in common are omitted from the column containing the Book of 1552. From this their Lordships of the Judicial Committee hastily concluded that the Prayer of Consecration was omitted altogether from the Book of 1552. Is it tolerable that the final decision of ecclesiastical affairs should be entrusted to a tribunal so entirely ignorant of the whole domain of liturgiology? Surely it is not necessary to be a 'Ritualist' (in the popular sense of that word) in order to see and deprecate the scandal of such a state of things.

The court was equally astray in affirming that 'by the time when the second Prayer-Book was introduced a great change had taken place in the opinion of the English Church.' No change at all 'had taken place in the opinion of the English

¹ This extraordinary blunder was pointed out as soon as the judgment was published, and for the passage in italics the following words were substituted in the official Report: 'material alterations were made in the prayer of consecration.'

Church.' The second Prayer-Book was not the offspring of the Church of England. Its parentage was foreign, not English. Calvin, Bucer, Peter Martyr, and the English exiles trained by them, were the real authors of the Book of 1552. The English Church had no opportunity of revising, or of expressing any opinion upon it. And even its Parliamentary authority is somewhat shady. The Prayer-Book which the second Act of Uniformity sanctioned was withdrawn from publication before the date on which it was to come into use; and it never came into use except partially in London and the neighbourhood. Cranmer expressed a doubt of the legality of the Book after being 'altered again without Parliament.'¹ Indeed, the Judicial Committee would have found a decisive refutation of their theory of 'a great change in the opinion of the English Church' between the first Prayer-Book and the second, if they had only taken the trouble to read the Act of Uniformity which sanctioned the second Book.

The preamble of that Act bears the following emphatic testimony to the unqualified merits of the first Book:—

Whereas there has been a very godly order set forth by the authority of Parliament for common prayer and administration of the Sacraments to be used in the mother tongue within the Church of England, agreeable to the Word of God and the Primitive Church, very com-

¹ See p. 166.

fortable to all good people desiring to live in Christian conversation, and most profitable to the estate of this realm, upon the which the mercy, favour, and blessing of Almighty God is in no wise so readily and plenteously possessed as by common prayer, due use of the Sacraments and often preaching of Gospel, with the devotion of the hearers :

And yet, this notwithstanding, a great number of people in divers parts of this realm, following their own sensuality, and living either without knowledge or due fear of God, do wilfully and damnably before Almighty God abstain and refuse to come to their parish churches and other places where common prayer, administration of the Sacraments, and preaching of the Word of God is used upon the Sundays and other days ordained to be holy days.

For reformation *hereof* [that is, of the prevailing ungodliness, not of the first Prayer-Book], be it enacted, &c.

The Act proceeds to enact stringent ecclesiastical and civil penalties against all who shall continue to abstain from attendance on Church services and administration of Sacraments ; and it ' charges all the archbishops, bishops, and other ordinaries ' to see to the execution of the law in this respect. And to enable them to do this effectually the Act gives them ampler power ' to reform, correct, and punish . . . all and singular persons which shall offend within any their jurisdictions or dioceses.'

The Act, moreover, goes on to say that such objections as were made to the first Prayer-Book were caused ' rather by the curiosity of the minister and mistakers than of any other worthy cause.'

The truth is that the second Prayer-Book owes its origin to two causes. Edward VI., under the influence of the Swiss Reformers, threatened that if Convocation and Parliament thwarted him he would use his royal prerogative in furthering the views of Calvin and his disciples. His Council, on the other hand, supported him in his high-handed policy because that policy promised no small amount of plunder, the greater part of which was likely to find its way into their own coffers. Vestments for altar and clergy, gold and silver and jewelled plate, valuable pictures, and books, and manuscripts, if abolished as superstitious, would be valuable as plunder. Not only church ornaments of great value, but priceless libraries, the property of cathedral, and college, and monastic institutions, were sold and dispersed among private families. The library of Westminster Abbey was involved in the general ruin. The King sent a letter for purging it of superstitious books and manuscripts. 'The persons are not named, but the business was to cull out all superstitious books, as missals, legends, and such like, and to deliver the furniture of the books, being either gold or silver, to Sir Anthony Aucher.' 'These books,' says Collier, with caustic humour, 'were many of them plated with gold and silver, and curiously embossed: *this, as far as we can collect, was the superstition that destroyed them.*' The libraries of Merton College, Balliol, Exeter, Queen's and Lincoln were

similarly destroyed. 'The public library—made up in a great measure of the books given by Angerville, Bishop of Durham; Cobham, Bishop of Worcester; and Humphrey, the good Duke of Gloucester—underwent the same fate. The books marked with red were generally condemned at a venture for Popery, and where circles and mathematical figures were found they were looked upon as compositions of magic, and either torn or burnt; and thus an inestimable collection, both for number and value, were seized by the visitors, turned into bonfires, or given to binders and tailors for the use of their trade.'¹ And it is to this wanton ruin, the fruit of greed or senseless bigotry, that our courts of justice have sometimes appealed in proof of the illegality of Church ornaments thus destroyed!

So much as to the 'great change in the opinion of the English Church' between the first and second Prayer-Books of Edward VI. And the worst of it is that the judges are not agreed among themselves. The Judicial Committee in the case of *Westerton v. Liddell* declared, as we have seen, that the two Prayer-Books of Edward were materially different in consequence of 'a great change' in the religious belief of the English Church in the interval. But the same court in a previous case declared that there was no material change between the two Prayer-Books of Edward,

¹ *Hist.* v. 417.

or between either and the Prayer-Book of Elizabeth.¹

Nor is the Judicial Committee the only secular tribunal which is apt to lose its way hopelessly among the landmarks of history. In adjudicating on one of the issues of the Gorham case the Court of King's Bench decided that King Henry VIII. was 'impatient to marry Anne Boleyn' five months after her daughter Elizabeth was born; thus indirectly pronouncing the great queen illegitimate. The same court, on the same occasion, declared that Sir Thomas More was Lord Chancellor when 24 Hen. VIII. c. 12 was passed: that is, eleven months after More had resigned the Great Seal. It made a similar blunder in the case of Lord Chancellor Audley. Sir Fitzroy Kelly made fine sport of these historical fictions in the Court of Common Pleas. But are they not almost inevitable in the case of judges who are obliged to grope their way in the dark among matters which lie outside their studies and professional practice?

I have the highest respect for lawyers, but 'sutor ne ultra crepidam' is as applicable to the legal profession as to any other. A man may be a great lawyer without being necessarily more competent than an ordinary mortal to sit in judgment on a disputed passage in Plato or Tacitus, and is likely to be less competent than a man who

¹ *Mastin v. Escott*. The judgment was delivered by Lord Brougham.

has made Plato or Tacitus a special study ; and is it not true, though it may seem paradoxical to say so, that the more successful a lawyer is in his own profession, the less likely he is to be a good judge in matters outside his own profession ? What time has a successful barrister to master questions which lie outside his ordinary studies, and which he may think uninteresting and unprofitable ? Indeed his opportunity of mastering even his own branch of the law is in an inverse ratio to the extent of his practice. Lord Keeper North observed that what a lawyer did not learn while he was a student he would be little likely to learn at a later time. And it is related of Lord Loughborough that, thinking he would have more leisure after reaching the judicial bench, he began to study the history of our law after he became Lord Chief Justice, but had to give it up, being too tired for serious intellectual work after sitting six hours a day in court.¹ When I read the record of such a strenuous life as that of the late Lord Selborne, who, after pleading all day in court, his mind on full stretch, had sometimes to sit up the whole night to master a case, my wonder is not that he should go astray on the question of the Advertisements of 1566, but that he should know as much of ecclesiastical history as he did. The Judicial Committee of the Privy Council usually consist of retired judges, or judges borrowed from other

¹ *Auckland Correspondence*, i. 382.

courts, and retired officials from India and the Colonies. What can such men know, however great their ability and their skill in matters with which they are conversant, about such questions as those discussed in this book? Such knowledge is not obtained by the light of nature, nor can it be acquired in a few days. Is it not probable that an ordinary person of average ability and education, who has made a special study of such questions, is more likely to arrive at right conclusions than a lawyer, however eminent, who has never studied them at all?

Indeed I am inclined to think that the study of the common law has a tendency to mislead rather than assist a common law judge in adjudicating in ecclesiastical cases. Burke says that 'no man comprehends less the majesty of the Constitution than the *nisi prius* lawyer, who is always dealing with technicalities and precedents.' Whether that be true or not as regards constitutional law, it can hardly be doubted that it holds good in the case of ecclesiastical law. The principles and doctrines of these two branches of the law are different, if not mutually antagonistic. The principle underlying ecclesiastical law is traditional belief, sanctioned by Church authority, and enshrined in the common law of Christendom. The principle of secular law is national opinion enshrined from time to time in positive enactments, and therefore changing according to the

varying moods of the national sentiment and temper. The former accordingly retains the old doctrine and ritual where it has not been expressly altered; the latter holds, on the contrary, that 'omission is prohibition.' The former principle is laid down very authoritatively by the Church of England. The canon of 1571 concerning preachers enjoins the clergy 'never to preach anything to be religiously held and believed by the people except what is agreeable to the doctrine of the Old or New Testament, and which the Catholic Fathers and bishops have collected from that doctrine.' The thirtieth canon of 1603 explains the rationale of the canon of 1571. After defending against the Puritans the use of the sign of the cross in baptism, the canon proceeds to lay down as follows the general principle underlying the appeal of the English Church to antiquity:

Thirdly, it must be confessed that in process of time the sign of the cross was greatly abused in the Church of Rome, especially after that corruption of Popery had once possessed it. But the abuse of a thing doth not take away the lawful use of it. Nay, so far was it from the purpose of the Church of England to forsake and reject the Churches of Italy, France, Spain, Germany, or any such-like Churches, in all things which they held and practised, that, as the Apology of the Church of England confesseth, it doth with reverence retain those ceremonies which do neither endamage the Church of God, nor offend the minds of sober men; and only departed from them in those particular points wherein they were fallen both from themselves in their ancient

integrity, and from the Apostolical Churches which were their first founders.

Lastly, the use of the sign of the cross in baptism, being thus purged of all Popish superstition and error, and reduced in the Church of England to the primary institution of it, upon those true rules of doctrine concerning things indifferent, which are consonant to the Word of God and the judgment of the ancient Fathers, we hold it the part of every private man, both minister and other, reverently to retain the use of it prescribed by public authority.

This constitutional doctrine was confirmed by Act of Parliament in the year 1559, which says emphatically that 'such person or persons' as may hereafter 'have or execute any jurisdiction, power, or authority spiritual . . . shall not in any wise have authority or power to order, determine, or adjudge any matter or cause to be heresy, but only such as heretofore have been determined, ordered, or adjudged to be heresy, by the authority of the Canonical Scriptures, or by the first four general councils, or any of them, or by any other general council wherein the same was declared heresy by the express and plain words of the said Canonical Scriptures, or such as hereafter shall be ordered, judged, or determined by the High Court of Parliament of this realm, with the assent of the clergy in their Convocation.'¹

The reader will find, by looking at Appendix A, that my principal examiners on the Royal Com-

¹ 1 Eliz. c. 1.

mission brushed all this aside as irrelevant. They repudiated, as entirely outside the province of their inquiry, the idea of a common law of Christendom in doctrine and ceremonial by which the Church of England was confessedly bound in matters which were not expressly abrogated. The questions put to me by Sir Lewis Dibdin, Sir Edward Clarke, and Dr. Gibson are saturated with that fallacy, and it pervades all the decisions of the Judicial Committee. In fact the principle of interpretation adopted when the Judicial Committee was substituted for the Court of Delegates was nothing less than a revolution in the English Constitution, as it was settled by the statute of 'The Restraint of Appeals,'¹ which laid down in clear and noble language the respective domains of the ecclesiastical and civil judicatures and their mutual relations. Here is the preamble, which cannot be abridged without spoiling it :—

Where, by divers sundry old authorities, histories, and chronicles, it is manifestly explained and expressed that this Realm of England is an empire, and so hath been accepted in the world, governed by one supreme head and king, having the dignity and royal estate of the imperial crown of the same ; unto whom a body politic, compact of all sorts and degrees of people, divided in terms and by names of spirituality and temporality, ben bounden and owen to bear, next to God, a natural and humble obedience : he being also institute and furnished by the goodness and sufferance of Almighty God with

¹ 24 Hen. VIII. c. 12.

plenary, whole, and entire power, preëminence, authority, prerogative, and jurisdiction, to render and yield justice and final determination to all manner of folk, residents, or subjects within this his Realm, in all causes, matters, debates, and contentions happening to occur, insurge, or begin within the limits thereof, without restraint or provocation to any foreign princes or potentates of the world: the body spiritual whereof having power, when any cause of the law divine happened to come in question, or of spiritual learning, then it was declared, interpreted, and shown by that part of the said body politic called the spirituality, now being usually called the English Church, which always hath been reputed, and also found of that sort, that both for knowledge, integrity, and sufficiency of number, it hath been always thought, and is also at this hour, sufficient and meet of itself, without the intermeddling of any exterior person or persons, to declare and determine all such doubts, and to administer all such offices and duties, as to their rooms spiritual doth appertain: for the due administration whereof, and to keep them from corruption and sinister affection, the king's most noble progenitors, and the antecessors of the nobles of this Realm, have sufficiently endowed the said Church both with honour and possessions: and the law temporal, for trial of property of lands and goods, and for the conservation of the people of this Realm in unity and peace, without ravin or spoil, was and yet is administered, adjudged, and executed, by sundry judges and ministers of the other part of the said body politic, called the temporality: and both their authorities and jurisdictions do conjoin together in due administration of justice, the one to help the other.

This settlement lasted in its main features down to the Acts of 1832 and 1833 which established

the Judicial Committee on its present basis, and thereby destroyed completely the ecclesiastical judicature and put a purely secular tribunal in its place. And, as if this were not enough, the Judicial Committee has been so manipulated in practice that its procedure in ecclesiastical causes constitutes a gross violation of one of the fundamental principles of British justice. It now claims, for the sake of policy, a dual character, which is not only inconsistent with its origin, but is destructive of one's elementary conception of justice in addition. It claims to be both a consultative body and a Final Court of Appeal: claims which are mutually destructive. After the Ridsdale case in 1877 Lord Cairns, who was then Lord Chancellor, finding that it became known that the judges were not unanimous in their decision, issued an Order in Council imposing silence and secrecy on the members of the Judicial Committee, on the ground that the Committee was a consultative body and not a court exercising judicial jurisdiction.¹ The late Lord Selborne defended this rule by anticipation in a debate in the House of Commons in 1867. His words are :—

I now come to the Judicial Committee of the Privy Council. This is a very eminent tribunal. . . . The Court undoubtedly has worked well, and I cannot but

¹ See speech by Lord Cairns in a debate on the Judicial Committee on April 30, 1872: 'Beyond all doubt the Judicial Committee has no jurisdiction, and is only a consultative body.' Surely this raises the

think it in some respects a model of what a good Supreme Court of Appeal ought to be. . . . It gives judgment by the mouth of a single judge, usually well considered, and written or even printed, and suppresses the difference of views which may possibly exist among the members of the tribunal. I cannot but think the practice of the Judicial Committee in that respect a wise one, giving the authoritative judgment of the Court, from which there is no further appeal, without the expression of individual opinions calculated to detract from or neutralise its authority.

This is an amazing allegation from an eminent Equity lawyer, who became soon afterwards Lord High Chancellor. If the suppression of 'difference of views' on the part of the Judicial Committee be a 'wise' thing, forming 'a model of what a good Supreme Court of Appeal ought to be,' one may ask in wonder why this mark of model wisdom should not characterise all our courts of law. Not long after this, Lord Selborne himself, in conjunction with Sir John (afterwards Lord) Coleridge and Dr. Deane, gave the following opinion on the supremacy of the Crown and its power over causes in the courts of common law :—

The Crown is supreme over all causes ecclesiastical in the same, and in no other sense, and to no greater extent than the Crown is supreme over causes temporal, and by

question whether the so-called judgments of the Judicial Committee have any coercive validity. How can the Committee be '*only* a consultative body' and a final court of supreme jurisdiction? But that is what it claims to be. In truth there is no end to the labyrinth of confusion in which this hybrid tribunal has involved the course of justice.

means of the various courts of law. The Submission of the Clergy Act made it lawful for the parties grieved by any decision of an ecclesiastical judge to appeal to the King in Chancery, for which Court of Appeal the Judicial Committee of the Privy Council is now substituted. *This is an appellate jurisdiction.*

When the custom of suppressing individual opinions in the Judicial Committee came before a Committee of the House of Lords in 1872, Lord Westbury, one of the ablest lawyers who ever sat on the woolsack, declared bluntly that the practice which Lord Selborne had eulogised in the House of Commons—namely, the delivery of a judgment as the unanimous opinion of the court when it was not so—was ‘inconsistent with the truth.’

Lord Cairns’s Order in Council on February 4, 1878, imposing silence and secrecy on the judges of the Judicial Committee, was a revival of one of the worst precedents of Stuart despotism : namely, the Order in Council of 1627, which suppressed differences of opinion among the members of the Council. It is alien from the whole genius of British justice and antagonistic to the practice and precedents of our courts. The whole subject was treated exhaustively by a Committee of the House of Commons in connection with the trial of Warren Hastings. The Report of the Committee, which was written by Burke, and supported by the opinions of the most distinguished members of

both Houses of Parliament and of all the judges who were consulted in the matter, is so luminous, and so pertinent to my complaint against the Judicial Committee, that I will venture to make some extracts from it as follows :—

Upon the soundest and best precedents the Lords have improved on the principles of publicity and equality, and have called upon the parties severally to argue the matter of law previously to a reference to the judges; who, on their parts, have afterwards *in open court*,¹ delivered their opinions, often by the mouth of one of the judges, speaking for himself and the rest, and in their presence: and sometimes all the judges have delivered their opinion *seriatim* (even when they have been unanimous in it), together with their reasons upon which their opinion has been founded. This, from the most early times, has been the course in all judgments in the House of Peers. Formerly even the record contained the reasons of the decision. ‘The reason wherefore’ (said Lord Coke) ‘the records of Parliaments have been so highly extolled is that therein is set down, in cases of difficulty, not only the judgment and resolution, but *the reasons and causes of the same* by so great advice.’

Upon a point of law in the trial of Lord Strafford ‘the judges delivered their opinion, and each argued it (though they were all agreed) *seriatim* and *in open court*.’

Again :—

Your Committee do not find any positive law which binds the judges of the Courts in Westminster Hall

¹ Here and elsewhere in these extracts the italics are Burke's.

publicly to give a reasoned opinion from the bench in support of their judgment upon matters that are stated before them. But the course hath prevailed from the oldest times. It hath been so general and so uniform that it must be considered as the law of the land. It has prevailed, so far as we can discern, not only in all the courts which now exist, whether of law or equity, but in those which have been suppressed or disused, such as the Court of Wards and the Star Chamber. An author, quoted by Rushworth, speaking of the constitution of that Chamber, says, 'and so it was resolved *by the judges on reference made to them ; and their opinion, after deliberate hearing and view of former precedents, was published in open court.*' It appears elsewhere in the same compiler that all their proceedings were public, even in deliberating previous to judgment. The judges in their reasonings have always been used to observe on the arguments employed by the counsel on either side, and on the authorities cited by them, assigning the grounds for rejecting the authorities which they reject, or for adopting those to which they adhere, or for a different construction of law, according to occasion. This publicity, not only of decision but of deliberation, is not confined to these several courts, whether of law or equity, whether above or at *nisi prius*, but it prevails where they are assembled, in the Exchequer Chamber or at Serjeants' Inn, or wherever matters came before the judges collectively for consultation and revision. It seems to your Committee to be moulded in the essential frame and constitution of British judicature. Your Committee conceives that the English jurisprudence has not any other sure foundation, nor consequently the lives and property of the subject any sure hold, but in the maxims, rules, and principles, and juridical traditionary line of decisions contained in the notes taken, and from time to time published (mostly under the sanction of the judges), called reports.

Again :—

To give judgment privately is to put an end to reports, and to put an end to reports is to put an end to the law of England. It was fortunate for the Constitution of this Kingdom that, in the judicial proceedings in the case of shipmoney, the judges did not venture to depart from the ancient course. They gave and they argued their judgment in open court. Their reasons were publicly given, and the reasons assigned for their judgment took away all its authority.¹ The great historian, Clarendon, at that time a young lawyer, has told us that the judges gave as law from the bench what every man in the hall knew not to be law.

Once more :—

Your Committee is of opinion that nothing better could be devised by human wisdom than argued judgments, publicly delivered, for preserving unbroken the great traditional body of the law, and for marking, whilst that great body remained unaltered, every variation in the appreciation and the construction of particular parts; for pointing out the ground of each variation, and for enabling the learned of the Bar, and all intelligent laymen, to distinguish those changes made for the advancement of a more solid, equitable, and substantial justice, according to the variable nature of human affairs, a progressive experience and the improvement of moral philosophy, from those hazardous changes in any of the ancient opinions and decisions which may arise from ignorance, from levity, from false refinement, from a spirit of inno-

¹ I believe that I have shown in the course of this work that this criticism is exactly applicable to the ecclesiastical judgments of the Judicial Committee in so far as the reasons for them have been published.

vation, or from other motives of a nature not more justifiable.¹

Previously to Lord Cairns's Order in Council forbidding the publication of any differences of opinion on the part of the judges in the Judicial Committee, it was optional with that court to publish such differences or not. Even that was most objectionable, and was severely condemned by Lord St. Leonards, whom the late Chief Baron Fitzroy Kelly, in his trenchant criticism on Lord Cairns's Order, calls 'the most learned and able lawyer of this (the nineteenth) century, and the judge of the longest experience among the judges of the present age.' The Chief Baron quotes the following solemn declaration by Lord St. Leonards :

Now, for myself, I would not sit upon any appeal or any court in the kingdom if I were not at liberty to express the opinion which I entertain ; and I am clearly of opinion that the law never can flourish as a science unless the judge is permitted to do so. . . . Could that be endured? Would any man do it? Ought it to be done?

The Chief Baron adds : ' The learned lord kept his word to the end of his life, and never once, after delivery of these opinions, sat as a Privy Councillor in the Judicial Committee. I would further say that he often expressed these sentiments, in reference to the Judicial Committee, in private

¹ Burke's *Works*, viii. 55, 56, 63, 64, Rivington's edition.

conversation with myself, during the last ten years of his life.'¹

The last—unfortunately, as I presume to think—of the Chief Barons quotes Lord Brougham, who established the Judicial Committee, as saying that the advocates of the suppression of the differences of opinion on the part of the judges 'forget the compensation which is afforded in respect of responsibility itself from the watchful eyes of brother judges; a tribunal fully more formidable than the public or even the Bar, and a tribunal whose members must needs know a great deal more intimately than any spectators the errors and negligences of each other . . . The same reasoners forget the security which is afforded, and may always be obtained, against improper judicial appointments, or inefficient judicial exertions, by requiring each judge to give, either always or in rotation, his reasons, and still more by requiring on great questions that these reasons be reduced to writing.' This course of proceeding, which he recommends, was adopted while Lord Brougham presided over the Judicial Committee. Where a difference of opinion existed it was always avowed. And therefore, as Chief Baron Fitzroy Kelly says, 'Lord Brougham must have agreed with Lord Westbury that to state a judgment or opinion to be the judgment or opinion of *their*

¹ 'A Letter to the Lord High Chancellor upon the late Order in Council of the 4th of February, 1878,' p. 49.

lordships is really not consistent with the truth, unless it be unanimous; and when there is a difference of opinion that it can be described only as the judgment of "the majority." And if this be so, to declare that a judgment is the judgment of their lordships is really to declare, if the words are read and interpreted according to their natural meaning, that which is absolutely untrue in fact. And though indeed men may differ as to the meaning of words, if the Lord Chancellor of the day happens himself to dissent from the judgment which he is called upon to pronounce as the organ and chief of the court, I cannot understand how he can declare with a safe conscience that "their lordships" (and not a majority of their lordships) "are of opinion that the appeal" (as it may be) "should be allowed or dismissed."

In accordance with these sentiments Lord Chief Baron Kelly repudiated with indignation Lord Chancellor Cairns's Order in Council, accusing of violation of oath and of duty to the Sovereign any Privy Councillor who divulged differences of opinion among the members of the court. After declaring that Lord Cairns's Order in Council in effect 'stigmatised as the violators of their duty and of their oaths' 'no less than seven prelates, including in their number five archbishops, and nineteen judges, including five who had attained the office of Lord High Chancellor,' the Chief Baron proceeds:—

My Lord, I myself should shrink with unfeigned humility from even the mention of my name in the same category with these eminent and distinguished personages, but I, who must upon the same ground have been guilty likewise of this violation of my duty to my Sovereign and my oath of secrecy in my office of Privy Councillor, have to defend myself against the stigma thus cast upon me, and the dishonour which it would attach to my name; for I have at many times and in many places, since the judgment in the Ridsdale case was delivered, freely, openly, and publicly stated that I, with two other Privy Councillors (one of them perhaps the most learned and experienced in ecclesiastical causes among living men), and without ever dreaming that I was violating my duty to my Sovereign and my oath of office—that I and these two eminent Privy Councillors had dissented from the judgment of the majority.

The question is a very important one, and may become a very acute one on the publication of the Report of the Royal Commission on Ecclesiastical Discipline. I offer no apology, therefore, for making one more quotation from Chief Baron Kelly's pamphlet. He was leading counsel in the case of *Westerton v. Liddell*, and had studied the question with great care, as I know personally, for I enjoyed the privilege of his friendship and often talked those matters over with him. Like all men who plead for justice to an unpopular party, Lord Chief Baron Kelly was himself accused of being a Ritualist; to which he made reply: 'I am quite aware of the prejudice which not unnaturally exists in the minds of many eminent and excellent

persons against what is called "Ritualism." I have myself been called a "Ritualist"; but I am no more a Ritualist than I am a Mohammedan or a Russian. I have seen with regret that in some churches what are called the High Church clergy have indulged in excesses, in what I myself have thought mere matters of form, in the performance of divine service, with more to the same effect. But he failed to see that the unpopularity of certain practices and ceremonies had anything whatever to do with their legality; and he recognised the insuperable difficulties which the judgments of the Judicial Committee created for the clergy. For instance:—

But here a new danger arises. Let me again take the case of Mr. Ridsdale as example. He finds from the judgment of their lordships that it is unlawful to wear the vestments mentioned in the alleged Rubric, and is desirous of knowing upon what authority that judgment rests, inasmuch as he knows that it is his duty, on the one hand, to obey the law, and he feels that it is his duty also, and he believes a higher duty, to observe the Articles of Religion and conform in all things to the true doctrines of the Church of England in the performance of Divine Service; and he conscientiously believes that it is his duty to wear these vestments at a particular period of the Service, on these grounds. Some twelve years ago the questions about these vestments having arisen, but having as he and many other Ministers of the Gospel, Privy Councillors, and Judges supposed, been definitely settled in favour of the right, if not the duty, to wear these vestments, by what fell from the Judges in the case of

Westerton v. Liddell, but also because, the question having been revived, a body of the clergy submitted a case to some seven or eight of the most eminent men at the Bar of England upon this very question, including (I would omit to mention myself, though I was one consulted) the late Lord Chief Justice Bovill, the present Chief Justice of the Common Pleas, Lord Coleridge, Sir Robert Phillimore, Sir James Hannen, now Judge of the Divorce Court, and Lord Justice James, now all Privy Councillors ; and to these were added Dr. Deane, Q.C., Mr. Prideaux, Q.C., and Mr. J. Cutler, Professor of Law, King's College ; and all, without any approach to a doubt, advised that the Rubric was as much a part of the Prayer-Book, and made law by the Act of Parliament, as the Lord's Prayer, the Creeds, or the Litany ; and as affecting the obligatory nature of the Rubric, to this may be added that part of the judgment of your Lordships in the Ridsdale case, in which it was held that this Rubric, if law at all, was imperative or obligatory. If, in the perplexity and difficulty in which Mr. Ridsdale was thus placed, he had appealed to your Lordship or any member of the Privy Council, praying to be informed upon what weight of authority this judgment rested, seeing that he was called upon on the one hand to obey the law, and so to do violence to his conscience, or, on the other hand, rather than violate what he believed to be a paramount duty, to continue to wear the vestments, and so to expose himself to another prosecution, and ultimately to privation, which to him would be destitution and ruin, or to resign his benefice, which would have the same effect ; if in this state of things he had appealed, as I have observed, to any member of the Privy Council, the answer to him, if indeed he had been fortunate enough to obtain an answer, must have been : ' Our judgment makes the law, and you are not to know, and we are forbidden to tell, whether the judgment was unanimous or whether, as it

may be, the Lord Chancellor and Lord Selborne and all of the highest authority in the Council were not in the minority and overruled by half a dozen judges, who, though eminent and most learned in the law, were wholly unfamiliar with these ecclesiastical and doctrinal questions, which you of the Church have studied throughout the greater part of your lives.'

Add to this that the Lord Chancellor of the day may, at his discretion, pack the Committee with partisans of his own religious opinions, so as to secure a judgment in favour of his own views and prejudices. In his work on the British Constitution¹ Lord Brougham, who remodelled the Judicial Committee in 1833, says :—

The Judges, four at least, and there are seldom more, take the causes in rotation, as virtually presiding, and each in his turn thus draws up the judgment with the reasons and communicates it to the others, who make such alterations as they think fit, and when all are agreed it is delivered as the judgment of the Court; or, if they differ, as that of the majority.

In secular matters the procedure of the Judicial Committee, described by Lord Brougham, has generally been followed; the judges have sat by rotation and delivered their judgment in each case as that of the majority alone when there has been a difference of opinion. In ecclesiastical appeals the court is now usually constituted by the nomination of the Lord Chancellor, who may thus, from

¹ P. 378.

motives of policy and what he may conceive to be the interest of the Church or State, form a court *ad hoc* to carry out a particular policy. And since Lord Cairns's Order in Council of February 4, 1878, the Judicial Committee has ceased to be even a *judicial* tribunal, and is now a consultative body only, deliberating in secret and suppressing any differences of opinion among its members. It is therefore possible that the court may be equally divided in opinion and the majority may be constituted by the casting vote of the President, while the minority thus artificially created may in authority and learning far outweigh the official majority. But this is concealed from the public. We should not have known without Chief Baron Fitzroy Kelly's revelation that himself and two other members of the court, 'one of them perhaps the most learned and experienced in ecclesiastical causes among living men,' dissented from the judgment in the Ridsdale case. I venture to think that in no other matter would the anomalous constitution of the Judicial Committee and its despotic procedure, borrowed from one of the most arbitrary periods of English history, be endured. But anything appears to be considered good enough as an ecclesiastical tribunal. As a matter of fact, the Judicial Committee has forfeited its title to the appellation of 'judicial' since it declared itself to be a consultative body without jurisdiction. Is it not monstrous that, in order to find an excuse for

suppressing differences of opinion among its members, the court should declare itself to be not a court at all, yet issue judgments which all concerned are bidden to obey without appeal on pain of being denounced and punished as law-breakers.

For the reasons, then, which I have given in this Introduction, and for others stated in the body of this volume, I submit that the Judicial Committee has proved itself utterly incompetent as a Final Court of Appeal in ecclesiastical causes. Policy, prejudice, unconscious bias, ignorance, have presided over its ecclesiastical judgments. The late Bishop Stubbs, with his passion for justice and his reverence for historical truth, did not hesitate, in a letter to a friend (afterwards published), to accuse the Judicial Committee of 'deliberate falsehood' in its ecclesiastical decisions. So impossible did it seem to such a master of historical erudition to explain in any other way the violent perversions of history which have usually characterised the judgments of that august tribunal. I have never made such an accusation myself, because my experience has taught me that an inveterate prejudice has power to blind the mind to the plainest facts. But it is well to bear in mind the impression which the proceedings of the Judicial Committee have made on a mind so competent and so fair and impartial as that of Dr. Stubbs. Two extracts from letters of Mr. Gladstone to Bishop Wilberforce will show that those proceedings made

an equally painful impression on his mind. For example:—

Two things are pretty plain: the first, that not only with executive authorities, but in the sacred halls of justice, there are now two measures, and not one, in use: the strait one for those supposed to err in believing too much, and the other for those who believe too little. The second, that this is another blow at the dogmatic principle in the Established Church: the principle on which as a Church it rests, and on which as an Establishment it seems less and less permitted to rest.

Again:—

It is neither disestablishment, nor even loss of dogmatic truth, which I look upon as the greatest danger before us, but it is the loss of those elementary principles of right and wrong on which Christianity itself must be built. The present position of the Church of England is gradually approximating to the Erastian theory, that the business of an Establishment is to teach all sorts of doctrines and to provide for ordinances for all sorts of people, to be used at their own option. It must become, if uncorrected, in lapse of time a thoroughly immoral position.¹

I am ignorant, of course, of the character of the Report about to be presented by the Royal Commission on Ecclesiastical Discipline, and of the recommendations which the Commission may make. But of one thing I am very sure: namely, that peace cannot be restored to the Church till there is an end made of enforcing the judgments of the

¹ *Life of Bishop Wilberforce*, ii. 353.

Judicial Committee as the law of the Church, and until another tribunal has been substituted for that discredited court. The principle and pledge incorporated in 24 Hen. VIII. c. 12, which was rashly abolished when the Court of Delegates was superseded by the Judicial Committee, must be restored and redeemed. 'When any cause of the law divine happens to come in question, or of spiritual learning,' it must be 'declared, interpreted, and shown by that part of the body politic called the spirituality.' And in case the Courts of the Bishops and Archbishops failed to do justice, 25 Hen. VIII. c. 19 (*The Submission of the Clergy and Restraint of Appeals*) provided an appeal to the King in Chancery.¹ I quote the words:—

And for lack of justice in the Courts of the Archbishops of this realm, or in any the King's dominions,

¹ Not to the King in Council, as has been sometimes erroneously alleged, e.g. in Brodrick and Fremantle's *Ecclesiastical Judgments of the Privy Council*, p. 4: 'The claim to hear final appeals in matters ecclesiastical, being preëminently one of the original prerogatives of the Crown, is, as such, naturally exercised by the King in Council.' On the contrary, the King in Council has never exercised judicial jurisdiction of any kind. Down to 1832, when the Court of Delegates was abolished, not a single case exists of an appeal to the King in Council in ecclesiastical causes. It was invariably to the King in Chancery. The difference is fundamental. For in Chancery the King exercised his prerogative as the fountain of justice through a Court of Delegates, the majority of whom were necessarily ecclesiastics, or ecclesiastical lawyers: that is, laymen learned in both canon and civil law. The Judicial Committee, establishing an appeal to the King in Council—besides its proved incompetence in other respects—was thus surreptitiously a violent infringement of the two great Reformation statutes, *The Restraint of Appeals*, and *The Submission of the Clergy and Restraint of Appeals*.

it shall be lawful for the parties grieved to appeal to the King's Majesty in the King's Court of Chancery, and that upon every such appeal a commission shall be directed under the Great Seal to such persons as shall be named by the King's Highness, his heirs or successors, like as in case of appeal from the Admiral's Court, to hear and definitely determine such appeals and the causes concerning the same. Which Commissioners, so by the King's Highness, his heirs or successors, to be named or appointed, shall have full power and authority to hear and definitely determine every such appeal, with the causes and all circumstances concerning the same; and that such judgment and sentence as the said Commissioners shall make and decree, in and upon 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.

This is quite plain. The members of the Court of Delegates appointed to hear appeals in ecclesiastical causes were to be 'like as in cases of appeal from the Admiral's Court.' In other words, as the members appointed to hear appeals in Admiralty cases must be persons skilled in Admiralty law, so persons delegated to hear appeals in ecclesiastical cases must be persons skilled in ecclesiastical law; ordinarily, bishops or ecclesiastical dignitaries of requisite learning; or, after the Act allowing laymen to be ecclesiastical judges, trained ecclesiastical lawyers.

There is an ignorant prejudice against ecclesiastical courts. But surely it stands to reason that judges in ecclesiastical affairs should be men

learned in ecclesiastical law and history. It is so in Scotland. There is no appeal from the ecclesiastical courts there so long as they act within the limits of their jurisdiction and constitutional powers; and that system works well.

In truth this division of labour has been—at least till lately—the rule in all branches of our judicature. Let us hear Lord Coke:—

As every court of justice hath laws and customs for its direction, some by the common law, some by the civil and canon law, some by peculiar laws and customs, &c. ; so the High Court of Parliament *suis propriis legibus et consuetudinibus subsistit*. It is by the *lex et consuetudo parliamenti* that all weighty matters in any parliament moved, concerning the peers of the realm, or commons in parliament assembled, ought to be determined, adjudged, and discussed by the court of parliament, and not by the civil law, nor yet by the common law of this realm used in inferior courts. This is the reason that judges ought not to give any opinion of a matter of parliament, because it is not to be decided by the common laws, but *secundum legem et consuetudinem parliamenti*; and so the judges in divers parliaments have confessed.¹

When, in the year 1586, some Puritan members of the House of Commons sought to invade the domain of the spirituality, the Queen sent them a peremptory refusal by the mouth of the Lord Keeper, on the ground that ‘if anything were amiss it appertaineth to the clergy more properly

¹ Inst. 4, p. 15.

to see the same redressed.' In enforcing this royal message the Lord Keeper quoted the proverbial warning : *Unicuique in sua arte credendum. Quam quisque novit artem, in hac se exerceat. Navem agere ignarus navis timet.* This rule of 'every man to his art' prevails in all departments of the State except in the present administration of the law of the Church of England. The army, the navy, and the Established Church of Scotland, all have their own independent tribunals. Yet any haphazard pilot, though he may never have looked into a chart, and be quite incapable of taking a nautical observation, is considered perfectly qualified to navigate the good ship of the Church of England through all the dangers of the deep. But for the 'Divinity that shapes our ends,' she must have suffered shipwreck long ago.

It is not a question of the ability or integrity of the judges, but of their knowledge. Let us look at the composition of the Judicial Committee as compared with the Court of Delegates which it superseded. From 1534 to 1832 the Sovereign, acting through the Lord Chancellor, who must be a professed member of the Church of England, selected delegates from all England, including learned clergy or ecclesiastical lawyers learned in common law and ecclesiastical history. By the existing law the Lord Chancellor, or the President of the Council, who need not even be a Churchman, chooses out of a body of about thirty a quorum

who need not be more than three, and not one of whom is obliged to be a Churchman. Ecclesiastics are excluded from the court by law, and ecclesiastical lawyers by necessity. For the race of ecclesiastical lawyers came to an end as a branch of the law on the extinction of Doctors' Commons. As regards its judiciary, therefore, the position of the Church of England is anomalous and unique among religious bodies. A final court of appeal has been imposed upon her without her consent, not a single member of which is obliged to be a Churchman. Her doctrines and ritual are under the control of a quorum of three of the Judicial Committee; and not only so, but the whole quorum may and are likely to be quite ignorant of the questions on which they are called upon to give a final decision. But if they were all of necessity Churchmen it would make very little difference as to their competence. Let me put a favourable case.

Sir Edward Clarke is a sincere Churchman, a most able man, a brilliant advocate with a great reputation at the Bar, accomplished, conscientious; yet if any of my readers who understand these questions will look at Sir Edward Clarke's examination of me (see Appendix A, pp. 328-339) they will, I think, agree with me that this distinguished lawyer is rather impeded than aided by his practice at the Bar in arriving at right conclusions on questions of ecclesiastical law. He recognises no common law of Christendom in doctrine and ritual

though it is plainly laid down by the existing statute and canon law. He insisted on my giving him 'a definite rule' as to ritual and ceremonial observances, 'mandatory and not permissive.' When I answered that in the sixteenth century 'a standard was adopted which legalised everything within that standard, but something less was permitted because it was very difficult, if not impossible, in some cases to bring all the clergy up to the standard,' he retorted, 'Never mind what was the case at that time.' He could see no difference between 'a definite mandatory rule' and leaving 'everybody free to do as he liked.' He brushed aside, with an 'Oh, no,' my assertion that in the sixteenth century the Royal assent to a Bill by Commission put an end to the session unless special provision was made to the contrary. Yet what Sir Edward Clarke thus waved aside is an undoubted fact. He insisted that the disuse of the Eucharistic vestments proved their illegality, although it is an accepted maxim even of the common law that desuetude is not repeal, and that no statute can be abrogated except by a subsequent statute which repeals the former absolutely, or by necessary implication. And when I reminded him of the disuse of the cope, which nevertheless the Judicial Committee on two occasions pronounced not only legal, but obligatory, Sir Edward said, 'I assure you that I do not find any difficulty about the cope.' The law and practice of Elizabeth's

reign, he said, 'has nothing to do with it.' He must have an instance of some clergyman wearing a chasuble since 1662, when the last Act of Uniformity was passed, sanctioning the present form of the Ornaments Rubric; forgetting that the Convocation and Legislature of 1661-2 were simply and avowedly restoring the old law, not making a new one. I reminded him that the present form of the rubric was framed by Cosin, and that Cosin has declared emphatically that the intention of the rubric was to restore the disused vestments. But all in vain. Nothing short of positive evidence that the vestments had been worn since 1662 would satisfy Sir Edward Clarke. Some persons who have not gone deep into the question date the origin of the Church of England from the reign of Henry VIII.; others from the reign of Edward VI., or Elizabeth; and refuse to recognise any doctrine or ritual as legal which precedes those dates. Sir Edward Clarke draws the line at 1662, and will not recognise any custom or law of the English Church of an anterior date. That mental attitude, natural to a lawyer of Sir Edward's branch of the profession, and characteristic of the Judicial Committee, is a positive disqualification for sitting in a Court of Appeal in ecclesiastical causes.

Now I hold that the use or non-use of the Eucharistic vestments since 1662, or even since 1559, has nothing to do with their legality. The cope went completely out of use, even in cathedrals;

yet the Judicial Committee has declared that its use is still obligatory in law. Let it be remembered that the Eucharistic vestments were only used at the celebration of the Holy Communion, which was a rare event from the middle of Elizabeth's reign till the Restoration : generally once a quarter, in many places only once a year ; even in cathedrals only once a month. The tradition of the vestments thus died out in most parishes in England even before the death of Charles I. The Commonwealth made a clean sweep of all church ornaments, and at the Restoration the Church found herself empty and desolate. Laud, strong-willed as he was, found it impossible to restore the general use of the surplice in *any* ecclesiastical ministrations, and it was not restored universally before the Tractarian movement. The Royal Commissioners appointed in 1689 to revise the Prayer-Book recommended that the use of the surplice should be made optional. 'If any minister,' says the Report of the Commissioners, 'should come and declare to his bishop that he cannot satisfy his conscience in the use of the surplice in divine service, in that case the bishop shall dispense with his using it ; and if he shall see cause for it, he shall appoint a curate to officiate in a surplice.'

Fancy a parish in which the incumbent objected to the surplice and was dispensed from its use, but was assisted by a curate clothed in sur-

plice, to satisfy such parishioners as desired that garment! And the Commission which recommended that piebald piece of ritualism consisted of one Archbishop and nine Bishops, in addition to the Deans of St. Paul's, Canterbury, Peterborough, Winchester, Norwich, and of Christ Church; in addition also to two Regius Professors from Oxford and one from Cambridge, as well as the Master of Trinity and five archdeacons, besides five prebendaries. Fortunately, Convocation rejected the recommendations of the Commissioners and saved the Church from a grotesque and unworkable innovation. But the incident proves the absurdity of arguing on the assumption that the Ornaments Rubric was always obeyed even in regard to the surplice. It was no more obeyed, even when its meaning was not disputed, than the rubric which orders the use of the Athanasian Creed is now by a large number of the clergy. Dean Prideaux, a learned and distinguished divine of the period, published a pamphlet in defence of the recommendations of the Royal Commissioners. Here is his solution of the surplice question:—

As to the surplice, I am sufficiently satisfied that nothing is more unreasonable than those cavils which are risen against it. . . . But when through the malice of some in working strange objections against it into the minds of men, and the weakness of others in receiving and believing them, it is now become so great a stumbling-block of offence as to drive multitudes to forsake our churches, and be disaffected to the worship of God which

is performed in them, whatsoever was the reason of its first appointment, sure I am that from hence there is much greater to lay it aside, and appoint another that may be less offensive in its stead. The union of the Church and the benefit which the souls of men may receive thereby being certainly things of far greater moment than to be sacrificed to so trivial a matter as that of a garment.¹

‘Totally to lay aside’ the surplice was certainly a less objectionable as well as a more logical solution than providing a surpliced curate for the incumbent whose conscience would not let him put on his own back what he had no objection to see on the back of his curate.

But the surplice was not the only stumbling-block to scrupulous consciences at that time. The Athanasian Creed was another, and drastic proposals were made regarding it also, which I will pass by. The reader will be surprised to learn that kneeling at the reception of the Holy Communion was another grievance which it was proposed to abolish or leave optional.² I quote Dean Prideaux’s defence of the proposed alteration :—

Kneeling at the Sacrament of the Lord’s Supper is a posture so proper to that Holy Ordinance, that of all the constitutions of our Church this is the last I should be

¹ *A Letter to a Friend Relating to the Present Convocation at Westminster*, by Humphrey Prideaux, D.D., p. 49.

² The Commissioners recommended that a communicant who, after conference with his minister, declared that he could not conscientiously receive the Sacrament kneeling, might receive it standing.

willing to part with ; because I think the highest posture of devotion is that which is always most natural for us to be in when we are receiving from it so great and inestimable benefits as those which are reached out unto us in that Holy Mystery. But since the weakness of many, who are good and well-meaning men, has been so far imposed on by several fallacious arguments, which they have not skill enough to see through, as to think it sinful to receive in that posture, and hereby the table of the Lord becomes deserted, and the souls of many deprived of the benefit of that spiritual food which is administered thereon, contrary to the intention of our Saviour, who hath by no means empowered us on any such account as this to debar men from communion, and deprive them thereby of those benefits of salvation which we are sent to administer unto them, it is time for us now to abate our rigour in this matter ; and when we are not able to bring men up by reason of their weakness to the constitutions of the Church, be so far indulgent as to descend to them, and give them the Sacrament in their own way rather than, for the sake of a posture only, debar them of the benefits which their souls may receive thereby ; and to do otherwise, I doubt, will not only be a sin against Christian charity, in prejudicing the salvation of many, but also be an abuse of the commission entrusted to us.

A long sentence, as confused in syntax as in logic. I need not discuss other alterations which it was then proposed to make in the Prayer-Book. The recommendations of the Royal Commission were rejected by Convocation, and nothing came of them. This was fortunate, for if they had been carried into effect there can hardly be a doubt that they would have resulted in the disintegration

of the Church of England.¹ Who would have cared to maintain an ecclesiastical establishment in which the use of creeds and ceremonies was left

¹ It was fortunate also in the interest of literature. For the revolutionary recommendations of the Royal Commissioners did not spare even the incomparable English of the Book of Common Prayer. 'The style of the Liturgy, however, did not satisfy the Doctors of the Jerusalem Chamber. They voted the Collects too short and dry; and Patrick was entrusted with the duty of expanding and ornamenting them.' (Macaulay's *Hist.* iii. 476.) Even the Latitudinarian gorge of Macaulay rose in revolt against this barbarism. 'The diction of our Prayer-Book,' he says, 'has directly or indirectly contributed to form the diction of almost every great English writer, and has extorted the admiration of the most accomplished infidels and of the most accomplished Nonconformists; of such men as David Hume and Robert Hall. . . . In one respect at least the choice of Patrick, to improve the style of the Prayer-Book, seems to have been unexceptionable; for, if we judge by the way in which Patrick paraphrased the most sublime Hebrew poetry, we shall probably be of opinion that, whether he was or was not qualified to make the Collects better, no man that ever lived was more competent to make them longer. I will give two specimens of Patrick's workmanship. "He maketh me," says David, "to lie down in green pastures; He leadeth me beside the still waters." Patrick's version is as follows: "For as a good shepherd leads his sheep in the violent heat to shady places, where they may lie down and feed (not in parched, but) in fresh and green pastures, and in the evening leads them (not to muddy and troubled waters, but) to purer and quiet streams; so hath He already made a fair and plentiful provision for me, which I enjoy in peace without disturbance." In the Song of Solomon is an exquisitely beautiful verse: "I charge you, O daughters of Jerusalem, if ye find my beloved, that ye tell him that I am sick of love." Patrick's version runs thus: "So I turned myself to those of my neighbours and familiar acquaintance who were awakened by my cries to come to see what the matter was; and conjured them, as they would answer it to God, that, if they met with my beloved, they would let him know—what shall I say?—what shall I desire you to tell him, but that I do not enjoy myself now that I want his company, nor can be well till I recover his love again?"'. Fancy our Book of Common Prayer 'expanded and ornamented' in this style! In saving such a classic from such an outrage Convocation is surely entitled to the everlasting gratitude of every lover of the English language.

optional? The lack of statesmanship and feeble grasp of principle which the Commissioners' recommendations and Dean Prideaux's pamphlet exhibit indicated a state of spiritual apathy which went on increasing till Wesley appeared to rouse the nation from its lethargy. We know the reception which he and his followers received from the well-to-do and from the authorities in Church and State. Macaulay has some remarks on this subject which are worth quoting. Contrasting the different policies of the Churches of Rome and England in dealing with new religious movements, he says of the former :—

She thoroughly understands, what no other Church has ever understood, how to deal with enthusiasts. In some sects, particularly in infant sects, enthusiasm is suffered to be rampant. In other sects, particularly in sects long established and richly endowed, it is regarded with aversion. The Catholic Church neither submits to enthusiasm nor proscribes it, but uses it. She considers it as a great moving force which in itself, like the muscular powers of a great horse, is neither good nor evil, but which may be so directed as to produce great good or great evil ; and she assumes the direction to herself. . . . The ignorant enthusiast whom the Anglican Church makes an enemy, and, whatever the polite and learned may think, a most dangerous enemy, the Catholic Church makes a champion. . . . In this way the Church of Rome unites in herself all the strength of Establishment and all the strength of Dissent. . . . At Rome the Countess of Huntingdon would have a place in the calendar as St. Selina, and Mrs. Fry would be foundress and first Superior of the Blessed Order of Sisters of the

Gaols. Place Ignatius Loyola at Oxford. He is certain to become the head of a formidable secession. Place John Wesley at Rome. He is certain to be the first General of a new society devoted to the interests and honour of the Church.¹

Wesley was discouraged and repelled, and the immense spiritual force of Methodism, which might have been enlisted in the service of the Church of England, was thus alienated, and driven to energise, not always in a friendly spirit, outside her pale.

But Wesley's example was not altogether fruitless inside the Church. It led the way to the Evangelical revival, which, like reforms in general, was one-sided; dwelling too much on the subjective side of religion, and too little on its external framework and sacramental character. The Oxford Movement came to redress the balance. And how were the rank and file of that movement received by their own generation? It is now the fashion to extol the Tractarian party as loyal Churchmen, led by a band of brilliant and able and self-sacrificing men. Very different was the judgment passed upon them in their own day. The most brilliant of them, after he was driven out of a Church which knew not how to use his gifts, culled a posy of excerpts from episcopal charges of which the following will suffice as a specimen:—

¹ *Critical and Historical Essays* (Essay on Ranke), iii. 129.

‘Let us diligently search the well of life,’ said one, ‘and not run after the stinking puddles of tradition, devised by men’s imagination.’ ‘It is a subject of deep concern,’ said another, ‘that any of our body should prepare men of ardent feelings for a return to the Roman Mass-book.’ ‘Already,’ said a third, ‘are the foundations of apostasy laid. Antichrist is at the door. I am full of fear: everything is at stake; there seems to be something judicial in the rapid spread of these opinions.’ ‘Our glory is in jeopardy,’ cries a fourth. ‘Tractarianism is the masterpiece of Satan,’ says a fifth.

But space would fail me if I were to quote in detail. Let it, then, suffice to say that the leading Tractarians were denounced as

‘superstitious,’ ‘zealots,’ ‘mystical,’ ‘malignants,’ ‘Oxford heretics,’ ‘Jesuits in disguise,’ ‘tamperers with Popish idolatry,’ ‘agents of Satan,’ ‘a synagogue of Satan,’ ‘snakes in the grass,’ men who were ‘walking about our beloved Church, polluting the sacred edifice and leaving their slime about her altars,’ ‘miscreants, whose heads may God crush.’¹

And the Press vied with the Episcopate in these violent denunciations of the leading Tractarians. In a number of the ‘Standard’ of the year 1841 I find a leading article in which it is said: ‘There is not a particle of true intellectual vigour, or manhood, or candour in his [Newman’s] whole sect.’ The ‘Times,’ to do it justice, tried for three years gallantly to stem the torrent of abuse. In the same year (1841) in which the ‘Standard’ denied

¹ Newman, *Lectures on Certain Difficulties felt by Anglicans in submitting to the Catholic Church*, p. 92.

that there was 'a particle of true intellectual vigour, or manhood, or candour' in Newman and his friends, the 'Times' wrote:—

No man, however widely differing from them, can open any of their publications without perceiving that they write with learning, ability, forbearance, and courtesy of language towards their adversaries. No man can know anything of their lives without being aware that they act consistently with their professions.

In 1844 the 'Times' joined the assailants of the Tractarian party, and the motive cause was the insistence by the leading Tractarians on the weekly offertory even when there was no celebration of the Holy Communion. I am bound to say that the 'Times' seems to me to have had the best of the argument. The Tractarian movement, like most earnest and enthusiastic movements, had its 'fads' and puerilities. It elevated the weekly offertory into a kind of sacrament. 'For himself,' said Bishop Blomfield—who was hardly a Tractarian—to a deputation on this subject, 'he at once declared that he would not preach in any church in his diocese where the ceremony regarding the offertory was not observed.' The line the 'Times' took was that the offertory was an adjunct to the celebration of the Holy Communion, and that the weekly revival of the one implied the accompaniment of the other:—

If the Bishop of London [it said] chooses to hold to the decision of antiquity, he must *first* restore weekly

communion, and then the weekly offertory is sure to come. . . . Let the clergy, especially the younger ones, remember that as words are the signs of ideas, so forms and ceremonies are but the outward expressions and features of a vast spiritual soul. The church revivers may be right or they may be wrong in wishing to get back the old system; but if we were their enemies, we could not recommend them a more pernicious course than that which some are pursuing. To introduce bits and fragments—and under present circumstances the weekly offertory, without communion, is but a contemptible scrap—of an ancient system, without first having saturated themselves and their flocks with a ‘primitive’ life and doctrine, is a puerility.

This seems to me good sense and sound doctrine, and the ‘Times’ would have done admirable service if it had continued to write in this wise style of calm and judicious criticism. But it yielded at last to the current and gave the assailants of the Oxford Movement the inestimable advantage of its heavy batteries.

‘The best of prophets of the future is the past.’ A true knowledge of history confers a kind of gift of prophecy. To look backward intelligently and sagaciously is potentially to look forward. Political and religious movements commonly obey everlasting laws and travel through the stages of known cycles, which thus ensure enough of resemblance to guarantee the general outline of an accurate prophecy. Let us then take a sort of bird’s-eye view of the various stages of the ‘Ritual’ contro-

versy from the year 1844 to the forthcoming Report of the Royal Commission on Ecclesiastical Discipline. It will make interesting, and perchance instructive, reading. My quotations shall be all from the 'Times,' because, however violent its language may seem now, its violence was surpassed by most of the leading organs of public opinion at the time. The following is from a leading article in the 'Times' of December 31, 1844 :—

Throughout the whole of this unhappy contest the laity have behaved with consistency; they have stood their ground firmly; they have made known, intelligibly enough, over and over again, their strong repugnance to the introduction of the obnoxious novelties; they have respectfully requested the removal of them; to be allowed to worship as their fathers worshipped, and to observe the same ritual to which they have been accustomed from their infancy. . . . The year, it appears, is to close over this fiery controversy of which no one can tell the final issue. . . . We look upon it as a strife, not of words, but of principles, and therefore the more lasting and important in its effects.

These are the words with which the 'Times' rings out the year 1844. The area of the strife extended during the following year, and so, unfortunately, did its bitterness. The Press had reporters—war correspondents they might be more fitly called—to watch and describe the development of events. One of these, writing from Exeter on January 20, 1845, opens his description of the fray as follows :—

After the disgraceful exhibition of Sunday last at the church of St. Sidwell's—the excitement and irritation shown in the church—the hootings and yellings in the streets by an indignant population at the Rev. Mr. Courtenay for continuing observances and ceremonies in the service of the church to which the parishioners had expressed their repeated and decided objection—it was hoped by many that a regard for the decorous observance of the Sabbath, and for the quieting of men's minds, would have induced that gentleman to yield.

But 'that gentleman' apparently was proof even against the soothing influences of the Sabbath, and performed accordingly the service in a way which led to results described as follows by the 'Times' correspondent:—

On leaving the church the congregation mingled with a crowd of 700 or 800 people who were assembled outside, and waited for the appearance of Mr. Courtenay. He left the church in the centre of a dozen gentlemen, headed by the churchwardens, and was received by the crowd with hootings and yellings, which continued as he and his friends rapidly made their way through, protected by policemen.

This was in the morning.

In the evening [continues the reporter], although it rained in torrents, the church of St. Sidwell's was densely crowded. It was a strange and unbecoming scene of excitement. Again Mr. Courtenay preached in his surplice, following all the same objectionable observances as in the morning. On his entering the pulpit the congregation appeared all to rise from curiosity; many went out; the church porch and lobby were densely crowded; and

so great a noise prevailed that the opening prayer before the sermon was scarcely audible. . . . The service ended, the scene outside the church beggars description. It rained in torrents; yet the streets were like a fair. About two thousand persons were assembled to hoot Mr. Courtenay as he left the church. Gibes, and shouts, and laughter rang through the air. The rev. gentleman was again surrounded by a party of his friends to protect him as he left the church. A strong body of the police made a lane through the crowd for him, and then formed in close file round him to keep off the crowd. . . . The indignation of the people is certainly excusable, for the cause of all the mischief was Mr. Courtenay and a white gown. It was generally rumoured that the Mayor had called on Mr. Courtenay before the afternoon service, and represented to him the danger to the peace of the town, and the great probability of a fight with the police if he persevered, and had put it to him as a clergyman if he thought it proper to run the risk of such a result by persisting in the line of conduct he was pursuing.

These scenes went on for several Sundays, and then the 'Times' opened its batteries on Mr. Courtenay. '*Quousque tandem?*' demanded the leading journal, as if Mr. Courtenay were an ecclesiastical Catiline, conspiring against the institutions of his country.

How long is it to go on? How long is the public patience to be abused by the impertinence of such men as the Rev. Mr. Courtenay in those ceremonial absurdities which even his Bishop has been forced to discountenance? . . . As to reasoning the point any longer, it is out of the question. For the peace of society, for the comfort of the townspeople, for the cause of quiet and devotion in

the public service of the church, this may not and must not be. Mr. Courtenay's career has had its full share of experiment upon the general feeling of Exeter; and if he will not comply with the audible expression of opinion which he has already received, but will collect a crowd to repeat their detestation of his doings, and put in requisition a whole force of police to guard him home, he must be put down as a common nuisance.

Let us now leap over three years. Poor Mr. Courtenay was worried into his grave in the interval, and the Rev. J. Ingle appears as the hero of the scene which is thus described in the 'Times' of November 6, 1848:—

A RIOT IN CHURCH.—On Sunday, the 29th ult., the church of St. Sidwell's, in the city of Exeter, was the scene of a disgraceful riot during the time of the evening service in consequence of the Rev. J. Ingle entering the pulpit in his surplice. . . . The uproar commenced with a general 'coughing down.' Several persons then moved towards the door, making a great noise in their progress; a young woman went off in a fit of hysterics, uttering loud shrieks, whilst a mob outside besieged the doors of the building. A cry of 'Fire!' was raised, followed by an announcement that the church doors were closed, and a rush was made to burst them open. Some persons cried, 'Turn him out!' 'Put out his lights!' In the galleries the uproar was at its height, whistling, the noise of cat-calls, and such cries as are heard in theatres, hurrahing, &c., echoed throughout the edifice. Mr. Ingle still persisted to read his text, but was quite inaudible, and the row increased, some of the congregation waving their hats, standing on the seats, brawling, roaring, and gesticulating, like a mob at an election.

These doings were in the far West. Let us now see how matters fared in the metropolis. On March 15, 1845, there was an excited meeting held in the parish of St. George's-in-the-East, London. The chairman of the meeting was the senior churchwarden of the parish, who bore the ill-omened name of Liquorish. But the orator of the occasion was a certain Mr. Baddeley, of whom history, as far as I know, records nothing more. Mr. Baddeley made a speech which appears to have evoked much applause, and which, no doubt, expressed the genuine feelings of the man and of those who cheered him. The following extracts will give some idea of his line of argument:—

It was lamentable that a parish consisting of upwards of 43,000 souls should be disturbed to its centre at the will of one individual, who at his mere pleasure disturbed and deranged the beautiful and solemn ceremonial of church service which had been handed down to us unchanged for more than two centuries. These were not the days to trifle with the laity. Men could not now be dragooned into a belief or compelled to a ceremonial. Fortunately there was an organ of incalculable power and extent to preserve and support the creed of their forefathers: the 'Times' was that powerful organ. . . . Their rev. rector talked of peace while he was at the very time fomenting discord by introducing a Jim Crow sort of buffoonery into the peculiarly solemn and impressive decencies of our simple and affecting church service. Until this innovation was palmed upon them there was not a more happy or united parish in the whole kingdom than theirs.

Other speakers followed in a similar strain, and then the 'Times' reporter relates a pathetic incident:—

Several old parishioners, some of whom were affected even to tears, came forward to protest against practices which drove them from the church where their fathers had worshipped, and where healing memories of holy things soothed, while they sanctified, their Sabbath visits. All this, they said, was changed by the practice of their rector. The son passed by the grave of his father; the widower, of his wife; the mother, of her child,—to seek in some remote and unaccustomed house of worship that spiritual sustenance which the novel practices of their new rector had rendered unacceptable at his hands.

Scarcely less pathetic was the declaration of a gentleman at Hurst, in Berkshire. This gentleman is described as 'the owner of Hurst House,' and here is his tale of woe—tinged, however, with one ray of pensive satisfaction:—

Alluding to his aunt, who attained the great age of 100 years, he observed that it was a satisfactory reflection to him and his brother that the latter days of their excellent aunt were not embittered by such proceedings as had lately taken place in the parish, and that she had not lived to be driven, by the mistaken course which had been pursued, from the church which she had so many years attended.

The fate from which the Angel of Death had mercifully snatched this good old lady was that of witnessing the collection of an offertory and hearing

the Church Militant Prayer on Sundays on which the Holy Communion was not celebrated.

But what were these 'novel practices,' the 'Jim Crow sort of buffoonery,' which had wrought such dire havoc in a once peaceful and happy parish? *Spectatum admissi risum teneatis, amici?* 'The very head and front of' the rector's 'offending' was that he preached in the surplice, turned to the East at the recital of the Creed, and that 'the responses after the Commandments, which are prayers for mercy, and not songs, are usually chanted.'

In 1859-60 there was a recurrence of these disgraceful riots in St. George's-in-the-East, and I remember an amusing anecdote which I once heard Dean Stanley relate in connection with them. The Dean had gone one Sunday evening to see for himself the cause of the riots. The church was filled with an excited congregation, but the service went on with tolerable decorum till the officiating clergyman retired into the vestry before the sermon. There were a few moments of nervous silence, with craning of necks in the direction of the vestry. Presently the door of the vestry was opened, and an excited female, in front of Dean Stanley, clapped her hands and exclaimed, 'Thank God! it's black.' The Rector had agreed to a compromise, and the preacher appeared arrayed in a black gown. If that worthy female is still alive, she may often have had cause since then to exclaim, 'Thank God! it's white.'

But the parish of St. George's was not the only parish in the East of London which was vexed with a perverse rector's 'Jim Crow sort of buffoonery.' There was, for example, the parish of St. Leonard's, Shoreditch, the parishioners of which compelled the rector to agree to a compromise. The 'mark of the beast' in that parish was the chanting of the Psalms; and this the rector agreed to give up. 'But what wretched creatures are they,' exclaimed the 'Times,' 'who attempted to introduce that chanting in parish churches?'

The surrender of the rector, however, was not absolute and complete:—

To vitiate the good to be derived from this return to the usual service [the 'Times' goes on to say], Mr. Evans means to introduce a portion of the new version of the Psalms after the third collect. Does he? Then we hope he will be hooted out of the church immediately. Whence does he learn this change? Not from the rubric certainly; which says, 'in **CHOIRS** and **PLACES** WHERE **THEY SING**¹'—that is, not in parish churches, but in cathedrals and places where erewhile monks unhappily chanted to each other in responsive strains.

The riots and public meetings culminated at last in a series of petitions to Parliament, which led to a lively debate in the House of Lords. Lord Fortescue presented these petitions in a tolerably moderate speech, and the drift of the docu-

¹ Here and elsewhere I copy the capitals and italics of the original.

ments may be gathered from the following quotation :—

That certain ancient and conflicting laws and regulations of the Church exist which, being incompatible with the condition and Protestant feelings of the people, had, with the tacit consent of bishops, clergy, and laity, long fallen into disuse.

The petitioners accordingly deprecate the revival of 'these obsolete laws and regulations,' and suggest 'such a revision and alteration of the rubrics, canons, and laws of the Church as shall establish uniformity adapted to the present times.' Earl Fortescue took the same line in his speech. He pleaded earnestly for lawlessness—that is, for violation of the rubrics—on behalf of the Evangelical party.

It will be observed that the High Church clergy of that day were not accused of lawlessness, or of disobedience to bishops, so much as of over-scrupulosity in carrying out the law and yielding a too thorough obedience to the bishops :—

In this debate the Bishop of Norwich said :—

The right rev. prelate [Phillpotts] had said that we are under a stringent vow to obey the rubrics. We none of us are under such stringent vow; for we never can obey all. If we are told of a stringent obligation to obey the rubrics, we must obey all. Who has a right to say, 'That part I will admit, and that part I will dispense with?' We must have the whole rubric, and nothing but the rubric. That cannot be.

Bishop Blomfield protested against this view of the matter, and said the clergy were bound to obey 'those parts which we *can* obey.' The Bishop of Norwich, however, retorted with effect:—

There are parts of the rubric which we can obey and do not. 'This part,' it is said, 'I adhere to, and that part I do not.' We have no right to make such a choice, and obey certain parts and not others.

It having been found impracticable to alter the law by constitutional means, recourse has been had to the courts of law, and negatives have thus been 'read into' some of the unpopular affirmative injunctions of the rubrics. In this ingenious way the party which sixty years ago was persecuted for being too rigidly law-abiding, now finds itself exposed to imprisonment and temporal ruin for the crime of 'lawlessness.' It reminds one of the old ordeal for witches in Scotland. The reputed witch was flung into deep water to test her innocence. If she went to the bottom and was drowned, she was declared not guilty. If she floated on the surface, she was taken out and burnt.

The two bishops who particularly excited the wrath of the 'Times' were Bishop Blomfield of London and Bishop Phillpotts of Exeter; and their guilt consisted in having recommended their clergy to preach in the surplice and have an offertory every Sunday. For this heinous offence the two prelates in question were pelted by the Press, day by day and week after week, with

language of which the following extracts will furnish a fair average specimen :—

Would any man believe—any reasonable man—that after distracting his diocese, harassing the clergy, and provoking the laity to an opposition unprecedented in the annals of our Church by his own wilful and unjustifiable measures, he can turn round in his place in Parliament and ask what it all means? The whole kingdom can answer you, my Lord Bishop. Far and wide and on all sides, the rumours of your doings in Exeter have been circulated; and although your lordship ‘has no time for the newspapers,’ it is not so with all. The studies and labours which consume your valuable hours, and hinder you from being acquainted with the topics of the day, are fortunately unknown to the majority. . . . Let things remain as they are. Let the service of the Church of England be administered as it has been since the days of our great-grandfathers. We want no enactments to change or reform what is in itself complete and sufficient.

The ritual ‘of our great-grandfathers’—that is, the great-grandfathers of 1845—‘complete and sufficient’! I wonder where the Church of England would be now if the Press of that day had had its way, and the ‘complete and sufficient’ style of worship of the ‘great-grandfathers’ were still in vogue. The Liberation Society would certainly have had no *raison d’être*, for there would be no Established Church—perhaps no Church at all—to destroy.

The ‘Times’ resumed its theme in another leader :—

‘What is all this about?’ says the right rev. prelate [Phillpotts], in reply to Lord Fortescue in the Upper House of Parliament last Thursday; and the inquiry was received with general laughter. Why, the ‘ABOUT’ is this—and a singular ABOUT it is—that two bishops out of twenty-six have, in what they call pastoral letters to their clergy, ordained a different mode of performing the Divine Service of the Church from that to which the people of England, for whose use the liturgy was compiled, had been immemorially accustomed. . . . Why cannot the baffled prelate quietly ‘give in,’ and if possible let the mischief which himself and his poor infatuated clergy have occasioned be forgotten? But if both the bishops stand firm to what they have called their convictions, they ought to retire from the bench; and if they are conscientious men they will retire. The Church of England was not made for *them*, but for the people of England; and the people of England—God, we are sure, blesses them in the effort—will have the Sacred Service of the Church as their sires and grandsires had it. Should the prelates in question still adhere to their errors, we shall show further reasons for removing them.

And all for recommending a weekly offertory and the use of the surplice in the pulpit! In another article the ‘Times’ asked, in a fit of sorrowful indignation:—

Is our Church still to flourish, the pride and strength of our land; or are her congregations to be dispersed, her temples to become dilapidated, her services to be deserted, her friends to be alienated and disgusted, from the perverse and wanton intrusion of ceremonies and observances which, displeasing as they are to the people,

answer no one corresponding end, and are carrying division and destruction into the very bosom of our Church?

‘The sacred service of the sires and grandsires’ is happily a thing of the past. The three-decker is rapidly becoming a tradition; and so also are the cosy square pews, and Tate and Brady, and the parson-and-clerk duet, and the slovenliness which was called ‘simplicity,’ and the infrequent services and mouldy mildewed walls, and all the other constituents of ‘the sacred service’ which the ‘sires and grandsires’ loved. Even the black gown, against which I have never been able to get up any special antipathy, will soon be as antiquated as frills and periwigs. If any of the gentlemen who did the ecclesiastical leaders for the ‘Times’ sixty years ago are still in the land of the living and still in the same mind, with what feelings must they regard the revolution that has borne them onward like fossils from a bygone era! One of them at least was evidently alive and unconverted as late as February of the year 1881. Long had he endured his grief in silence; but Dean Church’s plea for tolerating the Ritualists was more than he could bear: and in a leading article in the ‘Times’ of February 10, 1881, he gave vent to the pent-up musings of years. There was still, he thought, a chance of getting rid of the surplice and not in the pulpit only, but in all ministrations. Here is our Rip van Winkle’s

diagnosis of the ecclesiastical situation, which Mr. Delane, who had a satirical humour, allowed him to air in the leading journal:—

What is it that now divides the population of this island into two camps, with an almost impassable gulf between them? It is not the chasuble, or the mixed chalice, or incense, or any of the points at issue in the 'Ritualist' controversy. It is the surplice, and whatever goes with it in the shape of forms and liturgies. If people are to do what they please, retaining the name of Church people, then, for a few thousands who would wish to see the celebrant in the chasuble, there are a few millions who would rather see him in his everyday attire. Supposing this policy of toleration defined, formulated, and enacted, for one million who might endure the chasuble, five millions would request their minister to discard the rag of Popery [*i.e.* the surplice]. As a matter of taste, they would be justified in so doing, for the surplice is very much out of place in a building and style of worship as near as may be to that of Dissenters.

And then the writer gives his own idea of the kind of worship best calculated to win the masses:—

After a hymn, given out by the minister in a black gown, a scripture-reader rises in his everyday coat and reads a selection from the Prayer-Book, with a short lesson, and with the relief of several more hymns. The minister ascends the pulpit, offers a long extempore prayer, and then talks to the people very pleasantly for half an hour. He is full of anecdote from religious journals and biographies, from his own personal experiences and his conversations with his flock. He alludes to departed members of it as saints in glory, and recalls

their favourite text and utterances. All this is charming to small shopkeepers, humble citizens, cooks, and housemaids. They will come from any distance, and even desert their Bethels, Zions, and Ebenezers, for the preacher.

In the year 1875 the maligned Tractarians were avenged, when the two Archbishops and their suffragans—all but two—issued a Pastoral of which the opening paragraph says :—

We acknowledge humbly and thankfully the mercies vouchsafed by Almighty God to the Church of England. By His blessings on the labours of the clergy and laity our Church has of late been enabled in a marvellous manner to promote His glory, and to advance His kingdom both at home and abroad. If we judge by external signs—the churches built, restored, and endowed, during the last forty years; the new parishes formed in that time, especially in our great towns and cities; the vast sums of money voluntarily contributed for the promotion of religious education; the extension of the Church in the Colonies and in foreign countries, including the foundation of more than fifty new Sees; the great increase in the number of persons of all classes who, by prayers and labours, assist in the work of converting souls to Christ,—all bear witness to the zeal and earnestness of the clergy and laity of the English Church.

That date of ‘ forty years,’ so prolific in the zeal and earnestness and good works which the Archbishops and Bishops so handsomely recognise, covers exactly the Tractarian movement from its origin to its partial development into what is called ‘ Ritualism.’ But if the Bishops of the previous

generation, and the Press, and excited politicians, had had their way, that harvest of good things which the Episcopal Pastoral enumerates had never been. And may we not add that but for the unsympathetic—I will even say brutal—treatment which the early Tractarians received from those in authority in Church and State, and from the organs of public opinion in the Press, that harvest would have been more bountiful still?

Have we not a lesson and a serious warning in all this? Are we on the eve of another blunder? Is there to be more proscription, another Public Worship Regulation Bill, more prosecutions, unlimited latitude in doctrine and ritual in one direction, rigid conformity to an arbitrary Procrustean standard in another? I hope not. For I am quite sure that the Church of England as an Establishment will not survive another experiment of that sort. Let it be remembered that in this matter we have not to do with a number of ritualistic clergy. We have to do with a powerful, an earnest, and a large and rapidly increasing body of the laity, who sit very loosely to the Establishment, and who will unite to overthrow it if another attempt is made to pervert or tighten the law against them, while relaxing it in favour of all others. Let it also be considered that in these days of sudden democratic upheavals, a coalition between the Ritualists and the Labour and Radical parties might very possibly precipitate disestablishment at the next general

election. Mr. Gladstone once said to me : ‘ If the disestablishment of the English Church ever come to pass, it is likely to come less by an attack from without than by a revolt from within.’ In itself the Establishment has no attraction for the Ritualists. Its good things—its dignities, its honours, its emoluments—are not for them. They and their services are maintained chiefly by the voluntary offerings of the laity, and these would increase in the event of disestablishment.

Moreover, the Ritualists have behind them the great bulk of the High Church party : not because these are in full sympathy with them—for they deplore much that many Ritualists do—but because they love fair play ; and they do not think it fair play to press what is at best a doubtful law against the Ritualists, while allowing, if not encouraging, all other parties to set at nought rubrics of which the meaning is neither disputable nor disputed. Let me take my own case. I belong to a Cathedral Chapter which—myself included—sets the law, even as interpreted by the Judicial Committee, at defiance. When the Purchas Judgment was pronounced the Dean and Chapter of Ripon provided themselves with a cope, in which they, as well as the Bishop, officiated at the times appointed. The Dean was Dr. McNeile, of Liverpool fame, and the Bishop, Dr. Bickersteth ; both strong Evangelicals. When I became a member of the Chapter of Ripon some twenty years ago, the

cope had disappeared, and I have never been able to discover why or whither. But there we are, a thoroughly lawless Chapter, whether tested by the law of the Church or the law of the Judicial Committee. And I believe that nearly all the Cathedral Chapters in England are in a similar condition of flagrant lawlessness. Will not the instinct of justice, which lies deep in the British breast, rise in revolt against any despotic attempt to compel some wretched Ritualist, slaving, it may be, among the poor and miserable, to discard his chasuble, while Cathedral dignitaries and bishops refuse to wear the vestment which the law confessedly makes obligatory on them? And, what is still worse, a number of clergy publicly deny or explain away some of the fundamental articles of the creed of Christendom, while doubt is freely cast on the genuineness or authenticity of almost every book in the Old and New Testaments. Yet no one dreams of a Royal Commission to inquire into these things and recommend a remedy.

This one-sided sort of discipline will never do. The law must be enforced all round without fear or favour, or it must not be enforced against one party only: I care not which party. The Royal Commissioners have kept their secret well, and I have no idea what their recommendations may be. But if the Church is to remain established, there must be no recourse to Parliament, either to alter any of the rubrics or to infringe the ancient con-

stitution of the Church—*e.g.* by a Parliamentary abolition of the bishop's veto on what he may regard as a mischievous prosecution. This is one of the inherent rights of the episcopal office, which Mr. Gladstone considered so essential that he intimated to the Episcopate that unless they guarded it during the passage of the Public Worship Regulation Bill through Parliament he would no longer oppose Disestablishment. There is a large multitude of Church people, lay and clerical, and no lovers of Ritualism, who would view with such repugnance the idea of flinging the doctrine and ritual of the Church into the melting-pot of the Houses of Parliament that, to avoid such a catastrophe, they would strain every nerve to force Disestablishment in this very Parliament; a contingency by no means impossible in the event of a lead from a strong body of Churchmen.

But I may be asked: 'If you oppose an appeal to Parliament, what is *your* remedy?' Well, my first remedy is patience. Patience on the part of our rulers would have saved Wesley, and the vast spiritual force which bears his name, to our Church. Patience would have saved to our Church the splendid intellectual and moral gifts of John Henry Newman, and the galaxy of bright names who followed his lead, and made the Church of England much the poorer by their secession. The patience of Convocation in resisting the

revolutionary proposals of the Royal Commission in 1689 saved the Church of England from disruption. The patience of the Bishops in abstaining from seeking Parliamentary power to crush the Tractarians, much as they abused them, during the period of excitement and riot which I have just described, enabled the Church to meet with such wonderful success the new political and social forces which the era of the Reform Act called into being. The Ritual troubles of our day are but gentle breezes compared with the hurricane which raged and howled against chanted Psalms, frequent celebrations of the Holy Communion, and the use of the surplice in the pulpit. As late as 1851, bishops actually refused to license any curate who would not give a written pledge against preaching in the surplice, on the specific ground that the surplice was illegal in the pulpit. Suppose a Royal Commission had been appointed at that time to inquire into the causes of the riots, and that Commission had proposed and Parliament had passed a law against frequent celebrations, choral services, and preaching in the surplice, is there a man of sense in the kingdom now who would not denounce such stupid and criminal folly? I venture to predict that some twenty years hence most of the things which are now objected to in public worship will cause as little stir as choral services and the surplice in the pulpit do now.

I have no doubt that there has been, and still is, much that is censurable in the Ritualistic movement. That is generally the characteristic of any movement which is enthusiastic and energetic. It is sure to make proud flesh, as did, indeed, the Tractarian movement; and the secular and ecclesiastical authorities of the day could see nothing but the proud flesh, which they denounced accordingly as a mass of putrid matter which ought to be got rid of as speedily as possible.

The proud flesh of the Tractarian movement sloughed off in due time, and all that was noble and good in it—which surely was the larger part—has been assimilated into the life and system of the Church. The proud flesh of the Ritualistic movement will also drop as persecution ceases; and the bishops of the next generation will do it that justice which the bishops of this have done to the much calumniated Oxford Movement.

Much of the strength of the Ritualists, as a party, is derived from the moral support which they receive from the bulk of the High Church party. That support they will continue to receive as long as the bishops enforce the judgments of the Judicial Committee as the law of the Church and of the land. But let the Bishops fall back on the inherent power of their office. Let them act as 'fathers in God,' and not as State officials enforcing discredited legal decisions. Let them claim the *jus liturgicum* which belongs to their office as chief

pastors, and judge each case as it arises on its merits, regardless of the Judicial Committee, and I am bold to believe that they will find their task much easier. The readers of this volume will see what my own view is as to the ritual authorised by the Ornaments Rubric. I believe the meaning of the rubric to be perfectly plain and not in the least ambiguous to anyone who approaches it with knowledge of the subject and with an open and unprejudiced mind. But all things that are lawful are not necessarily expedient; and the High Church party would, I believe, support bishops who forbade the introduction of even lawful ritual on congregations unprepared for it. The bishops who have succeeded best in putting down disorder in their dioceses are the bishops who have relied on their spiritual office and judiciously ignored the Judicial Committee.

There is one consideration in connection with this subject which men of the world, whatever their views may be, would do well to take seriously to heart. It is much to the credit of the working classes of this country that they have never shown any disposition to combine in their own interest against the owners of property and privilege as such. Who can doubt that this is largely due to their being still under the influence, ideals, and sentiments of Christianity, even when they sit loosely towards the Christian Creed? But if the masses lose hold of their instinctive belief in a

future world where the destiny of man is dependent on his conduct here, why should they acquiesce in social and political arrangements which do not appear to many of them to be to their benefit? Let them lose their faith in a heaven beyond the grave, and will they not make haste to seek their heaven here? They are the majority, and they have shown their power in the present Parliament. Their power is likely to go on increasing, and the omens seem to point to the decadence of Christian influences in the next generation. How will they be affected then towards the established order of things? This was so well put by a powerful writer a quarter of a century ago that I am tempted to quote his words :—

What will be the result, what the possible catastrophe, when this doctrine [of a future life] is no longer accredited ;—when it is discarded as a delusion ;—when it is resented as a convenient deception and instrument of oppression ;—when the poor man is convinced that there is no wealth of gold and jewels awaiting him in the spiritual kingdom ;—that if he is wretched here he is wretched altogether ;—that what he lacks now will never hereafter be made good to him ;—that the promises and hopes dangled before him to keep him quiet have been mere moonshine, and that in very truth the bank in which he had insured his fortune, in which he had invested all his savings to have a provision, in which he had toiled with indefatigable industry and endured with exemplary patience, is a fraudulent insolvent ;—when, in fine, he wakes up with a start to the bewildering conviction that *if* he is to rest, to be happy, to enjoy his fair

share of the sunshine and the warmth of life, *he must do it now, here, at once, without a day's delay?* Will there not come upon him that sort of feverish haste to be in luxury and at peace, to *immediatize* all that earth can yield him, to sink the uncertain future in the passing present, which has been depicted in such vivid colours as pervading and maddening the daily thought and talk of the Socialists and Communists of the French metropolis? ¹

The writer of this passage was the well-known publicist, W. R. Greg. He thought, after careful inquiry, that the salutary and restraining influences, which had till then been operating on the characters of the working classes, were rapidly on the wane. 'Among working men,' he said, 'it is absolute atheism, and is complicated by a marked feeling of antagonism towards the teachers of religion, a kind of resentment growing out of the conviction that they have been systematically deluded by those who ought to have enlightened them.' He adds in a note: 'I am assured, however, that this can scarcely be stated as broadly as a few years ago—*considerably owing to the Ritualists.*'

Is it wise, even from a temporal point of view, to wage war against a religious movement which, with all the extravagances and follies that may be imputed to it, won this testimony from a very able public writer who had, as a Unitarian, no sympathy with Ritualism? The influence of the Ritualists has increased immensely among the masses since

¹ *Rocks Ahead*, pp. 131, 141-143.

Mr. Greg wrote. I was greatly struck by the report of a conference between representative labour leaders and leading Ritualists at Mirfield a few weeks ago. The conference was marked by a most cordial feeling and the utmost frankness on both sides. One of the representatives of labour declared emphatically, without dissent on the part of his colleagues, that the one party in all the Churches with which the labour party had any sympathy was that of the Ritualists. The severest censors of the Ritualists commonly admit their self-denial and labours of love among the poor, but add that this is not the question. I submit that it is very largely the question. The very purpose of religion is to purify and elevate humanity; to make human beings better parents, better children, better servants and masters—in a word, better citizens. A mode of religion which does this ought surely to be tolerated, if not cherished; but to flout and suppress it would be an act of criminal folly which its opponents would probably live to deplore, perhaps when too late.

‘I’d give the lands of Deloraine
Dark Musgrave were alive again.’

But the wish did not restore ‘dark Musgrave’ to life, and religious forces, like human life, are more easily destroyed than revived. Like the meek Sicambrian of old, men sometimes live to ‘burn what they adored, and adore what they had

burnt.’¹ Look now at the scenes of the religious riots described above, and you will find the present generation cherishing what their forefathers reviled. So it always is. One generation stones the prophets, and another adorns their sepulchres. I should like to see a Royal Commission appointed to inquire into the moral influence of so-called Ritualism in parishes where it has been fairly tested. The investigations of such a Commission would, I venture to think, be infinitely more valuable than inquiries into the modes of public worship in such parishes. Mr. Henry Blunt, late rector of St. Andrew’s, Holborn, a genial Broad Churchman, speaking to me once about the clergy of St. Alban’s, Holborn—a district carved out of his parish—said: ‘Well, Ritualism does not appeal to me. But I must be just. What is now the parish of St. Alban’s used to be morally one of the worst in London. These men have worked wonders. They have regenerated the place. You would not know it to be the same place. “By their fruits ye shall know them.” The fruits of these men are good, and it would be a sin and a calamity to interfere with them.’

We are on the threshold of a new era. The democracy is coming to the front and has already realised its power; and the question is whether

¹ *Mitis, depone colla, Sicamber: adora quod incendisti, incende quod adorasti.* Address of Remigius, Bishop of Rheims, to Clovis when baptizing him. See Gregory of Tours, tom. ii., l. ii., p. 177.

its power shall be exercised under the influence of Christian principles or under the influence of pure secularism. That depends on the attitude of the Christian Church towards the legitimate aspirations and ideals of the working classes. If that attitude is intelligent, appreciative, sympathetic, I, for one, have no fear of the working classes. I am glad that they have been able to return so large a number of able and earnest representatives to Parliament. These men, I am confident, will be no party to any one-sided legislation for the suppression of Ritualism. If the Church of England is to survive as an Establishment she must find room and work for all parties who are loyal to the creed of Christendom and are really doing good work within her fold. They all act as a check on each other. The Evangelicals check the perhaps natural tendency of the High Church party towards formalism and too much reliance on external observances. The High Church party checks the tendency of the Evangelicals to depreciate rites and ceremonies and tradition, and to rely too exclusively on private judgment and the subjective side of religion. The Broad Church party has done good service in discrediting the worship of the mere letter of the Bible as a criterion of infallibility, forgetting that the Bible, standing alone, presents different, and sometimes contrary, aspects of the truth to different minds; while, on the other hand, both the Evangelical and

High Church parties act as checks on the tendency of the Broad Church party to accept with uncritical subservience the rash conclusions of Dutch and German critics in the sphere of Biblical criticism. Ritualism, too, within reasonable limits, has its use as a reminder that man has eyes and ears as well as reason, and that truths reach his soul through those avenues which might never reach it through the understanding alone. We need a policy of reasonable comprehension and elasticity, not of narrowness and proscription. I trust that the policy recommended by the Royal Commission points in that direction. If it points in the opposite direction, it will probably live in history as the proximate cause of the disestablishment, perhaps the disruption, of the ancient Church of England.

A passion for uniformity has been growing for some years both in the political and religious world. Larger States absorb smaller ones and destroy their individual characteristics in art, literature, philosophy, and in the development of human character. I am not at all sure that the unification of Italy, with its crushing burden of armaments and suppression of local laws and customs, has been an unmixed gain to the people of Italy. I am sure that the unification of Germany—whatever be its results in material wealth—has been a loss to the nation intellectually and morally. The worship of Mars and Mammon has superseded the cultivation of the Muses. We have been saved so

far from this result of the material expansion of our worldwide Colonies, by the gift of autonomy, which has enabled them to develop in various directions according to their several environments.

The same passion for uniformity has invaded our institutions. It may be questioned whether our judicature has gained by the abolition of a number of our ancient courts and jurisdictions, and I have no doubt that the abolition of our old ecclesiastical courts and judges has been an unmitigated evil.

The passion for uniformity has now reached the precincts of our educational system, and it is sought to establish one universal type prescribed and moulded by the State, in spite of John Stuart Mill's impressive warning in the following passage :—

It is not by wearing down into uniformity all that is individual in themselves, but by cultivating it and calling it forth, within the limits imposed by the rights and interests of others, that human beings become a noble and beautiful object of contemplation.

If the Government would make up its mind to *require* for every child a good education, it might save itself the trouble of *providing* it. It might leave parents to obtain education where and how they pleased, and content itself with helping to pay the school fees of the poorer class of children and defraying the entire school expenses of those who have no one else to pay for them.

The objections which are urged with reason against State education do not apply to the enforcement of

education by the State, but to the State taking upon itself to direct that education, which is a totally different thing. That the whole or any large part of the education of the people should be in State hands, I go as far as anyone in deprecating. All that has been said of the importance of individuality of character and diversity in opinions and modes of conduct involves, as of the same unspeakable importance, diversity of education. A general State education is a mere contrivance for moulding people to be exactly like one another; and as the mould in which it casts them is that which pleases the predominant power in the Government, whether this be a monarch, a priesthood, an aristocracy, or the majority of the existing generation, in proportion as it is efficient and successful, it establishes a despotism over the mind, leading by natural tendency to one over the body. An education established and controlled by the State should only exist, if it exist at all, as one among many competing experiments, carried on for the purpose of example and stimulus to keep the others up to a certain standard of excellence.¹

I do not apply this to the Education Bill of the present Government in particular. In my humble judgment we have been on the wrong tack on education for some years. The Act of 1870 unquestionably undermined the foundation of the denominational system by establishing by its side an undenominational system supported by the rates, and bound in course of time, by its unlimited command of the public purse, to starve the denominational schools out of existence. The next

¹ *Essay on Liberty*, pp. 113, 190.

mistake was to pay the school fees for all children indiscriminately. And the third was the Education Act of 1902, which placed denominational schools on the rates, without recognising the correlative necessity of admitting supreme public control; which destroyed the *principle* of school trusts; and which made the exclusion from the schools of every parish priest in the land a possibility.

The same passion for uniformity has swept away all the endowments scattered over the country for enabling the children of poor parents to get a first-class education. These endowments are now thrown open to the public, thus enabling the rich to compete at a most unfair advantage with the poor, for whom the endowments were originally intended.

But it is in the sphere of religion that this mania for uniformity has done most mischief. In the Church of Rome it has destroyed local uses and customs, and reduced public worship to one monotonous type of dull uniformity. Our reformers introduced it in this country by abolishing the separate diocesan Uses instead of reforming and simplifying them. And ever since then our rulers in Church and State have been striving after this Procrustean uniformity. Vain quest! Nature, with her thousand tongues, protests against it. There is no uniformity in nature. What we behold everywhere is an infinite and glorious variety, pervaded by an all-embracing

Coarctation of liberty in uniformity simply as exemplified to
 uniformity from different aspects

unity and order. It was a favourite doctrine of Leibnitz that amongst the familiar objects of our daily experience there is no perfect identity. While walking one day in Kensington Gardens with the Princess of Wales, who was an ardent admirer of the great philosopher, Leibnitz began to expound and illustrate his thesis; and turning to a gentleman in attendance on her Royal Highness, he challenged him to produce two leaves from tree or shrub which were exactly alike in every particular. The challenge was accepted, and Leibnitz was proved to be right. All in Nature proceeds in endless variety. And not in the vegetable world only. No two animals of the same species are precisely alike; nor any two human beings, either in body or in mind. Infinite change, illimitable novelty, inexhaustible difference—these are the foundations upon which Nature builds and ratifies her purpose of individuality.

And as with external objects, so with human actions: amidst their infinite approximations and affinities they are separated by circumstances of never-ending diversity. History may furnish her striking correspondences, Biography her splendid parallels; Rome may in some cases appear but the mirror of Athens, England of Rome; yet, after all, no character can be cited, no great transaction, no revolution, no catastrophe of nations, which, in the midst of its resemblance to distant correspondences in other ages, does not include features

of abundant distinction and individualising characteristics, so many and so important as to yield its own peculiar matter for philosophical meditation, and its own separate moral.

Uniformity in religion, therefore, bears upon its very front the brand of imposture. It exists nowhere, and never has existed; and the pursuit of it has been the bane of the Church of England. The sooner it is abandoned the better. But unity we may have without uniformity: unity of creed, unity in all essentials, but an elastic variety in all the accessories of public worship and in other non-essentials. That is the principle on which I have always shaped my own conduct. If I officiate in a church where it is the custom to celebrate at the north end, I celebrate at the north end. If in a church where the black gown is worn in the pulpit—a rare sight now—I preach in the black gown. If in a church where the celebrant wears a chasuble, I wear a chasuble.

I trust that prudence and statesmanship have presided over the deliberations of the Royal Commission, and that they will recommend a policy of patience, forbearance, and the exercise of spiritual authority instead of coercive legislation, which would certainly be a ruinous remedy. The Bishops have more power than they think over the popular mind if they will only grasp the nettle and take the lead. The Primate has a well-deserved reputation for statesmanship. Let him tell the

public plainly that the principal observances now in question—*e.g.* Eucharistic vestments, incense, reservation of the Sacrament for the sick—are no more Popish than are cassocks and surplices. They are in use in all the Churches of the East: Greek Orthodox, Russian, Armenian, Jacobite, Coptic, Bulgarian; and also in Lutheran Germany and Protestant Scandinavia. To call them Popish, therefore, is to talk nonsense, and is playing into the hands of Popery in addition. For if Popery is as old as these practices, it is the religion of that Primitive Church to which the Church of England has always appealed against the innovations of Rome.

Let us have done with these vituperative epithets. The danger of the day for England is not Popery, but irreligion; not positive atheism indeed, but indifference to all spiritual truths and ideas; a determination to live in the present and let the future look after itself; to eat, drink, and be merry, regardless of the warning: 'Thou fool, this night thy soul shall be required of thee.' The weekly reminder of Sunday is becoming a thing of the past with the rich and leisured class: the week-end institution is practically abolishing it. Is this a time, then, to put down any religious movement, whatever be its occasional aberrations and eccentricities, which helps to keep alive and propagate belief in the unseen world, and in a life beyond the grave where the weary and heavy-laden

shall find rest? Who that has read can ever forget the pathos of the great Tractarian's valediction to the short-sighted and ungrateful Church which knew not how to use his brilliant gifts and loyal service?—

O my mother, whence is this unto thee, that thou hast good things poured upon thee and canst not keep them, and bearest children, yet darest not own them? Why hast thou not the skill to use their services nor the heart to rejoice in their love? How is it that whatever is generous in purpose and tender or deep in devotion, thy flower and thy promise, falls from thy bosom and finds no home within thine arms! Who hath put this note upon thee, to have 'a miscarrying womb and dry breasts,' to be strange to thine own flesh and thine eyes cruel towards thy little ones? Thine own offspring, the fruit of thy womb, who love thee and would toil for thee, thou dost gaze upon them with fear, as though a portent, or thou dost loathe as an offence; at best thou dost but endure, as if they had no claim but on thy patience, self-possession and vigilance, to be rid of them as easily as thou mayest. Thou makest them 'stand all the day idle,' as the very condition of thy bearing with them; or thou biddest them to be gone where they will be more welcome; or thou sellest them for nought to the stranger that passes by. And what wilt thou do in the end thereof?¹

Another choice spirit, also vilified by the same party which hounded Newman out of the Church of England, made a similar complaint. 'I wish to God,' said Robertson of Brighton, 'we had a little soldier's spirit in our Church! . . . But no!

¹ Newman's *Sermons on Subjects of the Day*, p. 460.

the Church of England will endure no chivalry, no *dash*, no effervescing enthusiasm. She cannot turn it to account as Rome turns that of her Loyolas and Xaviers.' Happily this is less true now than it was when Robertson wrote these words, and I will not allow myself to believe that a Royal Commission under the chairmanship of so able and experienced a statesman as Lord St. Aldwyn, and assisted by so able and cautious and tolerant and justice-loving a prelate as the Archbishop of Canterbury, will take so retrograde and fatal a step as to recommend a policy of coercion and repression, and that against one party only in the Church; a policy which would be the beginning of the end of the Establishment.

I have written this book from a feeling of duty and with a deep sense of responsibility: I hope also in a spirit of charity and fair play. I believe that the Church of England is, in the providence of God, predestined to a great purpose, nothing less than to be the means, at the time appointed by the All-wise, to re-unite Christendom. The striking passage in which the Ultramontane De Maistre gave expression to that feeling has often been quoted, but will bear quoting again. 'If Christians,' he said, 'are ever to be drawn towards each other, it seems that the initiative must come from the Church of England. Presbyterianism was French in its origin, and was thus marked by exaggeration and lacking in adaptability. But the Anglican Church touches

us with one hand, and with the other touches those whom we cannot reach.' And therefore this uncompromising Papalist saw, and had the candour to avow, that the Church of England is 'very precious (très précieuse)' as a mediator in the reunion of Christendom, 'like one of those chemical intermediaries capable of reconciling elements mutually repellent.'¹ Let us beware of putting obstacles in the way of God's designs. 'He that believeth shall not make haste.' The Church of England is worth preserving, and this volume is intended as a small contribution towards that end. *Spartam nactus es ; hanc exorna.*

¹ *Considérations sur la France*, Chapter ii.

CHAPTER I

QUEEN ELIZABETH'S RELIGIOUS BELIEF AND INTENTION ON HER ACCESSION

THE first factor of importance in our interpretation of the Ornaments Rubric is the fact that both it and the corresponding clause in her Act of Uniformity owe their existence to Queen Elizabeth. Foiled in her desire to restore the first Prayer-Book of Edward VI., she determined to obtain Parliamentary authority for supplementing the deficiencies of the Second Book by additions, especially in ceremonial, in concert with the Metropolitan or statutory Commissioners. This is placed beyond a doubt by a letter from Parker to Cecil, in which the Archbishop says :—

First, I said, as her Highness talked with me once or twice on that point, and signified that there was one proviso in the Act of the Uniformity of Common Prayer, that by law is granted unto her, that if there be any contempt or irreverence used in the ceremonies or rites of the Church by the misusing of the orders appointed in the Book, the Queen's Majesty may, by the advice of her Commissioners, or Metropolitan, ordain and publish such further ceremonies, or rites, as may be most for the reverence of Christ's holy mysteries and sacraments, and

but for which law her Highness would not have agreed to divers orders of the Book. And by virtue of which law she published further order in her Injunctions both for the Communion bread and for the placing of the Tables within the quire.¹

The Queen's purpose in this was two-fold: first, the bent of her own mind was strongly in favour of the ancient constitution, theology, and ceremonial of the Catholic Church, purged of mediæval accretions in doctrines and ceremonial; next, her political necessities coincided with her religious convictions. Let us examine these two points in the light of facts.

Immediately on her accession Elizabeth told Count de Feria, the Spanish ambassador, that she was resolved to restore religion as it had been left by her father.² In my examination before the Royal

¹ *Correspondence of Archbishop Parker*, p. 375.

² *Documents from Simancas relating to the Reign of Elizabeth*. Translated from the Spanish, and edited by Spencer Hall, F.S.A., Librarian of the Athenæum, London, 1865.

Mr. Martin Hume's translation is as follows:—

'Subsequently in conversation with me she said two or three bad things. One was that she wished the Augustinian Confession to be maintained in her realm, whereat I was much surprised, and found fault with it all I could, adducing the arguments I thought might dissuade her from it. She then told me it would not be the Augustinian Confession, but something like it, and that she differed very little from us, as she believed that God was in the Sacrament of the Eucharist, and only dissented from three or four things in the Mass.'

Sir Lewis Dibdin's comment is: 'That does not look as if Queen Elizabeth was altogether consistent or frank in her expression of views to De Feria.' I suggested that as Elizabeth's remark arose out of what she was saying about the Eucharist, I supposed that her reference to the Augsburg Confession related to the Lutheran doctrine on that subject. Sir Lewis answered:—

Commission on Ecclesiastical Discipline,¹ I quoted this as a key to Elizabeth's feelings and policy. My suggestion was received with surprise and incredulity, especially by Sir Lewis Dibdin, Dr. Gibson (now Bishop of Gloucester), and Mr. Drury, Principal of Ridley Hall. Sir Lewis Dibdin dismissed as an impossibility the idea that Elizabeth could desire or hope to restore religion as it had been left by the author of the Six Articles and the polemical treatise against Luther. And his incredulity was further strengthened by a later remark of the Queen to De Feria in a long and private conference which the ambassador had with her by command of Philip. De Feria urged her on the part of Philip to leave religion as it was settled at the death of Mary, instead of restoring it as it had been left by her father. To this she answered that she desired to establish in her kingdom the Augustan [Augsburg] Confession of Faith, or another like it (*à otra cosa como aquella*); that she, in fact, differed little from us (the Roman Catholics), because she believed that Christ (*Dios*) was present in the Sacrifice of the Eucharist; and that in the Mass she disapproved of only two or three things (*cosas*); that for herself, she thought

'I will not follow you there, but what I do notice is that within a week or two of her apparently telling him that she would like to restore the state of things as in her father's time, she says that for herself she accepts the Confession of Augsburg [or something like it], which was the very point on which her father split with the foreign Protestants.'

¹ See Appendix A, pp. 270, 311.

to be saved quite as much as the Bishop of Rome.¹

These alleged opinions and intentions of Elizabeth appeared to Sir Lewis Dibdin so strange and inconsistent that he discredited the veracity of De Feria (whom he regarded as an unscrupulous man), or believed that Elizabeth was fooling him. But De Feria was an able man, and he had no motive to deceive his master, but every motive to tell him the exact truth. He was, moreover, on friendly terms with the Queen, who had no temptations at that time to mislead him as to her religious opinions and intentions. Her confidences to him are quite consistent with her convictions and policy, and her reference to the Augsburg Confession by no means justifies, as we shall see as we proceed, the inferences drawn by Sir Lewis Dibdin and Dr. Gibson. The latter especially challenged vehemently the possibility of Elizabeth having any intention or wish to restore religion as it had been left by her father. His view was that there was an impassable chasm between the state of religion left by Henry and that initiated by his son on coming to the throne. He laboured this point with great insistence, as the reader will find by turning to the official report of my evidence given in the Appendix. I shall return to Dr. Gibson at a later

¹ *Documents from Simancas relating to the Reign of Elizabeth*. Translated from the Spanish and edited by Spencer Hall, F.S.A., p. 59. Chapman and Hall, 1865. Cf. Froude, *Hist.* vii. p. 82, and Strype, *Ann.* pt. 1, 3. Strype gives a wrong date here.

stage. Meanwhile, let us examine Sir Lewis Dibdin's view that Elizabeth's reference to the Augsburg Confession shows that 'she was making a fool' of De Feria in telling him that she wished to adopt the Augsburg Confession, or something like it. 'Is it not common knowledge,' he asked, 'that it was the Augsburg Confession over which Henry VIII. quarrelled with the foreign Protestants? He would not accept the Augsburg Confession, but put out the Ten Articles instead, and that was the point of divergence (I think about 1535) between Henry VIII. and foreign Protestants.' This he considered conclusive proof that Elizabeth was not sincere in telling De Feria that she was resolved to restore religion as it was at the death of her father, including some modified form of the Augsburg Confession. But a good deal had happened between 1535 and 1547, when her father died. It is plain from the context that the Queen's reference to the Augsburg Confession was limited to the doctrine of the Eucharist and possibly to the doctrine of Confession, which was closely connected with the Eucharist. What, then, does the Augsburg Confession teach on these doctrines, and what was Henry VIII.'s attitude towards it?

CHAPTER II

THE AUGSBURG CONFESSION AND HENRY VIII.

THE Article *De Missa* opens with the following words :—

Our churches are falsely accused of having abolished the Mass, for the Mass is retained among us, and is celebrated with the greatest reverence; nearly all the ceremonies are kept and used, except that some German hymns are mingled with the Latin for the edification of the people.¹

The Article goes on to say that ceremonies are needful to teach the unlearned, and that the ministry of God's Word may excite some to true

¹ 'Falso accusantur ecclesiæ nostræ, quod missam aboleant. Retinetur enim missa apud nos, et summa reverentia celebratur; servantur et usitatæ ceremoniæ fere omnes, præterquam quod Latinis cantionibus admiscetur alicubi Germanicæ, quæ additæ sunt ad docendum populum. Ideo etiam opus est ceremoniis ut doceant imperitos, et tractatio verbi Dei excitet aliquos ad verum timorem, et fidem, et invocationem. Et non solum Paulus præcepit uti lingua intellecta populo, sed etiam ita constitutum est humano jure. Assuefit populus, ut una utantur sacramento, siqui sunt idonei. Id quoque auget reverentiam et religionem publicarum ceremoniarum. Nulli enim admittuntur nisi prius explorati. . . . Cum igitur et ad ceremoniam assuefiat populus, et de usu admoneatur, fiunt missæ apud nos rite et pie, et geruntur omnia in ecclesia majore cum gravitate et reverentia quam olim.' *Confessio Augustana*. Excusa Vitembergæ, Anno MDXL.

fear, and faith, and prayer, for only worthy communicants can use the Sacrament beneficially. Therefore none are admitted unless they are first examined. This is put more plainly in the Article *De Confessione* :—

Confession is not abolished in our churches. For the Body of Christ is not given except after examination and absolution. And the people are taught most diligently concerning the doctrine of absolution, as to which heretofore there was great silence. Men are taught to seek absolution as a rule, because it is the voice of God, and is pronounced by the command of God.¹

So far, Henry VIII. would find very little to quarrel with in the Augsburg Confession. We know, moreover, that in the early days of Elizabeth's reign there was a strong party among the Reformers who were anxious to take the Augsburg Confession as a pattern in doctrine and ceremony for the Reformation settlement in England. Strype, after describing the 'Device' for the reformation of religion offered to Cecil, with the Queen's privity, 'at the very beginning of her reign,' writes :—

A difficult work this was now taking in hand: the reformation of corrupt religion being the harder to bring to pass because there was not only in this juncture a formidable Popish party to struggle with, but a Lutheran party also. For there was not a few now that, in the

¹ 'Confessio in ecclesiis apud nos non est abolita. Non enim solet porrigi Corpus Domini nisi antea exploratis et absolutis. Et docetur populus diligentissime de fide absolutionis, de qua antea hæc tempora magnum erat silentium. Docentur homines ut absolutionem plurimi faciant quia sit vox Dei, et mandato Dei pronuncietur.'

alteration of religion, would endeavour to have it settled according to the Augustan Confession: whereby a real and substantial Presence might be acknowledged in the Eucharist; crucifixes and images might be retained in the churches; the wafer put into the receiver's mouth, and such like. And of this the learned men of the foreign reformed churches were much afraid. I find a letter written anno 1559, from Bullinger, chief pastor in Zürich, to Utenhovius, another learned man, now at Frankford (but under King Edward VI. belonging to the Dutch Church in London), signifying how many strove to have the Augustan Confession received here. 'I see,' said he, 'no little disturbance like to arise even in England, if, as some do require, the Confession of Augsburg be there received: a thing unsuitable in many respects.'¹

Elizabeth's desire therefore (expressed to De Feria) to sanction in her kingdom the Augustan Confession of Faith, or something like it, is thus indirectly confirmed.

But what about her father? Was he likely to tolerate anything of the sort? And could Elizabeth have been serious in telling the Spanish ambassador 'that she was resolved to restore religion as her father had left it'? What was Henry's attitude towards the Augsburg Confession? On his invitation some leading representatives of German Protestantism came over to England, there to discuss the possibility of union with the English Church on the basis of the Augsburg Confession. The second embassy was in the year 1539. The King appointed a body of

¹ *Annals*, i. pt. 1, 76.

Anglican divines, including Tunstall of Durham, to confer with the Germans, who drew up a number of articles for which they claimed the approval of Luther, Melanchthon, and certain cities and princes of Germany, their adherents. In this document the Germans accepted episcopacy, and the primacy of the Bishop of Rome, while rejecting his supremacy. Provided an agreement were arrived at in matters of doctrine, they thought an agreement 'concerning choice of meats, holy days and ceremonies, might be made easy . . . since it is not possible that the world might stand without ceremonies and man's ordinances, seeing that all innovations without necessity ought to be excluded.' They held, with some qualifications, that confession is 'profitable.' They believed in justification by faith, but insisted that 'the faith that justifies ought not to be idle, but adorned with good and godly deeds.' They admitted the doctrine of free will, and allowed that men might fall from grace as often as they committed deadly sin. 'We use the usual ceremonial in the Office of the Mass. For what should avail a change of ceremonies without necessity? But we admit not private masses, because they occasion sundry abuses; because there is an open fair or market made of the celebration of masses.' They professed their belief in the doctrine of the Real Presence in the Eucharist. While believing that the reception of 'Christ's Body under both species'

was the right thing, they charitably refused to condemn those who were content to receive under one species; 'and there should be a prohibition made that one should not offer insults against the other.' While thinking that the saints should 'be proposed to us for an example to learn to follow their lives and conversation' without direct invocation, yet they do not condemn invocation of saints; for 'we affirm for a certainty that the saints do continually intercede for the Church: albeit Christian men ought to be taught that they should not repose the same hope in the saints which they ought to have in God.' 'We do not reject the images of Christ and of his saints, but the adoration made to them; whereof idolatry is sprung.' Nor did they condemn monasticism indiscriminately. 'We think it best to dispute of Purgatory and Pardons in the schools, rather than in the pulpit to dispute of the same without any profit; so that the marketings and bargains thereof should be avoided. For we do reject in those things and others, wherein we do not agree, the abuse rather than the thing itself: the which nevertheless may be discussed and amended by Councils lawfully assembled.' 'Luther hath revoked all the books wherein there be many things contrary to these articles, and hath retracted with his own hands and acknowledged his faults.'¹

¹ Strype, *Eccl. Mem.* i. pt. 1, 526-9. Strype gives the date of 1529, which is of course a slip for 1539.

The document is dated 'March 3, 1539.'

The Conference led to no formal agreement between the German and Anglican divines. But the failure was due to political rather than to religious causes. When the political horizon was again clear Henry renewed his efforts to bring about an agreement on religious matters between the German Lutherans and the Anglican Church. Froude is justified by facts in his account of this episode :—

He now (A.D. 1546) once more, as if to signify to his own subjects and to the world his resolution to go forward with the Reformation, offered to unite with them [the Lutheran princes and their subjects] in a league offensive and defensive, to be called 'the League Christian.' Inasmuch as he would be called on for larger contributions than any other prince, he desired for himself the principal authority; but his object, he said, was 'nothing more than the sincere union and conjunction of them all together in one God, for Christian judgment and opinion in religion, following the Holy Scriptures or the determination of the Primitive Church' in the first General Councils. He entreated again that their 'learned men' would come to England and settle with him their minor differences, and 'so, they being united and knit together in one strength and religion, it might be called indeed a very Christian league and confederacy.' At the same time he surprised Cranmer by telling him that he was prepared for the change at home of the Mass for the modern Communion. . . . The Germans, indeed, were so blind to their peril as again to hesitate, and to demand impossible conditions. The false promises of the French betrayed them to their ruin. But

the King's intentions remained unaffected. Slow to resolve, he was never known to relinquish a resolution which once he had formed; and Elizabeth did but conclude and establish changes which her father would have anticipated had another year of life been allowed to him.¹

Froude adds in a footnote: 'I say Elizabeth rather than Cranmer and Hertford; for the Reformation under Edward VI. was conducted in another spirit.' He refers to a letter from the Protector to Mary in reply to her complaint that the proceedings of Edward and his Council were 'against her father's will.' 'The Duke in his answer told her,' says Strype—

That her father died before he had fully finished such orders as he was minded to have established if death had not prevented him, and that it was most true that no kind of religion was perfected at his death, but that he left all uncertain. . . . But he [the Duke of Somerset] and others could witness what regret and sorrow their late master had at the time of his departure, for that he knew religion was not established as he purposed to have done; and a great many knew, and so did he, and could testify, what that king would have done further in it if he had lived.²

The following is Strype's account of the King's desire to turn the Mass into a Communion:—

This was the last year of King Henry, and the two last things the Archbishop was concerned in by the

¹ Vol. iv. pp. 211-212.

² *Eccl. Mem.* ii. pt. 1, 94.

King were these. The King commanded him to pen a form for the alteration of the Mass into a Communion. For a peace being conducted between Henry and the French King, while that king's ambassador, Dr. Annebault, was here, a notable treaty was in hand by both kings for the promoting that good piece of reformation in the churches of both kingdoms of abolishing the Mass. The kings seemed to be firmly resolved thereon, intending to exhort the Emperor to do the same. This work our King committed to the Archbishop, who, no question, undertook it very gladly: but the death of the King prevented this taking effect.¹

The Order of the Communion was the first instalment of this undertaking on the part of Cranmer, and the first Prayer-Book of Edward was the second. Before Henry's death the Order of the Communion was probably ready for the approval of Convocation, and Edward's first Prayer-Book was drafted in the rough.

It follows indubitably from all this that Elizabeth's declaration to the Spanish ambassador, that she was 'resolved to restore religion as it had been left by her father,' is in full harmony with the facts and with her own character and feelings, as will appear more fully as we proceed. Her reference to the Augustan Confession shows her thorough knowledge of the negotiations that had taken place between the German divines and the Anglicans, and of her father's attitude on the subject towards the end of his life. Liturgically, therefore, the

¹ *Memorials of Cranmer*, i. 198.

state of religion as Henry left it was the Order of the Communion, which prescribed the usual ceremonies of the Mass (minus the Elevation) and the draft of the First Prayer-Book. This I shall now endeavour to show.

CHAPTER III

A GREAT PART OF DIVINE SERVICE IN ENGLISH AT HENRY VIII.'S DEATH

DR. GIBSON, Sir Lewis Dibdin, and Mr. Drury, with the apparent assent of the other Commissioners, maintained that at Henry VIII.'s death there was practically no liturgical reform at all. 'They had the Litany in English,' said Dr. Gibson, in his severe examination of me, 'but can you give me a single other thing except that after Matins and Evensong one chapter was to be read in English in Henry VIII.'s reign?' 'In the Order of the Communion there was not a single word in English. And there were no occasional services in English that I am aware of.' I ventured to suggest 'that the Epistles and Gospels were read in English.' 'No, not until the Injunctions of Edward VI.,' was Dr. Gibson's magisterial answer. And Sir Lewis Dibdin confidently supported him. Very well; we shall see.

Let us now note Dr. Gibson's positive assertions and compare them with the facts. He insisted (1) that the Epistles and Gospels were not read in church in English before the reign of Edward VI.;

(2) that 'there were no occasional services' in English in the reign of Henry VIII.; (3) that 'the whole system of chantries remained unchanged at the death of Henry VIII. ;' (4) that the Latin edition of the Elizabethan Act of Uniformity was neither a contemporaneous, nor authorised, nor legal interpretation of 'the second year' in the Ornaments Rubric ; and (5) he told me for my information : ' You do not seem to realise the extraordinary difference there was between the last year of Henry VIII. and the first and second years of Edward VI.'

Dr. Gibson is a learned divine. He has been Principal of a Theological College, and he had leisure to prepare his cross-examination of me, to choose his own points, and to master the facts on which he examined me. On the other hand, I had come up from Yorkshire and appeared before the Commission without the smallest inkling of the points on which I was to be rigorously cross-examined and challenged to the proof. I think it would have been fairer and more conducive to historical truth if some idea had been given me beforehand of the line of cross-examination to which I was to be subjected. Taken thus at a disadvantage, and feeling assured that Dr. Gibson would not have ventured on such peremptory assertions without having made sure of his ground, I yielded, with much misgiving, to the superior knowledge which such confidence implied. I will

deal with Dr. Gibson's points as they arise in the course of my argument, and I begin with his assertion that, except the Litany and one lesson, there was not 'a single other thing' in English in Henry VIII.'s reign. The truth is that some years before Henry VIII. there was a process gradually going on of translating various portions of the Latin services into English. Our present beautiful Litany was translated and in part composed by Cranmer in 1544. 'From this time,' says Canon Dixon, 'until the liturgical reformation of the following reign, no opportunity was lost, whenever any special service was appointed, of turning some part of the old Latin services into English; and in this gradual way the alterations of the public services progressed considerably during several years.'¹

But, in matter of fact, this gradual transformation of the old Latin services into English had been going on long before Cranmer's translation of the Litany. Let me quote again from Canon Dixon:—

The old service-books of England, the mingled product of the ecclesiastical and monastic systems, contained (like those of the rest of Christendom) two different sets of Offices for the seven or eight canonical hours of prayer. The one series was for public worship; the other was for private devotion. Long before the Reformation the private Offices had been taken and translated into English separately; and, under the peculiar name of Primer, they were in the hands of the people. Small manuals, in

¹ *Hist. of the Church of England*, ii. 351-2.

English, or partly in Latin, with this title still remain ; some of them of a date considerably earlier than the Reformation. These little books had come to be understood to have certain fixed contents ; and to include elementary expositions of doctrine along with the prayers and other forms of devotion. They contained, besides the Offices of the Hours, the Litany, the Ten Commandments, the Ave, and other Preces, with some explanations. From the beginning of the Reformation such books had increased greatly in number ; for in the Primer, or private prayer-book, the New Learning discerned a means of disseminating their opinions in a familiar and unsuspected form.¹

And in a footnote Canon Dixon says : ‘ Those manuals were used as reading-books in schools, as well as for ordinary devotions. Mr. Dickenson says that no less than thirty Primers, either wholly English, or English and Latin combined, were published between 1527 and 1547.’

Several of the Primers put forth in the reign of Henry VIII. contained the Epistles and Gospels in English. I think the first in which they appear is the Primer published by Bishop Hilsey of Rochester in 1537, and republished in 1539. It was published by authority of Henry VIII. It had the Litany in English (seven years before Cranmer’s translation), but without the saints invoked in previous versions, except those found in the New Testament. ‘ Otherwise it is chiefly remarkable for a calendar giving Epistles and Gospels for Sundays and Saints’ days,

¹ *Hist. of the Church of England*, ii. p. 360.

which nearly correspond with those now in use. Hilsey may therefore be regarded as the first compiler of the present selection of Epistles and Gospels.'¹

In 1538 'The Pystels and Gospels of every Sunday and holy day in the year' was printed 'by Robert Redman, dwelling at the sign of the George next to Saint Dunstan's Church in Fleet Street.'

Another, but different, copy was published in 1540, containing the Collects, Epistles, and Gospels in English for the Sundays and holy days throughout the year. And in the same year a Primer was published in English and Latin 'set out at length with the exposition of *Miserere* and *In Te Domine speravi*, and with the Epistles and Gospels throughout all the whole year.'

These I have myself examined. And I possess in addition 'The Epistles and Gospels, with a brief Postil upon the same,' throughout the year, by Richard Taverner. It was 'imprinted in London by Richard Bankes,' 'cum privilegio Regali ad imprimendum solum,' and bears the date of 1540. Immediately after the table of contents is

THE COPY OF THE KYNGE'S GRACIOUS PRIVILEGE

Henry the Eight by the Grace of God Kynge of Englande and of Fraunce, defensour of the fayth, Lorde of Ireland, and in earth supreme head immediately under Christe of the Church of England. To all prynters of

¹ *Hist. of the Church of England*, ii. 361-2.

bokes wythin thys oure Realme, and to all other our officers, ministers and subiectes, these our letters hearyng or seyinge : Gretynge

We let you wit, that of our grace especial we have gyuen priuilege unto our welbeloued subiecte Richarde Bankes, that no maner person wythin this oure Realme, shal prynte any maner of bokes, what so ever our sayd subiecte shall prynte fyrste wythin the space of seuen years next ensuyng the printynge of euery suche boke so by hym prynted, vpon payne of forfeytyng the same. Wherefore we woll and commande you, that ye nor none of you do presume to prynte any of the sayde bokes duryng the tyme aforesayd, as ye tender oure pleasure, and woll auoyde the contrarye.

Taverner's 'Postils' was published, as already stated, in 1540, and ran rapidly through five editions before the end of the year. It was undertaken at the request of Cromwell, the King's Vicegerent, and received, as we have seen, the *imprimatur* of Henry himself, to whom Taverner was Clerk of the Signet. Cardwell republished an edition of it in 1841, after collecting the four oldest copies which he could find. Only one of these copies has a date, and that 'in one only of its titles, viz. at the beginning of the third part.' My copy, which differs from all the copies mentioned by Cardwell, has the date (1540) twice, namely, on the title-page of the front which begins with Corpus Christi day and goes on till the end of the Trinity season, and on the title-page of the part which begins with 'A Sermon on the Resurrection,' and goes on till Corpus Christi day.

The Preface, which follows 'The Copy of the Kynge's Gracious Privilege,' is worth quoting:—

Forasmuch as (good Christen reader) at this present time, accordynge to our Lordes worde, the haruest is great and plenteouse, but the labourers are fewe: I meane as thus, that the people be very desirous and greedy to receyue Gods worde, yf they had plentie of sober, modeste, and sincere teachers, whereas nowe for skacetic of suche in some places they be destitute and scattered abrode euen as shepe lackyng feythful shepherdes: I was instantly required, to thintent y^e Lorde of the haruest myght by thys meane thrust forth his labourers in to the harueste, to peruse and recognize this brefe postel which was delivered me of certayne godly persons for y^e purpose and intende. Whiche thinge to my lytel power and as the shortnes of tyme wolde serue, I haue done. And such sermones or homylyes as semed to want, I haue done. I haue supplied partely in myne owne industrye and partlye with the helpe of other sober men whych be better lernyd then I my selfe. Now, yf ye and namely you pristes and curates shall use thys syngular helpe and benefyte, whych is here offered unto you, well & to the edificatiō of Christes Church, ye shal gyve occasiō that other fruteful workes may be hereafter at the cōmañdemēt of the Kynge's maiestie or of his most honourable counsel set forth and published unto you. But yf, on the contrary part, after the exemple of y^e unprofitable servaūt spokē of y^e Gospel, ye wol not fynde in your hartes charitably & prudently to occupye this talent that here is frankely delyuered unto you, but wyll eyther wrappe it up in a faire napkin or els unreverently handle it to the destruction & not to the edification of others: be ye then sure, that not only no mo such benefytes shalbe bestowed upon you, but also all that whyche ye haue

already shall be taken from you, & that not unworthly. Yea & fynally accordynge to our Lordes owne sentence ye shalbe caste as seruantes unprofitable into utter darkness, where shalbe wepyng & gnashynge of teeth. But there is good hope that ye woll otherwyse demene your selves, namely, nowe syth ye be so beningly inuited, injoynd, & cōtinually called upon to execute your office in thys behalfe by oure hygh shepherde vnder Christ & supreme heade oure most dradde soueraigne lorde the Kynges maiestie whom, I doubte not, but ye woll gladly obeye. I meane to fede more often your flocke cōmytted to your charge not with rashe erronyouse, heretical or fabulouse sermons, but with sobre, discret, catholike & godly instructions such as be here described vnto you or better yf better ye can deuyse. In which thyng doynge, ye shall vndoubtedly not onely declare youre selves obedient to your supreme heade Gods minister, but also ye shall discharge youre conscience before God of the due ministratiō where vnto ye be called. To whome
 be given all prayse &
 glory worlde
 without
 ende
 Amen.

Taverner's Epistles and Gospels, with their Postils, were thus, we see, published on the highest authority, that of the King and his Council, containing, among others, Cranmer and Gardiner. It is probable also that some of the leading divines of the day helped Taverner in the composition of the sermons. It is likely also that Bishop Bonner had Taverner's book in his mind when he gave the

following directions to his clergy in his Injunctions of 1542 :—

That all priests, when they shall preach, shall take the Gospel or the Epistle of the day, which they shall recite and declare to the people plainly, distinctly, and sincerely from the beginning to the end thereof, and then to desire the people to pray with him for grace, *after the usage of the Church of England now used*; and that done, we will that every preacher shall declare the same Gospel or Epistle, or both, even from the beginning; not after his own mind, but after the mind of some Catholic doctor, allowed in the Church of England.¹

Taverner's Postils, annexed to the Gospels and Epistles alternately, are excellent in morals and doctrine, and were highly esteemed at the time. Two of them were adopted by Archbishop Parker and published by authority of Queen Elizabeth in the second Book of Homilies: namely the Homilies for Good Friday and Easter Day, which are the same as Taverner's sermons on the Resurrection of Christ and upon the Passion.

So much, then, as to the persistent assertions of Dr. Gibson and Sir Lewis Dibdin that the Epistles and Gospels were not read in divine service in English till they were authorised by Edward VI.'s Injunctions.

Nor is it accurate on the part of Dr. Gibson to say that 'in the Order of Communion there was not a single word in English.' The fact is that

¹ Wilkins, *Conc.* iii. 866; Burnet, iv. 515, Pocock's edition.

the Order of Communion is all in English. It is an addition to the Latin Service for the benefit of those who did not understand Latin, and to whom the Sacrament was now administered in both kinds. In fact, a large part of it is incorporated in our present Communion Office, *e.g.* the exhortation to the communicants, the warning to evil livers, the invitation to worthy communicants to 'draw near,' the general confession, the absolution, the 'comfortable words,' the prayer of humble access, the words (as in Edward's first Prayer Book) addressed to the communicants in delivering the Sacrament to them, and the benediction. Indeed, Fuller the historian regarded the Order of the Communion as a sort of first edition of Edward's first Prayer Book, and covered by the first Act of Uniformity.

When challenged by Dr. Gibson to show that a good part of the old services was in English in Henry VIII.'s reign, I said that 'they had the Litany and a great many prayers in English.' 'They had the Litany,' he said in his confident way, 'but can you give me a single other thing except that after Matins and Evensong one chapter was to be read in English in Henry's reign?' 'I think I could,' I answered. 'I think not,' replied Dr. Gibson. Still pressed, I said that 'a great many of the occasional services' were in English. 'There were no occasional services in English that I am aware of,' was the summary rejoinder.

I was surprised, but held my peace. The services of Ordination, Coronation, Matrimony, Baptism, Confirmation, Burial, are all 'occasional services.' Dr. Gibson would no doubt admit this, and he was probably thinking of occasional services other than these when he declared that there were no occasional services in English in Henry VIII.'s reign. Yet even so it is a somewhat surprising confession on the part of a learned divine like Dr. Gibson. Several of the occasional services in Maskell's 'Monumenta Ritualia' were in English. And among the most popular services at that time and before that time were the Processionals, which consisted of litanies, suffrages, and prayers for various occasions: for rain, for fair weather, in times of war, famine, and pestilence. It is possible that some of these were partly in English long before the death of Henry. It is certain that they were in English in the latter years of his life, as the following letter to Cranmer in 1544, on the eve of the King's departure to France, will show. The letter was sent by the Primate to his Suffragans:—

Most Reverend Father in God, right trusty and right well-beloved, we greet you well; and let you wit that, calling to our remembrance the miserable state of all Christendom, being at this present, besides all other troubles, so plagued with most cruel wars, hatreds and dissensions, as no place of the same almost (being the whole reduced to a very narrow corner) remaineth in good peace, agreement and concord; the help and remedy

hereof far exceed the power of any man, must be called for of Him who only is able to grant our petitions, and never forsaketh or repelleth any that firmly believe and faithfully call upon Him; unto whom also the examples of Scripture encourage us in all these and others our troubles and necessities to fly and to cry for aid and succour. Being thereupon resolved to have continually from henceforth general processions in all cities, towns, churches and parishes of this our realm, said and sung with such reverence and devotion as appertaineth, forasmuch as heretofore the people, partly for lack of good instruction and calling on God, partly for that they understand no part of such prayers and suffrages as were used to be said and sung, have used to come very slackly to the processions, where the same have been commanded heretofore: We have set forth certain godly prayers and suffrages in our native English tongue, which we send you herewith; signifying unto you that, for the especial trust and confidence we have of your godly mind and earnest desire to the setting forward of the glory of God and the true worshipping of his most holy name, within that province committed by us unto you, we have sent unto you these suffrages, not to be for a month or two observed and after slenderly considered, as other our injunctions have, to our no little marvel, been used; but to the intent, as well the same as other our injunctions, may earnestly be set forth by preaching, good exhortations, and otherwise, to the people, in such sort as they, feeling the godly taste thereof, may godly and joyously with thanks embrace and frequent the same as appertaineth.

Wherefore we will and command you, as you will answer unto us for the contrary, not only to cause these prayers and suffrages aforesaid to be published frequently and openly used in all towns, churches, villages, and parishes of your own diocese, but also to signify this our pleasure unto all other bishops of your province, willing

and commanding them in our name, and by virtue hereof, to execute the same accordingly. Unto whose proceedings, in the execution of this our commandment, we will that you have a special respect, and make report unto us if any shall not with good dexterity accomplish the same ; not failing, as our special trust is in you.

Given under our signet at our manor of St. James, the 11th of June, the thirty-sixth year of our reign.¹

Speaking of the previous year (1543), Strype says:—

Occasional prayers and suffrages, to be used throughout all churches, began now to be more usual than formerly. For these common devotions were twice this year appointed by authority, as they had been once the last ; which I look upon the Archbishop to be the great instrument in procuring : that we might by this means, by little and little, bring into use prayer in the English tongue, which be so much desired : and that the people might be the more desirous to hear their whole service rendered intelligible ; whereby God might be served with the more seriousness and true devotion. The last year there was a plentiful crop upon the ground : but when the time of harvest drew near there happened a great plague of rain. So in August letters were issued out from the King to the Archbishop, that he should appoint certain prayers to be used for the ceasing of the wet weather ; and to write to the rest of the province to do the like.²

Strype quotes the letter, which bears date ' the 20th day of August, the XXXV year of our reign.'

¹ Wilkins, *Conc.* iii. 868 ; Burnet, iv. 529, Pocock's edition.

² *Mem.* i. 181. Instead of 'the rest of the province,' the original has 'other the prelates of this our realm.' So that both provinces were intended, as probably also in the King's previous letter.

It is evident from the King's letter that these prayers were to be in English,¹ otherwise supplication could not have been made by 'every person, both by himself apart, and also by common prayer.'

This may suffice by way of answer to Dr. Gibson's assertion that 'there were no occasional services in English' before Henry VIII.'s death. Dr. Gibson, I feel obliged to say, seemed to me anxious in his cross-examination of me to press more meaning into my words than they fairly bear, for the purpose of prejudicing my evidence. 'A great many things,' I said, in my examination before the Commission, 'had been abolished under Henry VIII. and in the early years of Edward VI., and a great part of the service was in English.' Here I coupled together the latter part of Henry's reign and the early years of Edward. But Dr. Gibson made a determined effort to pin me down to the death of Henry VIII. exclusively. Yet if I really had said what Dr. Gibson tried to make me say I should not have been far wrong. In matter of fact a great deal of divine service was

¹ 'Occasional prayers, supplications, and processions, to be used in churches, were not unknown in olden times; and in the last year [1543] they had been ordered by the King on account of a great rain falling in harvest. It is not improbable that the suffrages used on that occasion were in English: and it is certain that in this year [1544] the King, about to embark in person on his last expedition against France, ordered special prayers to be had in the tongue of the people.' Dixon, *Hist.* ii. 349. I should say, for the reason which I have given above, that it is more than probable that the suffrages in the special services of 1543, as well as those in 1544, were in English.

in English at Henry's death. The Epistles and Gospels were read in English, and two Lessons from the Old and New Testaments, besides abridged lessons ; and much of our present Prayer Book was included in the authorised Primers. Let us look at the last of them, 'Set forth by the King's Majesty and his Clergy' in 1545, 'to be taught, learned, and read.'

The word Primer is a generic term, including a variety of books of devotions. We are here, however, concerned with only one class of Primers, namely, those intended both for private and public use, and these were generally known as 'the Primer' *κατ' ἐξοχήν*. They were in fact an abridged and a simpler form of the Breviary, or Canonical Hours, of which the usual name was 'the Divine Office.' It is a common, but erroneous, belief that the Breviary was intended for the use of the clergy only. It was intended for the laity also—at least those parts of it in which the laity could join without interfering with their secular work. Let me quote on that point a writer¹ of unquestioned authority, although it is really a matter of common-place knowledge on the part of liturgical students :—

The laity were strongly urged to be present ; but, as Gavantus complains, they flocked more readily to the Holy Communion than to the Office of the Hours. . . . It is indeed a certain thing that the Divine Office was not

¹ Maskell's *Mon. Rit.* ii. pp. xxix-xxxi.

instituted solely for the clergy, but for all men who called themselves Christians. Hence were there so many canons of the Western Church obliging all parishioners to attend upon it, some on every day, some on Sundays, others on the festivals. Lyndwood, for the English Church, speaks plainly upon the point. A constitution of Archbishop Winchelsey decrees ‘ut Presbyteri infra nostram provinciam celebrantes intersint in cancello in Matutinis, Vesperis, et aliis Divinis Officiis, debitus horis,’ &c. And the gloss explains ‘hora competens’ to be that when the attendance of the people may be expected, though not always, perhaps, hoped for.’

Again an incidental notice to the same effect is among the constitutions of Bishop Kirkham, of Durham, A.D. 1255: ‘Provideant rectores . . . ne passim laici sedeant et stent in cancello, dum Divina Officia celebrantur, nisi forsitan patroni, aut alia venerabilis persona, ad hoc ob reverentiam admittatur.’¹

In some places, indeed, the laity were more zealous in their attendance on the Divine Office than the clergy, as one of a body of canons agreed upon in a synod held at Exeter in the thirteenth century shows. Some of the clergy shirked their duty in a manner which the synod did not hesitate to characterise as a fraud on the Church. They even ordered, as a rubric in our Prayer-Book still orders, the parish priests to have a bell tolled to summon the parishioners to prayer; but lazy parsons sometimes ordered the bell to be tolled, yet never appeared. When some parishioners assembled and, finding no parson, inquired where he

¹ Maskell's *Mon. Rit.* ii. pp. xxix-xxxii.

was, the bell-ringer answered that the parson had come and gone, there being no congregation.¹ 'The parishioners go away deluded,' says the synod, 'and the church is deprived of its proper dues.'

Let us now glance at King Henry VIII.'s last Primer (1545). The preface begins :

Henry the VIIIth, by the grace of God King of England, France, and Ireland, Defender of the Faith, and in earth Supreme Head of the Church of England and Ireland, to all and singular our subjects, as well of the clergy as also of the laity, within our dominions whatsoever they be, greeting.

After explaining why people should understand the meaning of the words they use in prayer, the Preface proceeds :—

In consideration whereof we have set out and given to our subjects a determinate form of praying in their own mother tongue, to the intent that such as are ignorant of any strange or foreign speech may have what to pray in their own and acquainted and familiar language with fruit and understanding, and to the end that they shall not offer unto God (being the Searcher of the reins and heart) neither things standing against true religion and godliness, nor yet words far out of their intelligence and understanding.

¹ 'Præterea audivimus quandoque, quod presbyteri, quanquam fuerint absentes, tanquam præsentés essent, ad horas canonicas faciunt campanas pulsari: quarum sonitu populus excitatus, dum ad ecclesiam Divinum Officium audiendi et orandi causa accedit, presbyterum non inveniens, a clerico præsenté ubi sit [inquirunt], et responsum accipiunt, "Non est hic, jam recessit," et sic parochiani illusi recedunt et ecclesia debitis defraudatur obsequiis. Hanc fraudem evellere cupientes, statuimus, &c.' Wilkins, *Conc.* ii. 707.

And we have judged it to be of no small force, for the avoiding of strife and contention, to have one uniform manner or course of praying throughout all our dominions; and a very great efficacy it hath to stir up the ferventness of the mind if the confused manner of praying be somewhat holpen with the fellowship or annexion of the understanding, if the ferventness of the prayer being well perceived do put away the tediousness or fainting of the mind, being otherwise occupied and turned from prayer; if the plenteousness of understanding do nourish and feed the burning heat of the heart; and finally, if the cheerfulness of earnest minding the matter put clean away the slothfulness of the mind tofore gathered.'¹

The Primer is further introduced by a Royal Injunction that explains in detail the purpose of the king and clergy in publishing this Primer, which is to supersede all others. Hitherto 'the youth of our realms (whose good education and virtuous bringing-up redoundeth most highly to the honour and praise of Almighty God) have been taught the elements of the Christian Faith in Latin, by means whereof the same are not brought up in the knowledge of their faith, duty, and obedience, wherein no Christian person ought to be ignorant.' For the sake of the youth, therefore, the Primer services are now published in English. And not for the sake of the youth only, but also 'that our people and subjects, which have no understanding in the Latin tongue, and yet have the knowledge

¹ *Three Primers of Henry VIII.* p. 440.

of reading, may pray in their vulgar tongue, which is to them best known; that by the means thereof they should be the more provoked to true devotion, and the better set their hearts upon those things that they pray for.' 'And finally for the avoiding of the diversity of primer books that are now abroad, whereof are almost innumerable sorts, which minister occasion of contentious and vain disputation rather than edify; and to have one uniform order of all such books throughout all our dominions, both to be taught unto children and also to be used for ordinary [i.e. common] prayers of all our people not learned in the Latin tongue; [we] have set forth this Primer or Book of Prayers in English, to be frequented and used in and throughout all places of our said realms and dominions, as well of the older people as also of the youth for their common and ordinary prayers.'¹

Froude describes the authorised Primer of 1545 as follows: 'a collection of English prayers was added to the Litany, a service for morning and evening, and for the burial of the dead; and the King, in a general proclamation, directed that the Primers should be used in all churches and chapels in the place of the Breviary.'² Dixon girds at this passage from Froude, which he calls a 'passable account of the authorised Primer, perhaps. But Mr. Froude goes on to say that "the King in a

¹ *Three Primers of Henry VIII.* p. 457. ² Froude, *Hist.* iv. 190.

general proclamation directed that they should be used in all churches and chapels in the place of the Breviary." He refers to Wilkins iii. 873. Perhaps anything that the King published might be called a proclamation, but it would have been better to call this, as Wilkins does, "The King's Preface to his Primer book." That is what it is. . . . It contains no mention of the Breviary, and no direction that the Primer, or *private* Prayer-Book, should be read in churches and chapels. How on earth could it? The "collection of English prayers" which is used in churches and chapels belongs to the following reign.'

But the Primer was sanctioned by a royal Injunction, which was equivalent to a proclamation. The language of the Injunction precludes the possibility of our regarding the Primer as a mere collection of '*private* prayers,' as Dixon calls it with the emphasis of italics. The King was not so foolish as to prescribe 'one uniform order' of *private* prayers 'throughout all places of our said realms and dominions.' And how could such uniform order 'be frequented' by 'all our people not learned in the Latin tongue'? The language evidently refers to places of public worship. And this is placed beyond a doubt by the services being called 'their common and ordinary prayers'—i.e. the common and ordinary services of the Hours or Breviary, which, as we have seen, the laity as well as the clergy were expected to attend, especially

such of the Breviary Services as would not interfere with the ordinary avocations of the laity. A glance at the table of contents prefixed to the Primer of 1545 would have saved Canon Dixon from his blunder. Here it is :

- ‘ The Calendar.
- ‘ The King’s Highness’ Injunction.
- ‘ The Prayer of our Lord.
- ‘ The Salutation of the Angel.
- ‘ The Creed or Articles of the Faith.
- ‘ The Ten Commandments.

- ‘ The Matins.
- ‘ The Evensong.
- ‘ The Complene.
- ‘ The Seven Psalms.
- ‘ The Litany.
- ‘ The Dirige.
- ‘ The Commendations.
- ‘ The Psalms of the Passion.
- ‘ The Passion of our Lord.
- ‘ Certain godly prayers for sundry purposes.’

It is really absurd to suppose that all this refers to a book of private devotions. The authorised Primer of 1545 was to a large extent the foundation of the subsequent Book of Common Prayer. Matins opens with the same suffrages in both books, followed by the *Gloria* and, after the Salutation of the Angel in the Primer, goes on to

the *Venite*. Then follow certain Psalms, then an anthem, then the Lord's Prayer, then the following blessing: 'The everlasting Father bless us with his blessing everlasting'; then the Lessons—one from the Old Testament and one from the New; then the *Te Deum*, followed by versicles. Evensong is on the same lines, containing suffrages, the *Gloria*, Psalms, anthem, a hymn, versicles, the *Magnificat*, a second anthem, a versicle, and a prayer. The other services of the Divine Office are all given, simplified and purged from a number of ceremonies and omitting a large number of Saints' days.

Moreover the following direction is prefixed to the Processional:—

As these holy prayers and suffrages following are set forth of most godly zeal for edifying and stirring of devotion of all true faithful hearts; so it is thought convenient in this common prayer of procession, to have it set forth and used in the vulgar tongue for stirring the people to more devotion; and it shall be every Christian man's part reverently to use the same, to the honour and glory of Almighty God and the profit of their own souls. And such among the people as have books, and can read, may read them quietly, and attentively give audience in time of such prayers, having their minds erect to Almighty God, and devoutly praying in their hearts the same petitions which do enter in at their ears, so that with one sound of the heart, and one accord, God may be glorified *in his Church*. And it is to be remembered that that which is printed in black letters is to be said or sung of the priest with an audible

voice, that is to say, so loud and so plainly that it may well be understood of the hearers. And that which is in the red is to be answered of the choir soberly and devoutly.

How in the face of all this Canon Dixon could have committed himself to the extraordinary assertion that this Primer is a '*Private Prayer-book*,' containing no direction that it 'should be used in churches and chapels,' is amazing. One can only suppose that he never examined the Primer critically, if at all. The whole structure and woof and texture of the Primer show that it was intended to be used in churches and chapels. Of course, there are private devotions in it as well. This is one of the few errors in Canon Dixon's able and learned and, on the whole, accurate history.

And now let the reader judge for himself between my statement, that at the close of Henry VIII.'s reign 'a great part of the service was in English,' and Dr. Gibson's counter-assertion 'that at the death of Henry VIII. there was nothing in English except the Litany and one chapter of the Old and New Testament to be read after Matins and Evensong,' which, in his opinion, were said in Latin.

CHAPTER IV

BOOK OF COMMON PRAYER IN SUBSTANCE THE WORK OF HENRY VIII.'S REIGN

BUT my evidence as to the progress of the Reformation at Henry VIII.'s death is not yet finished.

At the opening of Convocation in the beginning of Edward VI.'s reign (November 7, 1547), the Lower House sent some petitions to the Upper House, of which the third was—'That the performance of the bishops and others who, by order of the Convocation, have spent some time in reviewing and correcting the Offices for Divine Service, may be laid before the House.'¹ 'Here,' says

¹ Collier, v. 213. Gasquet and Bishop give the words of the petition as follows: 'That the labours of the bishops and others who, by command of Convocation, had been engaged in examining, revising, and setting forth (*et edendo*) the Divine Service, should be produced and submitted to the examination of this House.' *Edward VI. and the Book of Common Prayer*, p. 1.

Archbishop Cranmer's version of the petition says that the clergy declared that 'by command of Henry VIII. certain prelates and learned men were appointed . . . to devise a uniform order; who according to the same appointment did make certain books, as they [the Lower House] be informed.' And the object of their request was, according to Cranmer's statement, that these books should be submitted to them 'for better expedition of Divine Service to be set forth accordingly.' *Ibid.*

Dixon,¹ 'they referred, it can scarcely be doubted, to the unpublished "Rationale," which Cromwell had appointed in the last year of his life.' Dixon is evidently in error here. The words of the petition do not correspond with the contents of the 'Rationale,' which was not a revision and correction of the Offices for Divine Service, but an elaborate explanation of the ceremonies and services of the Church.

There is no record of the answer of the Upper House to the petition from the Lower, nor have we any further account of the revision of services—those 'certain books' which Cranmer said had been drafted by a committee of 'certain prelates and learned men for a uniform order.' There can be no doubt, however, that the Lower House of Convocation was accurately informed. But what became of the revised Service-Books to which they referred and which they wished to examine 'for the expedition of Divine Service to be set forth'? There can hardly be a doubt, I think, that they were the drafts of the Order of the Communion and the Prayer-Book of 1549. We have seen (p. 12) that in the last year of his life Henry VIII. commanded Cranmer 'to pen a form for the alteration of the Mass into a Communion,' which, according to Strype, Cranmer 'undertook very gladly.' Henry had on various occasions previously expressed his disapproval of solitary Masses and the

¹ Dixon's *Hist.* ii. 467.

trafficking in sacred things thereby engendered. But the corollary of 'the alteration of the Mass into a Communion' was the administration of the Sacrament to the laity in both kinds whenever there was a celebration. Accordingly Cranmer, a few days after the opening of Convocation in 1547, and doubtless in response to the petition of the Lower House for information about the revision of Services on which the authorised committee of experts had been engaged, presented to the Lower House, through the Prolocutor, 'a Form of a certain Ordinance for the receiving of the Body and Blood of our Lord under both kinds of bread and also of wine.' This was on November 30. The date is important, for it shows that the Order of the Communion had been drawn up before the accession of Edward VI., according to Cranmer's undertaking to Henry VIII. to compile such a Form, and was thus known to Parliament while 1 Edward VI. was before it. On November 12 the Bill against irreverence to the Blessed Sacrament was read for the first time in the House of Lords; a second time on the 15th; and a third time on December 3. Meanwhile, a Bill for Communion in both kinds was read for the first time on November 26. But before either Bill passed through Parliament they were combined in one Bill, and this became 1 Ed. VI. c. 1. as we have it now. So that Parliament had cognisance of the Order of the Communion while passing the Act, which actually quotes part of the document.

Both appeared under the auspices of Cranmer, and he and everybody at the time assumed that the Order of the Communion had the authority of Parliament, which merely authorised what Cranmer had prepared in obedience to Henry VIII.'s command.

But the Lower House demanded to see 'certain books, the labours of the Bishops and others who, by command of Convocation, had been engaged in examining, revising, and setting forth the Divine Service.' The Order of the Communion alone does not satisfy this description. There must have been another book. What was it? The credit of answering that question belongs to two learned Roman Catholic writers, Dom Gasquet and Mr. Bishop.¹ They discovered some years ago the draft of the Prayer-Book of 1549 in Cranmer's handwriting. There are three copies of this draft, and 'the document,' they think, 'is to be assigned to some date between 1543 and Henry's death in 1547.' It is in Latin because Cranmer had Quignon's revised Latin Breviary before him and borrowed freely from it. But it is evident that the Book when complete was intended to be in English. In fact, the Preface to our present Prayer-Book is, for the most part, a literal translation from Cranmer's Latin draft.

The truth is that the main lines of our Book of

¹ See *Edward VI. and the Book of Common Prayer*. By Francis Aidan Gasquet, O.S.B., and Edmund Bishop.

Common Prayer were laid down before the death of Henry VIII., and the Book of 1549 was but the filling in of the outline. The common impression is that soon after Edward VI.'s accession to the throne he commissioned a select body of divines to draw up for the first time a 'Book of Common Prayer and Administration of the Sacraments and other Rites and Ceremonies according to the use of the Church of England,' and that this body accomplished their task in a few months, and produced at a single effort the first Prayer-Book of Edward VI. The fact is very different. Edward's Book was the result of a long process extending by a series of experiments over a series of years, in which both the Church and the State, in varying degrees, took part. The process began in the year 1516 when the most authoritative and popular of the old English Service-Books, the Sarum Breviary, underwent a sweeping reform, including a provision for an increased use of Holy Scripture. The Sarum Missal underwent a similar reform two years later. In the year 1534 the Convocation of Canterbury petitioned Henry VIII. to authorise an English version of the Bible. The King refused; but the petition bore fruit not long after. Archdeacon Freeman calls attention to the remarkable fact that,—

Coincidentally with this petition [of 1534] the issue of printed editions of the principal Service-Books, of whatever 'Use,' which since the end of the fifteenth century had

continued without interruption, *suddenly ceased*; and in the case of the Missal was *never resumed* up to the time of the first Revision of the Offices in 1549. This coincidence is too remarkable to have been the result of accident. It indicates, not obscurely, a design or desire on the part of Convocation to popularise the ancient Offices and adapt them to congregational use (at least to the extent of having the portion of Scripture contained in them read in the vernacular) before putting them forth again. It would be natural, under the influence of such a hope, to suspend the issuing of the Service-Books in their older form.¹

I have already shown how this design was carried out in the various amended editions of the Primers, with the Epistles and Gospels in English sometimes attached to the Primers, and sometimes, as in Taverner's edition, printed separately. Even where the Epistle and Gospel were still read in Latin they were also read in English, as Bonner's Injunctions show.² The difference which Edward's Injunctions made in this respect was that the Epistle and Gospel were now ordered 'to be read at High Mass in English, *and not in Latin.*'

In 1541 Cranmer moved in Convocation 'that the Missals and other Liturgic Books might be reformed, omitting [with other things] the names of the Popes.' Soon afterwards an amended edition of the Sarum Breviary was put forth with the

¹ *Principles of Divine Service*, ii. 104.

² I have sometimes seen this done abroad at the present day, e.g. in Bamberg.

proposed omissions, and the Sarum Use was now made obligatory.

This was obviously intended to pave the way for further reforms, and accordingly in the following year a Committee of both Houses of Convocation was appointed by desire of the King in order 'that all Mass-books, Antiphoners, Portuases [shortened Breviaries] in the Church of England should be newly examined, corrected, reformed.'¹ The Committee consisted of the Bishops of Sarum (Shaxton) and Ely (Goodrick), and six members of the Lower House. Freeman says of this Committee :—

Having been in the first instance appointed by Convocation, at the desire of the Crown, it would seem to have been considered henceforth as a standing institution, and as the common property, in some sort, of the spiritual and temporal authorities; or rather as an instrument in the hands of both, which each made use of, with the tacit concurrence of the other, for carrying out the purpose originally contemplated in its appointment.²

About the same time an Act of Parliament was passed giving statutory authority to a larger Committee, probably embracing and superintending the smaller Committee appointed by Convocation, with very large powers of revision and reformation. Historians have strangely overlooked this most important Committee, which throws a clear light

¹ Wilkins, *Conc.* iii. 863.

² *Principles of Divine Service*, ii. 108.

on some otherwise obscure points in the ecclesiastical legislation of Edward VI. and Elizabeth, as we shall see later on. The part of this statute which concerns us at present is the following :—

Whereas the King's Majesty . . . hath appointed . . . the archbishops and sundry bishops of both provinces . . . and also a great number of the most learned honest and most virtuous sort of the Doctors of Divinity men of discretion judgment and good disposition of the realm, to the intent that . . . they should declare by writing and publish as well the principal articles and points of our faith and belief with the declaration true understanding and observation of all other such expedient points as by them, with his Grace's advice counsel and consent, shall be thought needful and expedient, and also for the lawful rites ceremonies and observations of God's service within his Grace's realm. . . . BE IT THEREFORE ENACTED . . . that all and every determinations declarations decrees definitions resolutions and ordinances, as, according to God's Word and Christ's Gospel, by his Majesty's advice and confirmation by his letters patent, *shall at any time hereafter* be made set forth declared defined resolved and ordained by the said archbishops bishops and doctors now appointed, *or by other persons hereafter to be appointed* by his Majesty or else by the whole clergy of England, in or upon the matters of Christ's religion and Christian faith and the lawful rites ceremonies and observations of the same, shall be in all and every point limitation and circumstance thereof, by all his Grace's subjects and other residents and inhabitants within the realm . . . fully believed obeyed observed and performed . . . as if the said determinations, declarations . . . had been by express words terms and sentences plainly set out and contained in the present Act. Provided that nothing be done ordained . . . by authority

of this Act which shall be repugnant or contrariant to the laws and statutes of this realm.¹

Unless this statute was repealed, as has been contended, by 1 Edw. VI. c. 12 (of which more anon), it is plain that it gave statutory force to the acts and regulations of authorised picked committees of divines down to the first Act of Uniformity, which — without formally repealing — practically suspended 32 Hen. VIII. c. 26. Certainly that was the constitutional doctrine of that time. For instance, the Catechism of 1552–3 claimed Synodal authority. When it came up for debate in Convocation on October 18, 1553, Dr. Weston, Prolocutor of Convocation in the first year of Mary, objected ‘that the said Catechism was not set forth by agreement of that House.’ To this objection Philpot, Archdeacon of Winchester, answered that

The said House had granted the authority to make ecclesiastical laws unto certain persons to be appointed by the King’s Majesty, and therefore whatsoever ecclesiastical laws they or the most part of them did set forth (*according to the statutes in that behalf provided*)² might be well said to be done in the Synod in London.³

We now see what the Lower House of Convocation meant in their petition to the Upper House

¹ 32 Henry VIII. c. xxvi. (*Statutes of the Realm*, printed by command, from Original Records and Authentic MSS. 1817, iii. 783).

² The reference is probably to 25 Hen. VIII. c. 19, and 32 Hen. VIII. c. 26.

³ Heylin, *Hist. of Ref.* i. 258.

in November, 1547, requesting to be allowed to see and examine the 'books' compiled by the Committee of 'certain Prelates and learned men' 'appointed by Henry VIII. to devise' 'a uniform order.' I have no doubt that they meant 'the Order of the Communion,' and the draft of the Prayer-Book of 1549, both of which were composed under the ægis of the Committee to which 32 Hen. VIII. c. 26 gave statutory power.¹

¹ No question arises here as to the repeal of 32 Hen. VIII. c. 26 by 1 Edw. VI. c. 12, for the latter was subsequent to the petition of the Lower House.

CHAPTER V

MAIN LINES OF THE REFORMATION LAID IN HENRY VIII.'S REIGN

It is a prevalent impression, and was evidently the impression of most of my cross-examiners on the Royal Commission on Ecclesiastical Discipline, that the Reformation of the Church in England really began in the reign of Edward VI., the Reformation under Henry VIII. consisting only of the abolition of Papal Supremacy and its direct offshoots. That is the position taken up by Bossuet,¹ who has been slavishly followed by English Churchmen who ought to know better. It was a natural position for a Roman Catholic controversialist, offering a great polemical advantage. But it is a ruinous position for an Anglican, for it conceals the fact that the Reformation was a revolt of the whole English nation—of the Church quite as much as of the State—against Papal usurpations in Church and State and corruptions in religion. In fact, the Church took the lead. It was the Convocation of the clergy that

¹ *Histoire des Variations des Églises Protestantes*, liv. vii. s. 24-28.

moved the King and Parliament to abolish annates, and recommended that in the event of the Pope retaliating by interdict or any other of the coercive weapons in the armoury of the Court of Rome, the English nation should repudiate his jurisdiction altogether. There is so much ignorance and misapprehension on this subject that it is worth while to quote at length the Petition of Convocation:—

Whereas the Court of Rome hath a long season exacted of such as have been named or elected to be archbishops or bishops of this realm the annates—that is to say, the first fruits of their bishoprics—before they could obtain their bulls out of the said Court; by reason whereof the treasure of this realm hath been had and conveyed to Rome, to no small decay of this land, and to the great impoverishing of bishops; while, if they should die within two or three years after their promotion, should die in such debt as should be the undoing of their friends and creditors; and by the same exaction of annates bishops have been so extenuate that they have not been able in a great part of their lives to repair their churches, houses, and manors; which by reason thereof have fallen into much decay: and besides, that the bishops have not been able to bestow the goods of the Church in hospitality and alms, and other deeds of charity which, by the law and by the minds of the donors of their possessions temporal, they were bound to do.

In consideration whereof, forasmuch as it is to be accounted as simony by the Pope's own law to take or give any money for the collation, or for the consenting to the collation of a bishopric, or of any other spiritual

promotion: and to say that the said annates be taken for the vacation, as touching the temporalities, pertaineth of right to the King's Grace; and as touching the spirituality to the Archbishop of Canterbury: and it is not to be allowed, if it should be alleged, that the said Court exacteth these annates for parchments and lead, and writing of the bulls. For so should parchment and lead be very dear merchandise at Rome, and in some cases an hundred times more worth than the weight or counterpoise of fine gold.

In consideration also that it is no reason that the first fruits of such temporal lands as the King's most noble progenitors and other noblemen of this realm have given to the Church of England, upon high respects, causes, and conditions, should be applied to the Court of Rome: which continually getteth by this means, and many other, much goods and profits out of this realm, and never departeth with any portion thereof hither again. For touching the same temporal lands, the bishops be subject only to the King's Grace, and not to the Court of Rome: neither by reason of those possessions ought to pay these annates as a tribute to the said Court. Wherefore if there were just cause, as there is none, why any sums of money, besides the competent charges of the writing and sealing, should be demanded for bishops' bulls, the Court of Rome might be contented with the annates of the spiritualities alone, without exaction of the first fruits of the temporalities; in which they have none interest, right, or superiority.

And further, in consideration that the bishops be sworn at their consecration, that they shall not alienate the immovable or precious movable goods of their bishopric: seeing the payment of these annates be an alienation of the first fruits, being precious movables; by the alienation whereof the bishop should fall into perjury;

(After quoting the Council of Basle in support of their complaint against the extortions of the Court of Rome):—

It may please the King's most noble Grace, having tender compassion to the wealth of this his realm, which has been so greatly extenuate and hindered by the payments of the said annates, and by other exactions and slights, by which the treasure of this land hath been carried and conveyed beyond the mountains to the Court of Rome, that the subjects of this realm be brought to great penury, and by necessity be forced to make their most humble complaint for stopping and restraining the said annates and other exactions and expilations, taken for indulgences and dispensations, legacies, and delegacies, and other feats, which were too long to remember :

First, to cause the said unjust exactions of annates to cease and to be foredone for ever by this act of his Grace's High Court of Parliament. And in case the Pope would make any process against this realm for the attaining of these annates, or else would retain bishops' bulls till the annates be paid, forasmuch as the exaction of the said annates is against the law of God and the Pope's own laws, forbidding the buying or selling of spiritual gifts or promotions ; and forasmuch as all good Christian men be more bound to obey God than man ; and forasmuch as St. Paul willeth us to withdraw ourselves from all such as walk inordinately ; it may please the King's most noble Grace to ordain in this present Parliament, that the obedience of him and the people be withdrawn from the See of Rome : as in like case the French King withdrew his obedience from Pope Benedict the XIII. of that name ; and arrested by authority of his Parliament all such annates, as it appeareth by good writing ready to be shewed.¹

¹ British Museum, MS. Cleop. E. 6, p. 263.

This petition of Convocation bore fruit the following year in the Act restraining annates (23 Hen. VIII. c. 20). The Act provided that if the existing Pope, or any of his successors, should still attempt to exact annates by means of 'excommunication, excommengement, interdiction, or by any other process, censures, compulsories, ways or means,' then—

Be it enacted by the authority aforesaid that the King's Highness, his heirs and successors, Kings of England, and all his spiritual and lay subjects of the same, without any scruples of conscience, shall and may lawfully, to the honour of Almighty God, the increase and continuance of virtue and good examples within this realm, the said censures, excommunications, interdictions, compulsories, or any of them notwithstanding, minister, or cause to be ministered, throughout this said realm, and all other the dominions or territories belonging or appertaining thereto, and all manner of sacraments, sacramentals, ceremonies, or other divine service of Holy Church, or any other thing or things necessary for the health of the soul of mankind, as they heretofore at any time or times have been virtuously used or accustomed to do the same; and that no manner such censures, excommunications, interdictions, or any other process or compulsories, shall be by any of the prelates, or other spiritual fathers of this region, nor by any of their ministers or substitutes, be at any time or times hereafter published, executed, nor divulged, nor suffer to be published, executed, or divulged in any manner of wise.

Let it be remembered that it was the clergy who took the initiative in this comprehensive repudiation of the Pope's jurisdiction in England.

But so far it was mainly a repudiation of the secular side of Papal supremacy. The Pope's judicial authority in England was abolished; appeals to Rome were forbidden; the Pope's usurped rights of patronage were done away; contributions to the Papal treasury ceased; and the Pope's claim to grant dispensations to British subjects was disallowed. But we are thus far, for the most part, in the domain of the temporal attributes claimed by the Papacy. The spiritual claims of the Pope were not yet assailed, or only indirectly, as in the assertion of the right of the English clergy to administer the Sacraments and discharge all other religious offices in spite of Papal excommunications and interdicts. But in 1534 the attack was carried into the spiritual domain. The claims of the Papacy in their theological aspect were submitted to the consideration of the Universities of Oxford and Cambridge, and were decided in the negative. On March 31, 1534, the Convocation of Canterbury, and on the 5th of the following May the Convocation of York, declared 'that the Bishop of Rome has no greater jurisdiction conferred on him by God, in this Kingdom of England, than any other foreign bishop.'¹ This declaration was signed not only by the bishops, but also by the superior clergy in the monasteries and by the Cathedral chapters as well as by the

¹ Rymer, xiv. 487-527; Wilkins, iii. 769; Collier's *Eccl. Hist.* iv. 263.

two Universities. The aged Bishop of Chichester, Dr. Sherborne, wrote that he had himself preached in support of the declaration of the two Convocations, and had commissioned his suffragan to do the same; and he added that 'there is neither abbot, prior, dean, archdeacon, priest, parson, vicar, nor curate within my diocese but they have commandment to publish the same in their churches every Sunday and solemn feast accordingly.'

The next move in the direction of reformation in 1536 was a series of 'Articles on Religion, set out by the Convocation, and published by the King's Authority.' This is the title in the Cotton MS. In Berthelot's it runs, 'Articles devised by the Kinges Highn. Majestie to stablyshe Christen quietnes and unitie amonge us, and to avoyde contentious opinions: which Articles be also approved by the consent and determination of the hole Clergie of this Realme, Anno MDXXXVI.' There is no substantial difference between the two editions.

These 'Articles about Religion' were followed in the ensuing year by 'The Institution of a Christian Man,' which is an explanation, covering some two hundred pages octavo, of the doctrines of the Church. In 1543, and again in 1545, an edition of the 'Institution' was published, in a slightly varied form, under the title of 'A Necessary Doctrine and Erudition for any Christian Man, Set forth by the King's Majesty of England, &c.'

Now let us see what these formularies, which came out on the authority of both Church and State, teach. They condemn kneeling, and bowing, and offering to images ; and all worship before them was to be directed not to the image itself, nor to the saint represented, but to God only. Indulgences were rejected, and while prayers for the departed are defended, the mediæval doctrine of purgatory was condemned in the following words :

Finally, it is much necessary that all such abuses as heretofore have been brought in by supporters and maintainers of the Papacy of Rome and their accomplices concerning this matter be clearly put away ; and that we therefore abstain from the name of purgatory, and no more dispute or reason thereof : under colour of which have been advanced many fond and great abuses, to make men believe that through the Bishop of Rome's pardons souls might clearly be delivered out of it, and released out of the bondage of sin ; and that masses said at *Scala Cœli*,¹ and other prescribed places, phantasied by

¹ There seems to be a confusion here between *Scala Santa* and *Ara Cœli*. The former is evidently intended. The *Scala Santa* is a flight of stairs, consisting of twenty-eight marble steps, under a portico on the north side of the Lateran Basilica, in Rome. Tradition says that the steps belonged to Pilate's house, and had been the very steps by which our Saviour descended when He left the judgment seat. An extraordinary sanctity is thus ascribed to them, and they are only allowed to be ascended by penitents on their knees ; so that it was necessary to protect them by planks of wood from being worn away. The church of *Santa Maria di Ara Cœli* stands at the top of broad stairs, consisting of 124 marble steps taken from the ruins of the temple of *Quirinus* ; but no special sanctity attaches to these steps. The church itself is held in great veneration by reason of the '*Santissimo Bambino*' which it holds, and which is reputed to work miracles of healing. It was in the church of *Ara Cœli* that Gibbon as he tells us, sat musing 'among the ruins of the Capitol,' and was

men, did there in those places more profit the souls than in another; and also that a prescribed number of prayers sooner than other (though as devoutly said) should further their petition sooner, yea specially if they were said before one image more than another which they phantasied. All these and such like abuses be necessary utterly to be abolished and extinguished.¹

‘It is a fact,’ observes Palmer, with strict accuracy, ‘that *no new formulary of doctrine whatever* [the italics are his] was published by the Church during the whole reign of Edward VI.’ The forty-two Articles of religion never received any ecclesiastical authority, and they passed away still-born. And thus, as Palmer says, ‘it seems plain that during the whole reign of Edward VI. the doctrine of the Church of England was most authentically represented by the formulary of instruction formally approved by Convocation in the reign of Henry VIII., A.D. 1545, entitled “The Necessary Doctrine and Erudition for any Christian Man.”’²

And now I respectfully submit that I was more than justified by all the evidence in maintaining before the Royal Commission that Queen Elizabeth was perfectly sincere and serious in telling the Spanish ambassador on her accession that she was

suddenly inspired with the idea of writing the *Decline and Fall of the Roman Empire*.

¹ See *Formularies of Faith*, pp. 134, 135, 137, 211, 285, 286, 300, 305.

² *Treatise on the Church of Christ*, i. 508, 509.

resolved 'to restore religion as it was left by her father.' When Mary was dying she agreed to declare Elizabeth her successor, but strongly urged that she should maintain the Catholic religion as Mary had restored it. Doubtless Elizabeth had this request in her mind when she declared her intention to go back behind Mary and Edward to the stage which the Reformation had reached at her father's death. She was not able to realise her intention to the letter: circumstances were too strong for her. Nevertheless the formularies of the later years of Henry and of the reign of Elizabeth 'are not so worded as to evince any great or irreconcilable opposition between the public and authorised faith of the Church of England in the reign of Henry VIII. and in that of Elizabeth.'¹

¹ Palmer's *Treatise on the Church of Christ*, i. 526. Let it be remembered that Palmer was an Anglican divine not only of great ability and learning, but of a singularly judicial mind in addition, as well as a pronounced opponent of distinctively Roman doctrines.

CHAPTER VI

RELIGIOUS POLICY OF EDWARD VI. AND ELIZABETH COMPARED

It was, indeed, an irreparable misfortune for the Church and nation of England that in the inscrutable providence of God Henry VIII. was not succeeded by Elizabeth instead of her brother, a boy of ten, whose head was turned by designing flatterers, and who was a mere puppet in the hands of politicians and courtiers who made the reform of religion a mask for the plunder of the Church in their own sordid interests. Till then the leaders of the Reformation were the native clergy through their constitutional organs, the Convocations of both provinces. Under Edward the lead was usurped by a band of foreigners and fanatical exiles, who desired not reform, but revolution; republicans in politics and anarchists in religion: Calvin, Bucer, Peter Martyr, Hooper, Sandys, Grindall, Bullinger, &c. Calvin was their leader, and his aim was to overthrow the constitution of the Church of England and put that of Geneva in its place. Cranmer, as usual, played a weak and vacillating part. Satisfied with the first Book of

Edward and disliking the temper and revolutionary principles of the extreme Puritans, he was at first opposed to any further revision. On receiving a Royal mandate to peruse and report on the alterations proposed to be made in the Book of 1549, he sent a protest to the Council, of which the drift may be gathered from the following extract:—

I know your Lordships' wisdom to be such as that I trust ye will not be moved with those glorious and unquiet spirits which can like nothing but that is after their own fancy; and cease not to make trouble when things be most quiet and in good order. If such men should be heard, although the Book were made every year anew, yet it should not lack faults in their opinion.¹

A pregnant commentary on the declaration of the Act of Uniformity which ratified the second Book—namely, that 'such doubts as had been raised in the use and exercise' of the first Book proceeded rather from 'the curiosity of the ministers and mistakers than from any other worthy cause.' But the King, probably at the instigation of the astute men who pulled the strings of policy, threatened that when Parliament met he would effect his purpose by exercise of the Royal authority.² Cranmer thereupon yielded and

¹ *State Papers* (Domestic) Edward VI. xv. 15.

² 'Verum hoc non me parum recreat, quod mihi D. Checus [Sir John Cheke] indicavit; si noluerint ipsi [episcopi], ait, efficere ut quæ mutanda sint mutantur, Rex per seipsum id faciet; et cum ad Parliamentum ventum fuerit, ipse suæ Majestatis auctoritatem interponet.' Peter Martyr's letter to Bucer in Strype's *Memorials of Cranmer*, ii. 899. Cf. i. 301-2.

swam with the stream. And so the second Prayer-Book of Edward superseded the first; the Act of Uniformity, however, which ratified it, giving its benediction to the first Book, and barely disguising the scorn of the Parliament which passed it for the promoters of the second Book.

The result, as I have said, was to alienate the rulers of the Church, who had guided the English Reformation thus far with so much skill and discretion, and to throw the movement into the hands of violent fanatics, who were unconsciously used for their own selfish ends by powerful politicians and noblemen who saw in an ecclesiastical revolution a golden harvest of spoils from the property of the Church. The natural consequence was the national reaction under Mary, followed again by the recoil caused by her persecuting zeal and by the unpopularity of her Spanish husband. In that crisis the ecclesiastical hierarchy played their cards with amazing folly and maladroitness. Had they been wise they would have gathered round Queen Elizabeth on her accession and hoped for the best. Her first public acts were in accordance with her declaration to De Feria, that she intended to restore religion as her father had left it. She issued a proclamation forbidding unlicensed preaching, in order 'to restore universal charity and concord.' The old services and ceremonies were to be continued for the present, except that the Litany, the Ten Commandments,

the Lord's Prayer, the Creed, and the Gospel and Epistle were to be said in English. 'The model of the Chapel Royal, where the English parts of the service above enumerated were to be mingled with the Latin, was proposed to universal imitation: and the example of the Sovereign might encourage the spirit of reconciliation.'¹ She had her sister buried in Westminster Abbey with all the splendour of the old ceremonial, requiem Mass and all. She was herself crowned in accordance with the ancient ritual, except that the Epistle and Gospel were read in English and the elevation of the Sacrament was omitted in the Mass. She yielded, indeed, soon afterwards to the pressure of some of her Council, and modified her attitude somewhat. She had the crucifix and candles removed from the altar in her chapel, and sanctioned the destruction of statues and pictures in churches; but she soon acknowledged her mistake in a conversation with the Spanish ambassador some months later:—

Elizabeth now [October 3, 1559] ordered the cross and candles to be replaced in her chapel as before. This caused some disagreement with her Council. She said they had caused her to adopt measures which met with general disapprobation, and that the order to burn all statues and pictures had created great discontent, especially in Wales and the North.²

¹ Dixon's *Hist. of the Church of England*, v. 14.

² *Doc. from Simancas*, p. 64.

Indeed, so strongly did the Queen feel on the subject that she threatened to depose some Puritan bishops, including Sandys and Jewel, for removing crucifixes from churches. Jewel, writing to Peter Martyr on February 4, 1560, says: 'As far as I can conjecture I shall not write again as bishop. For matters are come to that pass that either the silver or tin crosses, which we have everywhere broken in pieces, must be restored, or our bishoprics relinquished.'¹ And Sandys, writing to Peter Martyr on the 1st of the following April, says: 'As to myself, because I was rather vehement in this matter [of crucifixes and images in churches], and could by no means consent that an occasion of stumbling should be afforded to the Church of Christ, I was very near being deposed from my office and incurring the displeasure of the Queen.'²

But, strong-minded as Elizabeth was, she found it hard, and in some cases impossible, to carry out her own policy in ecclesiastical matters. We find her four years later confessing to De Silva, the new Spanish ambassador, that 'she had been compelled to temporise at the beginning of her reign upon many points repugnant to her, but that God only knew the heart, and that she thought of restoring the crucifixes to churches.'³

These declarations of Elizabeth on various

¹ *Zurich Letters*, second series, i. 68.

² *Ibid.* p. 73.

³ *Documents from Simancas*, p. 91.

occasions, and to different persons, as to her religious convictions are confirmed by contemporary evidence and ratified by all standard historians. Two or three examples may suffice. In a letter to Cardinal Loraine, written on November 3, 1559, M. de Noailles, the French ambassador in London, writes :—

Yesterday this Queen celebrated the festival of All Saints [a mistake in the date, unless he meant All Souls] in her great chapel at Westminster with much solemnity. She had the wax tapers lighted during the services on the high altar, which she has made them replace against the wall where it formerly stood, with the cross and crucifix of silver thereon.¹

Froude sums up the situation pretty fairly between the Queen and the Puritans when he says :—²

She would have been well contented with a tolerant orthodoxy, which would have left to Catholics their ritual, deprived of its extravagances, and to the more moderate of their opponents would have allowed scope to feel their way towards a larger creed.

And speaking of the Puritans he says :—

At the heart of the matter it was they who were giving importance to what is of no importance. . . . They would have erected with all their hearts a despotism as hard, as remorseless, as blighting, as the Romanist.

It is worthy of remark, too, in passing, that the Champion's traditional challenge at the Queen's

¹ Miss Strickland's *Lives of the Queens of England*, iv. 151.

² Froude's *Hist.* v. 23, 80.

Coronation has a more Catholic ring than that of Mary's Champion, which was as follows :—

Whosoever shall dare to affirm that this Lady is not the rightful Queen of this kingdom I will show him the contrary, or will do him to death.¹

The challenge of Elizabeth's Champion was addressed to all who should contest her title as 'Queen of England, France, Ireland, Defender of the true ancient and Catholic faith, most worthy Empress from the Orcades Isles to the mountains of Pyrénée.'²

The Puritan Neale says of the divines engaged in reviewing the Prayer-Book of 1558-9 :—

Their instructions were to strike out all offensive passages against the Pope, and to make people easy about the belief of the corporal Presence of Christ in the Sacrament; but not a word in favour of the stricter Protestants. Her Majesty was afraid of reforming too far; she was desirous to retain images in churches, crucifixes and crosses, vocal and instrumental music, with all the old Popish garments. It is not therefore to be wondered at that in reviewing the Liturgy of King Edward no alterations were made in favour of those who now began to be called Puritans, from their attempting a purer form of worship and discipline than had yet been established. The Queen was more concerned for the Papists, and therefore, in the Litany, this passage: *From the tyranny of the Bishop of Rome, and all his detestable enormities, good Lord deliver us*, was omitted. The Rubric that declared

¹ *The Accession of Queen Mary: being the contemporary Narrative of Antonio de Guaras*, p. 122.

² Miss Strickland's *Lives of the Queens of England*, iv. 151.

that *by kneeling at the Sacrament no adoration was intended to any corporal presence of Christ* was expunged. . . . In short, the service performed in the Queen's chapel, and in sundry cathedrals, was so splendid and showy that foreigners could not distinguish it from the Roman, except that it was performed in the English tongue. By this method the Popish laity were deceived into conformity and came regularly to church for nine or ten years, till the Pope, being out of all hopes, forbid them, by excommunicating the Queen and laying the whole kingdom under an interdict.¹

Hume, who possessed that characteristic of the judicial temper which the late Sir George Cornwall Lewis calls 'the requisite indifference,' writes under the date of 1568 :—

But the Princess herself, so far from being willing to despoil religion of the few ornaments and ceremonies which remained to it, was rather inclined to bring the public worship nearer the Romish ritual ; and she thought that the Reformation had already gone too far in shaking off those forms and observances which, without distracting men of more refined apprehensions, tend in a very innocent manner to allure and amuse the vulgar. She took care to have a law for uniformity strictly enacted, wherein she was empowered by the Parliament to add any new ceremonies which she thought proper.²

So much, then, as to Queen Elizabeth's declaration on her accession that she intended to restore religion as her father had left it. She was very fond of her father, and had a great admiration for

¹ *Hist. of the Puritans*, i. 129, 144.

² *Hist.* v. 12.

his policy,¹ as she told the Spanish Ambassador. Her own opinions, moreover, were in tolerable harmony with the condition of ecclesiastical affairs which existed at Henry VIII.'s death, including the drafts of the Order of Communion and of the Prayer-Book of 1549, which Cranmer had drawn up and with which Elizabeth was probably acquainted. 'For herself,' as Froude says, 'she would have been contented to accept the formulas [? formularies] which had been left by her father, with an English ritual and the Communion Service of the first Prayer-Book of Edward the Sixth. . . . In her speculative theories she was nearer to Rome than to Calvinism,' and such leanings as she had in the direction of Protestantism 'had inclined to Luther and the Augsburg Confession.'²

¹ 'Débenle de haber predicado mucho la manera de proceder del Rey su padre.' *Doc. from Simancas*, p. 39.

² *Hist.* v. 115.

CHAPTER VII

ELIZABETH'S POLITICAL NECESSITIES COINCIDED WITH HER RELIGIOUS BELIEF

AND now let us see how far Elizabeth's political necessities coincided with her religious beliefs and desires.

What was the position of affairs, domestic and foreign, when she came to the throne? I have described it elsewhere,¹ and perhaps I may be allowed to quote the description here. 'It was a situation of extreme peril. Spain, the most formidable military and naval power in Europe, was under the rule of an able and autocratic monarch, possessing in the Netherlands a base of operations close to our shores if he resolved on hostilities against us. He kept so considerable a fleet there that when he returned to Spain, leaving the Duchess of Parma as Vicegerent in Flanders, he was escorted by a powerful squadron of ninety vessels, which caused no small anxiety in England.² The German Princes bore England no good will, and Denmark was doubtful. But the immediate and

¹ *Reformation Settlement*, pp. 586-592.

² *Calendar of State Papers*, Nos. 1174, 1175, 1258.

pressing danger was from France, and the nature of it may be gathered from the subjoined extract from Nares's "Memoirs of Lord Burleigh," written after careful examination of all the Burleigh papers :—

'But the actual degree of danger may be best understood, as well as the means of providing against it, from a paper drawn up by Secretary Cecil, after his accustomed manner, as a guide to the Council, upon a pretty general belief and opinion that France contemplated no less than the conquest of England this very year [1559]. "First," he argues, "they would not defer it because of the *doubt* of the Queen of Scots' life. Secondly, they had now got an occasion to conquer Scotland, and they had already men of war there, and prepared a great army both out of France and Almane [Germany]. Their captains were appointed; their victuals provided; their ships in rigging. Thirdly, they reckoned within a month to have their wills in Scotland. Fourthly, that done, it seemed most likely they would prosecute their pretence against England; which had no fort but Berwick to stay them, and that was imperfect, and would be these two years' day. Fifthly, if they offered battle with Almains, there was great doubt how England would be able to sustain it, both for lack of good generals and great captains; and principally for lack of people, considering the waste that had lately been by sickness and death these three last years; again, if it were defended with strangers, the entertainment would be so chargeable in respect of money, and so hurtful to the realm, as it could not be borne." These questions were then propounded: First, what to do; next, whether it were better to impeach the enemy in Scotland, now in the beginning, before their army were come, and so to take away their landing places; or to

prevent them therein, and to provide for the defence of the realm.¹

‘Cecil’s alarmist paper shows the deep depression and gloom which had settled on the nation, of which we learn from other sources also. Constant wars with France and Scotland had depleted the exchequer and impoverished the nation almost beyond endurance; and all this was aggravated by a prolonged plague and famine which had depopulated whole districts. And to fill the cup of misery the national honour was sorely wounded by the loss of Calais, which was too fresh to be recognised as a blessing in disguise.

‘Such was the prospect which confronted Elizabeth on her accession. And behind it was a peril even more formidable, because more widespread and less tangible and manageable—the peril of a religious crusade from abroad combined with an insurrection among her own subjects. The Papacy then wielded an immense political power in Europe, and that power would be arrayed against Elizabeth in all its vast and ubiquitous ramifications if she set it at defiance. Providentially the mutual rivalry of France and Spain prevented them from contracting an alliance for the invasion of England, which, humanly speaking, would at that time have been successful. It behoved her therefore to walk wisely and warily. What did she

¹ *Memoirs of Lord Burleigh*, ii. 26-7.

do? It says much for her courage and patriotism, and also for her political sagacity, that she at once set about the restoration of her father's legislation against the illegitimate usurpations of Rome. She knew she could carry her people in the mass with her there. But to interfere with the articles of their creed, or with the formal drapery of rite and ceremony in which their creed was shrouded and symbolised, was another matter. "The early lessons of the nurse and of the priest were not forgotten. The ancient ceremonies were long remembered with affectionate reverence."¹ She would prune public worship of unwholesome and superstitious excrescences, but was otherwise, as we have seen, "resolved to restore religion as it had been left by her father." And for this resolution she had good reason. Roughly speaking, the religious elements of the nation at that time may be described as follows. At the antipodes were a small minority of extreme Papists manipulated by the Jesuits and the Vatican, and at the other extreme a fanatical band of Puritans—revolutionists in religion and republicans in politics—whose descendants realised their ideals of both under the Commonwealth. Between these two extremes was the great body of the nation, who would have quietly acquiesced in the English Liturgy of Edward VI. with the ceremonial of Edward's second year—the old cere-

¹ Macaulay, *Essay on Burleigh and his Times*.

monial, that is, as fixed in Henry's and Edward's reigns. De Feria says that "the Catholics were [March, 1559] two-thirds of the realm," and another contemporary writer, quoted by Froude, says that they "were in a majority in every county in England except Middlesex and Kent."¹ At that time the Puritans were numerically insignificant, and would probably have soon vanished but for the patronage of powerful men at Court, who used them to enrich themselves with the spoils of the Church.

'Such then was the problem which Elizabeth had to solve when she came to consider the settlement of the religious question on her sister's death. Her own convictions and proclivities were avowedly in favour of a return to the settlement of 1547-8, with such modifications as the supersession of the Latin Mass and Breviaries by the English Prayer-Book required. And policy coincided with her personal inclination. The great majority of the nation would have gradually

¹ Froude, vii. 20, 68; also vi. 114. 'The interval of change under Edward the Sixth had not shaken the traditionary attachment of the English squires and peasantry to the Service of their ancestors. The Protestants were confined chiefly to the great towns and seaports; and those who deprecated doctrinal alteration, either from habit, prudence, or the mere instinct of conservatism, still constituted two-thirds, perhaps three-fourths, of the entire people.' Froude quotes the following note on the State of the Realm, at that time, 'in the hand of Sir William Cecil': 'In perusing the sentences of the Justices of the Peace in all counties of the Realm, scanty a third was found fully assured to be trusted in the matter of religion': that is, in any conspicuous innovation on the externals of public worship.

accepted the compromise. But to have suddenly changed the outward aspect of public worship throughout the realm would have spread consternation and anger from Land's End to the Tweed, and given the foreign promoters of a crusading invasion the opportunity which they needed—a widespread insurrection to welcome the invaders. We know how the comparatively insignificant alterations made in public worship in the beginning of Edward VI.'s reign bred a dangerous insurrection in Devonshire. With that warning before her Elizabeth was far too wise to offer her people a wanton provocation. Reluctantly accepting the Prayer-Book of 1552, with important alterations, she insisted on giving statutory authority to the ceremonial in authorised use in Edward's second year; that is, some months before Edward's First Prayer-Book had come into use, or was even a legal document. The anticipated result followed. Of all the priests then in England, probably 10,000, including the unbeneficed, only some two hundred refused to conform. The rest, with their congregations, acquiesced more or less cheerfully or resignedly. It is not from them that we hear loud cries and lamentations, but from the "pusillus grex," the returned exiles, when they found that Popery, as they deemed it, was made legal and could not be upset, as they admitted, except by another Act of Parliament. They devoted their energies there-

fore to the task of obtaining some relaxation for themselves. And they succeeded. The Advertisements let the Puritans off with a minimum of ritual observances while leaving the authorised ceremonial untouched.'

CHAPTER VIII

THE SECOND YEAR OF EDWARD VI.—JUDICIAL DECISIONS

THE meaning of 'the second year of Edward VI.' must be sought in Elizabeth's Act of Uniformity and Ornaments Rubric, together with the first Uniformity Act of Edward. The part of the Act of 1559 which bears upon the subject is as follows:—

Provided always, and be it enacted, that such ornaments of the Church and of the ministers thereof shall be retained and be in use as was in this Church of England by authority of Parliament in the second year of the reign of King Edward VI.

The Ornaments Rubric of 1559 says:—

And here is to be noted that the minister at the time of the Communion, and at all other times in his ministration, shall use such ornaments in the church as were in use, by authority of Parliament, in the second year of the reign of King Edward the Sixth, according to the Act of Parliament set in the beginning of this book.

It is admitted that the Rubric and the Act, under a very slight difference of phrase, 'obviously mean the same thing.'¹ What is that meaning?

¹ Judicial Committee in *Westerton v. Liddell*.

The Courts which have dealt with these questions in recent times have decided that the ornaments referred to in the Statute and Rubric of Elizabeth are the ornaments prescribed for use by the first Prayer-Book of Edward VI. Thus, in the case of *Westerton v. Liddell*, the Dean of the Arches, Sir John Dodson, ruled as follows :—

It has been contended in argument that the present Rubric has no application to the first Prayer-Book, because the statute establishing that Book did not come into operation until some time in the third year. In point of dates the matter stood thus: King Edward succeeded to the throne on January 28, 1547, and was proclaimed King on the 31st of the same month; the Parliament met in his second year on November 4, 1548, and the Statute for establishing the Book of Common Prayer was read for the third time in one House on January 15, 1549, and in the other on the 21st of the same month, and consequently in the second year of the King's reign. On what day it received the Royal Assent I have not been able to ascertain; but it is probable that no time was lost in this respect, because the Book was known to have been in a state of preparation beforehand, and both Cranmer and the Protector Somerset must have been anxious that it should become law as speedily as possible. It was true the Book was not in actual use in the churches until after the expiration of the second year, but the law itself had passed in that year . . . and I have no hesitation in stating that it is the conviction of the Court that the Rubric does recognise the first Book as being of Parliamentary authority in the second year of Edward's reign. Moreover, the journal of the transactions occurring in his short reign kept by the young King in his own handwriting puts an end to all doubts upon the subject.

Under the head of the second year, the King wrote: 'A Parliament was called where an uniform order of prayers was institute, before made by a number of bishops and learned men gathered together in Windsor.'¹

The Judicial Committee, in the same case, agreed with the Dean of Arches on this point, but for different reasons. The Committee said:—

Their Lordships, after much consideration, are satisfied that the construction of this Rubric which they suggested at the hearing of the case is its true meaning, and that the word 'ornaments' applies, and in this Rubric is confined, to those articles the use of which in the services and ministrations of the Church is prescribed by the Prayer-Book of Edward VI.

Again:—

The Queen was in favour of the first [Book], but she was obliged to give way, and a compromise was made, by which the services were to be in conformity with the second Book, with certain alterations; but the ornaments of the Church, whether those worn or those otherwise used, were to be according to the first Prayer-Book.

Again:—

It was urged at the Bar that the present Rubric, which refers to the second year of Edward VI., cannot mean ornaments mentioned in the first Prayer-Book, because, as it is said, that Act was probably not passed, and the Prayer-Book was certainly not in use, till after the expiration of the second year of Edward VI., and that therefore the words 'by authority of Parliament' must mean, by virtue of Canons or Royal Injunctions bearing

¹ Moore's *Report*, pp. 92-3.

the authority of Parliament made at an earlier period. There seems no reason to doubt that the Act in question received the Royal Assent in the second year of Edward VI. It concerned a matter of great urgency which had been long under consideration, and was the first Act of the session; it passed through one House of Parliament on January 15, 1549, N.S., and the other on the 21st of the same month; and the second year of the reign of Edward VI. did not expire till January 28. In the Act of 5 & 6 Edward VI. c. 1, it is expressly referred to as the Act 'made in the second year of the King's Majesty's reign.' Upon this point, therefore, no difficulty can arise. It is very true that the new Prayer-Book could not come into use until after the expiration of that year, because time must be allowed for printing and distributing the Books; but its use, and the injunctions contained in it, were established by authority of Parliament in the second year of Edward VI., and this is the plain meaning of the Rubric.¹

I have quoted from these two judgments so fully in order that the reader may be able to test the validity of the argument which follows by immediate comparison with the reasons on which the Court of Arches and the Judicial Committee based their decisions as to the meaning of 'the second year of King Edward VI.' If those reasons are untenable, the decisions fall to the ground. Both tribunals assume that the Royal Assent was given to Edward's first Act of Uniformity in his second regnal year, and both imply that, failing that Assent in the second year, their

¹ Moore's *Report*, pp. 156, 158, 160.

conclusions respectively are illegitimate. If the premisses are unsound the conclusions must be unsound. Let us examine the arguments of both Courts.

Sir John Dodson admits that he has 'not been able to ascertain on what day it [the Act of Uniformity of 1549] received the Royal Assent; but it was probable that no time was lost, because the Book was known to have been in a state of preparation beforehand, and both Cranmer and the Protector Somerset must have been anxious that it should become law as speedily as possible.' But probabilities—and this is a slender one—can hardly justify a decision involving penal and momentous consequences. The Dean of the Arches evidently saw this, for he proceeds to an argument which he thinks puts an end to all doubt. This conclusive piece of evidence is our old friend the entry in King Edward's Journal under the head of the second year. Let me quote it again:—'A Parliament was called where an uniform order of prayers was institute, before made by a number of bishops and learned men gathered together in Windsor.' It is curious how even learned and able men are apt sometimes to rely on arguments at second hand without testing their validity. The late Dr. Bright, for example, Regius Professor of Ecclesiastical History at Oxford, and a most able, learned, and accurate divine, quoted this extract from King Edward's Journal against me in a friendly contro-

versy which I had with him in the *Guardian*. Sir Lewis Dibdin made use of it in his able speech at the Lambeth Hearing. Arguing that the Royal Assent to Edward VI.'s first Act of Uniformity was given in the second year of his reign, he says :—

There is a piece of evidence that I think is worth something as to its being the second year, or at any rate as to its being considered the second year, because that is all that I am concerned with. It is in Edward's own Journal, which will be found in Burnet's 'History of the Reformation,' in the documents attached to the second book, part 2, book 2, in my edition, which is A.D. 1681, p. 5. Just at the beginning of the collection of records for that date you get his entry of what happened in the second year. Your Graces remember that Edward did not begin to keep this Journal from day to day, as it were, till, I think, about the fourth year; but he jotted down the beginning of his life under years, beginning with his birth. There is an entry for the second year, 'Year 2,' and then there are several things which do not concern us, and the last paragraph is this : 'A Parliament was called, when the uniform order of prayer was institute, before made by a number of bishops in Windsor.' No doubt that is the first Prayer-Book. At the end of that paragraph there is something else which does not concern us, and then you get 'Year 3.' There again it seems to me that that is valuable evidence that at any rate it was considered to be in the second year.¹

The present Dean of the Arches Court, it will be observed, is slightly more cautious than his predecessor, Sir John Dodson. The former thinks

¹ *The Case against Incense*, p. 12.

that the entry in Edward's Journal 'puts an end to all doubt upon the subject' of the Royal Assent having been given to the first Act of Uniformity in the second year. The latter will not commit himself to more than the suggestion that the entry in the King's Journal 'is valuable evidence that at any rate it was considered to be in the second year.'

Now let us consider first of all what the entry in the Journal means: 'A Parliament was called where an uniform order of prayer was institute, before made by a number of bishops and learned men gathered together in Windsor.' We have here two statements: (1) a Book of uniform [*i.e.* common] Prayer 'was institute' in Parliament—let us say, for argument's sake, in Edward's second year; (2) this Book had previously been 'made by a number of bishops and learned men in Windsor.' But there is nothing here about the Royal Assent. Nobody disputes that the first Act of Uniformity passed its third reading in the second year. The King says no more. He describes the action of Parliament by the word 'institute,' a perfectly correct rendering of 'conclusa est,' the phrase used in the Lords' *Journals* for the third reading of a Bill.

But this quotation from King Edward's Journal has an important bearing on the argument most relied upon by those who contend that the Royal Assent was given to the first Act of Uniformity in Edward's second year. The second Act of

Uniformity described the first as 'the Act of Parliament made in the second year of the King's Majesty's reign.' The inference drawn from this Parliamentary expression by the Judicial Committee, by Sir Lewis Dibdin at the Lambeth Hearing, and by my cross-examiners on the Royal Commission, is that it necessarily and unquestionably implies the Royal Assent. I shall consider the validity of that inference presently. Here I merely note the sense—which I contend is its Parliamentary sense—in which King Edward uses it: namely, in the sense of 'drawn up,' 'composed.'

But there is more to be said about the entry in King Edward's Journal. Edward's second year ended on January 27, 1548-9. The Act of Uniformity was read a third time in the House of Lords on January 15, and came back to the Lords from the Commons on January 22—*i.e.* five days before the end of Edward's second year. But the last day of the regnal year was the 27th, which was a Sunday, and therefore does not count. The House of Lords sat sometimes, but not always, on Saturday; so that there were at most only four days, and possibly only three, before the end of the second year. Now, if the Royal Assent was given to the Act of Uniformity before the end of the second year, it must have been by Commission: that is not disputed. But in those days Royal Assent by Commission was an august ceremony,

which could not be shuffled through in a hurry. It required the King's 'Letters Patent under his Great Seal, and signed with his hand, and declared and notified in his absence to the Lords Spiritual and Temporal, and to the Commons, assembled together in the High House.'¹ I have examined the records of Parliament, and I have not found a single case in the sixteenth century in which these formalities were omitted in the case of a Royal Assent by Commission. There is no record or hint of such a thing in the case of the first Act of Uniformity, and I submit that this fact amounts to a conclusive proof that the Act did not receive the Royal Assent by Commission; in other words, that it did not receive the Royal Assent at all in the second year. And the entry in the King's Journal confirms this view. 'At the end of that paragraph,' Sir Lewis Dibdin says, 'there is something else which does not concern us at all.' It concerns us very much indeed, I humbly think. But let us see. The 'something else' follows on immediately after the sentence quoted by Sir John Dodson and Sir Lewis Dibdin, and is as follows:—

¹ 'Be it enacted by the authority of this present Parliament that the King's Royal Assent by his Letters Patent under the Great Seal, and signed with his own hand, and declared and notified in his absence to the Lords Spiritual and Temporal and to the Commons, assembled in the High House, is and ever was of as good strength and force as though the King had been personally present, and had assented openly and publicly to the same, any custom or use to the contrary notwithstanding.' 33 Henry VIII. c. 21.

There was granted a subsidy, and there was a notable disputation of the Sacrament in the parliament-house. Also the Lord Sudeley, Admiral of England, was condemned to death, and died the March ensuing. Sir Thomas Sharington was also condemned for making false coin, which he himself confessed. Divers also were put in the Tower.

The King could find time and space for entering these things in his Journal, but omitted, as unworthy of notice, the most striking event of that year—that is, if the King had given his assent to the Act with all the pomp and dignity and previous notice demanded by the occasion. The thing is incredible.

Finally, the Royal Journal is worthless as a record of dates. It blunders repeatedly. For instance, in the paragraph from which we have been quoting the King says: ‘Upon St. Peter’s day the Bishop of Winchester was committed to the Tower.’ The bishop was committed to the Tower the day after St. Peter’s day. But the King himself supplies the means of confuting the inferences drawn from his Journal. ‘The Lord Sudeley,’ he says, ‘*was condemned to death, and died the March ensuing.*’ This is a decisive proof that events were entered into the Journal under date of the second year which really happened in the third year. Lord Sudeley was condemned and executed in March in the third year. But it is unnecessary to dwell on this, for the passage which

has been thought by eminent authorities to prove that the Royal Assent was given to the first Act of Uniformity in the second year proves, when examined, the very contrary.

So much, then, as to the alleged indubitable proof on which the Dean of the Arches Court in the case of *Westerton v. Liddell* founded his decision 'that the Rubric does recognise the first Prayer-Book as being of Parliamentary authority in the second year of Edward's reign.'

Let us now consider the reasons on which the Judicial Committee in *Westerton v. Liddell* based their decision that Edward's first Act of Uniformity received the Royal Assent in Edward's second year.¹

1. The Act 'concerned a matter of great urgency which had been long under consideration.' The 'great urgency,' in the Court's opinion, was the need of speedily authorising the new Prayer-Book.
2. 'In the Act of 5th & 6th Edward the Sixth, cap. 1, it is expressly referred to as the Act "made in the second year of the King's Majesty's reign." Upon this point, therefore, no difficulty can arise.'

Let us examine these two arguments. The first need not detain us. It is quite untenable. The Prayer-Book was not to come into general use till

¹ See pp. 76-7.

Whitsunday in the third year. There could, therefore, be no possible urgency for legalising its use by commission three or four days before the end of the second year. Sir Lewis Dibdin saw the weakness of their Lordships' argument, and therefore, while adopting their conclusion, he rejected their major premiss, and substituted another of his own. 'Your Graces may remember,' he said at the Lambeth Hearing, 'that the Privy Council in dealing with this in *Westerton v. Liddell* said the matter was urgent. If I may say so, the Lords of the Privy Council were absolutely accurate about that. They said it was impossible to tell when the assent was given.'¹ I may remark in passing that the last sentence is a slip of memory. So far from the Judicial Committee saying that 'it was impossible to tell when the Royal Assent was given,' they said, as we have just seen, that there was no doubt that the Assent was given in the second year. And Sir Lewis, while adopting the argument of 'urgency,' knew that their Lordships' reason for urgency would not hold water. Instead, therefore, of finding the cause of urgency in the need of legalising the Prayer-Book without delay, he finds it in the alleged necessity of releasing without delay the prisoners mentioned in the early part of the Act. That point I will discuss later on. I will now deal with their Lordships' second argument, which they considered decisive—namely,

¹ *The Case against Incense*, p. 12.

that the second Act of Uniformity described the first as 'made in the second year of the King's Majesty's reign.'

This argument was pressed on me at great length, as will be seen in the Appendix, by Sir Lewis Dibdin and other members of the Royal Commission on Ecclesiastical Discipline. After carefully reconsidering the whole matter, I abide by what I said then. Put briefly, my answer is as follows:—

The Judicial Committee decided that all the versions of the Ornaments Rubric and Elizabeth's Act of Uniformity 'obviously mean the same thing.' It will therefore suffice here to consider the contemporary Rubric of 1559, together with the Act of Uniformity of the same year. Let me for convenience sake quote again the Rubric and Act:—

And here is to be noted that the minister at the time of the Communion and at all other times in his ministration shall use such ornaments in the Church as were in use by authority of Parliament in the second year of the reign of King Edward the Sixth, according to the Act of Parliament set in the beginning of this book.

The portion of the Act here appealed to says:—

Provided always, and be it enacted, that such ornaments of the Church and of the ministers therefore shall be retained and be in use as was in this Church of England by authority of Parliament in the second year of the reign of King Edward the Sixth, &c.

What does this language of the Act and Rubric mean? Two interpretations have been given. It is contended on the one hand that the meaning of the Rubric is: 'The minister . . . shall use such ornaments in the church as were, by authority of Parliament in the second year of King Edward VI., in use.' And similarly as regards the Ornaments clause in the Act. Now I submit that this construction is non-natural and hardly makes sense; at least, it is an awkward and clumsy construction. And if the framers of the Act and Rubric meant it, would they not have said?—'The minister . . . shall use such ornaments in the Church as were authorised by Parliament in the second year of King Edward VI.'

I contend, on the other hand, that the words mean: 'The minister . . . shall use such ornaments as were in use in the second year of King Edward VI. by authority of Parliament.' That is good sense and good English. I shall offer reasons further on to show that this is the only tenable meaning. Meanwhile let us examine the phrase in Edward's second Act of Uniformity, which the Judicial Committee in 1857 and the present Dean of the Arches and many other lawyers since have regarded as a decisive proof that Edward's first Act of Uniformity received the Royal Assent in the second year of the King's reign.

In the second Act of Uniformity, says the Judicial Committee, the first Act of Uniformity

'is expressly referred to as the Act "made in the second year of the King's Majesty's reign." Upon this point, therefore, no difficulty can arise.' I submit, with great respect, that there is nothing in this argument. As a rule, statutes are said in Parliamentary parlance to be 'made' before they receive the Royal Assent, and 'passed' after the Royal Assent. I do not say absolutely that there is no exception. But I have examined the Lords' *Journals* from Henry VIII. to the end of James I., and I cannot recall any exception. Sometimes, but not invariably, a list is given, after the Royal Assent at the end of the Session, of all the Acts of that Session. There is such a list, I think, at the end of every Session in the reign of Edward VI. The list is headed in every case but one, 'Acts passed in the Parliament holden,' &c. In addition to this heading there is in every case, without exception, this marginal note in the left top corner of the list: 'Calendar of Acts passed this Session.' In 7 Edward VI. the heading is 'Acts made,' &c.; but the marginal note has 'passed.'

I do not lay much stress on this Parliamentary usage, for 'passed' and 'made' are used so loosely that no argument, unsupported by other evidence, can be safely built on either. The fact is that all statutes are 'made' by Parliament, but they have no Parliamentary authority till they have secured the Royal Assent. The King has not officially any part in the making of Acts of Parliament. It is

his prerogative to sanction or veto them, and nothing prescribed or forbidden by an Act of Parliament can be said to have the authority of Parliament before the Royal Assent, for the King might veto it; a contingency by no means impossible in the sixteenth century. In strictness of speech, indeed, a Bill does not become an Act till it has received the Royal Assent. But after it has received the Royal Assent it is still correct and common to speak of it as an Act 'made' in a particular year, though the Royal Assent was not given till the following year, just as it is proper to speak of a man-of-war as made in a certain dock-yard, though it did not become a man-of-war till it received the King's commission. The second Act of Uniformity is thus quite correct in describing the first Act of Uniformity as 'made in the second year of the King's Majesty's reign.' In Mary's first Act of repeal there is a series of sentences in which 'made' is used in the sense which I hold to be the correct one, *e.g.* :—

Be it enacted . . . that an Act made in the Parliament begun at Westminster the fourth day of November in the first year of the late King Edward VI., and from thence continued to the twenty-fourth day of December then next ensuing, that is to say, in the first Session of the same Parliament; . . . ; and also one other Act made in one other Session of the said Parliament holden upon prorogation at Westminster the fourth day of November in the second year of the said late King Edward VI., and then continued and kept to the

fourteenth day of March in the third year of the late King's reign, entitled An Act for the Uniformity of Service and Administration of the Sacraments throughout the Realm; and also one other Act made in the Session last before, which is entitled, An Act to take away all Positive Laws made against the Marriage of Priests; and also one other Act made in one other Session of the said Parliament holden upon prorogation at Westminster the fourth day of November, in the third year of the reign of the said late King Edward VI., and then continued and kept to the first day of February in the fourth year of his reign, entitled An Act for the abolishing and putting away of divers Books and Images; and also one other Act made in the same Session last before mentioned, entitled An Act made for the Ordering of the Ecclesiastical Ministers; and also one other Act made in one other Session of the said Parliament holden upon prorogation at Westminster the twenty-third day of January in the fifth year of the reign of said King Edward VI., and then continued and kept till the fifteenth day of April in the sixth year of the reign of the said late King entitled An Act for the Uniformity of Common Prayer and the Administration of the Sacraments. . . .¹

'Made' is obviously used in all those cases in the sense in which King Edward used it in the well-known passage in his Journal: 'A Parliament was called when an uniform order of prayer was institute, before made'—*i.e.* composed—'by a

¹ Observe here how carefully the Parliamentary phraseology differentiates Acts which extended over two sessions from those which were passed in one session. The first Act of Uniformity is invariably referred to as 2 & 3 Edward VI., which would be inaccurate if it had received the Royal Assent and had thus become an Act in the second year.

number of bishops and learned men gathered together in Windsor.' The expression, therefore, which the Judicial Committee in 1857 set the fashion of regarding as a conclusive proof that Edward's first Act of Uniformity received the Royal Assent in Edward's second year proves nothing of the kind. It merely means that that Act, like all other Acts of Parliament, was put into shape and passed through both Houses of Parliament in the second year, which nobody disputes. But it remained in suspended animation and had no authority whatever till the Royal Assent gave it legal validity in the third year. Consequently, it follows that the words 'by authority of Parliament in the second year of the reign of King Edward VI.' cannot refer to an Act which, as I hope to prove conclusively, did not receive the King's assent till the second month of the third year. Till then the Act had no legal force or authority of any kind. Whatever the words mean, therefore, they cannot refer to Edward's first Act of Uniformity if I am right in believing that the Act did not receive the Royal Assent in the second year.

Let us now consider my interpretation of the words—namely, that they refer to the ritual and ceremonial usage of the second year of Edward VI., not to the date of the Parliamentary authority which sanctioned those rules and ceremonies. That view has been the received interpretation

from Elizabeth's day till our own. It is unnecessary to trouble the reader with a catena of authorities. Two or three examples may suffice. On March 1, 1640-1641, the Lords appointed a very influential committee to report on Puritan complaints against the doctrine, discipline, and ceremonial observances of the Church. The Peers were at this time under the shadow of a revolution, political and religious, and it is evident that with a view to preserve their own order and privileges, the leading men among them determined to remodel the Prayer-Book and abolish almost everything except the episcopal office. Some of the leading divines of the period were also prepared to throw masts and rigging overboard in the hope of saving at least the hull of the ship. Vain attempt, as the event proved. The Committee consisted of ten earls, ten bishops, ten lay barons, and 'they were empowered to associate with themselves as many learned divines as they pleased.' They availed themselves of this permission, and among the divines chosen were Archbishop Ussher, Doctors Prideaux, Warde, Twisse, Hacket, Sanderson, Brownrigg, Waite, Holdsworth, Featley, Burgess, and Calamy. Prideaux, Sanderson, and Brownrigg were afterwards promoted to the Episcopate. Warde was one of the translators of the Bible, and afterwards Lady Margaret Professor of Divinity at Cambridge, an office in which he was succeeded by Holdsworth. In fact, all the divines on the Lords'

Committee were distinguished for learning and integrity, and represented various schools of theology. Taking the Committee as a whole, laymen and ecclesiastics, it would have been difficult to select a more influential and representative body of men. And what did they say as to the Ornaments Rubric? They recommended 'whether the Rubric should not be mended where all vestments in time of Divine Service are now commanded which were used 2 Edward VI.' Surely this is decisive on two points: first, that in the year 1640 the Ornaments Rubric was understood by all parties and scholars to order the Eucharistic vestments; next, that the Rubric prescribed the ornaments 'which were used' in the second year of Edward VI., not the ornaments which could not come into use by authority of Parliament till the third year.

In May, 1641, the following ordinance was passed by both Houses of Parliament:—

No copes, surplices, superstitious vestments [*e.g.* chasubles], roods or rood lofts, or holy water font, shall be or be any more used in any church or chapel within this realm.¹

A hard nut this for the Judicial Committee in the Purchas case. How did they deal with it? In a fashion characteristic of that august tribunal, which decided that the Advertisements of 1566

¹ *Ordinances, 1644, c. 38.* (Scobell's *Collections* 2658, p. 69.) Cf. Harl. Misc. viii. 107, where the collection of *Ordinances* is also given.

had forbidden and swept clean away the very vestments which a Parliamentary committee of experts declared in 1641 'are now commanded.' The Court unwisely gave their reasons for rejecting the inference which any body of intelligent and unprejudiced men would consider inevitable. The recommendation of the Lords' Committee, they said, 'applies to the earlier Rubric.' But both Rubrics 'obviously mean the same thing,' according to the decisions of the same Court in the year 1857. Next, said their Lordships, 'the suggestion did not emanate from the House of Lords.' It came from a most able and learned Committee appointed by the House of Lords to report, *inter alia*, on this very thing, and there is no record of a single peer—and there were peers of great learning and legal knowledge in the House—having questioned the suggestion. The third and last answer of the Court is that 'the suggestion was never adopted by that body.' I have just quoted the *Ordinance* adopting it three years afterwards.

So much for the kind of history on which the Judicial Committee is accustomed to base its judgments in causes ecclesiastical.

Let us leap down half a century and see what was the common interpretation of the Ornaments Rubric in the year 1688. In that year Richard Baxter and some of his friends made proposals for a reform of the Prayer-Book, and insisted that 'among the most necessary alterations of the

Liturgy' was 'that the Rubric for the old ornaments which were in use in the second year of King Edward VI. be put out.' Here we have the distinguished and saintly leader of the Puritans in 1688, agreeing with the Lords' Committee in 1641, that the Ornaments Rubric still prescribed legally the ornaments *which were in use* in Edward's second, not those which were ordered to come into use in his third, year.

It is not necessary to trouble the reader with more authorities—although they exist in abundance—to prove that the uniform interpretation of the Ornaments Rubric down to our own time has been that it prescribes the retention of the ornaments which were 'in use' in Edward's second year. For the argument which would restrict 'the second year' to 'by authority of Parliament,' to the exclusion of the words 'were in use,' has not, as far as I remember, a shred of support from contemporary or subsequent commentators down to the middle of the nineteenth century.

CHAPTER IX

THE LATIN ACT OF UNIFORMITY

I USED an argument before the Royal Commission with which Dr. Gibson dealt very severely, and in part somewhat irrelevantly. The Ornaments clause of the Uniformity Act of Elizabeth uses an expression which puzzled Archbishop Temple at the Lambeth Hearing, and which has been characterised as ungrammatical. The Act says: 'Provided always, and be it enacted, that such ornaments of the Church and of the ministers thereof shall be retained and be in use as was in this Church of England,' &c. I hold that the verb 'was' here is not governed by 'ornaments' as a nominative, but stands independently and means 'existed': a usage recognised by writers of the sixteenth century. This construction is corroborated by the Latin translation of Elizabeth's Act of Uniformity, which says: 'Provisum atque statutum sit, quod talia Ecclesiastica Ornamenta et Ministrorum eiusdem conservabuntur et usui subservient, quemadmodum mos erat in hac Ecclesia Anglicana ex auctoritate Parliamenti in anno secundo Regis Edwardi 6,' &c.

Both in my book on 'The Reformation Settlement' and in my examination by the Royal Commission I appealed to the phrase 'quemadmodum mos erat' as a contemporary and authoritative explanation of 'was' in the English version of the Act, and of the meaning of 'the second year' in both Act and Rubric: namely, that it is connected with the usage of that year, and not with 'by authority of Parliament.' Dr. Gibson's first assault on this argument was based on 'the extraordinary mistranslations and inaccuracies that there are in the [Latin] book.' He asked me repeatedly if I still relied on the words 'quemadmodum mos erat' in spite of the inaccuracy. But that is a pure irrelevancy. There is no connection between the Latin Prayer-Book and the Latin translation of Elizabeth's Act of Uniformity. They are the work of different hands. There are no 'extraordinary mistranslations and inaccuracies' in the Latin Act of Uniformity, and its authority is quite unaffected by any mistranslations and inaccuracies in the Latin Prayer-Book.

But this was a preliminary skirmish on the part of Dr. Gibson. The point which he considered conclusive against my argument was, as he maintained, that there was no 'contemporary, or authorised, or legal' translation of Elizabeth's Act of Uniformity. He had Clay's edition, 'which I have tested,' he said, 'by the original copy in the British Museum,' 'and the Act of Uniformity [in

Latin] does not exist, nor does the Ornaments Rubric.’¹ I too had carefully read and annotated Clay’s able and learned, but not infallible, books.² I also had examined all the various editions of the Latin Prayer-Book in the British Museum; the Record Office; the Bodleian; Christ’s College, Cambridge; the Rolls Office, Dublin (through the kindness of the Master of the Rolls); and in the library of Trinity College, Dublin (by the kindness of Professor Mahaffy and the Librarian of Trinity College). In none of them is there a copy of the Latin Prayer-Book of 1560 containing the Act of Uniformity in Latin. I have not been able to trace any earlier-printed edition of the Latin Act of Uniformity than that which is prefixed to the Latin Book of 1572.

Prima facie, therefore, there is so much to be said for Dr. Gibson’s assertion that I gave up the point provisionally before the Royal Commission, as I had only my memory to rely on and could not on the moment bring any direct evidence in support of my view, that there was a Latin version of the Act of Uniformity, and an authorised one, as early as 1560.

In his edition of ‘The Liturgies, &c., of Queen Elizabeth,’ Clay writes as follows:—³

¹ Appendix A, p. 350.

² *Liturgical Services, &c., of Elizabeth; Private Prayers of the Reign of Elizabeth; the Book of Common Prayer illustrated*: an admirable book.

³ Preface, p. xxiv.

The date usually assigned to the Latin Prayer-Book is 1560; in spite of Dibdin's assertion ('Typ. [*sic*] Antiq.' vol. iv. p. 25) that this date is merely conjectural, the common opinion is undoubtedly correct. For not only were Elizabeth's Letters Patent issued on April 6 in that year, but in the account of the *Cyclus Solaris* we have the following expression: *Annus præsens*, 1560. Herbert, indeed, (Ames, p. 1602) mentions a Latin Prayer-book printed by Wolf in 1559 (which date has been *written* upon the first page of Mr. Maskell's copy¹). Still, if we may judge from his mode of quoting the title, he could hardly have seen the work he meant.

I do not agree with Clay's last remark. In his edition of Ames's *Topographical Antiquities*—to which Clay persistently refers as 'Typ. Antiq.'—Herbert puts down under the date of 1559: 'A Latin Prayer-Book, the first of Q. Elizabeth.' I do not see why we should infer from this that Herbert 'could hardly have seen the work he meant.' But whether he saw it or not there was undoubtedly an edition of Elizabeth's Latin Prayer-Book in 1559. One copy of this edition is in the library of Trinity College, Dublin.²

There was a very good reason why there should be an edition of the Latin Prayer-Book in 1559. The Irish Act of Uniformity sanctioning the English Prayer-Book of 1559 has the following direction:—

¹ Which Clay erroneously thought 'unique.'

² The title-page of this book is as follows: 'Excusum Londini apud Reginaldum Wolfium, Regiæ Majest. in Latinis typographum. Cum privilegio Regiæ Majestatis. [1559.]'

That in every such church or place where the common minister or priest hath not the use or knowledge of the English tongue it shall be lawful for the same common minister or priest to say or use the Matins, Evensong, celebration of the Lord's Supper, and administration of each of the Sacraments, and all the common and open Prayer, in the Latin tongue, in such order and form as they be mentioned and set forth in the said Book established according to the tenor of this Act, and none otherwise or in other manner, anything before expressed or contained in this Act to the contrary notwithstanding.

That the Latin Prayer-Book was largely used in Divine Service in Ireland we know. Trollope reports to Secretary Walsingham in 1587 that 'when the Irish clergy must of necessity go to church they carry with them a book in Latin of the Common Prayer set forth and allowed by her Majesty.'¹ The Irish Parliament which passed the Act of Uniformity met in January 1560. It was necessary, therefore, that a Latin edition of the Prayer-Book should be sent to Dublin in time for its submission to Parliament. In confirmation of this view there is a memorandum from Sir John Mason (who had charge of the business) to Secretary Cecil, dated August 11, 1559, which says: 'The Book of Common Prayer in Latin is ready to print.'²

Though casting doubt on Herbert's assertion that there was an edition of the Latin Prayer-

¹ *State Papers concerning the Irish Church*, by Dr. Brady, p. 111.

² *Calendar of State Papers, Domestic*, 1547-1580, p. 136.

Book published in 1559, Clay admits that there is indirect evidence to show that 'the Book was published, or at least was ready for publication, before Elizabeth's issue of the Latin Prayer-Book.' And his critical instinct led him to ask, 'Had the Book so prepared any connection with the first Act of Uniformity passed by the Irish Parliament in the previous January?'¹ Undoubtedly it had. The following is also worth quoting from Clay:—

Wolf in 1571 (or rather in 1572, for the Psalter has both dates) sent out what we may rightly deem the earliest version into Latin of the whole Prayer-Book (Herbert's 'Ames,' p. 611). This the other printers carefully followed, and the copies (octavo) more commonly met with, though still very rare, are one in 1574 by Vautrollier, and another in 1594 by Jackson. Wolf's edition (and likewise the others) came out 'Cum privilegio Regiæ Maiestatis'; the Act of Uniformity is prefixed.

I have a copy without date, 'excusum Londini per assignationem Francisci Floræ. Cum privilegio Regiæ Maiestatis.' It has also in the Calendar the words: *Itaque annus hic præsens 1560 currentis cycli solaris est.* But the Psalter, with the date of 1574, is added to the volume. I do not attach great importance to 'Cum privilegio Regiæ Maiestatis,' but am entitled to say that it raises a presumption that the book so privileged possessed at least a quasi-Royal authority.

¹ *Liturgies of Queen Elizabeth*, p. xxiii.

But why was the Uniformity Act of 1559 translated into Latin at all? I hazard the conjecture that, like the 1559 impression of the Latin Prayer-Book, it was sent over to Ireland for the benefit of such clergy and laity as did not understand English. Of course it could not have been annexed to the Prayer-Book, as that was still unsanctioned by the Irish Parliament. But it is certain that, *pace* Dr. Gibson, the Latin Act of Uniformity was in the most literal sense contemporary with the English Act. There is indisputable evidence that it existed in an authoritative form in Latin not later than the year 1560. This is proved conclusively by two interesting documents in the British Museum. They are among the Lansdowne Manuscripts, and belonged originally to the manuscripts of Lord Burleigh (Secretary Cecil).¹ They are written by the same hand on a single sheet of paper, and are attributed, in the same handwriting, to Archbishop Parker. I have compared the handwriting with several specimens of Parker's, whose handwriting varies considerably. When he is copying he writes a neat small hand not unlike that of the MS. subjoined. But I am inclined, on the whole, to think that it is the handwriting of a secretary, who, as secretaries sometimes do, fell into the way of imitating his master's hand. The following is a transcript of the document, *verbatim et literatim* :—

¹ The reference is Lansdowne MSS. 120, ff. 79–80.

By Dr. Parker,
Abp. of Canterbury.

A note of the differences
betwene Kinge Edward his
second booke, and her Ma^{ties}
booke of Common-Prayer.

First Kinge Edward his second booke differeth from her Ma^{ties} booke in the first Rubrikes sett downe in the beginning of the booke. For K. Edwardes second booke hath it thus: The morning and evening prayer shalbe used in Such place of the Church, Chappell or Chancell, and the Minister shall turne him, as the People may best heare: And if there be any controversie therin, the matter shalbe referred to the Ordinary, and hee or his Deputee shall appoynt the place. And the, etc.

Agayne K. Edwardes second booke hath thus :

Agayne here is to be noted, that the Minister at the tyme of the Communion, and at all other tymes in his Ministration, shall use Neither Albe, Vestment nor Cope. But being Archbishop or Bishop he shall have and weare a Rochett, and beeing a Priest or Deacon he shall have and weare a surplisse only.

Wheras the Quenes booke hath it thus : The morning and Evening prayer shalbe used in the accustomed place of the Church, Chappell, or Chauncell, except it shalbe otherwise determined by the Ordinary of the place. And the Chauncells shall remayne as they have done in tymes past.

And here is to be noted, that the Minister at the tyme of the Communion, and at all other tymes in his ministration, shall use such ornaments in the Church, as were in use by authoritie of Parliament in the second yere of the raign of Kyng Edwarde the 6, according to the act of Parliament sett in the beginning of this booke. Secondly in K. Edw. second booke in the Letany there are these wordes: From the tyranny of the B. of Rome and all

his detestable enormitees: which are not in her Ma^{tis} booke.

Thirdely in the Letanie, her Ma^{tis} booke hath these wordes more then are in K. Edw. second booke, viz.: Strengthen in the true worshipping of thee in righteousnes and true holynes of lyfe etc.

Fourthly in the ende of the Letany there is no prayer in K. Edw. second booke for the King nor for the state of the Clergie. And the last Collect sett in her Ma^{tis} booke next before the firste Sonday in Aduent, and beginning, O God whose nature and propertee is euer to have mercy, is not in K. Edw. second booke. Furder there are two Collects appoynted for the tyme of dearth and famine, wheras her Ma^{tis} booke hath but one. And in K. Edw. second booke, this note is geuen of the prayer of St. Chrysostome, The Letany shall euer end with this collect following, which Note is not in her Ma^{tis} booke.

Fiftely K. Edw. second booke appoynteth onely these wordes to be used, when the bread is deliuered at the Communion, Take and eate this in remembrance that Christe dyed for the, and feede on him in thine heart by fayth with thankes-geuing. And when the Cupp is deliuered Drink this in remembrance that Christes bloud was shedd for thee, and be thankfull.

Statutum Elizabethæ.

Primo.

Et quòd idem liber, cum eo divini cultus, administrationis Sacramentorum, rituum et ceremoniarum ordine, alterationibus insuper et additionibus quæ eisdem adiiciuntur et per hoc Statutum assignantur, in pleno suo valore ac vigore permanebit; Eritque de et á festo Natiuitatis Johannis Baptistæ, juxta tenorem et effectum huius Statuti: Re quacunque in prædicto abrogationis Statuto in contrarium non obstante.

Cum unica alteratione vel additione quarundam

lectionum singulis diebus Dominicis per annum recitandarum: etiam cum Litaniarum forma alterata et emendata: duabusque etiam sententiis solummodo adiunctis, in Sacramento communicantibus tradendo, nec alia ulla nec alio modo.

Provisum atque statutum sit, quod talia Ecclesiastica Ornamenta et Ministrorum eiusdem conservabuntur et usui subservient, quemadmodum mos erat in hac Ecclesia Anglicana ex auctoritate Parliamenti in anno secundo Regis Edwardi 6., donec alius ordo constitutus fuerit á Reginea Maiestate cum Consilio Commissionariorum, qui ad causas Ecclesiasticas assignantur auctorizanturque sub magno Angliæ Sigillo, vel Metropolitanis huius Regni.

Atque etiam si contemptus aliquis aut irreverens quid circa ceremonias vel ritus Ecclesiasticos evenerit, abusione nimirum ordinum in libro assignatorum, quòd Reginea Maiestas simili utens consilio eorundem Commissionariorum vel Metropolitanis statuere et publicare poterit, ultiores ceremonias vel ritus, sicut maxime expedire videbitur, &c.

It is unquestionable that this manuscript preceded the year 1561, for it omits a number of other differences between the two Prayer-Books which were made in the early part of 1561. But inasmuch as the extract from the Act of Uniformity is on the same sheet of paper and in the same handwriting, this also fixes the date of the Latin version of the Act of Uniformity as not later than 1560, and it gives it in addition the *imprimatur* of Archbishop Parker and indirectly of Cecil.

The reader will observe that in this extract from the Act of Uniformity two separate quotations

from the *beginning* of the Act are prefixed to the Ornaments clause without any break between. There is no other difference except that in the first sentence of the extract 'valore' takes the place of 'robore' in the usual Latin version of the Act.

But why did Parker send to Cecil this 'note of the differences' between King Edward's Book and Elizabeth's, together with the Ornaments clause of the Act? I suggest the following explanation. On January 20, 1561, Elizabeth sent a second issue of Letters Patent to Parker, claiming power as follows to take further order under the Act of Uniformity:—

Letting you to understand that when it is provided by Act of Parliament holden in the first year of our reign, that whensoever we shall see cause to take further order in any rite or ceremony appointed in the Book of Common Prayer, and our pleasure known therein, either to our Commissioners for causes ecclesiastical, or to the Metropolitan, that then eftsoons consideration should be had therein.

After sundry orders in matters ecclesiastical, including the care and adorning of churches, and alterations and additions in the Lessons to be read in Divine Service, the Queen proceeds to remind the Metropolitan that she had authorised a Latin translation of the Prayer-Book 'in such sort as ye shall consider to be most meet to be used,' 'so that our good purpose in the said translation be not

frustrated, nor be corruptly abused, contrary to the effect of our meaning.'¹

It is probable that on the issue of these Letters Patent Cecil asked Parker for a note of the differences between Edward's second Book and the Queen's, and also for the clause of the Act of Uniformity under which the Queen claimed power to increase the differences; or Parker may have sent the information spontaneously. The two men were certainly in correspondence on the subject, for Parker writes to Cecil on another occasion:—

First, I said, as her Highness talked with me once or twice on that point, and signified that there was one proviso in the Act of the Uniformity of Common Prayer, that by law is granted unto her, that if there be any contempt or irreverence used in the ceremonies or rites of the Church by the misusing of the orders appointed in the Book, the Queen's Majesty may, by the advice of her Commissioners, or Metropolitan, ordain and publish such further ceremonies or rites as may be most for the reverence of Christ's holy mysteries and sacraments; and but for which law her Highness would not have agreed to divers orders in the Book.²

When the Latin Act of Uniformity was first printed and prefixed to the Prayer-Book there is no evidence in my possession to show. We may assume that one of the Queen's printers would not have prefixed it to an edition of the Latin Prayer-Book in 1572 without a word of explanation if it had not been then a recognised document. But

¹ *Parker Correspondence*, p. 133.

² *Ibid.* p. 375.

these are questions with which I have nothing to do. It is enough for me that there was a Latin version of the Act in 1560, and that the Archbishop of Canterbury sent to the Queen's Minister the crucial Ornaments clause together with a note of the differences at that time between Edward's second Prayer-Book and the Queen's, thus fixing the date.

In deference to Dr. Gibson's confident claim to superior knowledge and wider researches among original authorities in the British Museum, I dropt, in my examination before the Royal Commission, my argument from the 'quemadmodum mos erat' of the Ornaments clause in the Latin Act of Uniformity. Having now established my accuracy on this, as on other points, against Dr. Gibson, I resume my argument from 'quemadmodum mos erat.' Words which received the *imprimatur* of Parker and Cecil in the year 1560 may be considered as contemporary with the Latin Book of that year, and also as authorised and legal. So much for Dr. Gibson's positive assertion to the contrary on all three points. Nor is he accurate in saying that he 'tested the original copy [of the Latin Prayer-Book] in the British Museum.' I presume Dr. Gibson meant the original impression, which is non-existent. The original impression is that of 1559, of which there is not a copy in the British Museum.

Let us now compare Elizabeth's Ornaments Rubric with the contemporary Latin version of the

Act to which the Rubric expressly refers. The Rubric says :—

And here is to be noted that the Minister at the time of the Communion and at all other times in his ministration shall use such ornaments in the church as were in use by authority of Parliament in the second year of the reign of King Edward VI. according to the Act set in the beginning of this Book.

The corresponding words in the contemporary Latin version are :—

Provisum atque statutum sit, quod talia ecclesiastica ornamenta et ministrorum eiusdem conservabuntur, et usui subservient, quemadmodum mos erat in hac Ecclesia Anglicana ex auctoritate Parliamenti in anno secundo Regis Edwardi 6.

Here, then, we have an authoritative explanation of what both Act and Rubric prescribe—namely, *the ritual usage* of Edward's second year. I respectfully repeat, therefore, the words which offended Dr. Gibson. 'The fatal *quemadmodum mos erat*' proves that 'the second year' refers to the usage of that year, not to any Act of Parliament passed in that year. The ceremonial legalised by Elizabeth's Act of Uniformity was to be 'according to the custom of the second year of King Edward VI.' No ingenuity can make that mean any ceremonial prescribed by a book not published in the second year, and not to come into legal use till the lapse of some months in the third year. I believe, indeed, that Edward's first Prayer-Book

made no change, and was intended to make none, in the ceremonial of public worship. So that the question of the second year is in reality literary rather than liturgical. I may have occasion to touch upon this point at a later stage of my argument. I proceed now to give further reasons why the Ornaments Rubric cannot refer to Edward's first Book and its prescriptions.

CHAPTER X

REASONS WHY THE ROYAL ASSENT COULD NOT HAVE BEEN GIVEN TO THE FIRST ACT OF UNIFORMITY IN EDWARD'S SECOND YEAR

IT was conceded by the Court of Arches and by the Judicial Committee in 1857 that if it could be shown that the first Act of Uniformity did not receive the Royal Assent before the end of the second year it could not be covered by the Ornaments Rubric or Uniformity Act of 1559, from which it necessarily follows that that Rubric and Act cannot refer to the Prayer-Book of 1549. But if the first Act of Uniformity received the Royal Assent before the end of the second year, it must have been given by Royal Commission. That is unquestionable and unquestioned. Now assent by Royal Commission was at that time, as I have shown above (p. 80), a very formal and stately ceremony, and required adequate notice to be given to the three branches of the Legislature. It is, I submit, past belief that so august a ceremony could have taken place in the three or four days available before the end of the second year without a trace of it remaining on the page of history.

And not less incredible is it, as I have already observed, that the King, who was fond of pageantry, should have taken no notice of it in his *Journal*.

But we are not left to inference, however plain and irresistible, in this matter. There is clear proof that the first Act of Uniformity could not have received the Royal Assent in the second year—namely, that the Royal Assent put an immediate end to the session unless provision was made to the contrary. This rule was referred to at the Lambeth Hearing, but Sir Lewis Dibdin (now Dean of the Arches) brushed it aside as ‘an old superstition.’ On the contrary, it was a living constitutional doctrine for more than a century after Edward VI.’s death. I have given the following instances in my ‘Reformation Settlement’ (pp. 617–8). After the Royal Assent was given to 1 Car. I. c. 7 we read as follows:—

This session of Parliament (by reason of the increase of sickness and other inconveniences of the season, requiring a speedy adjournment) nevertheless shall not determine by his Majesty’s Royal Assent to this and some other Acts.¹

At the opening of the first Parliament after the Restoration an Act was passed to undo the Parliamentary irregularities of the Commonwealth. The Royal Assent was necessary at once, and it was given with the following proviso:—

¹ *Statutes at Large*, iii. 120.

Provided always, and it is hereby enacted, that his Majesty's Royal Assent to this Bill shall not determine this present session of Parliament.¹

Again, if the reader will look at 22 & 23 Car. II. c. 1, he will find that the Royal Assent was given in the beginning of the session to 'an Act to prevent malicious maiming and wounding'; and to prevent the session from being closed thereby there follows the usual proviso:—

Provided always, and it is hereby declared and enacted, that his Majesty's Royal Assent to this Bill shall not determine this session of Parliament.²

I have not pursued the inquiry further. It is enough for my purpose to have shown that from Henry VIII.'s time to Charles II.'s it was the invariable rule that the Royal Assent put an end to the session unless Parliament made provision to the contrary. But the Parliamentary session under consideration did not end till March 14 of Edward's third year, and there is no trace in the records of Parliament or elsewhere of such a proviso or of any Royal Assent by Commission.

In the course of my examination by the Royal Commission Sir Edward Clarke asked me, 'What authority have you for saying that the Royal Assent was not given until the third year?' I answered: 'Briefly this: In the first place, the Royal Assent determined Parliament [*i.e.* the

¹ 12 Car. II. c. 1. (*Statutes at Large*, iii. 143.)

² *Statutes at Large*, iii. 327.

session of Parliament] ; when it was given, Parliament came to an end.' 'Oh, no,' answered Sir Edward, and he argued the point till I produced my evidence, which is conclusive.

We have now got so far as this: The Royal Assent to the first Act of Uniformity in the second year could only have been given by Commission. There were only three or four days at the most to do it in, and it is certain that it was not done. In the court of reason, therefore, the case is ended. But prejudice is often impervious to reason, and it is so here. The Judicial Committee said in 1857 that 'there seems no reason to doubt that the Act in question received the Royal Assent in the second year of Edward VI.' And this is considered the last word on the subject by the great mass of lawyers and by the public in general. That view was pressed upon me confidently by the legal members of the Royal Commission. I asked if the Court had all the facts before it when it uttered its dictum, and I was assured that it had. I have since gone over the pleadings in that case, and I find that the Court had by no means got all the facts before it. Their Lordships do not seem to have troubled themselves to inquire how the Royal Assent was given in the second year—whether personally or by Commission—nor do they seem to have been aware that the Royal Assent determined the session. We are thus dealing with a case where ordinary evidence does not avail, because what we

have opposed to us is an inveterate prejudice, which can only be overthrown by the impact of cumulative facts. I proceed, therefore, to meet the remaining objections to my contention that the first Act of Uniformity did not receive the Royal Assent in the second year of Edward VI., from which it follows that nothing sanctioned by it can have had the 'authority of Parliament' in that year.

Both at the Lambeth Hearing and before the Royal Commission Sir Lewis Dibdin made a great point of 1 Mary, Stat. 3, c. 10, an 'Act for the Repeal of statute made for uniting the parishes of Onger and Grenestede in the Countie of Essex.' This statute, said Sir Lewis Dibdin in his cross-examination of me before the Royal Commission, is 'really identically in the same form as the Ornaments Rubric.' A discussion on that point followed between him and me, which I subjoin from the report of the official shorthand writer:—

It says 'an Act was made and ordained by authority of Parliament in the same second year.' That refers to an Act of Parliament which was read a third time in the third year, so that it was not even a complete Bill in the second year. It was read a third time and received the Royal Assent in the third year. I point to that as really a precedent for the Ornaments Rubric form. I have read your book and I gather that you do not take that view?—No, I still rely upon the word 'made.' I say that Acts of Parliament are made by Parliament, but do not become operative until they receive the Royal Assent.

8624. (*Mr. Prothero.*) Where does the word 'made' occur? It does not occur in the rubric?—No, it does not.

8625. (*Sir Lewis Dibdin.*) You have not got the words before you. The words are 'An Act was made and ordained by authority of Parliament in the same second year,' and, as I have told you, that Bill passed the third time in the third year?—Yes, it passed the first day of the third year.

8626. Still the third reading was in the third year?—Yes.

8627. I gather from your book that you do not think much of that as a precedent. I think that is the Act which you suggest was drawn by the village school-master?—No, pardon me; the suggestion is that the Act is based upon a petition from the parishioners, and Parliament quotes the petition as the reason for the Act.

8628. But what do you mean by that; the Act was in petition form, was it not? Why do you say that they quote the petition?—The parishioners of the two parishes make a complaint that the Act was passed to their prejudice, iniquitously they say, and put them to great inconvenience, and they beg Parliament and beg the Queen to dissolve the union of the two parishes, and the Act quotes the petition of the parishioners and enacts accordingly.

8629. But you are aware, are you not, that the whole of that Act, and a great many other Acts in the Statute Book, is in the form of a petition?—No.

8630. Not only what you say is quoted, but the whole thing?—The whole Act is not in the form of a petition.

8631. Yes it is.—It enacts.

8632. You are aware, are you not, that until a comparatively late period, all Acts of Parliament, and at the time we are speaking of, a great many Acts of Parliament were made in the form of a petition, and the only

evidence of the Royal Assent was the *La Reine le veult*, or the form of assent written at the end, and they appear in the Statute Books still in petition form?—Yes.

8633. And that is one of them, is it not?—Yes, undoubtedly, but I think if you read the first part of the Act, the preamble, really it is the wording of the petitioners. The Act in the ordinary form of a Statute would not make the very grave and serious accusations against the man who ‘corruptly’ got the parishes united.

8634. Surely the whole Act, preamble and everything else, is the petition of the people. You suggest—it does not sound to me a very likely suggestion—that it was drawn by the village schoolmaster?—Not the Act, but the petition.

8635. I put it to you that the whole Act is the petition?—I think not. It says ‘Be it enacted.’

8636. Let us look at it, because this is really in identical form with the Ornaments Rubric. It is Mary, Statute 3, chapter 10. It begins ‘Lamentably complaining, shewen unto your Highness your obedient and faithful subjects,’ quite a familiar beginning?—Yes.

8637. Then follow the words I have quoted which I am relying upon. Then the operative part of the Statute is still the petition. ‘It may, therefore, please your most excellent Highness. That it may be enacted by the same your Highness with the assent of the Lords spiritual and temporal and the Commons in this present Parliament assembled and by authority of the same, that’—Then the next sentence is ‘And that’—still the petition, and so on right through the Act. From beginning to end it is a petition in absolutely familiar form, of course?—But do you suppose that Parliament would say ‘That where by the sinister Labour and Procurement of one [who was patron of the livings and M.P. for the county] . . . inordinately seeking his private lucre and profit’? Surely that is the petition of the parishioners.

8638. Yes, it is a part of the petition. The whole thing is the petition?—Surely not.

8639. I think I can make this clearer if I read again from Hardcastle, who is the text writer on this subject. He says at page 46: ‘Evidence of the Royal Assent other than the words of enactment was never required as to the earlier Statutes, public or private, and from 3 Edward I. to Henry VI. there is no mention of the Royal Assent on public or private Acts other than the words of enactment. The importance of this question with reference to old Acts lay in the fact that as the Act was in the form of a petition unless it was endorsed *Le Roi le veult* or *Soit fait comme il est desire*, the sole evidence of Royal Assent was the appearance of the Bill on record.’ And we know (Sir Francis Jeune will bear me out) that there are hundreds of Acts on the Statute Book, of which the first Act of Uniformity itself is one, which so far as anything appears on the Statute Book are mere petitions?—I do not assent.

8640. I will not ask you any more questions about it because we are not quite agreed amongst ourselves on the Commission what the form of it is.

The fact is that Sir Edward Clarke joined in the discussion at this point, and took my side against Sir Lewis Dibdin, but by desire of the Chairman this little episode was not reported. Without going now into the subject of how far Acts of Parliament were all then in the form of a petition, the question does not arise here. The petitioning form of Acts of Parliament was addressed to the Sovereign *by Parliament*. But the petition in the Act under discussion was avowedly addressed to the Queen *by the aggrieved parishioners*

of the united parishes. Let me quote as much of the petition as proves this indubitably, together with my comments in my *Reformation Settlement*, which Sir Lewis Dibdin criticised with courtesy :—

Lamentably complaining shewen unto yo^r. Highness yo^r. obedient & faithful Subjects thinhabitauntes & Parishioners of the Townes & Villages of Chipping Onger otherwise called Castell Onger & Grenestede within yo^r. Graces Countye of Essexe; That where by the Sinister Labour & Procurement of one Willyam Moys Esquyer, yo^r. Graces late Servant deceased, sometime Patrone of the Parische Church of Onger aforesayd, & one of the Burgesses of the Parliament holden at Westminster in the second year of the late King of worthye memorye, Edward the Sixth your Highnes Brother, inordinately seeking his private lucre and profit, an Acte was made & ordeined, by authoritee of P^lliament in the same second year for a Consolidation & Union to be hadd and made of the Parish Churches.¹

¹ See *Reformation Settlement*, p. 612. The Act which united the two parishes, and which was repealed in Mary's reign in response to the petition of the parishioners, was not enrolled and was never printed. I had some difficulty in tracing it, and found a copy of it at last in Bonner's Register, p. 314. It is entitled 'The copie of an Act passed in the Secunde Session of the Parliamente holden and begowne at Westr. the 24th day of Novembre Anno Rx. Edwardi Sexti Secundo and contynued untill the 14th day of Marche Anno dicti R. E. Viti tercio.' This follows the usual parliamentary nomenclature, which mentions the period embraced by the Parliament referred to. Edward VI.'s second year is always quoted in conjunction with the third, namely, "2 & 3 Edward VI." None of the instances quoted by Sir Lewis Dibdin in his cross-examination of me is on all fours with the Ornaments Rubric. Collier is accurate in his history and phraseology when he writes, 'By this statute [Second Act of Uniformity] the first Common Prayer Book authorised by Parliament, *in the second and third year of this reign*, is called "a very godly order, agreeable to the Word of God and the primitive Church, very comfortable to all

‘The poor people go on to describe the hardships which the union of the two parishes entailed upon them, hindering—among other things—their going to church in rainy weather on account of a swollen brook that separated them from the church of the parish to which they had been, without their consent, united “by the sinister labour and procurement” of the patron of the living, their Parliamentary representative. They beg, therefore, that the Act which inflicted these evils upon them may be repealed. The document is an illiterate petition to the Queen, probably drawn up by the village schoolmaster or scribe, who might be excused for being a little astray in Parliamentary terminology and dates. The petition is prefixed to the repealing Act as its explanation and justification.’

Undoubtedly this Act is the nearest instance that has been cited of an Act receiving the Royal Assent in one year, yet credited to the previous year. But for the reasons just given I submit that no reliance can be placed upon it. And it is a solitary instance.

The next argument which I have to meet was put to me with great ability and ingenuity by Sir Lewis Dibdin.¹ Until the year 1792 the operation of Acts of Parliament was dated from the first day of the session in which they were passed. This

good people desiring to live in Christian conversation, and most profitable to the estate of this realm.”’—*Eccles. Hist.* v. 454.

¹ See Appendix A, p. 301, 306-311.

rule, however, applied only to 'every Act of Parliament in which the commencement thereof is not directed to be from a specific date.'¹ The question is, Was Edward's first Act of Uniformity one of these exceptions? Sir Lewis gave two reasons why, in his opinion, it was not. He draws a distinction between the Act and the Prayer-Book which it sanctioned. The latter, he allows, is directed to be from a given date, but not the former, because (1) the Act 'required the churchwardens to get the Prayer-Book ready against Whitsunday'; (2) that where copies of the Prayer-Book could be obtained before the compulsory date for its use (Whitsunday) it was to be used within three weeks of its being so obtained; (3) that the Act released a certain class of prisoners, for whose release, however, no date is given in the Act.

Let us consider these arguments. I cannot admit the distinction which Sir Lewis Dibdin draws between the Act and the Prayer-Book. If the former is not directed to begin from a given date, neither is the latter. Whitsunday was the day named in the Act on which the Prayer-Book was to come into universal use, but it was to be used earlier if copies could be obtained. I am surprised that Sir Lewis should make a point of the churchwardens being 'required to get the Prayer-Book ready against Whitsunday.' This seems to me to overthrow his argument. The Act

¹ *Statutes Revised*, iii. 338.

simply requires the churchwardens to have everything ready against the prescribed date. Obviously it did not matter when they began to discharge this duty, provided it was discharged by Whitsunday, the crucial date. Their omission of this duty was penal. And surely the fact that copies, if obtainable, were to be used before the prescribed date cannot prove that the Act was not directed to begin from a given date. An Act comes into legal validity from the date on which it can be penally enforced. But the Uniformity Act of 1549 could not have been penally enforced before Whitsunday of that year. Therefore I hold that it undoubtedly belongs to the category of Acts 'in which the commencement thereof is' 'directed to be from a specific date.' Surely the language of the Act is conclusive on that point. Let me give a few examples. The Act ordains that all persons concerned 'shall from and after the Feast of Pentecost next coming be bounden to say and use the Matins and Evensong, celebration of the Lord's Supper, commonly called the Mass, and administration of each of the Sacraments, and all their common and open prayer,' 'in such order and form as is mentioned in this book, and none other or otherwise.' It goes on to prescribe penalties for all violations of this order, 'after the said Feast of Pentecost next coming.' In the next section it prescribes penalties against all who 'after the said Feast of Pentecost next coming' shall say or do,

or incite others to say or do, 'anything in the derogation, depraving, or despising of the same book or anything therein contained.' Another section orders that copies of the book shall be obtained 'at the cost and charges of the parishioners of every parish and Cathedral church' before the 'Feast of Pentecost next following.'

If this, and more to the same effect, does not prescribe a date for the commencement of the Act, it would be difficult to name an Act which answers fully to that requirement.¹

But Sir Lewis Dibdin's third argument would, if well founded, have more substance in it, namely, that the Act released, *ipso facto*, all prisoners in confinement for innovations in Divine Service, with certain exceptions, yet no date is given for their release. I refer the reader to the Appendix (pp.306-311), where he will find Sir Lewis's argument against me stated with great ability and acuteness. I objected that there is nothing in the enacting part of the Act of Uniformity about pardoning any prisoners. Parliament indeed petitions the King to pardon all persons 'that have offended' in matters of religion other than 'such persons as now be and remain in ward in the Tower of London and the Fleet.' 'That is an enactment,' answered Sir Lewis; 'the whole Act

¹ Certainly Collier, who was a most careful and accurate writer, had no doubt on this point. He writes: 'The statute sets forth further: That if after the feast of Pentecost next coming, *when the Act was to inure,*' &c.—*Eccles. Hist.* v. 296.

is petition; it is the operative part of the Act.' With all respect, I dispute that assertion. In a copy which lies before me the preamble of the Act covers a little over a page; the petition covers less than three pages; then follows the enacting part, covering more than four pages. Immediately after the petition, on which Sir Lewis Dibdin relies, the Act goes on: 'And it is ordained and enacted,' and so it proceeds through thirteen paragraphs, each beginning 'Be it enacted' or 'Be it ordained and enacted,' to the end of the Act. I submit therefore, with all deference, that the petition for the release of the prisoners does not belong to the enacting part of the Act and receives no answer in the Act. The rest of the petition is answered by a specific enactment. I have examined a multitude of statutes of that period, and have found that the great majority of them are not in the form of petitions, and that, moreover, a petition is not necessarily an enacting part of the Act. If I may say so without great presumption, it seems to me that the Dean of the Arches has pushed his doctrine of statutes being in the form of petitions, and petitions having statutory force, much too far. I do not think the text-books bear him out. For instance, Maxwell is, I believe, considered a good authority, and he says:—

Originally Bills in Parliament were mere petitions to the King. They were entered on the Rolls of Parliament

with the King's answer; and at the end of the session the Judges drew up those records into statutes, to which they gave a title. In the execution of their task they occasionally made additions, omissions, and alterations. But the practice ceased in the reign of Henry VI., when Bills in the form of statutes without titles were introduced.¹

But, though 'introduced' without titles, they received a title when they became Acts, and lawyers are agreed, I believe, that the title of a statute may be taken to indicate its contents and purport. Now the authorised title of the Act under consideration is 'An Act for the Uniformity of Service and Administration of the Sacraments throughout the Realm.'²

There is not the slightest suggestion here about the release of prisoners, as we might have expected if the Act had any such intention or effect, especially when the release was, according to Sir Lewis Dibdin's argument, so 'urgent' that the King is supposed to have sent a Royal Commission in hot haste to give his assent to the Act of release the moment it passed through Parliament. The release of the prisoners would thus be the most urgent part of the Act. Yet the Act itself, apart from the brief petition near the beginning, breathes not a syllable about prisoners. I respectfully reject therefore, as violent and non-natural, the

¹ *On the Interpretation of Statutes*, p. 49.

² *Statutes of the Realm*, iv. 87.

construction which would make that petition *ipso facto* an order of release for the prisoners named.

Sir Lewis Dibdin argued against me on this point that the General Pardon Act of Edward's third year 'did not refer to those particular persons who had committed the offences' referred to in the Act of Uniformity. 'The two things,' he said—*i.e.* the offences pardoned in the General Pardon Act and those pardoned *ex hypothesi* in the Act of Uniformity—'are separate. It so happened that they were both passed in the same session, but that is all.' Let us see.

Parliament petitions in the Act of Uniformity that all persons convicted of ecclesiastical offences should be released except such persons as were imprisoned in the Tower and the Fleet, but left the mode and time of release to the King's discretion. The General Pardon Act released, *inter alios*, every prisoner convicted of offences 'as well spiritual as temporal unto the 14th day of March, 1548'; and section 15 enables archbishops and bishops to release from prison any person convicted and imprisoned for an ecclesiastical offence.¹

Thus we see that the General Pardon Act embraced precisely the class of persons on whose behalf Parliament petitioned in the Act of Uniformity, and under exactly the same exceptions demanded in the petition of the Act of Uniformity, namely, prisoners confined in the Tower and in the

¹ *Statutes of the Realm*, iv. pt. i. 36.

Fleet. Is it possible to doubt that this is the answer to the petition in the Act of Uniformity?

But the evidence for my view of the case does not end there. In the Lords' 'Journals' there is a list of sixty Acts of Parliament which received the Royal Assent on that day, and among them is the Act of Uniformity and the General Pardon Act. When I stated this before the Royal Commission, Sir Lewis Dibdin asked, 'Are you referring to the printed "Journal"?' 'I am referring to the printed "Journal",' I answered. 'That is in George III.'s reign,' he observed. Sir Edward Clarke then struck in with the remark, 'That is very much later indeed.' Here Sir Lewis Dibdin departed a little from his usual fairness, which I gladly acknowledge. The casual reader will imagine, from his slighting reference to George III.'s reign, that I had relied on some untrustworthy authority, and that appears to have been the impression made on so acute and learned a mind as Sir Edward Clarke's. But I quoted the authentic and recognised edition of the Lords' 'Journals.' Sir Lewis Dibdin held that there is no date in the manuscript lists of Acts as given in the Lords' 'Journals.' But the date is capable of proof by other evidence. In the body of the General Pardon Act the date of its passing is given as March 14. We may therefore say for certain that all the other Acts mentioned in the lists received the Royal Assent on the same day. It is for those who

dispute this to give some valid evidence for their scepticism. The burden of proof is on them, and they offer no proof at all.

I now claim to have proved that the petition in the Act of Uniformity was no part of the enacting portion of the statute, and that the release of the prisoners there referred to was effected by another statute—namely, the General Pardon Act. We have thus got rid of the only plausible reason for doubting that the commencement of the Act of Uniformity was directed to be from a specific date. It is also certain that the Act of Uniformity received the Royal Assent on March 14 of Edward's third year, unless some decisive evidence is produced to the contrary. Those who have so strenuously denied that the Royal Assent was given to the Act of Uniformity on the above date have strangely forgotten that they are bound to support their denial by some kind of positive evidence. This they have never attempted.

Let me quote here an authority, of whom Sir Lewis Dibdin made much use when he could appeal to him against my argument. In the very book¹ on which Sir Lewis relied against me on one particular point, Dr. Gee says, in reference to Sandys's famous explanation of the Ornaments Rubric :—

An entirely different view of the 'second year' has now to be discussed.

¹ *The Elizabethan Prayer-Book*, p. 111.

According to this, the words refer to the year 1549, and the ornaments specified in Edward's first Prayer-Book. This interpretation has the merit of the simplicity and directness which we might naturally expect in any reference of an Act of Parliament. It sends us back to a definite standard, and not to the highly controversial discussion of what the Injunctions of 1547 actually made legal. Moreover, the Prayer-Book of 1549 was certainly established 'by authority of Parliament.'

At first sight, however, it is a fatal objection to this view that the Book of 1549 was finally authorised in the third and not in the second year of Edward, since the Royal Assent was given in March 1549. The Parliament in question began to sit, after prorogation, on November 4, 1548. Any Act, therefore, of the session 1548-49 would be referred to in legal language as an Act of 2 & 3 Edward VI. In point of fact, Acts of that session are usually quoted as Acts of 2 & 3 Edward VI.¹ It would also be equally in order to refer to them as Acts 'made in the Parliament holden upon prorogation at Westminster, the 4th day of November, in the second year of the reign.' But, in any case, to describe the Act of Uniformity of 1549 as an Act of the second year is irregular.

¹ In a footnote Dr. Gee gives the two following illustrations: 'Thus in 1 Eliz. c. 9, "Whereas at a Parliament holden at Westminster upon prorogation, the second and third years of the reign of King Edward the VI.;" in 5 Eliz. c. 8. "One other Act made in the second and third year of the reign of our late sovereign lord King Edward the VI." These instances are normal, and are specially selected as being fairly contemporary with the proviso' in the Ornaments Rubric.

CHAPTER XI

TO WHAT DOES 'THE AUTHORITY OF PARLIAMENT' IN
THE ORNAMENTS RUBRIC REFER?

IF, as I contend, the Ornaments Rubric does not refer to Edward's first Prayer-Book, to what does it refer? I answer, to the Order of the Communion. But did the Order of the Communion possess the authority of Parliament? I maintain that it did; but my view was strenuously repudiated at my examination by the Royal Commission, especially by Sir Lewis Dibdin and Dr. Gibson. I have re-examined the question since then with the result that I find my view confirmed, and I now proceed to give my evidence. For the convenience of the reader I will quote now from the official report as much of my evidence as will suffice to exhibit my own view and that of my cross-examiners respectively. I began:—

I come to the ornaments rubric, upon which everything hangs. I need not read it, of course, because you are all familiar with the ornaments rubric, but I want to point out that the ornaments rubric of Elizabeth places the question of the 'second year,' in my humble opinion, beyond any possibility of doubt. It says: 'And here is to be noted that the minister at the time of the Com-

munion, and at all other times in his ministration, shall use such ornaments in the church as were in use by the authority of Parliament in the second year of the reign of King Edward VI., according to the Act of Parliament set in the beginning of this book.' Now what that rubric states is that 'such ornaments,' not 'as were authorised' simply, but 'such ornaments as were in use by authority of Parliament in the second year of the reign of King Edward VI.,' shall still be used. It is beyond all possibility of doubt that the prescriptions of the First Prayer-Book were not in legal use in the second year at all. The Prayer-Book itself was not a legal document until the second month of the third year, and consequently anything prescribed by it could not be spoken of in the Ornaments Rubric of Elizabeth as a thing that was 'in use by authority of Parliament in the second year of the reign of King Edward VI.' The Ornaments Rubric of Elizabeth, therefore, cannot cover the ceremonial usage of Edward's second regnal year, if we are to restrict it simply to the ornaments prescribed by the First Prayer-Book. It must refer to what was in use before the First Prayer-Book was authorised by Act of Parliament, and consequently so far as I understand the matter, it must refer to the ceremonial in use under the Order of the Communion, which, I contend, had the authority of Parliament in the second year.

8423. When was that authority given, in your view?—It was given when the Order of Communion came forth first by the Proclamation of King Edward, which, as I understand it, relied upon the Act authorising the administration of the Holy Communion in both kinds.

8424. Will you give the date?—March, 1548.

8425. (*Sir Lewis Dibdin.*) That is the date of the imprint?—Yes. 'Imprinted at London the VIII day of March in the second year of the reign of our Sovereign Lord King Edward the Sixth, by Richard Grafton,

printer to his most Royal Majesty, in the year of our Lord mdxlviii.'

8426. That is the date of the Proclamation?—No, that is the date of the publication of the Order of the Communion. I have not got the precise date of the Proclamation here, but it was almost at the same time as the publication of the Order of the Communion. I think the Proclamation came forth immediately afterwards.

8427. Immediately before, you mean?—Not before the publication of the book, did it?

8428. Surely?—The book was published on the 8th of March, 1548, and I think immediately afterwards it was issued, with the sanction of the Royal Proclamation which claimed expressly the authority of the Act of Parliament, and referred to 'the Order of the Communion' as 'such form and manner as hereafter by our authority with the advice before mentioned is set forth and declared.' It would be contemporaneous anyhow.

8429. That is stated on page 653 of your book, is it not?—Yes.

8430. And the statement seems to be that 'it was issued under the sanction of a Royal Proclamation, which claimed expressly the authority of the Act of Parliament, and referred to the "Order of the Communion" as "such form and manner as hereafter, by our authority with the advice before mentioned, is set forth and declared."' "

8431. That is in inverted commas; is that right? Is it not quite clear from the Proclamation that 'the advice before mentioned' is that of the Lord Protector, and not the advice of Parliament at all?—I do not think so.

8432. Now we may look at that. Here is the Proclamation: 'Edward, by the Grace of God King of England'—then follows his titles. 'To all and singular our loving subjects, greeting: for so much as in our High Court of Parliament lately holden at Westminster, it was by us, with the consent of the Lords spiritual and temporal, and

Commons there assembled, most godly and agreeably to Christ's Holy Institution enacted, that the most blessed Sacrament of the Body and Blood of our Saviour Christ, should from henceforth be commonly delivered and ministered unto all persons, within our Realm of England and Ireland, and other our dominions under both kinds, that is to say, of bread and wine (except necessity otherwise require) lest every man phantasying and devising a sundry way by himself, in the use of this most Blessed Sacrament of unity, there might thereby arise any unseemly and ungodly diversity: Our pleasure is, by the advice of our most dear uncle the Duke of Somerset, Governor of our person, and Protector of our Realms, Dominions, and Subjects, and other of our Privy Council, that the said blessed Sacrament be ministered unto our people, only after such form and manner as hereafter, by our authority, with the advice before mentioned, is set forth and declared.' Surely it is perfectly clear that the advice is the advice of the Lord Protector, and the consent of Parliament, which has been rehearsed in the earlier part of that Proclamation, has to do solely with the fact of Communion in both kinds and has nothing to do with the service at all. In other words, is it not a mistake to say as you do, on page 653, that 'the advice before mentioned' means the advice of Parliament?—But it says by the advice of the Lord Protector and the Privy Council, and they were the executors of the Act of Parliament; it was their function to put the Act of Parliament into force. As I understand it, the King says, by the advice of his uncle the Lord Protector and the Privy Council.

8433. Yes, that is what he says, not of the Act of Parliament?—No, but he refers to the Act of Parliament.

8434. (*Chairman.*) Will you state what Act of Parliament?—The Act which authorised the Communion in both kinds.

8435. What is the date of the Act?—1 Edward VI.

Chapter 1. If I may venture to do so, I should like to read the next paragraph in my book in order to explain my meaning: 'In addition to this Proclamation enjoining the general use of "the Order of the Communion" the Privy Council sent to every bishop, together with the copies of the book, a circular letter enforcing its use.'

8436. (*Sir Lewis Dibdin.*) Before you go to that I should like to finish this question. Your book says distinctly that this form was put out 'by our authority with the advice before mentioned,' which is in the Act of Parliament; that is what you state?—Yes.

8437. If that were so I think we should all understand your argument very clearly, but when the Proclamation is looked at, 'the advice before mentioned' is not the advice of the Act of Parliament but is the advice of the Lord Protector and the Privy Council?—Yes, but I think that claims the authority of the Act of Parliament. The Privy Council could not do anything without the Act of Parliament.

8438. They could do what they professed to do, put out the Proclamation. The King puts out the Proclamation with the advice of certain persons, those persons being the Lord Protector and the Privy Council. That is a very different thing from saying that it was by the advice of Parliament.—But then the King and the Privy Council could not change the laws of the Realm without an Act of Parliament.

8439. The question is not what they could have done but what they purported to do, and it is now agreed that the Proclamation was not as stated in your book, by the advice of Parliament, but by the advice of the Lord Protector and the Privy Council?—On their advice, but not on their authority apart from the Act of Parliament.

8440. But may we get it that that is a mistake; that although it is stated in your book that it is with the

advice of Parliament, it really means with the advice of the Lord Protector and the Privy Council? We can argue about it afterwards to any extent?—No, with the advice of the Privy Council basing themselves on the Act of Parliament. The Act does not advise.

8441. (*Sir Edward Clarke.*) Then you would so modify the passage?—That is what I meant by it. An Act of Parliament does not advise; it enacts.

8442. (*Sir Lewis Dibdin.*) You meant us to understand that ‘the advice before mentioned’ meant the advice of the Lord Protector and the Privy Council?—Yes.

8443. You have not mentioned either one or the other?—Perhaps that was careless; but the Proclamation rests itself and bases itself upon the Act of Parliament.

8444. (*Rev. Dr. Gibson.*) Then may I ask for what does the Proclamation claim the authority of the Act of Parliament?—For the Communion in both kinds.

8445. Not for the service?—Yes, for both.

8446. Will you tell me where it claims the authority of Parliament for the service?—I do not take that passage as isolated.

I went on to refer the Commission to the circular letter sent by the Council to the bishops, together with copies of the book enjoining its use. The letter bore the signature of the Council, including among others Cranmer’s, the Protector’s, and the Lord Chancellor’s. The gist of the letter is contained in the following extracts :—

After our most hearty commendations unto your Lordships, where, in the Parliament late holden at Westminster, it was, amongst other things, most godly established that, according to the first institution and use of the primitive Church, the most holy Sacrament of

the Body and Blood of our Saviour Jesus Christ should be distributed to the people under the kinds of bread and wine ; *according to the effect whereof the King's Majesty minding, with the advice and consent of the Lord Protector's grace, and the rest of the Council, to have the said statute well executed in such sort, as like as it is agreeable to the Word of God, so the same may also be faithfully and reverently received of his most loving subjects, to their comfort and wealths, hath caused sundry of his Majesty's most grave and learned prelates and others, learned men in the Scriptures, to assemble themselves for this matter, who, after long conference together, have, with deliberate advice, finally agreed upon such an Order, to be used in all places of the King's Majesty's dominions, in the distribution of the said most blessed sacrament as may appear unto you by the Book thereof, which we send herewith unto you.*

The bishops accordingly are—

to cause these books to be delivered to every Parson, Vicar, and Curate within your Diocese, with such diligence as they may have sufficient time well to instruct and advise themselves, for the distribution of the most holy Communion, according to the order of this book, before this Easter time, and that they may by your good means, be well directed to use such good, gentle and charitable instruction of their simple and unlearned parishioners as may be all to their good satisfaction as much as may be, praying you to consider that this Order is set forth to the intent there should be in all parts of the Realm, and among all men, one uniform manner quietly used. The execution whereof, like as it shall stand very much in the diligence of you and others of your vocation ; so do we eftsoons require you to have a diligent respect thereunto, as ye tender the King's Majesty's pleasure, and will answer to the contrary.

This says in plain terms that the Order of the Communion is the logical sequence of the statute, its necessary complement. 'To have the statute well executed,' a liturgical form is issued, part of which is actually contained in the statute, thus showing, as I have already pointed out, that Parliament had the Order of the Communion before it as the Act was passing through it. Canon Dixon says that the Order of the Communion was compiled and issued on 'the implied authority of the late Act'—namely, 1 Edward VI. c. 1. And certainly that was the contemporary opinion. For example, Foxe, who gives the Council's letter entire, says :—

By means as well of this letter, and the godly order of the learned, *as also of the statute and Act of Parliament before mentioned* [1 Edward VI. c. 1] *made for the establishing thereof*, all private blasphemous masses were now by just authority fully abolished throughout the Realm of England.¹

To Foxe's mind 'The Order of the Communion' was a most important fact in the history of the Reformation.

The learned editor of Hayward's 'Life and Reign of Edward VI.' says explicitly that 'The Order of Communion was pursuant to the *Act An. i. Edw. VI. for the Administration of the Sacrament in both kinds.*'²

¹ Foxe's *Acts and Mon.* p. 660, folio edition of 1641. The italics in the quotation are mine.

² P. 290, fol. ed.

Heylin gives the names of the Joint Committee of Convocation who revised The Order of the Communion, and adds :—

Who being thus convened together, and taking into consideration as well the right rule of the Scripture as the usage of the primitive Church, agreed on such a form and order as might comply with the intention of the King and the Act of Parliament, without any just offence to the Romish party.¹

Cardwell, no mean authority, who made a thorough study of this period, says :—‘ The Order of the Communion, having previously been approved by Convocation, *and authorised by Act of Parliament*, was printed by Grafton on the 8th of March, 1548, and accompanied by a proclamation enjoining the general use of it.’²

These extracts may suffice to show the opinion of standard authorities from the sixteenth century to our own time as to the Parliamentary authority of the Order of the Communion. And the opinion is correct, even apart from 1 Ed. VI. c. 1. Henry VIII. was empowered by 28 Hen. VIII. c. 7, confirmed by 35 Hen. VIII. c. 1, to make a will, having statutory force, to provide for the government of the realm during the minority of his male heir (*i.e.* till Edward VI. was eighteen). In virtue of this power Henry ap-

¹ *Hist. of Ref.* 119.

² *Doc. Ann.* i. 72.

pointed by will a Council who should administer affairs, with statutory power, during the nonage of his son. Therefore the King's Proclamation, with the advice and consent of his Council, sanctioning the use of the Order of the Communion, and also the encyclical of the Council enjoining its use, had Parliamentary authority.

Dr. Gee, commenting on Sandys's assertion that the Ornaments Rubric authorised 'the ornaments which were used in the first and second year of King Edward,' observes: ¹—

If, then, Sandys weighed his words, we must suppose that he meant the year 1548, which was partly first and partly second, since Edward began his reign on January 28. In that case Sandys's explanation of the proviso is intelligible. The year 1548 had its own legal ornaments.

These ornaments, according to Dr. Gee, mean all the ornaments which the Injunctions of 1547 spared; in other words, all the ceremonial of Divine Service, and especially the ceremonial of the Mass, which a rubric in the subsequent Order of the Communion forbade to be changed in any particular save only in the matter of the elevation. Moreover, a Proclamation was issued by the King, on the advice of his Council, in the beginning of Edward's second year, 'against those that doeth innovate, alter, or leave doune any rite or cere-

¹ *The Elizabethan Prayer-Book*, p. 107.

mony in the Church of their private authority.' To put a stop to unauthorised innovations on the part of 'certain private curates, preachers, and laymen . . . in some parish churches and otherwise,' the Proclamation ordains as follows :—

Wherefore his Majesty straitly chargeth and commandeth, that no manner person, of what state, order, or degree soever he be, of his private mind, will, or phantasie, do omit, leave doune, change, alter, or innovate any order, rite or ceremony, commonly used and frequented in the Church of Englande, and not commanded to be left doune at any time in the reign of our late sovereign lord, his Highness's father, other than such as his Highness, by the advice aforesaid, by his Majesty's visitors, injunctions, statutes, or proclamations, hath already, or hereafter shall command to be omitted, left, innovated, or changed, &c.¹

The ritual observances of Edward's first and second years in the matter of public worship were practically the same as those in use at Henry VIII.'s death. But Dr. Gee thinks that 'there is a fatal objection to this argument,' although it exactly fits Sandys's explanation of the Ornaments Rubric as ordering the ornaments of 'the first and second year' of Edward. 'The fatal objection' is that 'the policy of the Injunctions of 1547 could not be described as "by authority of Parliament."' But Dr. Gee, who is usually so careful, has made two mistakes here. He has forgotten that the In-

¹ Burnet, v. 188.

junctions of 1547 were published before the repeal of the Proclamation Act, which gave statutory force to royal proclamations. Whatever was ordered, therefore, by the Injunctions was 'by authority of Parliament.' The Injunctions had also the authority of Parliament for another reason, for they were issued by the King on the advice of his Council, whose acts had, by Henry's will, statutory force during the minority of Edward VI.

Gardiner seems to have been the only person who disputed the parliamentary authority of the Injunctions of 1547 at the time. His objections were overruled and the Injunctions were enforced. It has been objected by some modern writers that the Injunctions did not comply with the formalities required by 31 Hen. VIII. c. 8; *e.g.* that any ordinance issued by the King on the advice of his Council 'shall import or bear underwritten the full name of such of the King's Honourable Council then being as shall be the devisors or setters forth of the same, which shall be in this case the whole number afore rehearsed, or at least the more part of them, or else the proclamation to be void and of none effect.' The objectors have written without knowing that the original copy of the Injunctions still exists in Corpus Christi College, Cambridge, and bears the signature of the King and a majority of his Council, including Somerset and Cranmer. Sir John Dodson, before giving judgment in *Westerton v. Liddell*, verified their signatures, and decided

that the Injunctions had parliamentary authority. Gardiner, it must be added, retracted his objections to the Injunctions. Bonner, who showed himself recalcitrant towards some other acts of the Council, received the Injunctions without demur. Objection was also made at the time to the alleged statutory force of regal acts by advice of the Council during the King's minority. The question was referred to the Judges, who decided that the King had such power during his minority.

It must be borne in mind, moreover, that the question is not what lawyers think nowadays of the parliamentary authority or otherwise of Edward VI.'s Injunctions and Proclamations, but what was thought of them at the time. In matter of fact, they claimed to have coercive force, and were obeyed accordingly. The Constitution was at that time in a very unsettled and transition state, and regal acts which would not be considered to have statutory force now were accepted as statutory then. The Supremacy Act, for example (26 Hen. VIII. c. 1), ordained :

That the King, his heirs and successors, shall have full power and authority from time to time to visit, repress, redress, reform, correct, restrain and amend all such errors, heresies, abuses, offences, contempts and enormities, whatsoever they be, which by any manner of spiritual authority or jurisdiction ought or may lawfully be reformed, repressed, corrected, restrained or amended, most to the pleasure of Almighty God, the increase of virtue in Christ's religion, and for the conservancy of the

peace, unity, and tranquillity of this realm, any usage, custom, foreign law, authority, or any other thing or things to the contrary hereof notwithstanding.

The lawyers of that period held that this Act, together with Henry's statutory will, gave parliamentary force to Edward's ordinances by the advice of his Council, especially to such an ordinance as the Order of the Communion, which was, in fact, a corollary and complement of 1 Ed. VI. c. 1. But in any case the will of Henry VIII. gave statutory force to the King's Proclamation and the encyclical to the bishops, both of them on the advice of the Council. The Injunctions also gave the authority of Parliament to the ornaments in use in Edward's second year, as Dr. Gee has pointed out, although he has made a mistake in thinking that the Injunctions did not possess parliamentary authority.

But, in addition to all this, I fall back on an argument which I ventured to press on the Royal Commission, and which Sir Lewis Dibdin and Sir Edward Clarke energetically rejected. I recognise my presumption as a layman in refusing to be convinced by two lawyers of such distinction ; but they would, I feel sure, be the first to admit that the question must be settled by the logic of reason and of facts, and not by the weight of mere authority, however eminent. The argument is, that the Order of the Communion was compiled by one of those picked committees of bishops and divines

which were empowered by 32 Hen. VIII. c. 26 to put out formularies of doctrine and ceremonies, having the force of statute law. I have given the crucial part of this statute on p. 44, but for the sake of convenience I repeat it here:—

Whereas the King's Majesty . . . hath appointed . . . the archbishops and sundry bishops of both provinces . . . and also a great number of the most learned honestest and most virtuous sort of the Doctors of Divinity men of discretion judgment and good disposition of the realm, to the intent that . . . they should declare by writing and publish as well the principal articles and points of our faith and belief with the declaration true understanding and observation of all such other expedient points as by them, with his Grace's advice counsel and consent, shall be thought needful and expedient, and also for the lawful rites ceremonies and observances of God's service within his Grace's realm. . . . BE IT THEREFORE ENACTED . . . that all and every determinations declarations decrees definitions resolutions and ordinances, as, according to God's Word and Christ's Gospel, by his Majesty's advice and confirmation by his letters patent, *shall at any time hereafter* be made set forth declared defined resolved and ordained by the said archbishops bishops and doctors now appointed, *or by other persons hereafter to be appointed* by his Majesty or else by the whole clergy of England, in or upon the matters of Christ's religion and Christian faith and the lawful rites ceremonies and observations of the same, shall be in all and every point limitation and circumstance thereof, by all his Grace's subjects and other residents and inhabitants within the realm . . . fully believed obeyed observed and performed . . . as if the said determinations declarations . . . had been by express words terms and sentences

plainly set out and contained in the present Act. Provided that nothing be done ordained . . . by authority of this Act which shall be repugnant or contrariant to the laws and statutes of this realm.¹

This is very comprehensive. It gives statutory force to any 'lawful rites, ceremonies, and observances of God's service' that 'shall at any time hereafter be made by' the picked committee of bishops and divines then appointed, 'or by other persons hereafter to be appointed by his Majesty, or else by the whole clergy of England.' These conditions were fulfilled by the committee which compiled the Order of the Communion. It was practically a continuation, by Edward's appointment, of Henry's committee, which had never been dissolved. It consisted partly of the same members, and its work was adopted and sanctioned 'by the whole clergy of England' through their representatives in Convocation.

So far it cannot be questioned that the Order of the Communion thus rested on the authority of Parliament. But it is contended that 32 Hen. VIII. c. 26 was repealed by 1 Edward VI. c. 12, not directly or in express terms, but indirectly by some general words at the end. The Act is entitled, 'An Act for the Repeal of certain Statutes concerning Treasons, Felonies, &c.' I give the relevant part of this Act in Appendix B., and if the

¹ 32 Hen. VIII. c. 26 (*Statutes of the Realm*, printed by command from Original Records and authentic MSS. 1817, iii. 738).

reader will read it carefully he will see that its intention is to repeal all statutes involving death penalties or forfeitures for treason, petit treason, or felonies other than those imposed in the statute made in the twenty-eighth year of Richard III. And then, coming to particulars, the Act proceeds :—

All Acts respecting
Doctrine and matter
of Religion repealed ;
namely, 5 R. II. sec. 2,
c. 5 ; 2 H. V. sec. 1,
c. 7 ; 25 H. VIII. c. 14 ;
31 H. VIII. c. 14 ;
34, 35 H. VIII. c. 1 ;
35 H. VIII. c. 5.

And also be it enacted by the authority
aforesaid, that all Acts of Parliament and
Estatutes touching, mentioning, or in any
wise concerning Religion or opinions, that
is to say as well the Statute made. . . .

and it goes on to enumerate a number of statutes as given in the marginal notes, which I copy here from the ' Statutes of the Realm,' and ends as follows :—

And all and every other Act or Acts of Parliament concerning doctrine, matters of Religion, and all and every branch, article, sentence, and matter of pains and forfeiture contained, mentioned, or in any wise declared in any of the same Acts of Parliament or Estatutes, shall from henceforth be repealed and utterly void and of none effect.

To my mind it is quite plain that the concluding words refer only and exclusively to any Act concerning religion and opinion, which involved ' pains and forfeitures contained, mentioned, or in any wise declared ' in any such Acts. Tierney, in his edition of ' Dodd's Church History ' (ii. p. 7), gives the meaning of 1 Edward VI. c. 12 with accurate brevity :—

Among the principal obstacles to the designs of the Reformers were the restrictions imposed by the enactments of the late reign on the religious opinions of the people. To remove this impediment an Act was now brought in and passed with the general assent of the two Houses. By it all felonies created since the first year of Henry VIII., all treasons created since the twenty-fifth of Edward II., were abolished. The statute for the punishment of the Lollards and other heretics, the statute of the Six Articles, all laws concerning doctrines and matters of religion, and all prohibitions of reading, teaching, and expounding the Scriptures, and of printing, selling, and retaining English publications, were repealed.

But 'The Statutes at Large'—an edition of the statutes which has no authority whatever—gives the contents of 32 Hen. VIII. c. 26 in five lines and a half, and puts opposite this in the margin 'Rep. 1 Ed. VI. c. 12.' And a number of writers copy this, apparently without examining 1 Ed. VI. c. 12 for themselves, or considering the consequences that would follow this extraordinary construction of the statute. 'The Statutes of the Realm,' which is the standard and authorised edition of the statutes, omits the unauthorised marginal note in 'The Statutes at Large,' and puts instead of it the marginal note which the reader will find on the preceding page. In the year 1800 the House of Commons presented an address to the King praying that a new and complete edition of the statutes should be published. The King replied by appointing a very

able and numerous commission for this purpose, including Pitt, the three principal Secretaries of State, the Law Officers of the Crown, the Lord Advocate of Scotland, and a number of other eminent men. The work went on for more than five years, and in 1806 the King appointed a second commission, including several of the members of the first commission. The introduction to this monumental work says that it is the only complete and authentic edition of the statutes.

To my great surprise, both Sir Lewis Dibdin and Sir Edward Clarke adopted the marginal note in 'The Statutes at Large,' and insisted that 1 Ed. VI. c. 12 repealed 32 Hen. VIII. c. 26. I will quote here as much of my cross-examination as will bring this out. On my referring to 32 Hen. VIII. c. 26, Sir Lewis Dibdin asked some questions, which I quote here with my answers and Sir Edward Clarke's interventions:—

8474. But before we go into that, are you not aware that that Act was repealed by 1 Edward VI. Chapter 12, that is to say, that the same Royal Assent which gave assent to the Act for Communion in both kinds repealed that Act of Henry, so that nothing could have been done under it?—I think the Act was repealed in the reign of Queen Victoria.

8475. I notice that you say that in your book, but I think you are in error?—I do not think so.

8476. Perhaps I am wrong, but if you look at 'The Statutes at Large' you will see a statement of what this Act of Henry VIII. contained. It is 32 Henry VIII.

Chapter 26, and at the end of it are these words: 'Repealed by the general words of Stat. 1 Edward 6, c. 12, sec. 3.' Those general words seem, if I may say so, quite adequate for the purpose. 1 Edward VI., Chapter 12, was an Act dealing with penalties of various kinds, and at the end of the third section, which deals with certain specific statutes and repeals them, it says: 'And all and every other Act or Acts of Parliament concerning doctrine or matters of religion, and all and every branch, article, sentence and matter, pains and forfeitures contained, mentioned or in any wise declared in any of the same Acts of Parliament or Estatutes, shall from henceforth be repealed, and utterly void and of none effect.' You observe the words in the Act of Parliament, 'concerning doctrine or matters of religion'?—That was as regards penalties, was it not?

8477. No; it was the whole Act where there was a penalty?—But why then should it be necessary to repeal it in the reign of Queen Victoria?

8478. (*Sir Edward Clarke.*) Because we had a Statute Law Revision Committee then. Although the effect of repealing one Act might be to repeal or destroy it, where the Act was not repealed in terms it remained upon the list of statutes, and our Statute Law Revision Committee cleared off a great deal of absolutely obsolete Acts, or Acts which were practically repealed by another statute; it was simply a clearing-off process.

8479. (*Sir Lewis Dibdin.*) And I may supplement what Sir Edward Clarke says by reading you the Act. The preamble of every Statute Law Revision Act, but of this one in particular in 1863, is 'It is expedient that certain enactments (mentioned in the Schedule to this Act) which have ceased to be in force otherwise than by express and specific repeal, or have, by lapse of time and change of circumstances, become unnecessary, should be expressly and specifically repealed.' You see there had

been no express and specific repeal of that Act of Henry VIII. It had been repealed by general words in the Act of Edward, which I have read to you; therefore it remained, as Sir Edward Clarke has told you, on the Statute Book, in a general kind of way repealed, but not specifically and specially repealed until, when the practice of clearing up the Statute Book and cutting out what was useless and gone, for different reasons, came in, then in one of the very earliest Statute Law Revision Acts, this Act was cut out, not because it was law till then, but because it had never been specifically repealed?—What is the effect in law of a statute not specifically repealed?

8480. If it is repealed by general words it is repealed?—What Act do you say repealed it?

8481. The Act of 1 Edward VI., Chapter 12, Section 3—this very session that we are dealing with?—Does it mention this Act specifically?

8482. No; that is just the point.

8483. (*Sir Edward Clarke.*) If it had mentioned that Act specifically, that Act would have disappeared by virtue of that statute from the Statute Book, but it destroys the effect altogether of the Act without specifically repealing it.

8484. (*Sir Lewis Dibdin.*) If the Act, 1 Edward VI., Chapter 12, had mentioned that Act it would have specifically repealed it; it is because it did not mention it, but says that all Acts dealing with that subject matter are repealed, that it was only a general repeal—which was quite effective to repeal it, but still a general repeal—and therefore requiring this specific repeal in 1863.

This is quite plain. Those two distinguished lawyers hold that 1 Ed. VI. c. 12 repealed all previous Acts of Parliament ‘concerning doctrine

or matters of religion,' and therefore 32 Hen. VIII. c. 12. There seems to me to be a fatal objection to that construction. But before I come to that I will take the liberty of pointing out what seems an inaccuracy in the explanation given by Sir Edward Clarke of the repeal of 32 Hen. VIII. c. 26 as late as the year 1863. Sir Edward Clarke—and Sir Lewis Dibdin supported him—says that the Act in question was one of many 'absolutely obsolete Acts, or Acts which were practically repealed by another statute.' But an Act obsolete in the year 1863 was by no means obsolete in the year 1547—that is, within a few years of its enactment. And I respectfully submit that there is no such thing known in law as an Act '*practically* repealed by another statute' unless it is clearly contradictory to it. Let me quote one or two authorities :—

A subsequent statute may repeal a prior one, not only expressly, but by implication, as when it is contrary thereto, *i.e.* so clearly repugnant that it necessarily implies a negative; but if the Acts can stand together they shall have a concurrent efficacy.¹

I hold, with all deference, that 32 Hen. VIII. c. 26 and 1 Edward VI. c. 12 can very well 'stand together.'

Maxwell, a recognised authority, writes :—

¹ Wharton's *Law Lexicon*, p. 15, 9th edition by J. M. Lely, Esq., M.A., Barrister-at-Law.

But it is in the interpretation of general words and phrases that the principle of strictly adapting the meaning to the particular subject-matter in reference to which the words are used finds its most frequent application; . . . and it is necessary to give the meaning which best suits the scope and object of the statute without extending to ground foreign to the intention. It is therefore a canon of interpretation that all words, if they be general, and not precise and express, are to be restricted to the fitness of the matter. They are to be construed as particular if the intention be particular; that is, they must be understood as used in reference to the subject-matter in the mind of the Legislature, and strictly limited to it. The law will not allow the revocation or alteration of a statute by construction when the words may have their proper meaning without it.¹

This recognised canon of interpretation surely restricts 1 Ed. VI. c. 12 to the subject-matter of that statute, and forbids the general application of the concluding words on which Sir Lewis Dibdin and Sir Edward Clarke rely.

And as to the question of the obsolescence of a statute, the same author observes: 'The law is not repealed by becoming obsolete,' and he refers to *Trial by Battle*, which was still in force in 1819, and to a number of other instances.

But apart from the internal evidence against the accuracy of the marginal note in 'The Statutes at Large,' supported though it be by two distinguished lawyers like Sir Edward Clarke and Sir Lewis

¹ *On the Interpretation of Statutes*, pp. 75, 188.

Dibdin, I have another objection to urge against that construction of 1 Ed. VI. c. 12, which is surely quite fatal to it. It would play havoc with a large part of the history of England, for if the general words relied on by the editor of 'The Statutes at Large,' and those who follow his lead, repealed 32 Hen. VIII. c. 26, it repealed a great deal more. It repealed in fact the whole of the anti-Papal legislation of Henry VIII.; and not only so, but in addition every Act of Parliament dealing with doctrine and matters of religion back to and including Magna Charta. It is an infallible rule of logic that a reasoner cannot take as much of an argument as he pleases. He must take it entire with all its consequences, or leave it alone. Sir Lewis Dibdin's and Sir Edward Clarke's contention that 1 Ed. VI. c. 12 repealed 32 Hen. VIII. c. 26 thus proves too much, which means that it proves nothing at all.

Recognising my presumption in venturing to pit my own opinion against distinguished lawyers, I submitted the above argument to two lawyers of reputation and eminence, and both of them confirmed my view. One of them writes as follows :

You take the Order of the Communion as having Parliamentary authority, and being the instrument to which our present Rubric refers. You say it has statutory authority under 1 Edward VI. c. 1, and possibly also under 32 Hen. VIII. c. 26. It is with the latter statute that we have at present to do. You tell me that Sir L.

Dibdin and Sir Edward Clarke say that that statute was repealed by the general terms of 1 Edward VI. c. 12.

I quite agree with you that this is impossible. If this were so all sorts of religious statutes, not merely the anti-Papal legislation of Henry VIII., but the Statute of Præmunire; the statute forbidding the Archbishops of Canterbury to cite into their courts directly the subjects of the different diocesan bishops, commonly called the Statute of Citations, which has been enforced over and over again by the Common Law Courts; the Acts of Henry VIII. about tithe in the City of London, which are in force to this day, and but a few years ago were the subject of decisions in the House of Lords; the statute which gave the appeals to the Delegates,—would all be repealed.

Precisely the same argument was used in the cases of *Martin v. Mackonochie*, and *Flamank v. Simpson*, when the legality of the two lights on the Holy Table was supported by the Injunctions of Edward VI., and the prosecution replied that the statute giving authority to these Injunctions had been repealed by the same general words of 1 Edward VI. c. 12.

I have looked up that case, and I find that Mr. Hannen, afterwards Lord Hannen and a distinguished Judge, was one of the counsel for the defence. He adopted precisely the same argument that I have used against a similar line of reasoning; and the Dean of the Arches (the late Sir R. Phillimore) endorsed Mr. Hannen's argument, as the following extract from that learned Judge's judgment will show:—

It was truly observed by Mr. Hannen that the object of this statute is to repeal laws which inflicted severe

punishments and penalties, imprisonment, fine, and death, on account of opinions entertained 'concerning doctrine or matters of religion,' such as had been enforced in the reigns of Richard II., Henry V., and Henry VIII., against heretics of various kinds.

If the wider signification which has been contended for be given to this statute, it would in truth repeal the principal statutes enacted during the reign of Henry VIII. for establishing the independence of the Church of England.

It will be difficult to maintain that the statutes against the payment of annates (23 Hen. VIII. c. 20), the Restraint of Appeals (24 Hen. VIII. c. 12), and even the Act of Supremacy (25 Hen. VIII. c. 19), would not fall under the category of enactments concerning 'doctrine or matters of religion'; but in truth the number of statutes which this construction would repeal might amount to forty-two, and certainly would include a great many of grave importance. I remember that Sir W. Maule (one of the members of the Judicial Committee) observed, 'that if there were anything in Magna Charta about religion, it would on this construction be repealed.'

I am of opinion that the operation of this statute of Edward VI. must be confined within the limits which I have stated, and that it has not repealed any power to issue Royal injunctions which Henry VIII. derived, either from the Supremacy or the Proclamation Statute.¹

Sir Lewis Dibdin, with characteristic alertness, made a plausible objection to my appeal to 32 Hen. VIII. c. 26, which I must meet. 'If that were so,' he said, 'I suppose no Act of Uniformity would have been necessary. They could have put

¹ 'Martin v. Mackonochie' (*Law Reports, Admiralty and Ecclesiastical*, ii. 228).

out the Prayer-Book under that Act too.' The answer to this objection is supplied by the first Act of Uniformity. The variety of Uses in different dioceses caused such confusion and led to so many innovations that it was determined at last to have only one Use throughout the realm, and to enforce this with stringent and penal regulations, the ordinary law not sufficing to arrest the mischief. The preamble of the Act says :—

And albeit the King's Majesty, with the advice of his most entirely beloved uncle the Lord Protector and others of his Highness's Council, has heretofore divers times essayed to stay innovations or new rites concerning the premises ; yet the same has not had such good success as his Highness required in that behalf.

Therefore the Act of Uniformity provides an elaborate machinery to bring order out of chaos and enforce obedience, which previous regulations had failed to do.

Let us now consider the testimony of Sandys :

The last Book of Service is gone through with a proviso to retain the ornaments which were used in the first and second year of King Edward, until it please the Queen to take other order for them. Our gloss upon this text is that we shall not be forced to use them, but that others in the meantime shall not carry them away, but they may remain for the Queen.

Strype says truly that Sandys's proposed 'gloss' is but a private opinion. But what did Sandys mean by 'the first and second year of King Edward' ? Sir Lewis Dibdin tried hard to

get me to admit that Sandys made a mistake in any case. He said :—

There is clearly a mistake in Sandys's reference, because either from your point of view or the received view—my view I will call it—the first and second year was wrong. It was wrong either way, because if it meant the use in the second year, then that is not the first and second year; and if it meant the Act of Uniformity, then that is not the first and second year. It is a wrong reference either way, is it not?

I could not then, nor can I now, see that Sandys made any mistake. I give here a question which Sir Lewis evidently considered crucial, together with my answer :—

Do you think that a letter written under the circumstances in which this was before the Act was printed when he had not got access to it, within forty-eight hours of its going through Parliament, and written, as I observe he says at the end, 'hastily' (you see the last words are 'hastily at London, April 30th, 1559'), can add very much weight to it?—I do, because Sandys was a very important man. He was accepted by the authorities as the most distinguished leader of the Puritan Party; he was put on the Committee for revising the Second Prayer Book, and it is quite evident that he watched the whole process and the steps of it.

Sandys, Grindal, and other Puritan leaders were in London at the time, closely watching the progress of events and the debates in Parliament, where they had friends and allies. Whether the Act was printed or not when Sandys wrote, I have no doubt that he had access to it and was

accurately informed of its contents. He actually quotes the Act. Nor does his reference to 'the first and second year of King Edward' present any difficulty to my mind. It is susceptible of various interpretations, all tenable. (1) He might have believed with ancient writers, like Foxe, Hayward, and Heylin, and modern writers like Cardwell and Dixon, that the Order of the Communion was based on 1 Edw. VI. c. 1; in which case the 'authority of Parliament' would cover both the first and second years. Or (2) he might rely on the Parliamentary authority of the Injunctions of 1547 or the statutory force of the Acts of the Council in virtue of Henry VIII.'s will, which would also cover the first and second years. But (3) I am inclined to accept Dr. Gee's view, already quoted, that, 'if Sandys weighed his words'—which he must have done, writing as he did to the Primate—'we must suppose that he meant the year 1548, which was partly first and partly second, since Edward began his reign on January 28. In that case Sandys's explanation of the proviso is intelligible. That year 1548 had its own legal ornaments.' A strong point in favour of this view is Sandys's use of the singular, 'the first and second year' instead of 'the first and second years,' which he would probably have said if he meant 1547–1548. Lastly, Sandys may have relied on 32 Hen. VIII. c. 26, which, as I hold, gave Parliamentary authority to the Order of the Com-

munion; while, on the other hand, a rubric in the Order of the Communion sanctioned the ornaments of the first as well as of the second year.

I now respectfully submit that I have proved not only that the Ornaments Rubric and the Act of Uniformity of 1559 cannot refer to the first Prayer-Book of Edward, but, in addition, that they do refer to the Order of the Communion. That makes everything plain. The Order of the Communion was issued on Parliamentary authority on March 8, 1548. So that the second year covered both the usage and the authority of Parliament; and Sandys was, on any reasonable construction of his words, justified in saying that the ornaments sanctioned were the ornaments 'which were used in the first and second year of King Edward.' The statement is literally true.

This controversy, however, as I have already observed, is literary rather than liturgical. For, in matter of fact, the first Prayer-Book of Edward forbade no ornaments which were in legal use before. It was not a directory of public worship, and only enjoined a few things out of many customary usages.

In order that the reader may have all the facts before him, I give, in Appendix B (p. 373), the Section of 1 Ed. VI. c. 12, which is said to have repealed 32 Hen. VIII. c. 26. It is plainly not a general repeal of all statutes concerning doctrine and religion.

CHAPTER XII

THE PRAYER-BOOK OF 1549 NO EXHAUSTIVE DIRECTORY OF PUBLIC WORSHIP

THE only ornaments prescribed by the Prayer-Book of 1549 were the alb, tunicle, vestment or cope, surplice, corporas, paten, chalice, pastoral staff, crisme (chrisom) in baptism, and ring in marriage. There is no mention of a stole, though it was undoubtedly used ceremonially in ordinations, the Eucharist, preaching, baptisms. There is no mention of altarcloths, or of cross or crucifix, or altar lights, ablutions, or the places at which the Gospel and Epistle and lessons were to be read, or any ceremonies during Divine Service beyond standing and kneeling. The Judicial Committee in *Westerton v. Liddell* admitted that the Prayer-Book of 1549, by not forbidding, allowed ceremonies and ornaments which were subsidiary to Divine Service, though not mentioned in any rubric. Indeed, there is ample evidence to show that the old ceremonial remained under Edward's first Prayer-Book, with the difference only of the service being in English instead of Latin. As late as the year 1551 Bucer writes in his 'Censura':—

I may add on ceremonies that in many of your churches there is still found a studied representation of the execrated Mass, in vestures, lights, bowings, crossings, washing of the cup, breathing on the bread and cup, carrying the book from right to left of the table, leaving the table where the altar was, lifting the paten and cup, and adoration paid by men who nevertheless will not communicate. All these should be forbidden.¹

Clearly, therefore, they were not forbidden, or understood to be forbidden, by the book of 1549, and hence the violent agitation caused by the Puritans for the revision of that book.

While Bucer, Paul Fagius, Peter Martyr and others were the guests of Cranmer at Lambeth Palace before they took formal possession of the University chairs which the Archbishop had provided for them, Bucer and Fagius wrote to their friends at Strasburg, describing as follows the state of religion provided by the new Prayer-Book, which had not yet (*i.e.* April 26, 1549) come into use:—

As soon as the description of the ceremonies now in use shall have been translated into Latin we will send it to you. We hear that some concessions [to the Catholic party] have been made both to a respect for antiquity, and to the infirmity of the present age; such, for instance, as the vestments commonly used in the Sacrament of the Eucharist, and the use of candles²: so also in regard to

¹ See *Censura*, ch. xxvii. When Bucer published his *Censura* he had been for nearly two years in England as Regius Professor of Divinity at Cambridge, where he died soon afterwards. His information was thus at first-hand.

² Which were not prescribed in the first Prayer-Book. This proves the fallacy of the Judicial Committee's decision that omission is prohibition.

the commemoration of the dead and the use of chrism ; for we know not to what extent or in what sort it prevails.¹

Hooper, writing to Bullinger on December 27, 1549 (that is, some six months after the statutory date of the use of the Prayer-Book), says :—

The public celebration of the Lord's Supper is very far from the order and institution of our Lord. Although it is administered in both kinds, yet in some places the Supper is celebrated three times a day. Where they used heretofore to celebrate in the morning the *Mass* of the Apostles, they now have the *Communion* of the Apostles ; where they had the *Mass* of the Blessed Virgin, they now have the *Communion* of the Blessed Virgin ; where they had the principal or High Mass, they now have, as they call it, the High Communion. They still retain their vestments and the candles before the altars. In the churches they always chant the hours and other hymns relating to the Lord's Supper,² but in our own language. And that Popery may not be lost, the mass-priests, although they are compelled to discontinue the use of the Latin language, yet most carefully observe the same tone and manner of chanting to which they were heretofore accustomed in the Papacy. God knows to what perils and anxieties we are exposed by reason of men of this kind.³

In another letter, dated March 27, 1550, Hooper says :—

It is no small hindrance to our exertions that the form which our Senate or Parliament, as we commonly

¹ *Original Letters* : Letter 248, p. 535.

² *Ibid.* Letter 36, p. 72.

³ Another proof that omission is not prohibition.

call it, has prescribed for the whole realm is so very defective and of doubtful construction, and in some respects indeed manifestly impious.¹

But the returned exiles, who tried hard to re-construct the English Reformation on the model of that of Geneva, admitted that popular opinion and feeling in England were against them. I have already quoted the admission of two of them in the beginning of Elizabeth's reign, that they were 'a tiny flock.' They were tinier still in the reign of Edward VI. Hooper, writing to Bullinger in February 1550, says: 'The people however, that many-headed monster, is still wincing' at the innovations urged by the Puritans; 'partly through ignorance, and partly fascinated by the inveiglements of the bishops and the malice and impiety of the mass-priests.'² And Dryander, writing from Cambridge just before the day fixed for the general use of the first Prayer-Book, says: 'But this is the fate of the Church, that the majority overpower the better part; and though many things may be improved, there are nevertheless some causes of offence still remaining.'³

Indeed, the Puritan leaders were in personal danger from the popular feeling against them. Hooper writes on March 27, 1550:—

I have not yet visited my native place [Somerset], being prevented partly by the danger of rebellion and tumult in those quarters, and partly by the command

¹ *Original Letters*: p. 79.

² *Ibid.* p. 76.

³ *Ibid.* p. 351.

of the King that I should advance the Kingdom of Christ here in London: nor indeed am I yet able to stir even a single mile from the city without numerous attendance.¹

In the diocese of Durham and in other parts of the North of England neither Edward's first Prayer-Book nor his second came into use at all. Indeed, the second had hardly time to come into use anywhere. For this John Knox appears to have been mainly responsible. He had been appointed chaplain to Edward VI., and in that capacity preached before the Court and the King's Council in the autumn of 1552. He took for his subject the newly inserted Rubric in the second Prayer-Book, enjoining kneeling at the reception of the Holy Communion. Knox denounced the Rubric and the ceremony, and urged what he regarded as the Scriptural custom of sitting round a table. His sermon made a great stir, and was joyfully greeted by Utenhovius, a Dutch gentleman, at that time Elder of the Protestant community of foreigners established in London in 1550 by John a-Lasco. The King granted them the church of Austin Friars in the City, with freedom of worship except on one point—namely, that in their administration of the Lord's Supper they should conform to the custom of kneeling. Both Cranmer and Ridley insisted on this as a *sine qua non*. Hence the natural aspiration of Utenhovius in the following passage describing the effect produced by Knox's sermon:—

¹ *Original Letters*: p. 79.

Some disputes have arisen within these few days among the bishops in consequence of a sermon of a pious preacher, chaplain to the Duke of Northumberland, preached by him before the King and Council, in which he inveighed with great freedom against kneeling at the Lord's Supper, which is still retained here by the English. This good man, however, a Scotsman by nation, has so wrought upon the minds of many persons that we may hope some good to the Church will at length arise from it; which I earnestly implore our Lord to grant.¹

Knox's sermon and private colloquies had the effect of opening again the question of kneeling at the reception of the Holy Communion. The King and some of the Council favoured Knox's doctrine, and Cranmer was approached with a view to winning him over to the side of the innovators. But the Archbishop, for once, stood firm against Royal and Court influence, and Knox, despairing of persuading him, fired off his inflammatory sermon. I have on a previous page made a quotation from Cranmer's indignant letter to the Council, but the whole letter is worth quoting:—

After my humble commendations unto your Lordships; whereas I understand by your Lordships' letters that the King's Majesty's pleasure is that the Book of Common Service should be diligently perused, and therein the printers' errors to be amended, I shall travel therein to the very uttermost of my power, albeit I had need first to have had the Book written which was passed by Act of Parliament sealed with the great seal, which

¹ *Original Letters*: p. 591. Letter written to Bullinger, dated Oct. 12, 1552.

remaineth in the hands of Mr. Spilman, clerk of the Parliament, who is not in London, nor I cannot learn where he is. Nevertheless, I have gotten the copy which Mr. Spilman delivered to the printers to print by, which I think shall serve well enough.

And whereas I understand farther by your Lordships' letters that some be offended with kneeling at the time of the receiving of the Sacrament, and would that I calling to see the Bishop of London, and some other learned men, as Mr. Peter Martyr or such like, should with them expend and weigh the said prescription of kneeling, whether it be fit to remain as a Commandment, or to be left out of the Book, I shall accomplish the King's Majesty his commandment, albeit I trust that we with just balance, weighed this at the making of the Book, and not only we but a great many bishops and other of the best learned men within this realm, and appointed for that purpose. And now, the Book being read and approved by the whole State of the realm in the High Court of Parliament, with the King's Majesty his royal assent, that this should be now altered again without Parliament, of what importance this matter is I refer to your Lordships' wisdom to consider. I know your Lordships' wisdom to be such that I trust ye will not be moved by those glorious and unquiet spirits, which can like nothing but that is after their own fancy, and cease not to make trouble and disquietness when things be most quiet and in good order. If such men should be heard, although the Book were made every year anew, yet should it not lack faults in their opinion.

But, say they, it is not commanded in the Scripture to kneel, and whatsoever is not commanded in the Scripture is against the Scripture, and utterly unlawful and ungodly. But this saying is the chief foundation of the error of the Anabaptists and of divers other sects. This saying is a subversion of all order as well in religion as in

common policy. If this saying be true, take away the whole Book of Service. For what should men travail to set an order in the form of Service if no order can be set but that is already prescribed by the Scripture? And because I will not trouble your Lordships with reciting of many Scriptures or proofs in this matter, whosoever teacheth any such doctrine (if your Lordships will give me leave) I will set my foot by his to be tried by fire, that his doctrine is untrue, and not only untrue but also seditious, and perilous to be heard of any subjects, as a thing breaking the bridle of obedience and loosing them from the bond of all princes' laws.

My good Lordships, I pray you to consider that there be two prayers which go before the receiving of the Sacrament, and two immediately follow, all which time the people, praying and giving thanks, do kneel, and what inconvenience there is that it may not be thus ordered I know not. If the kneeling of the people should be discontinued for the time of the receiving of the Sacrament, so that at the receipt thereof they should rise up and stand or sit, and then immediately kneel down again, it should rather import a contemptuous than a reverent receiving of the Sacrament. But it is not expressly contained in the Scripture, say they, that Christ ministered the Sacrament to His Apostles kneeling. Nor they find it not expressly in Scripture that He ministered it standing or sitting; but if we will follow the plain words of Scripture we shall rather receive it lying down on the ground, as the custom of the world at that time almost everywhere, and as the Tartars and Turks use yet at this day to eat their meat lying down upon the ground. And the words of the Evangelist import the same, which be *ἀνάκειμαι* and *ἀναπίπτω*, which signify properly to be down upon the floor or ground, and not to sit upon a form or stool. And the same speech use the Evangelists when they show that Christ fed five thousand with five loaves, where it is

plainly expressed that they sat down upon the ground and not upon stools.

I beseech your Lordships to take in good part this my long babbling, which I wrote as of myself only, because the Bishop of London is not yet come, and your Lordships required an answer with speed; and therefore am I constrained to make some answer to your Lordships afore his coming. And thus I pray God long to preserve your Lordships, and to increase the same in all prosperity and goodness. At Lambeth this VIIIth of October, 1552.

Your Lordships' to command,

T. CANTR.

The printing of the second Prayer-Book had been stopped a fortnight previously for press corrections, as the following entry in the Register of the Privy Council will show:—

A letter to Grafton the printer to stop in any wise from uttering any of the books of the new Service, and if he have distributed any of them amongst his company [retail trade] that then to give strait commandment to every of them not to put any of them abroad until certain faults therein be corrected.

Cranmer's letter shows that the hope of getting the Rubric on kneeling expunged from the second Prayer-Book was an additional reason for arresting the printing and sale of the book. Cranmer's firmness defeated so far the policy of Knox and the Puritan innovators. But the delay left a narrow margin for the legal introduction of the second Prayer-Book, which was, by the Act of Uniformity, to take place on All Saints' Day. The

Declaration on kneeling hung in suspended animation till October 27, when it was added to the Prayer-Book by order of the King in Council just in time to allow the Prayer Book to come into legal use on the appointed day. But it is evident that there was no time to distribute, or even to print and bind, fresh copies of the Book before All Saints' Day; and the copies used in a few churches in the metropolis were some of the copies already printed and bound, with a separate leaf, which interrupted the pagination, gummed in, containing the Declaration on kneeling.¹ The King's fatal illness seized him soon after this, and the uncertainty about the succession gave the leading authorities in Church and State other things to think of than the comparative merits of the two Prayer-Books. It is probable that the second Book was never used except in a few churches in London and the neighbourhood. At a meeting of the Council on October 20, at which Cranmer was present, there is a memorandum in the handwriting of Cecil in which there is a significant reference, 'Y^e book in y^e B. of Durh^m.' I agree with Professor Lorimer that this note 'refers to a proposal to introduce the new Book of Common Prayer into the diocese of Durham, where no reformed Prayer-Book had ever been as yet [October 1552] used.'²

¹ A few copies of this impression with the intercalated leaf are still extant.

² *John Knox and the Church of England*, pp. 29, 107.

During Edward VI.'s reign, then, the ceremonial of public worship appears to have been somewhat as follows. The first Prayer-Book was not used at all in a considerable portion of the kingdom: Divine Service was conducted as in the latter part of Henry VIII.'s reign. And where the first Prayer Book was used the ceremonial of the Latin Service was continued in the English Service. The evidence which I have quoted, and which might easily be enlarged, seems to put this beyond a doubt. On the other hand, the second Book fell still-born. There was no time for its general use before the King sickened to death, and in the interval the critical state of the nation, politically, diverted men's minds from the controversy about ceremonial.

But it may be objected: If that is so, there was in reality no Reformation at all under the last Tudor sovereigns.

The answer is that in its initial stages the English Reformation was much more a political than a theological movement; the professed and actual aim of the Reformers being to liberate the Church and nation from the usurpations and intermeddling of the Pope. The native Reformers, as distinct from the Helvetian Reformers and their English pupils, disclaimed all intention to set up a new church, or creed, or ceremonial, further than by the abolition of certain abuses and superstitions, accretions which had in the course

of time become mingled with the ancient ritual of the Church of England. Both clergy and laity appealed to the Church of the Œcumenical Councils as the standard of faith and worship. There is no need to multiply authorities: the following representative names may suffice.

No man of our time studied the history of the Reformation with a more unbiased mind, a more minute care, or a more comprehensive grasp and knowledge of the subject than Mr. Gladstone. He was singularly well equipped for the task. To a wide and accurate range of reading he added a remarkable aptitude for theological and legal studies, and his eristic discipline in the House of Commons made him sharp to detect a flaw in an argument. Brought up an Evangelical, he began his special study of the Reformation with a mind biased, as far as it was biased at all, in that direction. Having no foregone conclusion to uphold, he kept his mind open to such light as an impartial study of facts might shed upon it. And this is his judgment upon the subject:—

With us the question lay simply between the nation and the Pope of Rome, and its first form as a religious question had reference purely to his supremacy. . . . That the question of the English Reformation was eminently and especially national; that it was raised as between this island of the free on the one hand, and an 'Italian priest' on the other, is a remarkable truth which derives equally remarkable illustrations from our history. The main subject of contention between the State and

the Romanists, or recusants as they were called, was not their adhesion to this or that Popish doctrine, but their acknowledgment of an unnational and anti-national head. To meet this case the oath of supremacy was framed. . . . The British Government required of its subjects the renunciation, not of the Popish doctrines, but of the ecclesiastical supremacy of the Pope. . . . It was not the existing Church as a religious institution, but the secular ambition of the Papal See, against which security was sought by renouncing its jurisdiction.¹

Newman's bias, after he became a Roman Catholic, would have been to make the most of the religious question as the motive cause of the Reformation. But he was an honest man and had studied the question conscientiously, and this is his conclusion :—

Not any religious doctrine at all, but a political principle, was the primary English idea at that time [reign of Elizabeth] of 'Popery.' And what was that principle, and how could it best be kept out of England? What was the great question in the days of Henry and Elizabeth? The *Supremacy*. . . . Did Henry VIII. religiously hold justification by faith only? Did he disbelieve Purgatory? Was Elizabeth zealous for the marriage of the clergy? or had she a conscience against the Mass? The supremacy of the Pope was the essence of the 'Popery' to which, at the time of the Articles, the Supreme Head or Governor of the English Church was so violently hostile.²

Freeman had a religious devotion to the virtue of historical accuracy, and he comes to the same

¹ *The State in its Relations with the Church*, pp. 174, 189-90.

² *Apologia*, p. 162. The italics are Newman's.

conclusion as Mr. Gladstone and Cardinal Newman :—

Nothing was further from the mind of either Henry the Eighth or of Elizabeth than that either of them was doing anything new. Neither of them ever thought for a moment of establishing a new Church or of establishing anything at all. In their own eyes they were not establishing, but reforming; they were neither pulling down nor setting up, but simply putting to-rights. They were getting rid of innovations and corruptions; they were casting off an usurped foreign jurisdiction, and restoring to the Crown its ancient authority over the State ecclesiastical.¹

The late Dr. Brewer edited, with learned introductions, several of the volumes published under the auspices of the Master of the Rolls. His introduction to the papers relating to the reign of Henry VIII. makes a goodly quarto volume of 572 pages. He had studied the history of the sixteenth and seventeenth centuries with great care, and he agrees in the main with the authorities already cited :—

But the Reformation did not owe its origin to Tyndal or to Parliament, to the corruptions of the clergy, or to oppression of the Ecclesiastical Courts. There is no reason to suppose that the nation as a whole was discontented with the old religion. Facts point to the opposite conclusion. . . . Nor, considering the temper of the English people, is it probable that immorality could have existed among the ancient clergy to the degree which the exaggeration of poets, preachers, and satirists

¹ *Disestablishment and Disendowment*, p. 38.

might lead us to suppose. The existence of such corruption is not justified by authentic documents, or by an impartial or broad estimate of the character and conduct of the nation before the Reformation. . . . But though the Reformation advanced no further [than the abolition of Papal Supremacy] in the reign of Henry VIII., and he still maintained the rites, ceremonies, and doctrines of the ancient faith, it was already in his reign irrevocably established.¹

Macaulay's summing up of the Reformation period is strongly biased against the High Church school. But he, too, makes the supremacy the testing question. Elizabeth as well as Henry VIII., he says,

certainly had no objection to the theology of Rome. The Royal supremacy was to supersede the Papal; but the Catholic doctrines and rites were to be retained in the Church of England. . . . Elizabeth clearly discerned the advantages which were to be derived from a close connection between the monarchy and the priesthood. At the time of her accession, indeed, she evidently meditated a partial reconciliation with Rome; and throughout her whole life she leaned strongly to some of the most obnoxious parts of the Catholic system.²

Hallam is recognised as one of the most dispassionate and judicial of our writers on history. I quote the following passage both because he supports the conclusions of the preceding authorities and also confirms the reasonableness of

¹ *Letters and Papers, Foreign and Domestic, Henry VIII.*, iv. 551.

² *Essays*, i. 131, 133.

Elizabeth's wish to 'establish religion as it had been left by her father':—

In fact no scheme of religion would on the whole have been so acceptable to the nation as that which Henry left established, consisting chiefly of what was called Catholic in doctrine, but free from the grosser abuses and from all connection with the see of Rome. Arbitrary and capricious as that King was, he carried the people along with him, as I believe, in all great points, both as to what he renounced and what he retained.¹

But we are not dependent on second-hand testimony for our knowledge of the position taken up by Elizabeth: her own words are on record. In her Admonitions of 1559 she declares that she 'neither doth nor ever will challenge any other authority than that was challenged and lately used by the noble kings of famous memory, King Henry VIII. and King Edward VI., which is, and was of ancient time, due to the Imperial Crown of this Realm.' And again, on the suppression of the northern rebellion, the Queen published a proclamation in which she said—

that she claimed no other ecclesiastical authority than had been due to her predecessors; that she pretended no right to define articles of faith, or to change ancient ceremonies formerly adopted by the Catholic and Apostolic Church . . .; but that she conceived it her duty to take care that all estates under her rule should live in the faith and obedience of the Christian religion; to see all laws ordained for that end duly observed; and

¹ *Const. Hist.* i. 143.

to provide that the Church be governed by archbishops, bishops, and ministers.

And she went on to assure her people that she meant not

to molest them for religious opinions provided they did not gainsay the Scriptures, or the Creeds Apostolic and Catholic, nor for matters of religious ceremony as long as they should outwardly conform to the laws of the realm, which enforced the frequentation of Divine Service in the ordinary churches.¹

These quotations show plainly what Elizabeth intended by the Ornaments Rubric and the Ornaments clause in her Act of Uniformity. She intended, as she told the Spanish ambassador, to restore religion as it was left by her father. We have already seen what that was.

¹ Lingard, v. 295.

CHAPTER XIII

DR. GIBSON ON THE LAST YEAR OF HENRY VIII. AND
THE FIRST AND SECOND YEARS OF EDWARD VI.

LET me now deal with another part of Dr. Gibson's cross-examination of me, leaving the reader to draw his own conclusions :—

You do not seem to me to realise [he said] the extraordinary difference there was between the last year of Henry VIII. and the first and second years of Edward VI.

But 'religion as left by her father' included what is commonly known as the Whip with Six Strings, or sometimes referred to as the Bloody Statute of the Six Articles. And you know what that meant. And it also included the whole system of chantries, and included hardly any service in English—a little, but that is all.

I might have objected to part of this as irrelevant. For the question on which the Royal Commission invited me to give evidence was the meaning of 'the second year' in the Ornaments Rubric, and that has to do with the ritual observances of public worship only. It has nothing to do with the Act of Six Articles or the system of Chantries. And when Elizabeth told the Spanish

ambassador that she intended to 'restore religion as left by her father,' it is clear from the context that she was thinking of the Eucharist and its exhibition in the ceremonial of public worship. And she repeated, in the document which I have just quoted, what she had said to the Spanish ambassador. She promised not to change 'the Creeds Apostolic and Catholic,' 'or ancient ceremonies formerly adopted by the Catholic and Apostolic Church.' But I preferred to make no technical objection to the line of argument sometimes adopted by my cross-examiners, reserving to myself the right of examining its validity elsewhere, as I have been doing thus far. I will now examine the quotations which I have made above from the official report of Dr. Gibson's cross-examination.

His reference to the Whip with Six Strings is not quite accurate. True, it was still on the Statute Book at the death of Henry VIII., but in a greatly modified form. It had its fangs drawn by 35 Hen. VIII. c. 5, which forbade any trial under it except on presentments or accusations made on the oaths of twelve men or more, and within a year of the alleged offence. This made the statute of the Six Articles as harmless practically as the writ *de heretico comburendo* years before its repeal in the reign of Charles II. I believe that no prosecutions took place under the statute of the Six Articles after 35 Hen. VIII. c. 5.

Dr. Gibson was quite right in saying that I 'do not seem to be aware of the extraordinary difference there was between the last year of Henry VIII. and the first and second years of Edward VI.' For authentic history knows nothing of such 'extraordinary difference.' The question, let it be remembered, concerns the mode of public worship, which remained during the first and second years of Edward substantially as it had been in the last year of Henry VIII., except that the Latin Mass was supplemented by the Order of the Communion, which prohibited the elevation at the Canon. Not only did the old ceremonies remain, but they were forbidden to be changed or omitted. One of the Injunctions of 1547 asks: 'Whether they bid the beads according to the order of our late sovereign lord King Henry VIII.' Another asks: 'Whether in their Masses they use not the collects made for the King and make not special mention of his Majesty's name in the same.' Another: 'Whether any person hath obstinately and maliciously, without a just and reasonable cause, broken the laudable ceremonies of the Church commanded to be observed, or superstitiously abused the same.' 'Whether Matins, Mass, and Evensong be kept at due hours in the Church.' That alone is a direct sanction of the Church Services and ceremonial as they were left at the death of Henry VIII.

A subsequent Proclamation in Edward's second year, quoted in part already, ordained as follows:—

The King's Highness by the advice of his most entirely beloved uncle the Duke of Somerset, Governor of his most Royal Person, and Protector of all his realms, dominions and subjects, and others of his Council, considering nothing so much to tend to the disquieting of his realm as diversity of opinions and variety of rites and ceremonies concerning religion and worshipping of Almighty God; and therefore studying all the ways and means, which can be, to direct this Church and the cure committed to his Highness, in one and most true doctrine rite and usage: yet is advertised that certain private curates, preachers, and other laymen, contrary to their bounden duties of obedience, do rashly attempt of their own and singular wit and mind, in some parish churches and otherwise, not only to persuade the people from the old and accustomed rites and ceremonies, but also themselves bring in new and strange orders every one in their church according to their fantasies; the which, as it is an evident token of pride and arrogancy, so it tendeth both to confusion and disorder, and also to the high displeasure of Almighty God, who loveth nothing so much as order and obedience. Whereupon his Majesty strictly chargeth and commandeth that no manner person, of what estate, order, or degree soever he be, of his private mind, will, or fantasy, do omit, leave done, change, alter, or innovate any order, rite or ceremony, commonly used and frequented in the Church of England, and not commanded to be left done at *any time in the reign of our late sovereign Lord, his Highness's father*, other than such as his Highness, by the advice aforesaid, by his Majesty's Visitors, Injunctions, Statutes or Proclamations hath already or hereafter shall be commanded to be omitted, left, innovated, or changed; but that they be observed after that sort as before they were accustomed, or else now sith prescribed by the authority of his Majesty, or by the means aforesaid, upon pain that whosoever shall

offend contrary to this Proclamation shall incur his Highness's indignation, and suffer imprisonment and other grievous punishments at his Majesty's will and pleasure.¹

In addition to this the Order of the Communion, which came into legal use at Easter in Edward's second year, and remained in legal possession till Pentecost in the third year, ordered that the Sacrament should be administered meanwhile 'without the varying of any other rite or ceremony in the Mass' than communion in both kinds and elevation at the Canon. Consequently Dr. Gibson's 'extraordinary difference between the last year of Henry VIII. and the first and second years of Edward VI.' resolves itself into the administration of the Sacrament to the laity in both kinds. And, as I have already shown, even this was provided for by Henry VIII. before his death.

Dr. Gibson also declared that 'religion as left by Henry VIII. included the whole system of Chantries.' Even if it did, that has nothing to do with the Ornaments Rubric, with which alone I had to deal. But it did not. Henry VIII. had received from Parliament for the term of his natural life power to visit and suppress colleges, hospitals, chantries, free chapels, and other such corporations, and he availed himself of this power to some extent. The Act terminated with Henry's life, and was renewed in favour of his son. So

¹ Cardwell's *Doc. Ann.* i. 42.

that, in matter of fact, 'the whole system of Chantries' had been potentially abolished towards the end of Henry VIII.'s life, and power to continue their abolition was renewed to his son. There was thus no difference of principle in the matter of Chantries between the end of Henry VIII.'s reign and the beginning of Edward VI.'s. Edward's policy was simply a continuation of Henry's.

And here I may take my leave of Dr. Gibson's 'extraordinary difference between the last year of Henry VIII. and the first and second years of Edward VI.'

CHAPTER XIV

COSIN AND OTHER COMMENTATORS ON THE ORNAMENTS RUBRIC

COSIN'S references to the Ornaments Rubric and the Act which gave it Parliamentary sanction are somewhat confused, as the reader will see by reading them in juxtaposition as follows:—

As were in use, &c.]
Among other ornaments of the Church that were then in use, the setting of two lights upon the Communion-table or altar was one appointed by the King's Injunctions (set forth about that time, and mentioned or ratified by the Act of Parliament here named), whereby all other wax lights and tapers, which in former times of superstition men were wont to place before their shrines and images of saints, being taken away and utterly abolished, it was required that two lights only should be placed upon the altar to

Such ornaments, &c.]
Without which (as common reason and experience teaches us) the Majesty of Him that owneth it, and the work of his service there, will prove to be of a very common and low esteem. The particulars of those ornaments (both of the Church and of the ministers thereof) are referred not to the fifth of Edward VI., as the service itself is in the beginning of that Act, for in that fifth year were all ornaments taken away (but a surplice only), both from bishops and priests and all other ministers, and nothing was

signify the joy and splendour we receive from the light of Christ's Gospel.

left for the Church but a font, a table, and a linen cloth upon it (at the time of the Communion only), but to the second year of that King, when his Service-book and Injunctions were in force by authority of Parliament. And in those books many other ornaments are appointed; as, two lights to be set upon the altar or Communion-table, a cope or vestment for the priest and for the bishop, besides their albs, surplices and rochets, the bishop's crosier-staff, to be holden by him at his ministration and ordination; and those ornaments of the Church which by former laws, not then abrogated, were in use by virtue of the Statute 25 Henry VIII.; and for them the provincial constitutions are to be consulted, such as have not been repealed, standing then in the second year of King Edward VI., and being still in force by virtue of this rubric and Act of Parliament.¹

¹ The following is the section of the Act 25 Hen. c. 19, to which Cosin refers: ' Provided also that such canons, constitutions, ordinances and synodals provincial being already made, which be not contrariant

By authority of Parliament.] Which confirmed both the first Liturgy and Injunctions of Edward the Sixth.

It is plain from the context that 'by authority of Parliament' Cosin here meant the first Act of Uniformity. But that belonged to the second and third years of Edward, whereas the Injunctions belonged to the early part of his first year. It is true that the Injunctions had Parliamentary authority, as I have already shown,¹ but not the authority of the Act of Uniformity. Cosin goes on to quote the corresponding clause of Elizabeth's Act of Uniformity; and his comment on the famous 'until other order,' &c., is: 'which other order, so qualified as is here appointed to be, was never yet made.'

Here again Cosin claims the authority of the first Act of Uniformity for Edward's Injunctions, which seems extraordinary. And not only so, but he asserts that the first Prayer Book was 'in force' *in the second year* of Edward by the same Act of Uniformity; the fact, of course, being that the first Prayer-Book was not in force till the sixth month of Edward's third year, and was not even printed in the second year.

nor repugnant to the laws, statutes and customs of this realm, nor to the damage or limit of the king's prerogative royal, shall now still be used and executed as they were afore the passing of this Act,' &c. Sir Lewis Dibdin, in his examination of me, argued that this Act gave no Parliamentary authority to the laws, constitutions, ordinances, and synodals provincial there sanctioned. I have elsewhere given reasons to show that Sir Lewis is in error in this. See Appendix A. p. 287.

¹ Pp. 136-153.

Again :

Among other ornaments of the Church also then in use, in the second year of Edward VI., there were two lights appointed by his Injunctions (*which the Parliament had authorised him to make, and whereof otherwhiles they made mention, as acknowledging them to be binding*), to be set upon the high altar, as a significant ceremony of the light which Christ's Gospel brought into the world; and this at the same time when all other lights and tapers superstitiously set before images were by the same Injunctions, with many other absurd ceremonies and superfluities, taken away. These lights were (by virtue of this present [Elizabethan] rubric, *referring to what was in use in the second of Edward VI.*) afterwards continued in all the Queen's chapels during her whole reign; and so are they in the King's and in many Cathedral churches, besides the chapels of divers noblemen, bishops and colleges to this day. It was well known that the Lord Treasurer Burleigh (who was no friend to superstition or Popery) used them constantly in his chapel, with other ornaments of fronts, palls, and books, upon his altar. The like did Bishop Andrewes, who was a man who knew well what he did, and as free from Popish superstition as any in the kingdom besides. In the latter end of King Edward's time they used them in Scotland itself, as appears by Calvin's epistle to Knox and his fellow-reformers there, *anno 1554, Ep. 206*, when he takes exception against them, for following the custom of England.

To this head we refer the organ, the font, the altar, the Communion-table, with the coverings and ornaments of them all; together with the paten, chalice and corporas, *which were all in use in the second year of Edward VI. by the authority of the Acts of Parliament then made.*¹

¹ Cosin's *Works*, v. 231-233, 438-441.

This passage is important for several reasons. Let the reader look at the words which I have marked by italics. The first of them explains what Cosin meant by claiming the authority of the first Act of Uniformity for Edward's Injunctions. He meant the indirect authority of that Act. 'Parliament¹ had authorised' the King to issue the Injunctions—which is quite true—and the Act of Uniformity 'made mention'² of them, thereby 'acknowledging them to be binding.' He expresses the same view in a passage already quoted (p. 183) where he speaks of 'the King's Injunctions (set forth about this time, *mentioned or ratified by the Act of Parliament here named*),' namely, the first Act of Uniformity.

Next, Cosin understands the Ornaments Rubric and the Ornaments clause of the Act of Uniformity of 1559 as referring to *the usage* of Edward's second year. And he holds that the ceremonial sanctioned directly or indirectly by the Injunctions of Edward remained in force down to his own time, as proved by the practice of Elizabeth, of Burleigh, of cathedrals and college chapels, of Bishop

¹ Namely 31 Hen. VIII. c. 8.

² It is true that 2 & 3 Edward VI. c. 1 does not 'mention' Edward's Injunctions by name, but the Preamble of the Act undoubtedly refers to the Injunctions in the following words: 'And albeit the King's Majesty, with the advice of his most entirely beloved uncle, the Lord Protector and other of his Highness's Council, has heretofore divers times essayed to stay innovations or new rites concerning the premises, yet the same has not had such good success as his Highness required in that behalf.' Cosin seems to have regarded this as a retrospective sanction of the Injunctions.

Andrewes, and others. And certainly altar lights and other ornaments mentioned by Cosin had no authority at all if the *litera scripta* of the first Prayer-Book is to be received as the limit of ceremonial lawful under the Ornaments Rubric. Cosin's argument on that point is conclusive.

But what did Cosin mean by ornaments 'which were all in use in the second year of Edward VI. by the authority of the *Acts* of Parliament then made'? Why does he use the plural? What 'Acts of Parliament then made' does he mean? We need not restrict his words literally to the second year. Cosin probably meant about that time. Still, the plural remains unexplained. I can only suggest that Cosin, like the writers of the time, meant Edward's first Act¹ sanctioning, as I believe, the Order of the Communion and customary ceremonial, together with the first Act of Uniformity. I can think of nothing else which fits into his words. And in any case his argument from 25 Hen. VIII. c. 19 covers the Order of the Communion with Parliamentary authority. Cosin elsewhere lays down as follows the broad principles enforced by the Church of England in the 24th

¹ Elizabeth's Act of Supremacy revived that statute; 'and all and every branches, clauses, and sections therein contained, shall and may likewise, from the last day of this session of Parliament, be revived, and from henceforth shall and may stand, remain, and be in full force, strength and effect, to all intents, constructions and purposes, in such like manner and form as the same was at any time in the first year of the said late King Edward VI.'

Canon: 'She [Church of England] prescribes not any ceremonies to other Churches, nor has she abrogated any that were instituted by Christ or His Apostles, *and were generally received by the whole Church of God.*'¹ We can in this way reconcile the apparent discrepancies in Cosin's language, and bring them, with one exception, into accord with historical facts. That one exception is his assertion that Edward's first Act of Uniformity and his first Prayer-Book were legislative products of his second regnal year. Cosin plainly asserts that the first Prayer-Book was in use in the second year, and by the second year he evidently meant the year 1549. He was right in thinking that the Act of Uniformity became a legal instrument in that year; right also in thinking that the first Prayer-Book and its prescriptions 'were in force' in that year; but wrong of course in thinking that 1549 was Edward's second year. Cosin was a great authority, and his error in this matter has misled a number of writers who have accepted his dictum without verifying it. It was perhaps a natural mistake, and other writers of the seventeenth century, as well as of the nineteenth, have fallen into it. It was my own belief till lately, when circumstances obliged me to go carefully and critically into the question. Of contemporary and subsequent writers who made the same mistake as Cosin in regard to the second year of Edward VI.

¹ Cosin's *Works*, v. 187.

I need only quote one, the Rev. W. Watt, D.D., who edited in 1640 a standard edition of Matthew Paris with a valuable glossary. After describing the alb as a linen vestment, 'like the surplice,' he says :—

Usum scilicet hujus Albæ in Ecclesia Anglicana, in desuetudinem potius sponte sua (sed quomodo nescio) abiisse, quam autoritate aliqua sacerdotibus nostris aut vetitum esse aut negatum. Cum enim in Rubrica trium illarum media, quæ principio Liturgiæ Anglicanæ præfiguntur, statutum reperiatur quod Minister tempore administrationis sacræ cœnæ, et in omnibus ministrationsis suæ temporibus aliis talibus in Ecclesia utetur ornamentis, quæ autoritate Parliamentaria in usu erant, in secundo regni anno Regis Edwardi sexti: Sane, in Liturgia illa Edwardi ipsissima (in priore duarum, scilicet quæ sub annum regni sui secundum Dominiq. 1549, in lucem prodiit) in hæc verba statutum reperiatur. In die et tempore sacræ celebrandæ cœnæ constitutis, Sacerdos qui sacra tunc fungetur ministrationse, ea ipsa se induet veste quæ eidemmet ministrationsi est assignata; cum Alba scilicet, et vestimento sive capa choralis. Ministri etiam coadjutores albis similiter vestientur.

Here, then, we have a learned divine writing about the same time as Cosin, assuming as a matter of common knowledge that the first Prayer-Book was in public use in Edward's second year, which he is careful to add was Anno Domini 1549. It is curious how a mistake of this sort is sometimes perpetuated from generation to generation by a series of writers who copy each other without reflection or examination. A palpable blunder

thus becomes stereotyped as an historical fact, misleading perchance, as in the present case, the tribunals of justice. And so we may dismiss as of no account the authorities, eminent and obscure, who have handed down the false tradition that the rubrical directions of Edward's first Prayer-Book prescribe the limits of ceremonial sanctioned by the Ornaments Rubric.

CHAPTER XV

THE ADVERTISEMENTS

It is hardly credible that any lawyer who has a reputation to lose will ever again, after examining the facts for himself, endorse the Purchas and Ridsdale judgments on the subject of the Advertisements of 1566. The Judicial Committee in the Purchas case ruled as follows, and its judgment was confirmed by the same tribunal in the Ridsdale case:—

The vestment or cope, alb and tunicle, were ordered by the first Prayer-Book of Edward VI. They were abolished by the Prayer-Book of 1552, and the surplice was substituted. They were provisionally restored by the statute of Elizabeth and by her Prayer-Book of 1559. But the Injunctions and Advertisements of Elizabeth established a new order within a few years from the passing of the statute, under which chasuble, alb, and tunicle disappeared. The Canons of 1603-4, adopting anew the reference to the Rubric of Edward VI., sanctioned in express terms all that the Advertisements had done in the matter of the vestments, and ordered the surplice only to be used in parish churches. The revisers of our present Prayer-Book, under another form of words, repeated the reference to the second year of Edward VI., and they did so advisedly after attention had been called to the possibility of a return to the vestments.

Let us examine this extraordinary judicial decision in the light of law and history.

As to law, it violates legal axioms which are so well understood and so universally received that they may be regarded as truisms. Assuming for the moment that the Advertisements possessed statutory authority, it by no means follows that they were intended to repeal, or did in fact repeal, any part of Elizabeth's Act of Uniformity. There is not a sentence or a single word in them which can be tortured into such a meaning. To repeal a statute one of two things is absolutely necessary: a subsequent statute may repeal it in express terms; or it may be so repugnant to it that it repeals it by implication, since it is obvious that when two statutes are in such direct collision that both cannot stand together the later must prevail, and consequently abrogates the former indirectly. But if there is no such collision there is no repeal of either, and both remain in force. These are axioms of legal interpretation, as any lawyer who knows his business will admit. But it may be well to cite a few authorities:—

A subsequent statute may repeal a prior one, not only expressly, but by implication, as when it is contrary thereto, *i.e.* so clearly repugnant that it necessarily implies a negation; but if the Acts can stand together they shall have a concurrent efficacy.¹

¹ Wharton's *Law-Lexicon*, p. 15, 9th edition by J. M. Lely, Esq., M.A., Barrister-at-Law.

But it is in the interpretation of general words and phrases that the principle of strictly adapting the meaning to the particular subject-matter, in reference to which the words are used, finds its most frequent application. However wide in the abstract, they are more or less elastic, and admit of restriction or expansion to suit the subject-matter. While expressing truly enough all that the Legislature intended, they frequently express more in their literal meaning and natural force; and it is necessary to give them the meaning which best suits the scope and object of the statute without extending it to ground foreign to the intention. It is therefore a canon of interpretation that all words, if they be general, and not express and precise, are to be restricted to the fitness of the matter. They are to be construed as particular if the intention be particular; that is, they must be understood as used in reference to the subject-matter in the mind of the Legislature, and strictly limited to it. . . . The law will not allow the revocation of a statute by construction when the words may have their proper operation without it.¹

One more authority may suffice. Some two generations ago the question of the validity of Lay Baptism came up for decision before the Court of Arches and the Judicial Committee. The two Prayer-Books of Edward VI. and the Prayer-Book of Elizabeth allowed Lay Baptism. In 1603-4 this permission was omitted, and a rubric was inserted requiring the officiant to be 'the lawful minister,' which was explained at the last revision as the 'minister of the parish, or, in

¹ Maxwell *On the Interpretation of Statutes*, pp. 75, 186.

his absence, any other lawful minister that can be procured.' This, *prima facie*, excludes the ministry of a layman. So thought Mr. Escott, a worthy parish priest, who was prosecuted for refusing to bury a child who had only received lay baptism. His defence was that the child had died unbaptized, having received baptism from a layman only. The Court of Arches decided against him and suspended him for three months. He appealed to the Judicial Committee, which confirmed the sentence. I am concerned here only with the *ratio dicendi* laid down by the Court of Appeal, which consisted of Lord Wynford, Lord Brougham, Mr. Justice Erskine, and Dr. Lushington. The judgment of the Committee was written and delivered by Lord Brougham. The Court decided that 'the Common Law' of Christendom, recognised by both East and West, sanctioned Lay Baptism in case of necessity, and that neither the Canon of 1603-4 nor the statutory rubric of 1661 could abrogate the Common Law without saying so in express language. The judgment parenthetically defines 'the Common Law' as 'not the law made by statute and rubric, but the law by statute and rubric recognised.' The following quotation gives the *ratio dicendi* of the judgment:—

Generally speaking, when anything is established by statutory provisions the enactment of a new provision must clearly indicate an intention to abrogate the old; else both will be understood to stand together, if they

may. But more especially where the Common Law is to be changed, and most especially the Common Law which a statutory provision had recognised and enforced, the intention of any new enactment to abrogate it must be plain to exclude a construction by which both may stand together. This principle, which is plainly founded on reason and common sense, has been largely sanctioned by authority. [After some remarks on Coke.] But the rule which is laid down in 2 *Inst.* 200 has been adopted by all the authorities, that ‘a statute *made in the affirmative, without any negative expressed or implied, doth not take away the common law.*’ . . . Here the [new law] . . . must be taken as an addition to and not a substitution for the former, unless the intention plainly appear to make it substitutionary and not cumulative. The proof is on those who would make it substitutionary and not cumulative. . . .

It follows inevitably from this rule of law that even if the Advertisements had full statutory force they would not abrogate any part of the provision of the Act of 1559, which legalised the ornaments of Edward’s second year. For there is nothing in the Advertisements which ‘plainly appear to make’ them ‘substitutionary and not cumulative.’ The words of the Advertisements are as follows:—

In ministration of the Holy Communion in the cathedral and collegiate churches the principal minister shall use a cope, with Gospeler and Epistoler agreeably; and at all other prayers to be said at the Communion table to use no copes but surplices.

That every minister saying any public prayers, or ministering of the Sacraments or other rites of the

Church, shall wear a comely surplice with sleeves, to be provided at the charges of the parish.

Not a word here to imply any abrogation of the Common Law, namely the ornaments clause of the statute of 1559. The Judicial Committee in the *Purchas* and *Ridsdale* cases arrived at the contrary conclusion through ignorance of the subject. They said :—

If the minister is ordered to wear a surplice at all times of his ministration, he cannot wear an alb and tunicle when assisting at the Holy Communion ; if he is to celebrate the Holy Communion in a chasuble, he cannot celebrate in a surplice.

But, in the first place, the minister is *not* ‘ordered to wear a surplice at all times of his ministration’; he is to wear a surplice at such times as the use of the cope is not enjoined. In the next place, it is not true that ‘if he is to celebrate the Holy Communion in a chasuble he cannot celebrate in a surplice’; nor is there any liturgical or other reason why the minister should not wear an alb and tunicle together with a surplice. Let me give a few examples.

The following rubric is from the York Missal: ‘Hæc lectio sequens in medio chori ab aliquo Vicario seniori in superpellicio et capa rubra serica.’¹ If the surplice could be worn under a cope, so of course could it be under a chasuble;

¹ Surtees Society’s edition, i. 10.

and, as a matter of fact, so it was. The old statutes of St. Paul's ordered the canons to wear 'colobium aut superpellicium album' under the Mass vestment.¹

In the Roman Missal the secular priest is enjoined, if it can be conveniently managed, to put on a surplice first, and over that the amice, alb, &c.

The canons of Rouen always wore chasubles over their surplices at Tierce on the Feast of Pentecost.²

Durandus commends the practice of some in wearing a surplice over their own clothes under the amice; next was the alb embroidered, made of fine linen, or byssus; it was straight, without any surples, and had straight sleeves; it had a headstall, and covered the whole body. Then the girdle; next was the stole or scarf; . . . over this was the chesible or planet, which was a surpled garment.³

A rubric of Edward VI.'s first Prayer-Book ordered the celebrant to wear 'a white albe plain, with a vestment or cope.' A rubric at the end of the Communion Office says: 'The Priest shall put upon him a plain albe or surplice, with a cope.' Another rubric says: 'And whensoever the Bishop shall celebrate the Holy Communion in the church, or execute any other public ministration, he shall

¹ Dr. Rock's *Church of our Fathers*, ii. 16.

² 'Le jour de la Pentecôte à Tierces sept Chanoines Prêtres revêtus de chasubles *pardessus leurs surplis*, accompagnez du Diacre, du Soudiacre, pareillement Chanoines, revêtus de dalmatique et de tunique.' *Voyages Liturgiques de France*, p. 327, Paris, 1718.

³ Johnson's *Canons*, A.D. 1460, note E.

have upon him, besides his rochette, a surplice or albe, and a cope or vestment.'

So much as to the confident dictum of the Judicial Committee that an order to wear a surplice is equivalent to an order not to wear a cope, alb, or chasuble. The facts are precisely the reverse. Numbers of pre-Reformation canons order the surplice without mentioning any other vestment. One of the canons, for instance, in Archbishop Reynolds's Constitutions (A.D. 1322) says: 'Let no clerk be permitted to minister in the office of the altar without a surplice.' Yet all the other vestments were also worn.

Thus we see that not only may the Advertisements and the statutory Ornaments Rubric stand together, but that their respective injunctions did, in matter of fact, stand together both before and after the Reformation.

The ruling of the Judicial Committee in the Purchas and Ridsdale cases is therefore plainly contrary to one of the received principles of law—namely, that when two legal injunctions are not mutually contradictory they may stand together; it is also contradicted by a long series of facts, without a single fact to support it.

But the ignorance of the Court, begotten of inveterate and invincible prejudice, sank to a still lower deep. There was a colourable, though flimsy, excuse for inferring, from the 'until further order' of Elizabeth's Act of Uniformity, that the

Eucharistic vestments were ‘*provisionally* restored by the Statute of Elizabeth and by the Prayer-Book of 1559.’ But the Court had to do with the statute of 1662, not with the statute of 1559; and the statute of 1662 says nothing about ‘further order.’ It restores all the ornaments of Edward VI.’s second regnal year absolutely. And therefore what the Court in the *Purchas* case decided was that the Advertisements of 1564–6 repealed a statute enacted nearly a century afterwards. The special pleading by means of which the Court conscientiously arrived at that paradoxical conclusion is one of the most marvellous exhibitions of judicial legerdemain in the annals of jurisprudence. And the paradox was reaffirmed by the same tribunal in the *Ridsdale* case through the frankly-avowed process of ‘reading into’ the statute of 1662 an interpretation which literally reversed its plain language.¹ A minority of the Court, as we afterwards learnt, disagreed with the majority, although their dissent was suppressed at the time, and the judgment was given as the unanimous decision of the whole body.

It needs no argument to show that the *Purchas* and *Ridsdale* Judgments are in this respect a complete inversion of one of the fundamental principles of British law as laid down by our courts and jurists, as, for instance, in *Edrick’s* case, where the judges said:—

¹ *Folkestone Ritual Case*, p. 719.

They ought not to make any construction against the statute; for nothing can so express the meaning of the makers of the Act as their own direct words, for *index animi sermo*. And it would be dangerous to give scope to make a construction in any case against the express words when the meaning of the makers doth not appear to the contrary, and when no inconvenience will therefore follow; and therefore *a verbis legis non est recedendum*. 'In fact,' says Stephens, in commenting on this case, 'when the Legislature has used words of a plain and definite import it would be very dangerous to put upon them a construction which would amount to holding that the Legislature did not mean what it expressed. The fittest in all cases where the intention of the Legislature is brought into question is to adhere to the words of the statute, construing them according to their nature and import, in the order in which they stand in the Act of Parliament.'

And Stephens quotes as follows from Lord Coke:—

The good expositor makes every sentence have its operation to suppress all the mischiefs; he gives effect to every word in the statute. He does not construe it so that anything should be vain and superfluous, nor yet makes exposition against express words; for *viperina est expositio quæ corrodit viscera textus* (Poulton's case, 34), but so expounds it that one part of the Act may agree with the other, and all may stand together.¹

It is not necessary to waste more time and space in showing how untenable in law is the doctrine that the Advertisements, even supposing for argument's sake that they had statutory force, could

¹ Bonham's case, 8 Co. 117.

repeal proleptically an Act of Parliament passed a hundred years afterwards. But the history of the Purchas and Ridsdale Judgments is more shaky even than its law. It actually bristles with historical blunders. I have already exposed some of these in the region of liturgiology: not in any of the recondite bypaths of that region, but in the king's highway, namely, in the first Prayer-Book, which the Court was bound, and indeed professed, to have mastered. To assert, as the Court asserted, that the surplice could not have been worn together with either cope or chasuble is to betray ignorance of the elementary facts of the case. Occasionally, indeed, the ignorance proves carelessness of so gross a kind that we may venture to call it discreditable. 'The Injunctions and Advertisements of Elizabeth,' say their Lordships, 'established a new order within a few years from the passing of the statute, under which chasuble, alb, and tunicle disappeared.' The statute in question was enacted in the year 1559, and in the same year the Injunctions were published. This is what the Court calls 'a few years from the passing of the statute.' So that, according to their Lordships, a statute was enacted in 1559 ordering the Eucharistic vestments, and Injunctions were issued in the same year by the Sovereign forbidding them! Must we really accept history of this sort from the Judicial Committee because the judges happen to be distinguished lawyers? A distin-

gished Sovereign, whose grammar proved to be faulty, claimed to be 'above grammar.' His bad grammar, however, only affected himself. But the bad history of the Judicial Committee of the Privy Council poisons the springs of justice and touches the liberty of the subject. Men have been subjected to fine and imprisonment for disregarding it.

But let us come to closer quarters with these extraordinary judgments. I have assumed, for the sake of argument, that the Advertisements had statutory force, and have shown that, even so, they contain nothing which conflicts with, and therefore nothing which repeals, any part of the Uniformity Act of 1559, still less any part of the Act of Uniformity which sanctions our present Prayer-Book, and which was enacted a century after the date of the Advertisements. I will now proceed to show that the Advertisements never had any statutory force whatever, although this is in reality a perfectly superfluous argument on my part. For the Advertisements were not intended to supersede the Ornaments Rubric of 1559 further than by relaxing the stringency of its obligation on those who objected to its requirements. The Advertisements were aimed exclusively at the recalcitrant Puritans, and let them off with a minimum standard of ceremonial while leaving the statutory maximum for those who were willing to observe it. This is capable of historical demonstration, as I shall now proceed to show.

Who complained of the Advertisements at the

time and resisted them to the best of their ability? The Puritans exclusively. There were nine thousand parish priests in England when Elizabeth ascended the throne, besides a large number of other clergy. These had always been accustomed to the ancient ritual without a break; for the short interval between the legalisation of the second Prayer-Book and the death of Edward, with the cloud of anxiety hanging over the nation respecting the succession to the throne, left no room for change except in a few churches in and around the metropolis. When Elizabeth succeeded her sister the old ceremonial was everywhere in possession, and her own private inclination and political exigencies prompted her, as she told the Spanish ambassador, to restore the religious settlement which her brother inherited from her father, and maintained, on the whole, during his first and second years. The multitude are more influenced by what appeals to the eye and ear than by questions of doctrine which are addressed to the understanding; and no one was more sensible of this than Elizabeth. She determined, therefore, to interfere as little as possible with the externals of public worship—the formal drapery in which the mysteries of religion are shrouded. By this policy she hoped to conciliate the great mass of the clergy, together with the laity who were in sympathy with them, and who consisted of the vast majority of the nation. That her policy

succeeded is proved by the silent acquiescence of the clergy in general,¹ apart from the Bishops, who were frightened into opposition by the lawless excesses of the Puritans and the encouragement given to them by persons of commanding influence at Court. The complaints and opposition came entirely from the 'tiny flock' of Puritans, as some of their own leaders described them. Let me give a few examples.

One of the most influential of the Puritan leaders was George Withers, and the following passage from a letter of his shows the view which the Puritans at that time took of the 'other order' in Elizabeth's Act of Uniformity:—

The second form of prayers, which Edward left behind him at his death, was restored to the Church. But the ceremonies which, as was above stated, were retained in the Church at the first Reformation of Edward, are restored under the same name. Power, moreover, was given to the Queen and the Archbishop to introduce whatever *additional* ceremonies they might think proper; and they immediately afterwards both discontinued the ordinary bread heretofore used in the administration of the Lord's Supper, and for the sake of a newer reformation adopted the round wafer, after the manner of that used by the Papists.²

Further on, Withers gives vent to his disappointment as follows:—

¹ It is on record that the number of clergy who refused to conform to the order of religion established by Elizabeth was about one hundred and eighty.

² *Zurich Letters*, Second Series, p. 161.

Then on the expulsion of the Popish bishops new ones had to be appointed in their room ; and most of these were of the number of returned exiles. These at first began to oppose the ceremonies ; but afterwards, when there was no hope otherwise of obtaining a bishopric, they yielded, and, as one of them openly acknowledged, undertook the office against their conscience. In the meanwhile they comforted their brethren, whom they perceived to be still struggling against these things, by promising them free liberty in the government of their churches ; and for some years they kept this promise. On the obtaining of which liberty they diligently purified their churches from all the blemishes and defilements of popery. Others, who had at first yielded, incited by their example, began to reform their churches in the like manner. But when the bishops saw the number and influence of these parties increasing among the people, they thought their dignity was at stake, unless they compelled the inferior clergy to adopt the same usages as they did themselves. They took up the matter therefore at the Queen's command.¹

He then goes on to refer to the deprivation of Sampson ; the summary proceedings against the other recusant clergy of London ; 'the Royal Injunctions and the Admonitions, or (as they call them) the Advertisements of the bishops' ; he bewails 'the wretched aspect of the Church of England.' 'What must we think,' he exclaims, 'when most of the clergy are Popish priestlings consecrated to perform mass' ('plerique sunt papistarum sacrificuli missæ consecrati') ?

These extracts from Withers prove two things

¹ Namely, by the Advertisements.

indisputably: first, that the Advertisements were aimed at the Puritans, and in no sense at the mass of the clergy all over England, who obeyed the Ornaments Rubric in its integrity; secondly, that the Advertisements had nothing but episcopal authority.

Bullinger, another influential leader of the Puritans, denounced the Advertisements as directed against the Puritans, and all our historians take the same line. Oldmixon says ¹:—

The Archbishop of Canterbury, the Bishops of London, Ely, Winchester, and Lincoln, framed several articles to enforce the habits, which were styled Advertisements. The Archbishop carried them to the Court; but the Queen as yet refused to give them her sanction. The Archbishop chafed at the disappointment, said the Court had put them upon framing them, and if they would not go on and give them the royal sanction they had better never have done anything; nay, if the Council would not lend them a helping hand against Nonconformists, as they had done heretofore in Hooper's days, they should be but laughed at for what they had done. But still the Queen was so cold that when the Bishop of London came to Court she spoke not a word to him about *the redressing the neglect of Nonconformity* in the City of London, where it was most disregarded; upon which the Archbishop went to the Secretary desiring another Letter from the Queen to back up their endeavours for conformity; adding, in some heat, 'If you remedy it not by Letter, I will no more strive against the stream, fume or chide who

¹ *History of England*, p. 340. Cf. 451, where Oldmixon reports Lord Treasurer Burleigh as saying: 'The Queen could not satisfy her conscience without crushing the Puritans.'

will'; which shows us that the Bishops incited the same measures against the Puritans, and that the statesmen did not care to meddle in the matter, since it must be their backwardness which made the Queen cool in an affair she had put the Bishops upon.

Carte says¹ :—

The exiles, returned from Geneva, had already begun disputes about the cap, surplice, *and other ecclesiastical habits*, not daring as yet to attack either the liturgy or the bishops. Their aversion to the habits of the Clergy was founded on their having been worn by the Papists; though they had most of them been in use before any of the corruptions of Popery were known in the world, and had not been derived from any pope, but indulged to the bishops and clergy by the Emperor Constantine the Great, being really parts of the imperial ornaments, and as such worn by emperors and kings, particularly by those of England, at their coronations to this day, from the time that those ceremonials were instituted.

The historian goes on to the Queen's letter to the Primate, 'expressly requiring him' and the Archbishop of York to restrain the lawlessness of the Puritan clergy. He says :—

But the business went on heavily, especially in London, where the greatest number of the irregular men were; well knowing that, as they had hitherto been connived at by their bishop, Grindal, they should on this occasion be supported by Sir Francis Knolles (who had been one of their congregation in London, and was now vice-chamberlain, allied to the Queen by his marriage with Cary, and much in her favour), by

¹ *History of England*, iii. 420-1.

Dudley Earl of Leicester, who had lately put himself at the head of the party, and by others¹ of their friends in Court and Council. These courtiers had influence enough to prevent the Queen authorising some orders [i.e. the Advertisements] drawn up by the bishops for all ministers to subscribe.²

It is needless to multiply authorities, for Elizabeth has herself placed on record what she intended by 'other order' in her Act of Uniformity. She explained her meaning indirectly in her letter, 'given under our signet at our Palace of Westminster, the 22d of January, the third year of our reign.' It was addressed to four of her Commissioners, 'so authorised by our Great Seal,' namely, the Archbishop of Canterbury, Bishop of London, 'William Bil, our Almoner, and Walter Haddon, one of the Masters of our Requests.' She begins by giving them to understand 'that where it is provided by Act of Parliament, holden in the first year of our reign, that whensoever we shall see cause to take further order in any rite or ceremony appointed in the Book of Common Prayer,' &c. She reminds them that she has already availed herself of this statutory power; and goes on to enjoin them to see to 'the comely keeping and order of the said churches, and

¹ Among those other friends of the Puritans 'in the Court and Council' were Sir Francis Walsingham, the Earl of Bedford, and the Earl of Warwick. See Oldmixon, p. 340.

² Cf. Collier, *Hist.* vi. 419; Soames's *Elizabethan Reli. Hist.* p. 43.

especially the upper part called the chancel,' seeing that there were 'great disorders, and the decays of churches, and in the unseemly keeping and order of the chancels and such like.' Those disorders the Commissioners are to correct, especially 'that in all collegiate¹ and cathedral churches, whose cost may be more probably allowed, one manner to be used; and in all parish churches also *either the same or at the least the like*, and one manner throughout our realm.'²

Let me call attention in passing to the proof afforded here incidentally of one of the many blunders of the Purchas Judgment, namely, that the Advertisements established a different ceremonial in Cathedrals and Collegiate Churches from that of parish churches. Here the Queen says distinctly that Cathedrals are the models at which parish churches are to aim when they can afford the cost. Parish churches are to have 'the same or at the least the like' order of service. But to pass on.

The lawlessness of the Puritans went on increasing to such a degree that the Queen was at last constrained to write a letter to Archbishop Parker, 'requiring him to confer with the bishops of his Province, and others having ecclesiastical jurisdiction, for the redressing disorders in the Church, occasioned by different doctrines and

¹ Which in the phraseology of the time included College Chapels.

² Strype's *Life of Parker*, iii. 46.

rites, and for the taking order to admit none into preferment but those that are conformable.' In this letter she rebukes 'the Primate and other the bishops of your province with suffrance of sundry varieties and novelties, not only in opinions, but because in external ceremonies and rites there is crept in and brought into the Church by some few persons, abounding more in their own senses than wisdom would, and delighting in singularities and changes, an open and manifest disorder, and offence to the godly, wise, and obedient persons, by diversities of opinions and changes, and specially in the external, decent, and lawful rites and ceremonies to be used in churches.'

The meaning of this is perfectly plain. The disorders were all caused 'by some few persons, abounding more in their own senses than wisdom would,' and setting themselves against the 'external, decent, and lawful rites and ceremonies to be used in churches.' There is no manner of doubt what those were. They were the full ritual of 2 Edward VI.: Eucharistic vestments, lights at celebration of the Holy Communion, ceremonial use of incense, &c. And the lawlessness of this noisy faction is contrasted unfavourably with 'the godly, wise, and obedient persons'—that is the nine thousand parish priests who practised the mode of worship enjoined by the Act of Uniformity and Ornaments Rubric, which is admitted even by the Purchas and Ridsdale judgments to have been lawful at the date of

this letter of Elizabeth, and for some years afterwards.

The Queen accordingly 'requires, enjoins, and straitly charges you, being the Metropolitan, according to the power and authority which you have under us over the province of Canterbury (as the like we will order for the province of York), to confer with the Bishops your brethren, such as be in commission for clauses ecclesiastical,' and 'so to proceed by order, injunction, or censure, according to the order and appointment of such laws and ordinances as are provided by Act of Parliament, and the true meaning thereof'; and also 'to observe, keep, and maintain such order and uniformity in all the external rites and ceremonies, both for the Church and for their own persons, as by laws, good usages, and orders, are already allowed, well provided, and established.'

Surely it needs a triple panoply of prejudice to see in these instructions any hint, still less any order, to alter the law and upset the order of worship prescribed by Statute and Rubric. On the contrary, the Primate and his suffragans are to devise means whereby the lawless clergy may be made to conform to the existing law. The Ornaments Rubric, instead of being condemned as 'provisional,' is upheld as 'established.'

The Queen concludes :—

And in the execution hereof we require you to use all expedition that to such a course as this is shall seem

necessary: that hereafter we be not occasioned, for lack of your diligence, to provide such further remedy, by some other sharp proceedings, as shall percase not be easy to be borne by such as shall be disordered: and therewith also we shall impute to you the cause thereof.

Strype has the following note here:—

This last paragraph was substituted in the room of some other words, which I find written by Cecil's own hand in a former rough draught, which (carrying something in them that might be made use of in favour of those Dissenters) the Queen, I suppose, commanded to be struck out, and the words above inserted in the place thereof. The words of the rough draught were as follows: 'And yet in the execution hereof we require you to use all good discretion, that hereof no trouble grow in the Church; neither that such as of frowardness and obstinacy forbear to acknowledge our supreme authority over all sorts of our subjects be hereby encouraged anywise to think that we mean to have any change of policy, or of the laws already made and established, but that the same shall remain in their due force and strength.'

Surely this is decisive of the intention with which the Advertisements were framed. The Queen's minister tones down a little the stringent and menacing language of the Queen, yet enjoins that her Majesty's intentions shall be carried out with such discretion that the lawless clergy shall not be 'encouraged anywise to think' that there is going to be any change of policy 'or of the laws already made, but that the same shall remain in their due force and strength.' But even this is too

mild for the Queen. She strikes it out, and inserts in its place a threat of 'other sharp proceedings' against the recalitrants.

In obedience to the Queen's commands, says Strype:—

The Archbishop and some of the other Bishops of the Ecclesiastical Commission proceeded to compile certain Articles, to be observed partly for due order in the public administration of the holy Sacraments, and partly for the apparel of persons ecclesiastical. These Articles were printed with a Preface this year 1564, by Reginald Wolf, according to Bishop Sparrow's Collections, and entitled Advertisements. Though by a writing on the backside of the fair copy that was sent to the Secretary, when they were first framed, it seems they were not presently published nor authorised. For these are the words written upon them by the Secretary's own hand, March 1564, *Ordinances accorded by the Archbishop of Canterbury, &c. in his province. These were not authorised nor published.*¹

Strype proceeds:—

The matter, I suppose, was this: When these Articles (by Leicester's means no question) were refused to be confirmed by the Queen's Council, the Archbishop, however, thought it advisable to print them under his and the rest of the Commissioners' hands, to signify at least what their judgment and will was; and so let their authority go as far as it would. Which was probable to take effect with the greater part of the clergy; especially considering their canonical obedience they had sworn to their Diocesans. But because the book wanted the Queen's authority they thought fit not to term the

¹ Strype's *Life of Parker*, i. 313.

contents thereof *Articles* or *Ordinances*, by which name they went at first, but by a modester denomination, viz. *Advertisements*.

This was the reason that there is some difference in the Preface thereof, as we have it printed in Bishop Sparrow's Collections, from that which is in the MS. copy sent unto the Secretary. That Preface is all the same, but only, whereas in the MS. it runs thus: [The Queen's Majesty—hath by the assent of the Metropolitan, and with certain other the Commissioners in causes ecclesiastical, decreed certain rules and orders to be used, as hereafter followeth]: in the said Collections we read thus: [The Queen's Majesty—hath by her letters directed unto the Archbishop of Canterbury, and Metropolitan, required, enjoined, and strictly charged, that with assistance and conference had with other Bishops, namely such as be in commission for causes ecclesiastical, some orders may be taken whereby all diversities and varieties among them of the clergy and the people, as breeding nothing but contention, offence, and breach of common charity, *and be against the laws, good usages, and ordinances of the realm,*¹ might be reformed and repressed, and brought to one manner of uniformity throughout the whole realm: that the people may thereby quietly honour and serve Almighty God in truth, concord, unity, peace, and quietness, as by her Majesty's said letters more at large doth appear. Whereupon by diligence, conference, and communication in the same, and at last by assent and consent of the persons beforesaid, these rules ensuing have been thought meet and convenient to be used and followed.] There be also some other small alterations. As the word *constitutions* in the MS.

¹ These words in *italics*, in the published form of the Advertisements, as well as the Queen's letter to the Primate, show that the intention was to level up to the standard of the Ornaments Rubric, not to level down to a lower standard.

is changed into *temporal orders* in the Collections, and *positive laws in discipline* is changed into *rules in some part of discipline*, I have also diligently compared the printed book with the aforesaid MS. copy, and find them different in many places, and sundry things are left out which are in the copy; the Archbishop thinking fit in that manner to publish them, *because of their want of the stamp of authority to oblige persons to the observance of them.*

The difference between the original draft of the Advertisements and the form in which they were published in 1566, here pointed out by Strype, marks the difference between the stamp of authority and the absence of it. The Queen kept on urging the Primate to repress the lawlessness of the Puritans. That well-meaning but weak man, in his turn, implored the Queen and her Council to give the seal of authority to the Episcopal Advertisements. This the Queen and the Council steadily refused to do. The poor Primate complained that he could not enforce the Advertisements on his own authority, especially in London, which was the headquarters and stronghold of the Puritans, and which was under the jurisdiction of a Puritan bishop. ‘An ox,’ said the distracted Archbishop, ‘cannot draw more than he can.’ Strype says :—

But all this pains and labour had not a success answerable. The Queen had followed the Archbishop with repeated commands to press the ecclesiastical orders. And she was in such good earnest to have them observed all her kingdom over, that she had now willed the Arch-

bishop of York to declare in his province also her pleasure determinately to have them take place there. But her Majesty's Council was backward to empower and countenance our Archbishop in his endeavours for that purpose. This, with the clamour and rage of the dissenting clergy and their adherents, and the hard names they gave him, quite discouraged the good man. He liked not the work, especially being accompanied with so much severity; but it was out of obedience to the Queen, who was continually calling upon him, and ordering the Secretary to write to him to quicken him. But finding his own inability to do her that service she required of him, he very often and earnestly sent to the Secretary, that the Queen's Council might stand by him with their authority. But he could not obtain his desire.¹

On April 28, 1566, the Primate wrote a pathetic letter to Cecil, in which he says :—

The Queen's Majesty willed my Lord of York to declare her pleasure determinately, to have the order to go forward. I trust her Highness hath devised how it may be performed. I utterly despair therein as of myself: and therefore must sit still, as I have now done, always waiting either her toleration, or else further aid. Mr. Secretary, can it be thought that I alone, having sun and moon against me, can compass this difficulty? If you, of her Majesty's Council, provide no otherwise for this matter than as it appeareth openly, what the sequel will be, *horresco vel reminiscendo cogitare*.

At last the Queen authorised the publication of the Advertisements, after the erasure of every

¹ Strype's *Parker*, i. 451. On March 12, 1566, Parker wrote to Cecil that 'some lawyers be in opinion that it is hard to proceed to deprivation, *having no more warrant but the Queen's Majesty's only word of mouth.*' (*Correspondence*, p. 264). He never got more.

sentence and expression which implied the formal and legal authority of the Sovereign under the 'other order' clause of the Act of Uniformity. The Primate now felt that he could enforce the Advertisements at least upon the ringleaders of the lawless Puritan ministers, and he proceeded against them with more rigour, but only with partial success. The Puritans were furious; but they were quick to mark the difference between the validity of the Advertisements and documents bearing the legal stamp. For instance, in a letter written by one of the leading Puritans, without date, but evidently after the issue of the Advertisements, the writer says:—

In what way the Sacraments are disfigured by human inventions will easily appear from the public form of prayer, the royal Injunctions, and the Admonitions, or (as they call them) the Advertisements, of the Bishops.

In brief, then, the state of the case is as follows: On coming to the throne the Queen made a strenuous effort to restore the First Prayer-Book of Edward VI. Failing in this, she had the Rubric against the Eucharistic vestments expunged from the Prayer-Book of 1552, with sundry other changes, before she sanctioned the restoration of that Book. Moreover, she insisted on the addition of a clause in the Act of Uniformity, restoring in its integrity the rule of public worship in legal use in the second year of Edward VI., and incorporated this, with a slight verbal alteration, in a Rubric prefixed to the

new Book. She made these alterations and additions a *sine qua non* of her sanctioning the Book. And knowing the revolutionary and intractable temper of the Puritans, she took the precaution—being a stickler for law—of giving herself power in the Act of Uniformity to take ‘other order’—explained, a few lines later, as adding ‘further ceremonies and rites’—as occasion might require. Under this sanction she published, the following year, under the authority of Royal Letters Patent, a Latin version of the Prayer-Book, with some changes which brought it nearer the First Prayer-Book of Edward VI.; *e.g.* the restoration of the Rubric sanctioning the reservation of the Sacrament for the Sick. Every action which she took in virtue of the ‘other order’ sanctioned by the Act of Uniformity was in the direction of enforcing the law of the Ornaments Rubric. In no single case did she take any action to abridge in any particular the standard of public worship prescribed by that Rubric. The lawlessness of the Puritans had at last become so rampant that the Queen wrote a strong letter to the Primate enjoining him to take action with his suffragans to devise means for curbing this clerical lawlessness of ‘a few persons,’ and enforcing obedience to the ‘established laws.’ The Advertisements of 1564 were the result. But the Queen, while urging Parker to action against the Puritans, persistently refused to give to the Advertisements the sanction provided for by the Act of

Uniformity. In 1566 she gave an informal sanction to the publication of the Advertisements; and in consequence of this informality the original title of 'Admonitions' was altered to 'Advertisements,' and every passage and word were struck out which implied legal authority. Thus shorn of legal authority, the Advertisements were published.

Why did the Queen refuse to give legal authority to the Advertisements? There were two reasons. The first was that the Advertisements fell short of her expectation. It is clear from her letter to Parker that she wished him and his colleagues to make the Ornaments Rubric the standard at which they were to aim. Instead of this they adopted a rule of an ideal maximum sanctioned by the Statute and Rubric—and practised by the vast majority of parish priests, as is evident from their silence—and a realisable minimum, to be enforced on the rebellious minority. The Queen had no objection to their enforcing this minimum rule on their own authority; but, with an unconsciously prophetic eye to Privy Council law, she refused to give the stamp of legality to anything short of the Ornaments Rubric.

Her second reason was partly political, and partly personal. Her Council, with their natural aversion to the stirring up of a swarm of Puritan hornets buzzing about their ears, acted on the Melbournian maxim, 'Can't you let it alone?' But some members of the Council and powerful

courtiers were in sympathy with the Puritans, thinking them the winning side. Pre-eminent among these was the Queen's favourite, the Earl of Leicester. To him Pilkington, the puritanical Bishop of Durham, made a passionate appeal in favour of toleration for the Puritans.¹ Thus the imbroglio ended in the compromise of publishing the Advertisements, with the informal sanction of the Queen, but without endowing them with the force of legal instruments. Collier says, with strict accuracy, that 'the Queen, as was observed, refused to confirm these "Advertisements," though drawn at her direction.' And he adds that 'the "Advertisements" were checked at present by the interposing of the Earl of Leicester, of Knolles, and some other Court patrons of Dissenters.'²

Soames, an expert in the history of the Reformation, says :—

Hence a formal approval of the Lambeth regulations was found unattainable. Had their tenor been disliked, the proceedings upon them which quickly followed never would have occurred. Elizabeth, however, withheld her name, on the plea that it was unnecessary, the prelates having already sufficient authority to act as she wished. Their position thus became highly difficult and invidious. It is plain enough that any reluctance to act would have

¹ Strype's *Parker*, iii. 69.

² *Eccl. Hist.* vi. 391, 392, 419; cf. Strype's *Parker*, i. 320. 'In the meantime the Archbishop and his fellows of the Ecclesiastical Commission did go on, as far as they could, to reduce the Church to one uniform order, the Queen still calling upon them so to do, reckoning their own authority sufficient.'

been immediately resented at Court, yet all the painful proceedings in which they soon became involved might be colourably represented as chiefly flowing from their own intolerance. . . . This publication [of the Advertisements] cites the Queen's letter [to Parker, quoted above] as an authority; her ministers therefore could not have disapproved it. No signatures, however, are printed, but those of the Primate and of the Bishops, Grindal, Cox, Guest, Horne, and Bullingham. The original document appears to have been signed by others besides; but this is immaterial, as it has none but ecclesiastical authority to plead.¹

I venture to assert, therefore, on the evidence, that the Advertisements had no force whatever in law. And I make that assertion without the slightest bias, and purely in the interest of historical accuracy. For the truth is that the legal *status* of the Advertisements is entirely irrelevant to my argument, though it is absolutely essential to the case set up by the Purchas and Ridsdale judgments. I have shown that the Advertisements were directed exclusively against the Puritan Nonconformists. In her letter to Parker, already quoted, the Queen draws a pointed contrast between the disobedience of the Puritans and the silent acquiescence of the mass of the clergy in the order of public worship prescribed by the Ornaments Rubric. Whittingham, Dean of Durham, in a long appeal to Leicester, indirectly confirms the distinction thus marked by the Queen. 'Alas! my lord,' he exclaims, 'that

¹ *Elizabethan Religious Hist.* pp. 42-3.

such compulsion should be used towards us, and so great lenity towards the Papists. How many of the Papists enjoy liberty *and livings* which neither hath sworn obedience to the Queen's Majesty, nor yet do any part of duty towards their miserable flocks,' *i.e.* after Puritan methods.¹

It is evident from all this that the 'other order' of the Elizabethan Act of Uniformity was understood at the time to grant power to correct defects or illegal innovations, not to abolish the legal standard. In addition to the evidence already offered the following—which alone would be decisive—may conclude this chapter.

In a letter from Horne, Bishop of Winchester, dated July 17th, 1565, there occurs the following passage:—

This Act [of Uniformity] cannot be repealed unless by the agreement and consent of all the Estates of the Kingdom, by whose concurrence it was enacted. . . . We certainly hope to repeal this clause of the Act next session.²

The Advertisements were the result of the Queen's letter to the Primate, urging him to 'confer with the bishops your brethren, namely, such as

¹ Strype's *Parker*, iii. 83. The relation in which Leicester was with the Puritans is shown by the next paragraph of this letter: 'O noble Earl, at least be our patron and stay in this behalf, that we lose not that liberty which hitherto by the Queen's Majesty's benignity we have enjoyed with comfort and quietness.'

² *Zurich Letters*, First Series, p. 142.

be in commission for causes ecclesiastical,' for the purpose of checking both neglect and violation of the Act of Uniformity. The letter is dated January 25th, 1564-5. The Primate consulted his colleagues on the Ecclesiastical Commission, and on the 3rd of March following sent to Cecil the draft of the Advertisements, with a covering letter in which he says that 'the devisers are only the Bishops of London, Winchester, Ely, Lincoln, and myself.' The names of those bishops are affixed to the document. Yet one of those signatories, writing some time afterwards, declares that the Act of Uniformity could not be repealed by anything short of another Act of Parliament, and he and his brother Puritans 'hoped to repeal the [Ornaments] clause of the Act next session.' It is quite impossible that Horne could have written thus, after signing the Advertisements, if the Advertisements had been intended to repeal that very clause.

Another of the devisers and signatories of the Advertisements was Grindal, at the time Bishop of London. Writing to Bullinger, in the year 1566, some time after the publication of the Advertisements, he says:—

When they who had been exiled to Germany could not persuade the Queen and Parliament to remove these habits out of the Church, though they had long endeavoured it, by common consent they thought it best not to leave the Church for some rites, which were not many, nor in themselves wicked; especially since the purity of the Gospel remained safe and free to them.

Again :—

When the Queen began first to reign, the Popish religion being cast off, she reduced religion to that condition wherein it was while King Edward VI. was alive. And to this all the States of the kingdom with full consent gave their voices in the great Council of the nation, called the *Parliament*. The authority of this Council is so great that the laws made therein could not by any means be dissolved unless by the same that made them. In that form of religion set up by King Edward there were some commands concerning the habits of ministers, and some other things, which some good men desired might be abolished or mended. But the authority of the law hindered them from doing anything that way. Yet the law allowed the Queen, with the counsel of some of the Bishops, to alter some things. *But indeed no part of the law has been either altered or diminished. (At vero de lege nihil nec mutatum nec imminutum est.)*¹

Now, when did Grindal write this letter? In the year 1571: that is, five years after the issue of the Advertisements. He had become Archbishop of York meanwhile. Soon after the publication of the Advertisements he declared that he and his friends had failed to persuade Parliament or the Queen to repeal or modify the Ornaments clause of the Act of Uniformity. Five years afterwards he declared that no part of the law in that matter had been altered or modified. Bishop Horne of Winchester made a similar declaration some months after the Advertisements had been printed and sent

¹ Strype's *Life of Grindal*, p. 156; *Zurich Letters*, First Series, p. 189.

to Cecil; and both prelates laid down the sound constitutional doctrine that the law could not be altered in any way without a fresh Act of Parliament. And they were not unimportant persons. One, after occupying the See of London, became Primate of the Northern Province. The other occupied the third see in rank. But, above all, both helped to draw up the Advertisements and affixed their signatures to them. Yet neither had the faintest idea that the Advertisements were intended to modify, or did in fact modify in any way, the existing law. Is this credible on the theory of the Purchas and Ridsdale judgments? Need we any further proof that those judgments are utterly untenable in law, and a travesty of history? Contemporary and subsequent testimony down to our own time confute the judgments. The Puritans admitted that the Advertisements were aimed at them, and strenuously denied them any legal or statutory authority, and the House of Lords in 1641 pronounced a similar judgment. This may be substantiated by a few samples:—

Though Her Majesty's most excellent name be used by the publishers of the said Advertisements for confirmation of them, and that they affirm her to have commanded them thereunto, by her Highness' letters; yet because the book itself cometh forth without her Majesty's privilege, and is not printed by her Majesty's printer, nor any in his name, therefore it carrieth no such credit and authority with it, as whereunto her Majesty's subjects are necessarily bound to subscribe, having other

laws, and other Injunctions under her Majesty's name, and authorized by her Majesty's privilege, contrary to the same.¹

Another writer of the same period says that the Advertisements

were never duly published, as being Advertisements only—in name ordinances, and not in deed; for though her Majesty's name, and commandment by her Majesty's Letters, be used by the publisher of the said Advertisements, for the confirmation of them, yet, nevertheless, because the book itself cometh forth without her Majesty's privilege,² and hath been printed not by her Majesty's printer, nor any in his name, therefore the same carrieth as yet no such credit and authority with it, as whereunto, *propter falsitatem expressam* or *veritatem tacitam in impetracione*, her Majesty's subjects are necessarily bound to subscribe, especially having other Injunctions under her Majesty's own name, and authorized by her Majesty's knowledge, contrary to the same, as in the article (concerning not preaching without licenses) shall appear.³

It may be that they [the Bishops] know their order when they ride in their scarlet robes before the Queen, and how to poll their clergy as they call them . . . or how to rattle up these new fellows, these young boys, that will not obey at a beck their Articles, Advertise-

¹ *An Abstract of certain Acts of Parliament; of certain of her Majesty's Injunctions; of certain Canons, etc.*, p. 33, 4to. No date, but before 1584.

² The Queen's 'Injunctions,' of 1553, have on their title-page '*Cum privilegio Regiæ Majestatis.*' The Advertisements never had this confirmation.

³ *The copy of a Letter written by a gentleman in the country, unto a Londoner, touching an Answer to the Archb. Articles. A part of a Register*, pp. 162, 163. 4to. cir. 1590.

ments, Canons, Caveats, and such like stuff of their own forging.¹

They snare the Church of God between that book [of Common Prayer] and other books which they obtrude with straight charge to be observed, which books do differ among themselves, as the book of Common Prayer and the Injunctions about wafers, the Book of Common Prayer and the Advertisements about the Church Vestments, the Canons against the Pontifical, in not ordering of ministers *sine titulo*, &c.²

I have already quoted the Lords' Committee in 1641, which consisted of ten earls, ten bishops, ten lay barons, and a number of other learned divines. Besides their pronouncement in support of the undiminished statutory force of the Ornaments Rubric, they asserted that some High Churchmen were apt to quote 'the Injunctions and Advertisements of Queen Elizabeth which,' says the Committee's Report, are not in force but by way of commentary and imposition.'³

¹ *A Second Admonition to the Parliament*, p. 23. 12mo. No date: cir. 1572?

² *Ibid.* p. 10.

³ Scobell's *Collection*, 2658, p. 69; *Harleian Miscellany*, viii. 107.

CHAPTER XVI

DR. GEE'S THEORY

SIR LEWIS DIBDIN, in his cross-examination of me, made a great point of the theory suggested and supported in Dr. Gee's *Elizabethan Prayer-Book*. Dr. Gee, he said, with my ready assent, 'is an authority who has a right to speak on these matters.' But Sir Lewis was in error in supposing that Dr. Gee is one of 'many and great authorities' who have adopted that theory. On the contrary, Dr. Gee claims, and claims truly, the credit of being the original and sole author of it. I have read *The Elizabethan Prayer-Book* with great care, and found it ingenious and plausible, and argued with that ability, moderation, and desire to be fair, which all who know the author would expect of him. But I remain unconvinced; and as the theory traverses my case at an important point, I am forced to remove it out of my way, or to admit that there is a serious flaw in my argument.

Dr. Gee rejects the current view of the revision of the Prayer-Book in 1559, namely, that a Committee of Divines was appointed, under the auspices of Sir William Cecil, to compare the two Prayer-

Books of Edward VI., and frame a new book against the first meeting of Elizabeth's Parliament. This Committee, according to the common account, consisted of 'Parker, Bill, May, Cox, Grindal, Whitehead, and Pilkington, all learned divines, and Sir Thomas Smith,' a learned and distinguished layman, at whose house the Committee was to meet for the revision. Parker, however, was prevented from attending by illness, and appointed, as Strype suggests, Guest to act in his place. This is the view accepted by all historians till Dr. Gee: *e.g.* by Camden, Burnet,¹

¹ *Hist.* ii. 598-600.

Dr. Gee (*Elizabethan Prayer-Book*, p. 11) says that 'Burnet passes over the matter of the revision entirely, and merely calls attention to the result.' Surely this is a mistake. Writing of Elizabeth's accession, Burnet says:—

'As her first impressions in her father's reign were in favour of such old rites as he had still retained, so in her own nature she loved state and some magnificence in religion as well as in everything else. She thought that in her brother's reign they had stript it too much of external ornaments, and had made their doctrine too narrow in some points; therefore she intended to have some things explained in more general terms, that all parties might be comprehended by them. She inclined to keep up images in churches, and to have the manner of Christ's presence in the Sacrament left in some general words; that those who believed the corporal presence might not be driven away from the Church by too nice an explanation of it. . . . She considered nothing could make her power greater in the world abroad so much as the uniting all her people together at home. . . . She observed that in the changes formerly made, particularly in renouncing the Papacy and making some alterations in worship, the whole clergy had concurred; and so she resolved to follow and imitate these by easy steps.'

Burnet then goes on:—

'There was a long consultation had about the method of the changes she should make: the substance of which shall be found in the Collection, in a paper where, in the way of question and answer, the

Strype,¹ Collier,² Dodd³ (Tierney's edition), and Hallam.⁴

'Two documents,' as Dr. Gee says, 'underlie the whole story.' One is the document which goes by the name of the 'Device for Alteration of Religion'; the other is Guest's well-known letter. Let us consider the 'Device' first. Dr. Gee examines its genesis and history; but it is not necessary for my purpose to follow him there. I am content to accept his conclusion that the document 'is Elizabethan'; that it 'belongs to the beginning of Elizabeth's reign, and bears an entry of that date, which is 'certainly in Cecil's handwriting.'

The 'Device' is an answer to a set of questions propounded to the writer; whether Sir T. Smith, or Cecil, or some one unknown. The questions are:

- I. When the alteration shall be first attempted?
- II. What dangers may ensue upon this alteration?
- III. What remedy for these matters? IV. What shall be the manner of the doing of it? V. What may be

whole design of it is laid down. This draught of it was given to Sir William Cecil, and does exactly agree with the account that Camden gives.' He gives a marginal reference to Camden and quotes 'the heads of the "Device,"' which he gives *in extenso* among his 'Collections.' (*Hist.* ii. 598-600, and v. 327, Pocock's edition).

In this passage, let me say in passing, Burnet confirms my view that Elizabeth was sincere when she told the Spanish Ambassador on her accession that she wished to restore the state of religion 'as it was left by her father.'

¹ *Ann.* i. pt. i. 119-122; pt. ii. 459.

² *Hist.* vi. 187-190.

³ *Hist.* ii. 122-4.

⁴ *Const. Hist.* 150. Hallam attributes the 'Device' to Cecil.

done of her Highness for her own conscience openly before the whole alteration; or if the alteration must tarry longer, what order be fit to be in the whole realm as an interim? VI. What noblemen be most fit to be made privy to these proceedings before it be opened to the whole council? VII. What allowances those learned men shall have for the time they are about to review the Book of Common Prayer and order of ceremonies and service in the Church, and where they shall meet?

The answer to the first question is that the alterations should be attempted 'at the next Parliament,' *i.e.* Elizabeth's first Parliament.

The answer to the second question is that the chief dangers to be expected by an alteration in religion are four in number:

i. The Pope 'will be incensed; will excommunicate the Queen's Highness, interdict the realm, and give it to prey to all Princes that will enter upon it; and incite them thereto by all manner of means.

ii. 'The French King will be encouraged' to attack England, as 'his people' will regard the English 'not only as enemies, but as heretics,' and those in England who will be alienated by changes in religion will aid the French.

iii. Scotland will be emboldened by these things, and will co-operate with the French.

iv. Ireland will resent alterations in religion, and will make trouble.

v. 'Many people of our own will be very much discontented; especially these sorts':

(1) Those who will lose office and employment by the change of government.

(2) Bishops and all the clergy will see their own ruin, and will therefore do their best to oppose alterations.

(3) In addition, 'men which be of the Papist sect'—*i.e.* who accept Papal supremacy with its political and other consequences—will 'join and conspire with the bishops and clergy.'

(4) To all these will probably be joined those who are suffering from the consequences of war and famine and will resent the imposition of fresh taxation.

(5) When the Puritans 'shall see peradventure that some old ceremonies shall be still left, and that their own views on doctrine and ceremonial are not to be exclusively sanctioned, and all others abolished and disproved, they shall be discontented, and call the alteration *a cloaked Papistry, or Mingle-mangle.*'

This must certainly be pronounced a singularly sagacious and accurate diagnosis of the whole situation, quite worthy of the brain of Cecil, and verified almost to the letter by the event.

How were these serious dangers to be met?

1. The French danger was to be averted by striving to make peace with France, and stirring up religious feuds in that country.

2. Rome was implacable and could not be satisfied.

3, 4. Peace with France would carry peace with Scotland; but religious strife must be fomented there also. Berwick must be fortified, and a frontier force organised. There must also be 'some expense of money in Ireland.'

5. The subdivisions of the fifth danger are dealt with separately :

(1) The Marian placemen, who were advanced only in the interest of the Papacy, must be got rid of as a standing menace and as a warning to all waverers between the old *régime* and the new. And as the disaffected are displaced, 'so must her Highness's old and sure servants, who have tarried with her, and not shrunk in the last storms, be advanced with authority and credit; that the world may see that her Highness is not unkind nor unmindful.'

(2) The bishops and clergy, if they prove recalcitrant, must be brought under terror of *Præmunire* and held to ransom. 'And by this means well handled Her Majesty's necessity of money may be somewhat relieved.'

(3) The Papalists pure and simple are to be deprived of power as much as possible: *e.g.* 'in commission of peace in the shires.' 'No office of jurisdiction or authority to be in any discontented man's hand, as far as justice or law may extend.'

(4) Those disaffected by impoverishment and excessive taxation are to be managed 'by gentle

and dulce handling by the Commissioners,' but to be summarily suppressed by military force if they should attempt any overt acts of insubordination.

(5) As for the Puritans, who 'could be content to have religion altered, but would have it go too far, the strait laws upon the promulgation of the Book, and severe execution of the same at the first, will so repress them that it is great hope it shall touch but a few. And better it were that they should suffer than her Highness or commonwealth should shake or be in danger. And to this they must well take heed that draw the Book.'

To the question: 'What shall be the manner of doing it?' the 'Device' recommends the divines already named as a Committee to draw up a revised Prayer-Book. Sir Thomas Smith is to convene the Committee of Revision at his house, where an allowance of food, and fuel, and wine is to be provided for the purpose. Meanwhile, 'a strait prohibition is to be made of all innovation until such time as the Book come forth, as well that there should be no changes in religion, which would take away authority in the common people's estimation; as also to exercise the Queen's Majesty's subjects to obedience.'

The 'Device' recommends that in the interval between the Queen's accession and the new Prayer-Book her Majesty should make as few changes as possible, such as 'receiving the Communion as her Highness pleaseth on high feasts'—that is,

I suppose, according to the ordinary Latin Mass, in her private chapel, either in one kind or in both; 'and that when there be more chaplains [than one] at Mass they do always communicate in both kinds.'

The 'Device' was meanwhile to be kept secret, the Marquis of Northampton, the Earl of Bedford, the Earl of Pembroke, and the Lord John Grey being alone 'made privy to these proceedings.'

Another important document which Dr. Gee enlists in the service of his theory is 'The Distresses of the Commonwealth,' endorsed by Armigail Wood, a Privy Councillor under Edward VI. He thinks—and I agree with him—that the document was drawn up at the request of Cecil. It paints the same gloomy picture of the state of the nation that Cecil gives in the State paper which I have quoted on p. 68. Here is the terrible 'summary rehearsal':—

The Queen poor. The realm exhausted. The nobility poor and decayed. Want of captains and soldiers. The people out of order. Justice not executed. All things dear. Excess in meat, drink, and apparel. Division among ourselves. Wars with France and Scotland. The French king bestriding the realm, having one foot in Calais and the other in Scotland. Steadfast enmity but no friendship abroad.

Very wise is the advice which this trusted agent of Cecil gives in the emergency:—

This case is to be warily handled, for it requireth great cunning and circumspection both to reform religion and

to make unity between the subjects, being at square for the respect thereof, and as I pray God to grant us concord both in the agreement upon the cause and state of religion, and among ourselves for the account of Catholic and Protestant: so would I wish that you [Cecil] would proceed to the reformation having respect to quiet at home, the affairs you have in hand with foreign princes, the greatness of the Pope, and how dangerous it is to make alteration in religion, specially in the beginning of a prince's reign. Glasses with small necks, if you pour into them any liquor suddenly or violently, will not be so filled, but refuse to receive that same that you would pour into them. Howbeit, if you instil water into them by a little and little they are soon replenished.

In 'The Device for Alteration of Religion in the First Year of Queen Elizabeth,' and in 'The Distresses of the Commonwealth, with the means to remedy them,' we have a panoramic view of the state of the nation, political, religious, and social, on Elizabeth's accession, with suggestions how to meet the crisis. The two pictures recognise the need of great caution in meddling with religion. There are two extremes with whom compromise seems impossible: the implacable Papalists on the one hand and the irreconcilable Puritans on the other. Between the two is the bulk of the nation, who must be managed with foresight, prudence, and tact. Changes in religion must be instilled 'by a little and little' into the 'narrow glasses' of the public mind; not 'suddenly or violently,' lest the nation refuse to receive them.

Such was the mental attitude of Cecil and those who were in his confidence in projecting the revision of the Prayer-Book for Elizabeth's first Parliament. In these preliminary consultations and negotiations the Puritans were not considered at all except as troublesome fanatics who were to be kept in order. Some of their leaders bitterly complained of this neglect, so different from the deference paid to them in the latter part of Edward VI.'s reign. In fact, everything conspires to show that at the beginning of Elizabeth's reign the policy which approved itself to the minds of Elizabeth and her confidential advisers was to make as little change as possible in the outward aspect of religion, while liberating the nation completely from the domination of the Papacy. It was to be a reformation on the lines of Henry VIII. rather than on the model of Edward VI. The two documents which we have been considering certainly justify the belief that Elizabeth was quite sincere when she disclosed to the Spanish Ambassador that she was resolved to restore religion as it was left by her father.

Some of her most intimate and influential friends, however, such as Dudley, Walsingham, and Knolles, were strongly predisposed in favour of the Puritans, while Cecil and Bacon supported the cautious and sagacious policy suggested by the perils which beset the Queen's position. The character of the Committee appointed to revise

Edward's two Prayer-Books was probably a compromise between these two cross currents, while Sir Thomas Smith, the chairman and convener of the Committee, might be trusted to guide their deliberations with skill and prudence. He had rare qualifications for such a task. Though sympathising, like Cecil himself, with the new learning, he had a conscience sufficiently tolerant to enable him, like Cecil, to serve under Edward VI. and live unmolested under Mary, and to enjoy some degree of favour from the Court, and even from the Pope; and his philosophical temper, great learning, and experience as a diplomatist all pointed him out as an ideal chairman for a committee appointed to frame an opportunist policy in the spirit of the 'Device' and of the State Paper on 'The Distresses of the Commonwealth.' That he sympathised with the moderate party of reformers in matters of ceremonial seems plain from the furniture of his chapel in 1569: an 'altar of walnut tree; vestment and albe for the Priest; and a pair of virginals instead of an organ.'¹

Of course a student of history is not bound by authorities, however numerous or eminent, when he believes that he has evidence to prove them wrong in any particular, and Dr. Gee does well to question the traditional view and put a more

¹ *Life*, p. 171. This was three years after the publication of the Advertisements, when the Eucharistic vestments were all abolished in law and fact, according to the Purchas Judgment.

accurate one, as he believes, in its place. I believe, for reasons which I shall presently give, that the weight of evidence is against him. Indeed the documents to which he appeals appear to me to suggest a contrary conclusion. But we shall see.

Dr. Gee's view, in so far as it conflicts with the argument of this book, may be briefly stated. He adds that there was no desire on the part of Elizabeth on her accession to revive the Book of 1549. This he infers from the fact, as he thinks, that 'the Queen was the consistent friend of those who upheld the Book of 1552 during all the months through which it was under discussion. She is said to have openly declared her satisfaction at the return of the exiles in December. She desired the presence of Peter Martyr in England. She was regarded by Cox as the special patroness of what he calls the sincere religion of Christ. And Jewel, who was most sensitive and suspicious, says of her: "We have a wise and religious Queen, and one too who is favourably and propitiously disposed towards us."'

All this must be taken with considerable qualification. It expresses the sanguine hopes of the returning exiles rather than any authentic evidence of the disposition of the Queen. All her public utterances at the time are in direct antagonism to the views, intentions, and policy of 'those who upheld the Book of 1552.' I have given ample proof of this in previous chapters, but may quote

here the following passage from her reply to the representations made to her by foreign Princes on behalf of the ejected bishops who refused to accept the new order of things. While promising 'to treat them gently,' there was a point beyond which she could not go:—

But to grant them churches to officiate in their worship, and keep up a distinct communion, were things which the public interest, her own honour and conscience, could not allow; neither was there any reason for such an indulgence, *for there was no new faith propagated in England*: no religion set up but that which was commanded by our Saviour, practised by the Primitive Church, and unanimously approved by the Fathers of the best antiquity.¹

This is in line with all her declarations on public policy and her own private wishes, and it is completely out of sympathy with the policy and intentions of the returned exiles. Elizabeth neither intended nor wished to set up a new religion. They did. Her sympathies were with the old ceremonial of public worship, purged of superstitious excrescences. They abhorred the old ceremonial and desired to set up a new Church on the Genevan model, stripped of the accessories of traditional ceremonies and vestures. One of the most conservative of them, perhaps, was Jewel, and we have in the following passage a specimen of his attitude towards Catholic antiquity in the matter

¹ Collier, vi. 252.

of religious worship. The letter from which the extract is taken was written to Peter Martyr at Zurich. It is without date, but internal evidence points to the period when the question of restoring Edward's second Book, with its bare ceremonial, was under discussion. Jewel describes himself and his fellow exiles as 'strangers at home,' and longs to be back in Zurich; so little sympathy does he find in England from those in authority. He hopes against hope that religion will be restored as it was at the end of Edward's reign:—

But, as far as I can perceive at present, there is not the same alacrity among our friends as there lately was among the Papists [*i.e.* the clergy at large, and the great majority of the laity]. So miserably is it ordered that falsehood is armed, while truth is not only unarmed but also frequently odious. The scenic apparatus of divine worship is now in debate; and those very things which you and I have so often laughed at are now seriously and solemnly taken to heart by some persons (*for we are not consulted*), as if the religion of Christ could not exist without clothes (*sine pannis*). We are not indeed so detached in mind as to take these fooleries seriously. Others are seeking after a golden, which seems to me rather a leaden, mediocrity, and cry 'The half is better than the whole.'¹

Here we have Jewel's own confession that he objected to what would now be admitted by Churchmen of all schools to be no more than the common decencies of public worship.

¹ *Zurich Letters*, i. 23.

In another letter to Peter Martyr in the year 1566, when the Advertisements were issued to force the Puritans to conform to a minimum of ceremonial, Jewel writes :—

The contest respecting the linen surplice, about which I doubt not but you have heard either from our friend Abel or Parkhurst, is not yet at rest. That matter still somewhat disturbs weak minds. And I wish that all, even the slightest, vestiges of Popery could be removed from our churches, and above all from our minds. But the Queen is unable to endure at this time the least alteration in matters of religion.¹

Again, on February 4, 1560 :—

The controversy [about the retention of the crucifix in public worship] is as yet undecided ; yet, as far as I can see, I shall not again write to you as a bishop. For matters are come to that pass, that either the crosses of silver and tin, which we have everywhere broken in pieces, must be restored or our bishoprics relinquished.²

A month previously Sampson, one of the Puritan stalwarts, referring to the retention of the crucifix and candles, declares that ‘ the wretched multitude are not only rejoicing at this, but will imitate it of their own accord.’³ Then he asks dolefully :—

What can I hope when three of our lately appointed bishops are to officiate at the table of the Lord : one as priest, another as deacon, and a third as sub-deacon, before the crucifix, or at least not far from it, with

¹ *Zurich Letters*, i. 148.

² *Ibid.* i. 68.

³ One of the many proofs that popular feeling was against the Puritans.

candles, and habited in the golden vestments of the Papacy; and are thus to celebrate the Lord's Supper without any sermon? ¹

On April 1, 1560, Bishop Sandys, writing to Peter Martyr, says:—

We had, not long since, a controversy respecting images. The Queen's Majesty considered it not contrary to the word of God, nay, rather for the advantage of the Church, that the image of Christ crucified, together with those of Mary and John, should be placed, as heretofore, in some conspicuous part of the church, where they might more easily be seen by all the people. Some of us [Puritan bishops] thought far otherwise, and more especially as all images of every kind were at our last visitation not only taken down, but also burnt, and that too by public authority, and because the ignorant and superstitious multitude are in the habit of paying adoration to this idol above all others. As to myself, because I was rather vehement in this matter, and could by no means consent that an occasion of stumbling should be afforded to the Church of God, I was very near being deposed from my office, and incurring the displeasure of the Queen.²

Cox, recently consecrated bishop of Ely, wrote about the same time to Peter Martyr:—

We are still compelled, to our great distress, to tolerate crucifixes in our churches.³

Strype may be quoted here:—

Cox, bishop of Ely, being appointed to minister the Sacrament before her there [in the Royal Chapel], made

¹ *Zurich Letters*, i. 63.

² *Ibid.* i. 73.

³ *Ibid.* i. 66.

it a matter of conscience to do it in a place which he thought so dishonoured by images; and could scarce be brought to officiate there, denying it a great while; and when he did it, it was with a trembling conscience, as he said.¹

The reader will now see, I think, that we must take with many grains of salt Dr. Gee's assertion that 'Elizabeth was the consistent friend of those who upheld the Book of 1552 during all the months through which it was under discussion.' He names in particular Peter Martyr, Jewel, and Cox. But Jewel declares, as we have just seen, that the returned exiles were not consulted at all in the matter. And all the letters from which I have quoted were written to Peter Martyr, who was in Zurich at the time. The extracts, moreover, exhibit Jewel, Cox, and the rest at the antipodes of feeling from the Queen as regards the ceremonial of public worship. Men of the eminence and strength of character of Jewel and Sandys confess that they narrowly escaped deposition at the instance of the Queen on account of their opposition to her wishes in this matter. I am surprised, under the circumstances, that Dr. Gee should write with regard to Jewel, Cox, Peter Martyr, and the other Puritan leaders:—

It is inconceivable that such uniform satisfaction with the Queen's attitude could have been expressed by such

¹ *Annals*, i. i. 260.

writers in the early months of 1559, if she were known to be desirous of introducing the Book of 1549.

‘Uniform satisfaction’! when the most distinguished of them confessed that they narrowly escaped deposition for their contumacy. There were complaints, loud and bitter, of the Queen going back behind the Book of 1552 ‘for the sake of a newer reformation.’¹

The extract from the letter of Sandys to Peter Martyr is, moreover, important for another reason. He was nearly deposed, he says, for taking down and destroying, at the last visitation of the Ecclesiastical Commissioners, crucifixes and other images, ‘and that too by public authority’: *i.e.* by the authority of Ecclesiastical Commissioners. But the Ecclesiastical Commissioners had no such authority. They were authorised to destroy images which had been abused for purposes of superstition, and this they interpreted as empowering them to destroy all images. Even in Henry VIII.’s reign Commissions were authorised to destroy objects of superstition. The reckless, indiscriminate, and often illegal iconoclasm of Elizabeth’s Commissioners shows the utter irrelevancy of citing visitation inquiries and articles as evidence of what the law enjoined or allowed.

‘As for Cecil,’ Dr. Gee says, ‘there is no shred of proof, apart from Guest’s letter, that he wished

¹ *Zurich Letters*, ii. 161.

to bring the first Book before Parliament.' 'No shred of proof' is surely rather too strong an expression. Cosin says: 'It was well known that the Lord Treasurer Burleigh used them [altar lights at the celebration of the Eucharist] constantly in his chapel, with other ornaments of fronts, palls, and books, upon his altar.'¹ A man whose predilections are thus marked, and who conformed to the established religion all through Mary's reign, would certainly have preferred the Prayer-Book of 1549 to that of 1552, and was most likely, as it seems to me, to make the suggestions which Guest answers. But let us consider Guest's letter, point by point, in connection with Dr. Gee's theory. I quote it at length here instead of relegating it to the appendix, in order that the reader may have it before him as I proceed with my criticism:—

Right Honourable,—That you might well understand that I have neither ungodly allowed anything against the Scriptures, neither steadfastly done anything contrary to my writing; neither rashly, without just cause, put away that which might be better left out, I am so bold to write to your honour some causes of the order taken in the new service, which enterprise, though you might justly reprove for the simple handling, yet I trust you will take it well for my good meaning. Therefore, committing your honourable estate to the great mercy of God, and following the intent of my writing, thus I begin the matter.

¹ *Works*, v. 441.

OF CEREMONIES.

Ceremonies once taken away, as evil used, should not be taken again, though they be not evil in themselves, but might be well used, and that for four reasons. The first, because the Galatians were reprov'd of Paul for receiving again the ceremonies which once they had forsaken, bidding them to stand in the liberty wherein they were called, and forbidding them to wrap themselves in that yoke of bondage, saying they builded again that which they had destroyed, and reprov'g Peter for that by his dissembling he provok'd the Gentiles to the ceremonial law, which they had left, looking back thereby from the plough which they had in hand. The second cause, because Paul forbiddeth [sic] us to abstain not only from that which is evil, but also from that which is not evil, but yet hath the appearance of evil. For this cause Hezekiah destroyed the brazen serpent, and Epiphanius the picture of CHRIST. The third cause, because the Gospel is a short word putting away the law, which stood in decrees and ceremonies, and a light and easy yoke delivering us from them. Therefore it is said that we should worship GOD in spirit and truth, and not in ceremonies and shadows also as did the Jews. And Paul likeneth us Christians, for our freedom from ceremonies, to men which live in all liberty, and the Jews, for their bondage in them, to men living in thralldom. Wherefore Austin, writing to Januarius against the multitude of ceremonies, thus saith, 'CHRIST hath bound us to a light burden, joining us together with Sacraments in number most few, in keeping most easy, in significance most passing.' And in the next epistle following he bewaileth the multitude of ceremonies in his time and calleth them 'presumptuous,' which were but few in respect of the number of ours. The fourth cause is because these ceremonies were devised of man, and abused to idolatry,

for CHRIST with his Apostles would not wash their hands before meat, though of itself it was an honest civil order, because it was superstitiously used. Paul forbad the Corinthians to come to the Gentiles' tables where they did eat the meat which was offered to idols, though an idol was nothing, nor that which was offered to it anything.

OF THE CROSS.

Epiphanius in an epistle which he wrote to John, Bishop of Jerusalem, and is translated by Jerome, sheweth how he did cut in pieces a cloth in a church, whereon was painted the image of CHRIST or of some saint, because it was against the Scripture, and counselleth the Bishop to command the priests of the same church to set up no more any such cloth in the same place, calling it a superstition to have any such in the church. Leo the Emperor, with a Council holden at Constantinople, decreed that all images in the church should be broken. The same was decreed long before in the provincial Council of Eliberis, Spain, cap. 30.

OF PROCESSION.

Procession is superfluous, because we may (as we ought to do) pray for the same in church that we pray for abroad; yea, and better too, because when we pray abroad our mind is not set upon GOD for sight of things (as experience teacheth) as when we pray in the church, where we have no occasion to move our mind withal.

OF VESTMENTS.

Because it is thought sufficient to use but a surplice in baptizing, reading, preaching, and praying, therefore it is enough also for the celebrating of the Communion. For if we should use another garment herein, it should seem to teach us that higher and better things be given by it than be given by the other service, which we must not believe.

For in baptism we put on CHRIST. In the word we eat and drink CHRIST as Jerome and Gregory write. And Austin saith the word is as precious as this Sacrament in saying 'He sinneth as much which negligently heareth the word as he which willingly letteth CHRIST'S BODY to fall on the ground'; and Chrysostom saith 'he which is not fit to receive is not fit to pray,' which were not true if prayer were not of as much importance as the Communion.

OF THE DIVIDING OF THE SERVICE OF THE COMMUNION IN TWO PARTS.

Dionysius the Areopagite saith that 'after the reading of the Old and New Testament, the learners of the faith before they were baptized, madmen and they which were joined to penance for their faults, were shut out of the church, and they only did remain which did receive.' Chrysostom witnesseth also that these three sorts were shut out from the Communion. Therefore Durand writeth that the Mass of the learners is from the Introit until the Offertory, which is called Mass, or sending out, in that it sendeth out, because when the priest beginneth to consecrate the Sacrament, the learners be sent out of the church. The Mass or sending out of the faithful is from the Offertory till after Communion, and is named Missa, a sending out, because when it is ended, then each faithful is sent forth to his proper business.

OF THE CREED.

The Creed is ordained to be said only of the Communicants, because Dionysius and Chrysostom and Basil in their liturgies say that the learners were shut out ere the Creed was said. Because it is the prayer of the faithful only which were but the Communicants, for that they which did not receive were taken for that time as not

faithful. Therefore Chrysostom saith that 'they which do not receive be as men doing penance for their sin.'

OF PRAYING FOR THE DEAD IN THE COMMUNION.

The praying for the dead is not now used in the Communion because it doth seem to make for the Sacrifice of the dead, and also because (as it was used in the first book) it maketh some of the faithful to be in Heaven and to need no mercy, and some of them to be in another place and to lack help and mercy, as though they were not all alike redeemed and brought to Heaven by CHRIST's merits; but some deserved it (as it is said of Martyrs); and some for lack of perfectness were in purgatory (as it is spoken of the mean sort). But thus to pray for the dead in the Communion was not used in CHRIST and His Apostles' time, nor in Justin's time, who, speaking of the manner of using the Communion in his time, reporteth not this. So that I may here well say with Tertullian, 'that is true which is first, that is false which is after; that is true which is first, that is first which is from the beginning, that is from the beginning which is from the Apostles'

OF THE PRAYER IN THE FIRST BOOK FOR CONSECRATION.

O MERCIFUL FATHER, ETC.

This prayer is to be disliked for two causes—the first, because it is taken to be so needful for the Consecration, that the Consecration is not thought to be without it. Which is not true, for petition is no part of Consecration, because CHRIST, in ordaining the Sacrament, made no petition but a thanksgiving. It is written, 'when He had given thanks' and not 'when He had asked,' which CHRIST would have spoken, and the Evangelists have written, if it had been needful, as it is mistaken. And though Mark saith that CHRIST blessed when He took

bread, yet he meaneth by 'blessed,' 'gave thanks,' or else he would have said also 'He gave thanks,' as he said He blessed if he had meant thereby divine things. And speaking of the Cup, he would have said CHRIST blessed when He took the Cup, and as he saith 'He gave thanks,' if 'gave thanks' and 'blessed' were not all one; or else CHRIST should be thought to have consecrated the bread and not the wine, because in consecrating the bread He said 'blessed,' and in consecrating the wine He left it out; yea, by Matthew, Luke, and Paul He should neither have consecrated the one nor the other, for that they report not that He blessed. Gregory writeth to the Bishop of Syracuse that the Apostles used only the Lord's Prayer at the Communion, and none other, and seemeth to be displeased that it is not there still so used, but instead thereof the canon which Scholasticus made. Therefore, in that he would the Lord's Prayer to be used at the making of the Communion, which maketh nothing for the Consecrating thereof, and not Scholasticus's prayer, which prayeth for the Consecration of the same; it must needs be that he thought the Communion not to be made by Invocation. Chrysostom saith that this Sacrament is made by the words that CHRIST once spoke, as everything is generated by the words of GOD that He once spake, 'Increase and fill the earth.' Bessarion saith that the Consecration standeth on CHRIST's ordinance and His words, and not of the prayer of the priest; and that for three causes. The first, because the priest may pray without faith, without which his prayer is not heard. The second, because the prayer is not all one in all countries. The third, because Baptism is without prayer. Justin, in showing how the Communion was celebrated in his time, maketh no mention of invocation, no more doth Irenæus.

The second cause why the foresaid prayer is to be refused is, for that it prayeth that the bread and wine may be CHRIST'S BODY and BLOOD; which maketh for the

popish transubstantiation, which is a doctrine that hath caused much idolatry. And though the Doctors so speak, yet we must speak otherwise, because we take them otherwise than they meant or would be taken. For when their meaning is corrupted, then their words must be expounded. In one place, it is said, 'This is the new testament in my BLOOD,' and in another place, 'This is my BLOOD of the new testament.' Here CHRIST'S words be diversely reported that we should expound them when they be mistaken. And both He and His Apostles allege, not after the letter, but after the meaning.

OF RECEIVING THE SACRAMENT IN OUR HANDS.

CHRIST gave the Sacrament into the hands of His Apostles. 'Divide it,' He saith, 'among yourselves.' It is decreed that the priest should be excommunicated which did suffer any man to take it with anything saving with his hands (as then they made instruments to receive it withal). Ambrose thus speaketh to Theodosius the Emperor, 'How wilt thou with such hands receive the BODY of CHRIST?' 'If we be ashamed,' saith Austin, 'and afraid to touch the Sacrament with foul hands, much more we ought to fear to take it with an unclean soul.'

OF RECEIVING STANDING OR KNEELING.

Justin saith we should rather stand than kneel when we pray on Sunday, because it is a sign of resurrection, and writeth that Irenæus saith it is a custom which came from the Apostles. And Austin thus writeth, 'We pray standing, which is a sign of resurrection, therefore on every Sunday it is observed at the Altar.' It is in plain words in the last chapter of the last book (which Gaguens, a Frenchman, hath put to Tertullian's works as his), that CHRIST'S BODY is received standing. Though this is the

old use of the Church to communicate standing, yet because it is taken of some by itself to be sin to receive kneeling, whereas of itself it is lawful, it is left indifferent to every man's choice to follow the one way or the other; to teach man that it is lawful to receive either standing or kneeling.

Thus (as I think) I have showed good cause why the service is set forth in such sort as it is. God for His mercy in CHRIST cause the Parliament with one voice to enact it, and the realm with true heart to use it.

Strype suggests that the letter from Guest to Cecil was in answer to 'hints and questions of the Secretary's pursuant to the settlement of the Liturgy.' Undoubtedly Strype is right in saying that in this affair [of the revision of the Prayer-Book in 1559] Sir William Cecil, the Queen's Secretary, was a great dealer and director, and was very earnest about the Book. Sandys bears similar testimony immediately after the Book had been sanctioned by Parliament. But it is unnecessary to labour the point, for Dr. Gee admits that 'Cecil was at this time the chief mover in all action religious and political. He was the right-hand man of Elizabeth, as Dean Boxall had been Mary's. The Spanish Ambassador says of Cecil in January [1559]: "Her present controller [Parry] and Secretary Cecil govern the kingdom, and they tell me the Earl of Bedford has a good deal to say."' Strype's suggestion is therefore more than probable.

But Dr. Gee thinks that Guest's letter has

nothing to do with the Prayer-Book revision of 1559, and refers it to the revision which produced the Book of 1552. This view seems to me quite impossible both on historical grounds and from internal evidence. There is not a particle of evidence to connect Guest with the Book of 1552. Dr. Gee admits that Guest, in this letter, like the writer of the 'Distresses of the Commonwealth,' 'appears to have had certain points submitted to him for his decision,' and he says that Guest 'speaks in the *Quorum pars magna fui* strain.' That is true, and is surely a conclusive proof that Guest had nothing to do with the revision of 1552. The dominant names connected with that revision are, on the one side, Calvin, Bucer, Peter Martyr, Knox, and their disciples among the returned exiles; and Cranmer on the other. Guest's name never appears directly or indirectly, still less as the leading actor.

Let us now examine briefly Dr. Gee's salient arguments to prove that Guest's letter refers to the revision of 1552, not to that of 1559.

1. 'The letter is without date.' That really is no argument, and is in any case as cogent against 1552 as against 1559. Besides, the fact that Cecil sent the letter to Parker in 1566 in answer to Parker's request 'for a certain writing, which he wanted' for the vestiarian controversy, inferentially supplies the date of 1566, when Parker was in the heat of the controversy on the vestments. The

letter is therefore relevant to Elizabeth's Prayer-Book, but not to the Book of 1552, in the revision of which neither Parker nor Cecil took part. Guest, moreover, was one of the Ecclesiastical Commissioners who drew up and signed the Advertisements in 1564. He wrote at the same time a learned answer, composed in scholastic form, to the argument of the Puritans against sacerdotal vestments. Granted, he says, that a sacerdotal vestment was formerly used for superstitious purposes,—

Yet it is not now appointed nor used for any such superstitious end. As I would to God it were so taught by public doctrine in print, and then all this strife would be at an end. But the said apparel is worn and appointed to put difference betwixt a priest and another man; and to show who is a priest, that he may be esteemed as he is, even the Minister of God's Holy Word and Sacraments. Therefore priests' apparel hath not the appearance of evil, but of good.¹

The fact is, Guest believed in a Real Objective Presence in the Eucharist, as his alteration of the 28th Article shows, and of this the doctrine of priesthood is the correlative. For the sake of peace he was apparently willing, as his letter to Cecil shows, to make large concessions to the Puritans in the beginning of Elizabeth's reign. But their intractable temper and anarchical doctrines appear to have made him acquiesce in the

¹ Strype's *Life of Parker*, iii. 105.

Queen's policy as embodied in the Ornaments Rubric.¹

2. The difference between the handwriting of Guest's letter to Cecil (*ex hypothesi* in 1559) and a letter of his written in 1565 is much greater, Dr. Gee thinks, than an interval of five or six years would imply, but could be accounted for by the interval between 1552 and 1565. 'The letter of 1565 is much less neatly written than that under consideration.' Handwriting is a very fallacious test when tried by the difference between neat and slovenly writing. Pen, ink, paper, weariness may easily explain the difference. Besides, Guest had been five years bishop when he wrote the letter of 1565, and five years' constant official correspondence would easily account for the deterioration of handwriting on which Dr. Gee relies.

3. 'But the most serious objection,' Dr. Gee says, 'to Guest's letter having anything to do with the Prayer-Book revision in 1559 is that it is hard to reconcile the character of the points debated by Guest in his letter with the probable course of any discussion that arose in the year 1559. . . . We know the character and antecedents of all the men in the list, and not one of them is likely to have desired to go behind the Book of 1552, or to bring back the Book of 1549.' It is no answer to this objection on the part of Dr. Gee to say that he has

¹ There is an excellent little book on Bishop Guest and the 28th Article by the Rev. G. F. Hodges, published by Rivington, Percival & Co.

here forgotten the most dominant influence in the revision of 1559, namely, the Queen's. For Dr. Gee believes, as we have seen, that the Queen was in full sympathy with the extreme Puritans who even objected to the use of the surplice. I need not argue that point, however, for I submit that I have proved to demonstration that Elizabeth thought that the Reformers of Edward VI. had gone too far and that she desired to go back to the state of things left by her father. That being so, I have no doubt that Strype is right in suggesting that Guest's letter is an answer to points raised by Cecil, who probably acted on the initiative of the Queen. Cecil's points would of course raise discussions. We know from Sandys' letter in April, 1559, that objections were raised to the alterations made by the revisers; that the Queen was prejudiced against some of the alterations; that Cecil took an 'earnest' part in the discussions or negotiations; and that the revisers 'ministered reasons to maintain' their position.¹ All this fits admirably into the revision of 1559; not at all into the revision of 1552. The very object of the 'Device,' to which Dr. Gee here appeals, was to find a *modus vivendi* for the great body of the clergy and laity, who were attached to the traditional mode of public worship, instead of alienating them as the domination of the Puritan party had done in the latter part of Edward's reign. The *Zurich Letters* show

¹ *Correspondence of Archbishop Parker*, p. 66.

plainly that the Puritans in the mass were exasperated by the result of the revision of 1559, and the Puritans on the Revision Committee complained bitterly that they were checkmated and defeated by the Ornaments Rubric and the corresponding clause of the Act of Uniformity, which were passed over their heads.

4. Guest's letter says: 'It is left indifferent to every man's choice to follow the one way or the other, to teach men that it is lawful to receive either standing or kneeling.' 'This,' says Dr. Gee, 'is clearly inapplicable to the Book of 1559.' But it is equally inapplicable to the Book of 1552, to which Dr. Gee refers it. Kneeling is enjoined in both Books. 'There is no mention,' he says, 'in any reference of the year 1559 to any diversity of practice in regard to kneeling.' But the Revision Committee sat in the early part of Elizabeth's reign, when 'diversity of practice in regard to kneeling' and every other act of public worship was sternly forbidden by proclamation; and some Puritans were summarily imprisoned for disobeying the order.¹ But the correspondence of the Puritan leaders in Elizabeth's reign proves that they were as relentless as ever against the practice of receiving the Sacrament kneeling.

These are Dr. Gee's principal reasons for believing that Guest's letter refers to the Book of 1552, not to that of 1559. They appear to me

¹ Strype, *Ann.* i. i. 59.

quite inadequate to sustain his conclusion. Nor is this all. Dr. Gee has strangely overlooked the internal evidence which seems to me to prove beyond a doubt that Guest's letter refers to the Book of 1559. For example:—

Ceremonies once taken away, as evil, should not be taken again, though they be not evil of themselves, but might well be used.

Manifestly this refers to ceremonies sanctioned by the Book of 1549 and taken away by the Book of 1552. In other words, the criticism is later than the Book of 1552 and must refer to the revision of 1559.

Again:—

That praying for the dead is not now used in the Communion because it doth make for the sacrifice of the dead.

But praying for the dead *was* used during the revision of 1552. Therefore the passage cannot refer to that revision. The next sentence confirms this:—

And also because (as it was used in the first Book) it makes some of the faithful to be in heaven, and to need no mercy; and some of them to be in another place, and to lack help and mercy.

A 'first Book' implies the existence of a second. But there was no second Book in existence during the revision of 1552. The same observation applies to the next section:—

OF THE PRAYER IN THE FIRST BOOK FOR CONSECRATION.

The criticism of Guest appears to me to show distinctly that it was a question between restoring the first Book of Edward or the second: Cecil, I have no doubt acting on the Queen's instructions, recommending the former; the revisers preferring the latter with some additional alterations to please the returned exiles.

The paragraph defending the reception of the Sacrament 'in our hands,' instead of our mouths (as the Book of 1549 ordered) is also an indirect proof that Guest's letter refers to the year 1559. There was in the beginning of Elizabeth's reign an influential party among the English reformers who advocated the adoption of the Augsburg Confession, 'whereby a real and substantial presence might be acknowledged in the Eucharist; crucifixes and images might be retained in the churches, the wafer put into the receiver's mouth, and such like.'¹ To all this the Puritanical members of the revision of 1559 were strongly opposed. Guest is evidently answering some one—no doubt Cecil—who suggested the restoration of the usage sanctioned by the Book of 1549.

But perhaps the most decisive proof of all that Guest's letter has to do with the revision of 1559 is the long argumentative paragraph 'Of the Prayer in the First Book for Consecration.' Sandys tells us, in his letter to Parker, just after the revision of 1559, on which he sat, that Dean Boxall objected

¹ Strype, *Ann.* i. i. 76.

to the Book of 1552, as revised by Sandys and his colleagues, that there was no thanksgiving in the Prayer of Consecration ; ‘ for, saith he, “ Dominus accipit *panem, gratias agit* ” ; but in the time of consecration we give no thanks. This he put into the treasurer’s [Cecil’s] hand, and into Countie de Feror’s [Count de Feria’s], and he laboured to alienate the Queen’s Majesty from confirming of the Act, but I think they cannot prevail. Mr. Secretary is earnest with the Book, and we have ministered reasons to maintain that part.’¹

The objector whom Guest is answering, and whom I assume to be Cecil, had evidently suggested the restoration of the *ἐπίκλησις*, which the revisers of the second Book had omitted. Guest answers that the essence of the consecration is in the words of institution ; ‘ because Christ, in ordaining the Sacrament, made no petition, but thanksgiving. It is written, “ When He had given thanks,” and not “ When He had asked.” ’ To this defence Dr. Boxall seems to have replied : ‘ But you have omitted from the Prayer of Consecration in the first Prayer-Book not only the invocation, but also the thanksgiving which follows the words of institution.’ Hence, as it seems to me, Guest’s elaborate argument to show that Christ’s giving of thanks is in itself a blessing, and His blessing a thanksgiving. The explanation appears to have satisfied Cecil and the Queen, for the omission in

¹ *Correspondence of Archbishop Parker*, p. 65.

the Book of 1552 was not repaired. Boxall's cavil and Guest's explanation thus dovetail into each other; but there is no incident in the revision of 1552 which explains this part of Guest's letter.

I venture to think that I have now disposed of Dr. Gee's book in so far as it trenches on my line of argument. But I agree with him in thinking that there is an unexplained lacuna in the story of the revision of 1559. The revision was heralded with much pomp. A very learned and distinguished public man was appointed as its chairman and convener. The revisers were to meet at his house, and food, fuel, and wine were provided for them. And the result of all this care and preparation was the Prayer-Book of 1552, with two or three insignificant alterations besides the Ornaments Rubric! 'Besides the Ornaments Rubric!' Ah! but to me that explains all. Dr. Gee has given his explanation, and I have examined it. Mine is a much simpler explanation. I believe that the revisers produced such a book as Guest's letter indicates—a book more obnoxious to the Queen than even the Book of 1552; that she refused to sanction it, but agreed to accept the Book of 1552 plus the last clause of the Act of Uniformity, which restored, as Sandys says, the ceremonial of Edward VI.'s first and second year, and gave the Queen statutory power, in conjunction with the Metropolitan or Ecclesiastical Commissioners, to make such additions in Divine

Service as seemed to be desirable. This statutory power she began immediately to exercise by insisting on incorporating the Ornaments clause of the Act of Uniformity in a special Rubric; by some changes in the Lectionary; by the publication of the Latin Prayer-Book, together with additional services (which approximated to, and in part went even beyond, the first Prayer-Book); by the Injunction ordering wafer bread, &c. Parker says distinctly that Elizabeth herself assured him that 'but for this [statutory power] her Highness would not have agreed to divers orders in the Book.'¹ And the Archbishop adds emphatically that the Injunction ordering wafer bread was covered by the Act of Uniformity. That is true, but only indirectly. The Injunctions did not comply with the provisions of the Act, which required that the Queen's statutory power should be issued on the advice of the Metropolitan or Ecclesiastical Commissioners; whereas the Injunctions were issued 'by the advice of our Most Honourable Council.' But the Injunction had the indirect authority of the Act, because it only enjoined what was in use by statutory authority in Edward's second year. Such Injunctions, however, as did not come under the protection of the Ornaments Rubric possessed only whatever authority the Queen might claim by virtue of her supremacy in causes ecclesiastical as well as civil. The Puritans were quick to detect

¹ Parker's *Correspondence*, p. 375.

this distinction between the Injunction on wafer bread and such Injunctions as were not covered by the Ornaments Rubric, and they made the most of it. Parker, too, recognised the difference. For while declaring, as we have seen, that the Injunction on wafer bread was sanctioned by the Act of Uniformity, he tells Cecil (who revised, if he did not draw up, the Injunctions) that he had unduly stretched the Queen's prerogative in that document: 'Her princely prerogatives in temporal matters be called into question of base subjects, and it is known that her Highness hath taken order to cease in some of them. Whatsoever the ecclesiastical prerogative is, I fear it is not so great as your pen has given it to her in the Injunction.'¹

The leading Puritans complained bitterly that the restoration of the Book of 1552 was nullified by the Act of Uniformity and Ornaments Rubric.

¹ Parker's *Correspondence*, p. 478; cf. Strype, *Ann.* i. pt. i. 236. This distinction between the Injunctions covered by the Ornaments clause of the Act of Uniformity and other Injunctions disposes of Dr. Gee's argument (*Elizabethan Prayer-Book*, pp. 140-1) that the Injunctions of 1559 modified the Ornaments Rubric. The Act gave the Queen authority on certain conditions to make *additions* to the ordinary ceremonial, not to 'modify' any part of the statutory standard, and the Injunctions, *per se*, had no statutory force, as they failed to comply with the terms of the Act. In any collision with the Ornaments Rubric the Injunctions, not the Rubric, would have to give way. But I do not admit that there was a collision between the Injunctions and the Ornaments Rubric. According to a recognised principle of law, they might both 'stand together.' The ornaments ordered to be destroyed were only such as were 'monuments of feigned miracles, pilgrimages, idolatry, and superstition'; not ornaments *of the same kind* which had not been so abused. There were similar Injunctions in Henry VIII.'s reign. It is true that in both cases there was sometimes an

They complained even more bitterly that their ecclesiastical patrons, after encouraging them in their lawlessness, had for the sake of promotion left them in the lurch, and even turned against them. And it is certainly a remarkable fact that the leading divines on the Revision Committee in 1559 were speedily rewarded with high promotion, as if to console them for some great disappointment: possibly the suppression of their recommendations for a new Prayer-Book. The Act of Uniformity, together with the Ornaments Rubric, gave the Queen practically what she wanted, while restoring the second Prayer-Book of Edward VI. with hardly any alteration.

indiscriminate destruction and spoliation of church ornaments, including vestments (for altars as well as clergy), candlesticks, crosses, patens, chalices, which were undoubtedly legal. The passages quoted by Dr. Gee on pp. 140-1 show that what the Injunctions condemned were particular ornaments, not the whole class. Thus shrines and pictures *in private houses*, if used for superstitious purposes, were ordered to be destroyed. It might as well be inferred that in ordering the destruction of the Mahdi's shrine at Khartoum Lord Kitchener intended the destruction of all Mohammedan tombs.

APPENDICES



APPENDIX A

TWENTY-NINTH DAY.

Thursday, 24th November, 1904.

PRESENT.

The Right Hon. Sir MICHAEL EDWARD HICKS-BEACH, Bart.,
M.P. (*in the Chair*).

The Most Rev. The LORD ARCHBISHOP OF CANTERBURY.

The Right Rev. The LORD BISHOP OF OXFORD.

The Right Hon. Sir FRANCIS HENRY JEUNE, G.C.B.

The Right Hon. Sir JOHN HENRY KENNAWAY, Bart., C.B
M.P.

The Right Hon. JOHN GILBERT TALBOT, M.P.

Sir SAMUEL HOARE, Bart., M.P.

Sir EDWARD GEORGE CLARKE, K.C.

Sir LEWIS TONNA DIBDIN, D.C.L.

The Rev. EDGAR CHARLES SUMNER GIBSON, D.D.

The Rev. THOMAS WORTLEY DRURY, B.D.

GEORGE WALTER PROTHERO, Esq., Litt.D.

GEORGE HARWOOD, Esq., M.P.

E. P. CHARLEWOOD, Esq. (*Secretary*).

J. A. LONGLEY, Esq. (*Assist. Secretary*).

The Rev. CANON MALCOLM MACCOLL, D.D., called ;
and Examined.

8370. (*Chairman*.) You are, I believe, a Canon of Ripon Cathedral?—Yes.

8371. And you have devoted much attention to matters which are within the scope of our Reference?—Yes.

8372. You are prepared, I think, to make a statement on the subject?—Yes, if the Commissioners wish it.

8373. If you please.—In forming a correct opinion on this

question I think a few general observations are necessary to understand the bearings of it. It seems necessary to understand first of all the intentions and wishes of Queen Elizabeth herself. I believe it is admitted by all historians that her own wishes were in favour of retaining as far as possible the old ceremonial and the old doctrines, so far as they were covered by the decisions of the first six general councils. If I may be allowed I should like to read two or three authorities on that subject. First of all Macaulay in his essays, in the first volume, pages 131-133, says Elizabeth 'certainly had no objection to the theology of Rome. The Royal supremacy was to supersede the papal; but the Catholic doctrines and rites were to be retained in the Church of England.' 'Elizabeth clearly discerned the advantages which were to be derived from a close connection between the monarchy and the priesthood. At the time of her accession, indeed, she evidently meditated a partial reconciliation with Rome; and throughout her whole life she leaned strongly to some of the most obnoxious parts of the Catholic system;' that is, 'obnoxious' in the eyes of Macaulay. And in the year 1569, on the suppression of the northern rebellion, Elizabeth put forth a Proclamation in which she said 'that she pretended no right to define articles of faith, or to change ancient ceremonies formerly adopted by the Catholic and Apostolic Church . . . ; but that she conceived it her duty to take care that all estates under her rule should live in the faith and obedience of the Christian religion; to see all laws ordained for that end duly observed; and to provide that the Church be governed by archbishops, bishops, and Ministers;' and then she assured her people that she meant not 'to molest them for religious opinions, provided they did not gainsay the Scriptures or the Creeds Apostolic or Catholic, nor for matter of religious ceremony as long as they should outwardly conform to the laws of the realm, which enforced the frequentation of Divine service in the ordinary churches.' That is from Lingard's History, volume 5, page 295.

8374. (*Rev. Dr. Gibson.*) Are all the quotations in your book?—Yes.

8375. It might be convenient if we could have the pages there—these are 337 and 338?—Yes.

8376. Lingard is only given as the authority for the Proclamation?—Lingard is only given as the authority for the Proclamation. In a conversation with Don Alvaro de la Cuadra, Philip's confidential agent to get at the Queen's intentions and real opinions, she said 'that she was resolved to restore religion precisely as it had been left by her father.' That is from the 'Documents from Simancas relating to Elizabeth,' page 55.

8377. (*Sir Lewis Dibdin.*) Is that quotation accurate?—That is accurate from the translation given by Spencer Hall. I took it from his book.

8378. (*Mr. Prothero.*) Does that quotation appear in your book?—Yes, it is at page 577.

8379. (*Sir Lewis Dibdin.*) Would you read the words again?—‘That she was resolved to restore religion precisely as it had been left by her father.’ Then it goes on ‘that although she would not assume the title of head of the Church,’ and so on.

8380. It is at page 37 not page 55. This is what it says in the State Papers: ‘She said after a time that she could not marry your Majesty as she was a heretic. I was much surprised to hear her use such words, and begged her to tell me the cause of so great a change since I last discussed the subject with her, but she did not enlighten me. These heretics and the devil that prompts them are so careful to leave no stone unturned to compass their ends that no doubt they have persuaded her that your Majesty wishes to marry her for religious objects alone, and so she kept repeating to me that she was heretical and consequently could not marry your Majesty. She was so disturbed and excited and so resolved to restore religion as her father left it, that at last I said that I did not consider she was heretical and could not believe that she would sanction the things which were being discussed in Parliament.’ I take it that is the passage?—I suppose it is; I quote from Spencer Hall.

8381. Do you not see that although you have it in inverted commas what you have is ‘That she was resolved to restore religion precisely as it had been left by her father.’ There is no ‘precisely’ at all?—I quote from Spencer Hall; I took his accuracy for granted.

8382. I beg your pardon, I am quoting from the actual State Papers by Martin Hume. You have not looked it up in the original?—No, but does that make any vital difference?

8383. It is stronger with ‘precisely’ in it?—Of course one would have to look at the Spanish there.

8384. Unless you are prepared to accept Mr. Hume’s translation of the official document?—It is a question between him and Spencer Hall.

8385. (*Mr. Prothero.*) I should have thought Hall took it from Martin Hume?—No, he wrote before Martin Hume, some years I think.

8386. (*Sir Lewis Dibdin.*) Are you not also in error in supposing that that came from de la Cuadra at all? It came from De Feria, de la Cuadra’s predecessor?—They were both at the same time in England for some time.

8387. This is a despatch from Count De Feria to the King?—And does he quote de la Cuadra?

8388. No.—There I simply relied upon Spencer Hall.

8389. De Feria was the man who rather failed with Elizabeth and was superseded by the astute person you have referred to, de la Cuadra?—Yes, he was.

8390. And this evidence is not de la Cuadra's but De Feria's?—Yes, he was superseded after some time, but for some time they were both in London together.

8391. The despatch is from De Feria.—Spencer Hall gives it from de la Cuadra.¹

8392. (*Chairman.*) Will you proceed to your next point?—Then my next point would be that the majority of the nation were at that time with the Queen in the intention thus expressed by her. De Feria, to whom Sir Lewis referred just now, says that the Catholics were then two-thirds of the realm, and a contemporary writer quoted by Froude says that they were in the majority in every county in England except Middlesex and Kent. That is Froude, Volume 7, pages 20 to 68. And in his very learned and able introduction to his publication on Henry VIII., Brewer says, 'There is no reason to suppose that the nation as a whole was discontented with the old religion. Facts point to the opposite conclusion.' Then the leaders of the Puritans themselves at the time represented themselves as a small minority; one of them spoke of their number as *pusillus grex*, a tiny flock. It is also, I believe, now generally admitted by historians that out of the something like 10,000 clergy in England on the accession of Queen Elizabeth, only 200 clergy refused to accept the Prayer Book; and Coke in his Charge at Norwich in 1607 declares that for the first ten years of Elizabeth's reign the Roman Catholics in England attended the parish churches—in fact, attended until the Papal Bull excommunicating Elizabeth. Then, in addition to that, it was clearly Elizabeth's political interest not to offend the majority of the clergy and church people of the time who were on the side, more or less, of the old religion with certain modifications and certain reformations, and a general abolition of the supremacy of the Pope and the corruptions which had come in. It was to her political interest to conciliate the majority of her subjects on church matters in addition to her own inclinations, because she was in a very serious political danger; both France and Spain and the Pope were conspiring against her to upset her throne, and therefore it was of vital importance to her to enlist as many of her subjects as she could on her side.

¹ Sir Lewis Dibdin's point is of no importance. De la Cuadra was sent by De Feria to Philip with the despatch. So that both envoys had part in it.

From her point of view it would have been an act of great political folly, therefore, to have rashly upset the whole externals of public religion, and it seems to me inconceivable that after the publication and enforcement of her Prayer Book the whole outward ceremonial should have been changed in one day, and not a word left to us on the part of those who were aggrieved. All the complaints for the first few years of Elizabeth's reign came from the Puritan party; very few, if any, from the other side. I cannot myself believe it to be possible that when the Prayer Book was introduced the outward ceremonial was entirely abolished—incense and lights at the celebration of the Holy Communion and the rest of it. A great many things had been abolished under Henry VIII., and in the early years of Edward VI., and a great part of the service was in English; but I cannot myself believe it possible that so complete a change as is popularly supposed could have taken place in one day without a sign or a voice protesting against it on the part of those who were familiar with the old ceremonial and liked it.

8393. (*Rev. Dr. Gibson.*) Did I rightly understand you to say that at the death of Henry VIII. a great part of the service was in English?—The Order of the Communion, with the exception of the Consecration Prayer which was in Latin, is mostly the same as the First Prayer Book of Edward VI.

8394. You allege that at the death of Henry VIII. a great part of the Order of the Communion was in English?—No, at the beginning of the reign of Edward VI.

8395. I thought you spoke of the death of Henry VIII.?—Edward VI. immediately succeeded him, and the Order of the Communion came out soon after the commencement of his reign.

8396. Soon after the commencement of Edward VI.'s reign?
—Yes.

8397. Henry VIII. died on January 27th, 1547, did he not?
—Yes.

8398. The Order of the Communion was not published till well on in 1548?—In the beginning of March.

8399. Then surely that is a very different thing from saying that when Henry VIII. died a great part of the service was in English?—No, not a great part of the Communion Service, but there were a great many changes. I think they had the Litany in English, and they had a great many prayers in English.

8400. A great many prayers, do you say?—The Parker Society published a number of them.

8401. They had the Litany in English, but can you give me a single other thing except that after Matins and Evensong

one chapter was to be read in English in Henry VIII.'s reign?—I do not know that I can at this present moment, but I think I could.

8402. I think not?—But they had a great many superstitious customs abolished.

8403. I am not asking generally. I understood you to say that at the death of Henry VIII. a great part of the service was in English?—Not of the Prayer Book, as we have it now.

8404. But a great part of the service?—Yes, of Matins and Evensong, and a great many of the occasional services.

8405. What was in English?—If I had my books I could provide you with some of them.

8406. I should like to know what they were. My impression is that at the death of Henry VIII. there was nothing in English except the Litany and one chapter of the Old and New Testament to be read after Matins and Evensong. In the Order of the Communion there was not a single word in English?—The Order of the Communion was all in English.

8407. And there were no occasional services in English that I am aware of?—Was the Epistle not read in English?

8408. No, not until the Injunctions of Edward VI.—Perhaps, then, I may not be strictly accurate there. Then Bishop Jewel, whom I quote in my book at page 626, writing on April 14th, 1559, says that Elizabeth refused to 'banish' the Mass 'from her private chapel.' 'She has however,' he says, 'so regulated this Mass of hers, that, although many things are done therein which are scarcely to be endured, it may yet be heard without any great danger.' I myself suggest that he refers there to the Order of the Communion.

8409. (*Sir Lewis Dibdin.*) That is Dr. Gibson's point again, 'such portions of the Mass in English as were so ordered under Henry VIII.'?—I had the impression that the Epistle and Gospel were read in English.

8410. (*Rev. Dr. Gibson.*) I think you will find not.—Then that is an error of mine, if it is so. Then I do not believe myself that the first Prayer Book of Edward VI. made any very great change in the externals of public worship. I do not believe there was any great change appealing to the eye made under it. For instance, I quote at page 447 from Dixon's 'History of the Church of England' a complaint by Bucer in the year 1551, in which he says, 'I may add on ceremonies that in many of your churches there is still found a studied representation of the execrated Mass, in vestures, lights, bowings, crossings, washing of the cup, breathing on the bread and cup, carrying the book from right to left of the table, having the table where the altar was, lifting the paten and cup, and adoration paid by men who nevertheless will not communicate.

All these should be forbidden.' That was in the year 1551 while the first Prayer Book was in use.

8411. (*Chairman.*) He says that these things were done in many of the churches; is that so?—Yes, 'in many of your churches.'

8412. But he wrote from an extreme point of view on the other side, did he not?—No doubt he did, but then he specified some of the things he objected to.

8413. But it does not follow that he was correct in saying that the things he objected to were done in many of the churches; he might have attributed such practices to far more churches than those in which they really existed. Sometimes we come across a similar state of mind now-a-days, do we not? You must take his evidence as that of a biassed witness, surely?—If he was biassed, he was biassed against all these things.

8414. (*Sir Lewis Dibdin.*) Do you know where Bucer was when he wrote this?—I cannot tell you at the moment.¹

8415. (*Sir Edward Clarke.*) He was abroad, was he not?—But then he was in constant correspondence with Hooper and Sandys and Grindal and all the rest of them, and he gave his information on their representation to him of the facts as they witnessed them.

8416. (*Sir Lewis Dibdin.*) Where do you extract the letter from?—From Dixon's 'History of the Church of England,' Volume III. page 291.

8417. Is it not in the Zurich Letters in the Parker Society?—No doubt it is, but, as it happens, my books are warehoused, and I cannot get at them.

8418. (*Rev. Dr. Gibson.*) Edward VI., of course, came to the throne on January 28, 1547. In August of that year Royal Injunctions were issued, and among the new provisions in these Injunctions was an Order for the reading of one of the Homilies every Sunday, besides the old provision for one chapter of the New Testament to be read at Matins and one chapter of the Old Testament on every Sunday and Holy Day; and, secondly, a direction was then added that the Epistle and Gospel at High Mass should be read in English?—Yes.

8419. That was in Edward's reign, not in Henry's reign?—Then I am corrected, but it was before the First Prayer Book.²

8420. Yes, but not at the death of Henry VIII.

8421. (*Bishop of Oxford.*) Referring to that quotation from Dixon on page 447, your note is, 'The only difference consisting

¹ He was at the time Professor of Divinity at Cambridge, and his letter is in answer to Cranmer, who had written to ask Bucer his opinion of the first Prayer Book. So that his knowledge was at first-hand.

² I was quite accurate. See pp. 15-37.

in the service being in English.' How do you account for the omission in Bucer's words of other points which, if I understand your contention rightly, would equally have been to be noticed? There is no mention, for instance, of the use of incense?—But I think that is a thing that the Puritans never objected to; so far as I know the Zurich Letters, and I have read them all, I do not think there is a single objection to the use of incense at all by the Puritans. It was Scriptural, and it was one of those things that, so far as I know, they never objected to.

8422. (*Chairman.*) Will you proceed, please?—Now I come to the ornaments rubric, upon which everything hangs. I need not read it, of course, because you are all familiar with the ornaments rubric, but I want to point out that the ornaments rubric of Elizabeth places the question of the 'second year,' in my humble opinion, beyond any possibility of doubt. It says: 'And here is to be noted that the minister at the time of the Communion, and at all other times in his ministration, shall use such ornaments in the church as were in use by the authority of Parliament in the second year of the reign of King Edward VI., according to the Act of Parliament set in the beginning of this book.' Now what that rubric states is that 'such ornaments,' not 'as were authorised' simply, but 'such ornaments as were in use by authority of Parliament in the second year of the reign of King Edward VI.,' shall still be used. Now it is beyond all possibility of doubt that the prescriptions of the First Prayer Book were not in legal use in the second year at all. The Prayer Book itself was not a legal document until the third month of the third year, and, therefore, anything prescribed by it could not be spoken of in the ornaments rubric of Elizabeth as a thing that was 'in use by authority of Parliament in the second year of the reign of King Edward VI.' The ornaments rubric of Elizabeth, therefore, cannot cover the ceremonial usage of Edward's second regnal year, if we are to restrict it simply to the ornaments prescribed by the First Prayer Book. It must, therefore, refer to what was in use before the First Prayer Book was authorised by Act of Parliament, and, consequently, so far as I understand the matter, it must refer to the ceremonial in use under the Order of the Communion, which, I contend, had the authority of Parliament in the second year.

8423. When was that authority given, in your view?—It was given when the Order of Communion came forth first by the Proclamation of King Edward, which, as I understand it, relied upon the Act authorising the administration of the Holy Communion in both kinds.

8424. Will you give the date?—March, 1548.

8425. (*Sir Lewis Dibdin.*) That is the date of the imprint?—Yes. ‘Imprinted at London the VIII day of March in the second year of the reign of our Sovereign Lord King Edward the Sixth, by Richard Grafton, printer to his most Royal Majesty, in the year of our Lord m^dxlviij.’

8426. That is the date of the Proclamation?—No, that is the date of the publication of the Order of the Communion. I have not got the precise date of the Proclamation here, but it was almost at the same time as the publication of the Order of the Communion. I think the Proclamation came forth immediately afterwards.

8427. Immediately before, you mean?—Not before the publication of the book, did it?

8428. Surely?—The book was published on the 8th of March, 1548, and I think immediately afterwards it was issued, with the sanction of the Royal Proclamation which claimed expressly the authority of the Act of Parliament, and referred to ‘the Order of the Communion’ as ‘such form and manner as hereafter by our authority with the advice before mentioned is set forth and declared.’ It would be contemporaneous anyhow.

8429. That is stated on page 653 of your book, is it not?—Yes.

8430. And the statement seems to be that ‘it was issued under the sanction of a Royal Proclamation, which claimed expressly the authority of the Act of Parliament, and referred to “the Order of the Communion” as “such form and manner as hereafter, by our authority with the advice before mentioned, is set forth and declared.”’

8431. That is in inverted commas; is that right; is it not quite clear from the Proclamation that ‘the advice before mentioned’ is that of the Lord Protector, and not the advice of Parliament at all?—I do not think so.

8432. Now may we look at that? Here is the Proclamation: ‘Edward, by the Grace of God King of England’—then follow his titles. ‘To all and singular our loving subjects, greeting: for so much as in our High Court of Parliament lately holden at Westminster, it was by us, with the consent of the Lords spiritual and temporal, and Commons there assembled, most godly and agreeably to Christ’s Holy Institution enacted, that the most blessed Sacrament of the Body and Blood of our Saviour Christ, should from henceforth be commonly delivered and ministered unto all persons, within our Realm of England and Ireland, and other our dominions, under both kinds, that is to say, of bread and wine (except necessity otherwise require) lest every man phantasying and devising a sundry way by himself, in the use of this most Blessed Sacrament of unity, there

might thereby arise any unseemly and ungodly diversity: Our pleasure is, by the advice of our most dear uncle the Duke of Somerset, Governor of our person, and Protector of our Realms, Dominions, and Subjects, and other of our Privy Council, that the said blessed Sacrament be ministered unto our people, only after such form and manner as hereafter, by our authority, with the advice before mentioned, is set forth and declared.' Surely it is perfectly clear that the advice is the advice of the Lord Protector, and the consent of Parliament, which has been rehearsed in the earlier part of that Proclamation, has to do solely with the fact of Communion in both kinds and has nothing to do with the service at all. In other words, is it not a mistake to say as you do, on page 653, that 'the advice before mentioned' means the advice of Parliament?—But it says by the advice of the Lord Protector and the Privy Council, and they were the executors of the Act of Parliament; it was their function to put the Act of Parliament into force. As I understand it, the King says, by the advice of his uncle the Lord Protector and the Privy Council.

8433. Yes, that is what he says, not of the Act of Parliament? ¹—No, but he refers to the Act of Parliament.

8434. (*Chairman.*) Will you state what Act of Parliament?—The Act which authorised the Communion in both kinds.

8435. What is the date of the Act?—1 Edward VI., Chapter 1. If I may venture to do so, I should like to read the next paragraph in my book in order to explain my meaning: 'In addition to this Proclamation enjoining the general use of "the Order of the Communion" the Privy Council sent to every bishop, together with the copies of the book, a circular letter enforcing its use.'

8436. (*Sir Lewis Dibdin.*) Before you go to that I should like to finish this question. Your book says distinctly that this form was put out 'by our authority with the advice before mentioned,' which is in the Act of Parliament; that is what you state?—Yes.

8437. If that were so I think we should all understand your argument very clearly, but when the Proclamation is looked at, 'the advice before mentioned' is not the advice of the Act of Parliament but is the advice of the Lord Protector and the Privy Council?—Yes, but I think that claims the authority of the Act of Parliament. The Privy Council could not do anything without the Act of Parliament.

¹ Parliament authorised Henry VIII. to make a will appointing certain persons to administer the affairs of the realm during the minority of his son. He appointed a Council accordingly, whose acts had thus statutory force. The sanction of the Order of the Communion by the King in Council had therefore Parliamentary authority.

8438. They could do what they professed to do, put out the Proclamation. The King puts out the Proclamation with the advice of certain persons, those persons being the Lord Protector and the Privy Council. That is a very different thing from saying that it was by the advice of Parliament.—But then the King and the Privy Council could not change the laws of the Realm without an Act of Parliament.

8439. The question is not what they could have done but what they purported to do, and it is now agreed that the Proclamation was not, as stated in your book, by the advice of Parliament, but by the advice of the Lord Protector and the Privy Council?—On their advice, but not on their authority apart from the Act of Parliament.

8440. But may we get it that that is a mistake; that although it is stated in your book that it is with the advice of Parliament, it really means with the advice of the Lord Protector and the Privy Council? We can argue about it afterwards to any extent?—No, with the advice of the Privy Council basing themselves on the Act of Parliament. The Act does not advise.

8441. (*Sir Edward Clarke.*) Then you would so modify the passage?—That is what I meant by it. An Act of Parliament does not advise; it enacts.

8442. (*Sir Lewis Dibdin.*) You meant us to understand that 'the advice before mentioned' meant the advice of the Lord Protector and the Privy Council?—Yes.

8443. You have not mentioned either one or the other?—Perhaps that was careless; but the Proclamation rests itself and bases itself upon the Act of Parliament.

8444. (*Rev. Dr. Gibson.*) Then may I ask for what does the Proclamation claim the authority of the Act of Parliament?—For the Communion in both kinds.

8445. Not for the service?—Yes, for both.

8446. Will you tell me where it claims the authority of Parliament for the service?—I do not take that passage as isolated.

8447. (*Sir Lewis Dibdin.*) But will you take the Proclamation itself; you are not tied down to your book. Let us take the Proclamation itself; can you show us where in the Proclamation the King claims the authority of Parliament for the service as distinguished from the giving of Communion in both kinds?—I speak from memory, but does not the Proclamation quote part of the Order of the Communion—

8448. I have read it.—Not the whole of it? I may be inaccurate.

8449. Will you look at the Proclamation (*handing the same to the Witness*)?—First of all it recites the Act; it bases itself upon the Act. It says: 'Our pleasure is by the advice of our

most dear Uncle, the Duke of Somerset, Governor of our person and Protector of our Realms, Dominions, and subjects and other of our Privy Council, that the said blessed Sacrament be ministered unto our people only after such form and manner as hereafter, by our authority, with the advice before mentioned, is set forth and declared.' That refers to the Order of Communion.

8450. (*Chairman.*) But where is it set forth and declared?—In the book which was published at the time—in the Order of the Communion.

8451. (*Sir Lewis Dibdin.*) There is not a word in the Proclamation, is there, about the service being in pursuance of the Act, or founded on the Act, or on the authority of the Act?—I read it so.

8452. But you have just had the book; what are the words that you rely upon?—The Proclamation bases itself for its entire authority on the Act of Parliament.

8453. (*Rev. Dr. Gibson.*) For its entire authority for the service?—Yes, because it goes on to say that in virtue of that Act, in consequence of that Act, the King with the advice of the Lord Protector and the Privy Council puts forth, or is about to put forth, the Order of the Communion.

8454. The Statute ordered the Communion in both kinds?—Yes.

8455. The Proclamation quotes the authority of Parliament for it?—Yes.

8456. And then in order to have that Statute well executed the King with the advice and consent of the Lord Protector's Grace and the rest of the Council has caused this service to be drawn up?—Yes.

8457. But that does not quote the authority of Parliament for the service in the very least, so far as I can see?—I read it so. I cannot understand its having any authority at all without it. The King and the Lord Protector had no legal power to put forth an Order of Communion except with Parliamentary authority.

8458. (*Sir Lewis Dibdin.*) Perhaps they had not; we will not argue whether it was so or not; but the question is, what they did and what they purported to do. I do not want to press you unduly about this, but here is the Proclamation, which first recites the act, as Dr. Gibson has told you, and then says, that the King in order to give effect to what the Act says is to be done, has put out a service. That surely does not give to the service the authority of the Act of Parliament?—I should certainly read it so. Perhaps I may take together with it then the circular letter which the Privy Council put forth.

8459. What do you refer to in that?—Here is the letter

which was issued by the Privy Council to every bishop in England; I quote it at page 653 of my book: 'After our most hearty commendations unto your Lordships, where in the Parliament late holden at Westminster it was, amongst other things, most godly established that, according to the first institution and use of the primitive Church, the most Holy Sacrament of the Body and Blood of our Saviour Jesus Christ should be distributed to the people under the kinds of bread and wine; according to the effect whereof the King's Majesty minding, with the advice and consent of the Lord Protector's Grace, and the rest of the Council, to have the said Statute well executed in such sort, as like as it is agreeable to the Word of God, so the same may also be faithfully and reverently received of his most loving subjects, to their comfort and wealths, hath caused sundry of his Majesty's most grave and learned prelates and others, learned men in the Scriptures, to assemble themselves for this matter, who, after long conference together, have, with deliberate advice, finally agreed upon such an Order, to be used in all places of the King's Majesty's dominions, in the distribution of the said most blessed Sacrament as may appear unto you by the Book thereof, which we send herewith unto you.'

8460. So far you would say that there was no authority of Parliament for the service in anything that you have read yet; no allegation that they had got the authority of Parliament for the service?—They had the authority of Parliament to put forth a form.

8461. Where are those words? They had the authority of Parliament for the distribution of the Sacrament in both kinds, and then in order that that may be properly executed, the King says that he and his Council have agreed upon a form?—But there must have been a form for the distribution in both kinds.

8462. I do not know whether there must or must not; the question is what this letter says?—I read it as basing the whole thing upon the Act. They go on to say that the bishops accordingly are 'to cause these books to be delivered to every parson, vicar and curate within your diocese, with such diligence as they may have sufficient time well to instruct and advise themselves, for the distribution of the most Holy Communion, according to the order of this book, before this Easter time, and that they may by your good means, be well directed to use such good, gentle and charitable instruction of their simple and unlearned parishioners as may be all to their good satisfaction as much as may be, praying you to consider that this Order is set forth to the intent there should be in all parts of the Realm and among all men one uniform manner quietly used. The execution whereof like as it shall stand very much in the

diligence of you and others of your vocation; so do we eftsoons require you to have a diligent respect thereunto, as ye tender the King's Majesty's pleasure, and will answer to the contrary.

8463. Is there anything in that which claims the authority of Parliament for the service?—Certainly that is the contemporary opinion. Foxe says, 'By means as well of this letter and the godly order of the learned, as also of the statute and Act of Parliament before mentioned [1 Edward VI. c. i.] made for the establishing thereof'—that is the Order of Communion.

8464. He does not mean that; he means made for the establishing of the Communion in both kinds. Do you regard Foxe as a particularly accurate writer?—Not always.

8465. (*Rev. Dr. Gibson.*) Is not what you quote from Heylin, lower down on that same page, much more accurate: 'So far the Parliament enacted, in relation to the thing itself, as the subject matter, that the Communion should be delivered in both kinds to all the good people of the kingdoms. But for the form in which it was to be administered, that was left wholly to the King and by the King committed to the care of the bishops (of which more hereafter); the Parliament declaring only, "That a godly exhortation should be made by the ministers, therein expressing the great benefit and comfort promised to them which worthily receive the same, and the great danger threatened by God to all such persons as should unworthily receive it"?'¹—That is what I was referring to.

8466. That gives the distinction, it seems to me, as perfectly as it can possibly be given: That there is authority of Parliament for the Communion in both kinds, and the Order of Communion, the service, was left wholly to the King—that is to say, the Act of Parliament is silent about it?—But of course various facts must be taken into consideration in arguing this matter out. Sir Lewis Dibdin will admit that the Order of Communion, as well as the first Prayer Book, was drawn up by picked committees, and whatever these picked committees drew up on these questions of ceremonial had the force of an Act of Parliament.

8467. (*Sir Lewis Dibdin.*) I do not admit it at all.—That is my contention.

8468. (*Archbishop of Canterbury.*) On what do you rely for that?—I rely on an Act of Parliament of Henry VIII., which I quote at page 659.

8469. (*Chairman.*) What is the date of the Act?—The refer-

¹ But if Dr. Gibson had continued his quotation from Heylin, as given in my book (p. 656), he would have found that Heylin claims the authority of 'the King and the Act of Parliament' for the Order of the Communion.

ence is 32 Henry VIII., Chapter xxvi, 'Whereas the King's Majesty . . . hath appointed . . . the archbishop and sundry bishops of both provinces . . . and also a great number of the most learned, honestest and most virtuous sort of the Doctors of Divinity, men of discretion, judgment and good disposition of the realm, to the intent that . . . they should declare by writing and publish as well the principal articles and points of our faith and belief with the declaration true understanding and observation of all such other expedient points as by them, with his Grace's advice, counsel and consent, shall be thought needful and expedient, and also for the lawful rites, ceremonies and observations of God's service within his Grace's realm . . . Be it therefore enacted . . . that all and every determinations, declarations, decrees, definitions, resolutions, and ordinances, as, according to God's Word and Christ's Gospel, by his Majesty's advice and confirmation by his letters patent, shall at any time hereafter be made set forth declared defined resolved and ordained by the said archbishops, bishops, and doctors, now appointed, or by other persons hereafter to be appointed by his Majesty, or else by the whole clergy of England, in or upon the matter of Christ's religion and Christian faith and the lawful rites ceremonies and observations of the same, shall be in all and every point limitation and circumstance thereof, by all his Grace's subjects and other residents and inhabitants within the realm . . . fully believed, obeyed, observed, and performed . . . as if the said determinations declarations . . . had been by express words, terms and sentences plainly set out and contained in the present Act. Provided that nothing be done, ordained . . . by authority of this Act which shall be repugnant or contrariant to the laws and statutes of this realm.'

8470. (*Sir Lewis Dibdin.*) This is another point, is it not? This is not claiming the authority of the original statute 1 Edward VI., Chapter 1, for the Order of Communion, but saying that it was a legal Order under this Act of Henry VIII. which you have quoted?—Yes.

8471. If that were so, I suppose no Act of Uniformity would have been necessary at all, would it? They could have put out the Prayer Book under that Act, too?—I suppose they could, but then the Act enjoins no penalties for the transgressing of it.

8472. Yes it does, if you will forgive my saying so?—This Act that I have quoted?

8473. Yes.—I do not think so.

8474. You will find that it does, I think. But before we go into that, are you not aware that that Act was repealed by 1 Edward VI., Chapter 12, that is to say, that the same Royal Assent which gave assent to the Act for Communion in both kinds repealed that Act of Henry, so that nothing could have

been done under it?—I think the Act was repealed in the reign of Queen Victoria.

8475. I notice that you say that in your book, but I think you are in error?—I do not think so.

8476. Perhaps I am wrong, but if you look at the Statutes at Large you will see a statement of what this Act of Henry VIII. contained. It is 32 Henry VIII., Chapter 26, and at the end of it¹ are these words 'Repealed by the general words of Stat. I., Ed. 6., c. 12, Sec. 3.' Those general words seem, if I may say so, quite adequate for the purpose. 1 Edward VI., Chapter 12, was an Act dealing with penalties of various kinds, and at the end of the third section, which deals with certain specific Statutes and repeals them, it says: 'And all and every other Act or Acts of Parliament concerning doctrine or matters of religion, and all and every branch, article, sentence and matter, pains and forfeitures contained mentioned or in any wise declared in any of the same Acts of Parliament or Estatutes, shall from henceforth be repealed, and utterly void and of none effect.'² You observe the words in the Act of Parliament, 'Concerning doctrine or matters of religion?'—That was as regards penalties, was it not?

8477. No; it was the whole Act where there was a penalty?—But why then should it be necessary to repeal it in the reign of Queen Victoria?

8478. (*Sir Edward Clarke.*) Because we had a Statute Law Revision Committee then. Although the effect of repealing one Act might be to repeal or destroy it, where the Act was not repealed in terms, it remained upon the list of statutes, and our Statute Law Revision Committee cleared off a great deal of absolutely obsolete Acts, or Acts which were practically repealed by another statute; it was simply a clearing-off process.

8479. (*Sir Lewis Dibdin.*) And I may supplement what Sir Edward Clarke says by reading you the Act. The preamble of every Statute Law Revision Act, but of this one in particular in 1863, is 'It is expedient that certain enactments (mentioned in the Schedule to this Act) which have ceased to be in force otherwise than by express and specific repeal, or have, by lapse of time and change of circumstances,³ become unnecessary, should be expressly and specifically repealed.' You see there

¹ This is a slip on the part of Sir Lewis Dibdin. The Statutes at Large do not give 32 Hen. VIII. c. 26 at all. The editor merely refers to the Statute in five and a-half lines, and puts a marginal note of its alleged repeal by 1 Ed. VI. c. 12.

² This argument proves too much. If valid, it proves that all Acts of Parliament on the Statute Book dealing with doctrine or religion were repealed, including all the anti-Papal legislation of Henry VIII.

³ But there was no 'lapse of time and change of circumstances' in the beginning of 1547. See my answer to the whole of this argument, p. 144.

had been no express and specific repeal of that Act of Henry VIII. It had been repealed by general words in the Act of Edward, which I have read to you ; therefore it remained, as Sir Edward Clarke has told you, on the Statute Book, in a general kind of way repealed, but not specifically and specially repealed until, when the practice of clearing up the Statute Book and cutting out what was useless and gone, for different reasons, came in, then in one of the very earliest Statute Law Revision Acts, this Act was cut out, not because it was law till then, but because it had never been specifically repealed?—What is the effect in law of a Statute not specifically repealed?

8480. If it is repealed by general words it is repealed?—What Act do you say repealed it?

8481. The Act of 1 Edward VI., Chapter 12, Section 3—this very session that we are dealing with?—Does it mention this Act specifically?

8482. No ; that is just the point.

8483. (*Sir Edward Clarke.*) If it had mentioned that Act specifically, that Act would have disappeared by virtue of that Statute from the Statute Book, but it destroys the effect altogether of the Act without specifically repealing it.

8484. (*Sir Lewis Dibdin.*) If the Act, 1 Edward VI., Chapter 12, had mentioned that Act it would have specifically repealed it ; it is because it did not mention it but says that all Acts dealing with that subject matter are repealed, that it was only a general repeal—which was quite effective to repeal it, but still a general repeal—and therefore requiring this specific repeal in 1863. I point this out to you, if that Act had been on the Statute Book is it in the least likely that we should have had a series of Acts of Uniformity dealing with the Prayer Book when the whole thing could have been done under that Act of Henry VIII., by a sort of Order in Council? ¹—I have read the Act. I have not got it all in my memory now, but, as I remember, the Act does not prescribe penalties.

8485. (*Sir Edward Clarke.*) But that is not of much consequence. Disobedience would be a misdemeanour, whether there was any penalty specified or not?—But would it be a punishable offence?

8486. Yes, punishable as a misdemeanour.

8487. (*Sir Lewis Dibdin.*) But I must refer you to the Act. This Act, 32 Henry VIII., Chapter 26, did provide penalties. You have read the effective part of it, and when it gets to the end it says : ‘All and every determinations, declarations, decrees, definitions, resolutions, and ordinances’ are to be ‘fully believed, obeyed, observed, and performed . . . upon the

¹ See my answer to this argument, p. 153.

pains and penalties therein to be comprised' (so that it left it, you see, to the authority to state its own penalties in the Order and gave it Parliamentary sanction)¹ 'as if the same determinations, declarations, decrees, definitions, resolutions and ordinances and every one of them with the pains and penalties therein comprised had been, were, or should be by express words, terms and sentences plainly and fully made, set forth, declared, rehearsed and contained in this present Act.' So that it was an Act with penalties?—Yes. I am sorry to trouble you or to be tedious, but to get my own mind clear, what exactly does the Act, which you say repealed it, say?

8488. It was 'An Act for the repeal of certain Statutes concerning Treasons, Felonies, etc.' (This Act of Henry VIII. was an Act with penalties.) Then after a great many specific repeals, the third section says, 'and all and every other Act or Acts of Parliament concerning doctrine or matters of religion; and all and every branch, article, sentence and matter, pains and forfeitures contained, mentioned, or in any wise declared in any of the same Acts of Parliament or Estatutes, shall from henceforth be repealed and utterly void and of none effect.' Those are the words.—But what was the heading; does the heading show the meaning of it?

8489. 'An Act for the repeal of certain Statutes concerning Treasons, Felonies, etc.'—Treasons and felonies would not apply, but the 'etc.' might cover it.

8490. That, in my view, disposes of the Act of Henry VIII., and only that; it disposes of the sanction endeavoured to be given to the Order of Communion by describing it as an Order under 32 Henry VIII., Chapter 26. It does that and nothing else; it leaves whatever force any other Act has in relation to the Order of Communion where it was?—The Committees appointed in virtue of the Act 25 Henry VIII., Chapter 19, however, continued their work. They sat at Windsor, and they proposed the Order of Communion.

8491. How do you know they were appointed under that Act?—Practically the same men continued mostly.

8492. The same men as whom?—No, I beg your pardon, they were appointed by Edward VI.

8493. Without any reference to this Statute at all?—No; the Statute says 'or by other persons hereafter to be appointed by his Majesty, or else by the whole clergy of England.' Agreeably to this, Convocation appointed the Committee which compiled 'The Order of the Communion.'

¹ But it was just because this was found to be ineffectual that the Preamble of the first Act of Uniformity says that an Act of Uniformity with special machinery and penalties was necessary.

8494. You are not able to tell us that they were appointed with regard to it?—So I read it.

8494A. Then the first Act of Elizabeth revived the Act of Henry VIII. which sanctioned all these things, did it not?—The Act of 1 Elizabeth, Chapter 1, revived 25 Henry VIII., Chapter 19.

8495. (*Rev. Dr. Gibson.*) Then your only evidence for there being the authority of Parliament for the ritual before the first Prayer Book is contained in your assertion that the Order of Communion was published by the authority of Parliament; and, secondly, that this Act 32 Henry VIII., Chapter 26, gave the authority of Parliament to whatever was existing then?—No, I am going to refer to something else.

8496. Are you going to take another point for that?—Yes.

8497. May we understand what it is exactly?—I say that the Act 1 Elizabeth, Chapter 1, revived 25 Henry VIII., Chapter 19.

8498. But how can 1 Elizabeth, Chapter 1, in any way indicate the authority of Parliament as existing in the reign of Edward VI.?—No, I do not mean for the Order of Communion.

8499. No, not for the Order of Communion, but for the whole system which was before the First Prayer Book.

8500. (*Sir Lewis Dibdin.*) I think your point is that 25 Henry VIII., Chapter 19, was in force in Edward VI.'s reign?—Yes, repealed by Mary and revived by Elizabeth.

8501. Therefore, your point is that the ceremonial in the second year of Edward meant ceremonial which by virtue of 25 Henry VIII., Chapter 19, was rendered legal as laid down by the old Canons for all time?—Yes, that is while they lasted.

8502. That is your point?—Yes.

8503. (*Rev. Dr. Gibson.*) 1 Elizabeth, Chapter 1, revived 25 Henry VIII., Chapter 19?—Yes.

8504. Which was in force in Edward VI.'s reign till repealed by Mary; is that the argument?—Yes, repealed by Mary and revived by Elizabeth; and that Act says, 'Provided also such Canons, constitutions, ordinances, and synodals provincial being already made, which be not contrariant to the laws, statutes, and customs of this realm, nor to the damage and hurt of the King's Royal prerogative, shall now still be used and executed as they were afore the making of this Act, till such term as they be viewed, searched, or otherwise ordered and determined by the said two and thirty persons, or the more part of them, according to the tenour form and effect of this present Act.'

8505. (*Sir Lewis Dibdin.*) Could you tell me—had the Canons the force of an Act of Parliament prior to 25 Henry VIII., Chapter 19?—No, I cannot tell you.

8506. They had not, had they? I think you do know that

Canons had not the force of statute law before 25 Henry VIII. ? —But the Bishops had power to enforce them.

8507. Yes, but they had not the force of an Act of Parliament?—Had they not?

8508. Then what this Act of Henry does is, is it not, to give them exactly the same position that they had before the making of the Act? Therefore, if they had not the authority of Parliament before the Act they did not get it by this Act, did they? They are to be still used and executed as they were before the making of this Act?—Yes.

8509. It gives them no higher title—I mean than they had before the Act?—But the title that they had before the Act was recognised as a sufficient title.

8510. But it was not a statutory title, was it?—Perhaps not.

8511. Then, I cannot see how ceremonies according to these Canons could be said in 1 Elizabeth, Chapter 2, to have the authority of Parliament on account of their mention in 25 Henry VIII., Chapter 19; because when you look at the mention it is expressly limited to giving them the same position, and no more than the position that they had before that Act, which, as you have conceded, was not a statutory title? ¹—No, but I still must very respectfully go back to the proclamation issued by Edward VI., basing itself, as it does, upon the Act for the administration of Holy Communion in both kinds, and

¹ Surely the statutory recognition of them by 25 Hen. VIII. c. 19 gave them indirectly a parliamentary authority. But it is not necessary to rely on that argument, because a later Act, 35 Hen. VIII. c. 19, sec. 2, renewed the power given by 25 Hen. VIII. c. 19, by a direct enactment. The words are:

‘That till such time as the King’s Majesty and the said thirty-two persons have accomplished and executed the effects and contents afore rehearsed and mentioned, that such Canons, Constitutions, Ordinances Synodal or Provincial, or other ecclesiastical Laws or Jurisdiction spiritual as be yet accustomed and used here in the Church of England; which necessarily and conveniently are requisite to be put in use and execution for the time, not being repugnant, contrariant, or derogatory to the Laws or Statutes of the Realm, nor to the Prerogatives of the Regal Crown of the same, or any of them; shall be occupied, exercised, and put in use for the time within this or other the King’s Majesty’s Dominions, and that the Ministers and due executors of them shall not incur any damage or danger for the due exercising of the aforesaid laws, so that by no colour or pretence of them the Minister put in use anything prejudicial or in contrary of the regal power or laws of the Realm, anything whatsoever to the contrary of this present Act notwithstanding.’

This enactment not only confirms 25 Hen. VIII. c. 19: it also enlarges it, for it includes the ecclesiastical Common Law as well as the Canons Synodal and Provincial. It follows that 35 Hen. VIII. c. 19, sec. 2, alone gives the authority of Parliament to the ritual and ceremonial of Edward’s second year, including the Order of the Communion. But I have shown in the body of this work that it does not stand alone. Sir Lewis Dibdin’s argument on this point therefore, I respectfully submit, falls to the ground.

prescribing, as it does, part of the Order of Communion in so many words.

8512. That is going back on your first point?—Yes.

8513. (*Chairman.*) We really need not go back upon that?—I must venture respectfully to say that I think that gives the authority of Parliament to the Order of the Communion.

8514. (*Rev. Dr. Gibson.*) Then you rely on your first head, not on your second or third?—I rely on my first head all through. I quoted the others as auxiliary to it.

8515. (*Bishop of Oxford.*) Do you make any difference between the expression 'by authority of Parliament,' and the expression, 'in pursuance of an Act of Parliament'?—I should say that anything done in pursuance of an Act of Parliament by competent authorities would give the authority of Parliament to it.

8516. Why do you insert the words, 'by competent authorities'?—Because you must have competent authorities to enforce an Act of Parliament—magistrates, and so on. Every person cannot do it.

8517. Why do you say 'competent authorities'? If it is the authority of Parliament why is the other authority needed?—Well, of course, an Act of Parliament does not enforce itself; it must have ministers to enforce it. An Act of Parliament is dead until you have competent authorities to enforce it—magistrates, and bishops and the like.

8518. (*Chairman.*) Will you go on, please?—Then I contend that if 'by authority of Parliament' does not apply to the Order of Communion, it cannot possibly apply to the First Prayer Book, and, therefore, it must be discovered what it does apply to.

8519. (*Sir Lewis Dibdin.*) Why cannot it apply to the First Prayer Book?—Because the First Prayer Book had no authority of Parliament in the second year.

8520. (*Chairman.*) Then you have no interpretation to give of the words 'by authority of Parliament' unless your interpretation is accepted, which we have been arguing about lately?—No, I think there is nothing that can meet the phrase in my opinion.

8521. (*Bishop of Oxford.*) You do not then rely upon the belief that the words 'by authority of Parliament' refer to a general state of things and not to any particular service book?—No, I do not think they can refer to that.

8522. You stake your case on the words referring to the Order of Communion?—Yes, or nothing at all. I say that the words cannot apply to the First Prayer Book, and if the words do not apply to the 'Order of the Communion' they cannot apply at all; and the rubric of Elizabeth refers not merely

to any book that had authority of Parliament at that time, but it refers to the usage of the second year. Now, as a matter of fact, the First Prayer Book did not come into legal use until the lapse of some months of the third year, and therefore nothing that was prescribed by it could be described as the usage by authority of Parliament in the second year of King Edward.

8523. (*Mr. Prothero.*) You do not think that those words, 'by authority of Parliament in the second year,' could have been applied then to an Act that was passed by Parliament in the second year, although it did not receive the Royal sanction until the third year?—No, it could not have the authority of Parliament to entitle it to be carried into force until it received the Royal sanction.

8524. Then in that case how do you account for Acts of Parliament which are stated to have been made, say, in the second and third years of a certain reign? The Royal sanction must have been given on a specific date, on a certain day, and yet the Acts are described as Acts of, say, the second and third years of Philip and Mary?—Passed in the Session which began in the second year and ended in the third year.

8525. For instance, in the first section of the Act of Supremacy there are the words: 'That the said Act, made in the said first and second years of the reigns of the said King Philip and Queen Mary, be repealed.' That Act is referred to as an Act made in the first and second year of a certain reign?—Yes.

8526. The sanction for that Act must have been given in one year or the other; no doubt in the second year?—Yes.

8527. But the Act is described as made in the first and second years?—Yes, because Acts are made in Parliament. The King has no hand in making Acts of Parliament at all; it is his prerogative to accept or veto them, and until he has accepted them they have no legal force, as I understand it. The Acts are made by Parliament and that may extend over both years.

8528. (*Sir Lewis Dibdin.*) But the Act is not made by Parliament; it is a Bill until it has got the Royal Assent. It is an Act made by Parliament and the King?—Made in Parliament, sanctioned by the King.

8529. (*Mr. Prothero.*) Or rather the King is part of Parliament for that purpose?—No, certainly not.

8530. As defined by Sir Thomas Smith. My point is that the reference in the rubric need not imply that the Act in question was sanctioned by the King in the second year, but that they would have described an Act passed by the Houses of Lords and Commons in the second year and sanctioned in

the third year as an Act having the authority of Parliament in the second year?—I do not think so, because it had not the authority of Parliament surely until the King gave it his sanction. It had no authority at all until then. The King might veto it.

8531. (*Chairman.*) I do not think we need go on with that point. Will you proceed?—I think that is about all that I have to say about the second year, which was the point, I understand, on which the Commission wished to examine me.

8532. (*Sir Lewis Dibdin.*) I want to get quite clear what is your view as to the meaning of the Ornaments Rubric section, 1 Elizabeth, Chapter 2, Section 25, quite apart from what can be said about it. I gather that your view is that when the section says that the ornaments 'shall be retained and be in use as was in this Church of England by the authority of Parliament in the second year of the reign of King Edward VI.,' it means that the usage of Edward's second year is enjoined?—In Elizabeth's rubric, yes.

8533. But what the Statute and the rubric say is rather different, is it not? What they say is that the usage which had the authority of Parliament in the second year 'shall be retained and be in use'; in other words, the rubric puts the second year not on the usage at all, but on the Parliament. It is the usage, whatever it was, which had the authority of Parliament in the second year. Is not that the right way to read it?—I think not.

8534. The words of the rubric are these: 'And here is to be noted that the minister at the time of the Communion, and at all other times in his ministration, shall use such Ornaments in the church as were in use by authority of Parliament in the second year of the reign of King Edward the VIth, according to the Act of Parliament set in the beginning of this book.' What I suggest to you is that the meaning of those words as they are arranged is not that the use is to be that of the second year, but the use by authority of Parliament in the second year; in other words, that 'the second year' is to be related to Parliament and not to the use?—But there must have been a second year.

8535. Certainly there was a second year, and there was a Parliament in the second year?—Yes.

8536. And that Parliament may have given authority for the use?—In the second year.

8537. No, the use has nothing to do with the second year as I put it to you, but the use is by authority of Parliament in the second year?—That is to say, you restrict the second year to the authority of Parliament and not to the use?

8538. Yes; is not that what the language, at any rate *prima*

facie says; it is not 'in use in the second year by authority of Parliament,' but it is 'in use by authority of Parliament in the second year'?—From my point of view there is no distinction because they had no authority, by the first Act of Uniformity, which was not a legal instrument in the second year.

8539. We will consider that, but first of all we want to get the words. The point of view I am putting to you, which I do not altogether expect you to accept, but I want you to really understand my view, is that 'the second year' is not the use in the second year, but the use by authority of Parliament in the second year?—I see your point. I do not feel disposed to accept it.

8540. I am going to ask you a few questions with the object of trying to bring out the meaning of these words, 'by authority of Parliament in the second year.' First of all, the phrase 'by authority of Parliament' is an exceedingly common one in Acts of Parliament, you will agree with me?—Yes.

8541. It or the equivalent of it occurs in every Act of that period at any rate?—Yes.

8542. They are all either 'by authority of Parliament,' or 'by the authority aforesaid,' if the Parliament has been mentioned before?—Yes.

8543. And 'by authority of Parliament,' I suppose we shall agree, means by authority of an Act of Parliament?—Yes.

8544. Parliament cannot do anything except through an Act?—No.

8545. So that we have got to this: that 'by authority of Parliament' means 'by authority of an Act of Parliament'?—Yes.

8546. The first point I put to you, then, is that those words, 'by authority of Parliament in the second year,' are equivalent to 'by authority of Parliament holden in the second year'?¹—I see your point. I cannot accept it.

8547. I want to refer you to several Statutes—I am afraid it is very tedious, but I think it is necessary with a view of showing that that is the way in which the words are used. Now take this very Statute that we have to construe—the Elizabethan Act of Uniformity—1 Elizabeth, Chapter 2, Section 2. You will find there a reference that we all recognise is a reference to the second Act of Uniformity, that is, the Act of 5 and 6 Edward VI., Chapter 1. In the second section you will find these words. It refers to the Prayer Book and then it says, 'The book' (that is the second Prayer Book of Edward) 'so authorised by Parliament in the said fifth and sixth years

¹ If that were so the words would be 'by authority of Parliament holden in the second and third years.' That, or words equivalent, is the usual form.

of the reign of King Edward VI.' You observe that you have there words that are substantially the same as the words we have to construe—'so authorised by Parliament in the said fifth and sixth years of the reign of King Edward VI.'? ¹—No.

8548. That word 'so' refers you back to the Preamble, and the Preamble amplifies those words in this way: 'Authorised by Act of Parliament holden in the fifth and sixth years of our said late sovereign Lord King Edward VI.'?—Yes.

8549. So that there you have in this very Act of Parliament an expression which I think you will agree is substantially identical in form with 'by authority of Parliament in the second year,' and it is construed in the Act itself to mean 'authorised by Act of Parliament, holden in the fifth and sixth years'?—Yes, but you see that does say 'the fifth and sixth years.' It does not say 'the second and third years' [in the Ornaments Rubric].

8550. I will deal with that, but if you will allow me we will take one point at a time, and the point we are on now is whether 'by authority of Parliament in the second year' means 'by authority of Parliament holden in the second year.' Now I should like you to look at the Act, 7 Edward VI., Chapter 6, an Act about coinage. The first section mentions a statute of Edward IV., and it mentions it in this way 'which statute and ordinance before rehearsed by authority of Parliament holden ² in the fourth year of the late King of famous memory, King Henry VII., was affirmed and enacted to be good and effectual from the feast of the Purification of our Lady in the year 1489.' There you get the same form of words 'by authority of Parliament in the fourth year,' but it means 'by authority of Parliament holden in the fourth year'; you have the word 'holden' put in?—Yes.

8551. What I am suggesting to you is that the words in the Ornaments Rubric must be read consistently with other Acts of Parliament to mean 'by authority of Parliament holden in the second year,' and I am showing you instances at or about

¹ That names the *two* years, which makes all the difference. Besides, the Royal Assent was given in the sixth year. Therefore the second Prayer Book was 'authorised' in the sixth year. The fact supports my argument. But the Ornaments Rubric does not say 'authorised by Parliament in the second and third years of the reign of King Edward VI.'

² This Parliament began on January 13, 4 Hen. VII., 1488-9, and was on February 23 prorogued to October 14, 5 Hen. VII., 1489. 'Holden' makes all the difference. It means, and is often so expressed, 'begun to be holden.' But the Ornaments Rubric does not say 'by the authority of Parliament "holden," or "begun to be holden," in the second year,' &c. There is no analogy between the two cases. None of the instances adduced by Sir Lewis Dibdin use the same form of words as the Ornaments Rubric and the Elizabethan Act of Uniformity.

that time where other Acts of Parliament used the same form of words, clearly meaning the authority of Parliament holden in a particular year?—I am speaking from memory, but do they not all when they mean to cover both years mention both years, ‘holden in the second and third years’?

8552. If you will forgive me for saying so, for this point I do not think it has any bearing. The one point that we are now upon is whether the words ‘by authority of Parliament’ if you like ‘in the second and third years’ do not mean by ‘authority of Parliament holden in the second and third years’; that it is an elliptical expression and that ‘holden’ is what it meant. Now let me ask you to look at the next Act, 7 Edward VI., Chapter 2, Section 1, an Act about Augmentations—an Act I think with which you are familiar. You get in the preamble of that ‘Whereas in the 27th year of the late King of famous memory, King Henry VIII., father to the King’s majesty, that now is there was ordained, made, established, and enacted by the authority of Parliament.’¹ There you get the same thing only put the other way; you get the words ‘the authority of Parliament’ with reference to a particular year, but the meaning of the reference is the holding of a Parliament in that year?—Yes [*and the giving of the Royal Assent in that year*].

8553. Again there is a very important Act on this question, on another part of it, namely, 3 and 4 Edward VI. Chapter 14, Section 1, refers to the Attainder Act of Thomas Lord Seymour, of Sudeley, and the Preamble there is ‘Whereas the said Thomas Lord Seymour by authority of your Highness’s Court of Parliament holden at Westminster in the second year of your most noble reign’—that is this very year. There again you get the same form of expression ‘authority of Parliament in the second year,’ but it means authority of Parliament holden in the second year?²—It puts ‘holden’ in.

¹ This reference supports my view. For the Royal Assent was given in that year, and of course ‘authorised’ the Act. But the Royal Assent was not given to the first Act of Uniformity in Edward’s second year.

² The answer to this is twofold. (1) ‘By authority of . . . Parliament holden . . . in the second year’ means ‘by authority of Parliament which began to sit in the second year.’ But it had no ‘authority’ in the second year: that is my point. (2) The Bill of Attainder of Sir Thomas Seymour was read in the Lords the first time on February 25 of the third year, and was read a second and third time on the 26th and 27th. The Bill passed the Commons on March 5, and received the Royal Assent, with a batch of other Bills, including the Act of Uniformity, on March 14. The Act of Attainder therefore belongs altogether to the third year of Edward VI. It had no authority at all—for it did not begin to exist—in the second year. The true and legal account of the matter is that the Bill received authority by means of the Royal Assent on the last day of the Session of the Parliament which began in the second year of Edward and ended on March 14 of the third year. There is no analogy whatever between this and the Ornaments Rubric together with the Ornaments clause of Elizabeth’s Act of Uniformity.

8554. Yes, that is so. Now the next is an Act of 5 and 6 Edward VI., Chapter 11, which is an Act to do with the punishment of divers treasons; there you get that something was limited, it does not matter what, 'by authority of Parliament holden in the 35th year of Henry VIII.'¹—But I think the word 'holden' makes a great difference.

8555. What difference?—The difference being in my point of view that it refers there to the authority of Parliament which was holden in that year; but here it does not say 'which was holden in that year' but 'by authority of Parliament in the second year of King Edward VI.'

8556. And what I suggest to you is that it is impossible on any reasonable construction to give one meaning to the words 'by authority of Parliament in the second year' and to give another meaning to the words 'by the authority of Parliament holden in the second year'?—I do not know. I am not sure that I should be prepared to accept that.

8557. Is it your view that while the one means one thing the other means something else?—I think that 'holden' restricts the meaning.

8558. No doubt it makes it clearer, I quite agree with you; but do you really suggest that it means something else if 'holden' is not there?—*Primâ facie* I should say that it does.

8559. That it means something else?—That when 'holden' is not there it refers to the passing of the Act and not to the Parliament in which it was passed. It refers to the legality of the Act—to the passing.

8560. (*Sir Edward Clarke.*) You mean to the coming in force of the Act?—Yes, to the coming in force of the Act and not to the Parliament in which it took place.

8561. (*Sir Lewis Dibdin.*) But is there anything in the form of those words, I put it to you as a matter of reasonable probability, to suggest that 'in the second year'—taking what we have to construe 'by the authority of Parliament in the second year'—is something different from what you get in a long series of statutes of which I have quoted just a very few where you have exactly the same form of expression only with the word 'holden' put in?—Speaking from recollection when Parliament covered more than one year it is so stated in the

¹ The same answer applies to Sir Lewis Dibdin's next example. The Statutes of that year are entitled, in the Statutes of the Realm, 'Statutes made in the Session of Parliament holden by prorogation at Westminster on the fourteenth day of January in the thirty-fifth year of the reign of K. Henry VIII.' It follows, of course, that the Statute in question received the authority of Parliament in the year named because it was both 'made' and received the Royal Assent in that year.

Act 'by authority of Parliament holden in the second and third years' or 'in the third and fourth years.'

8562. I will deal with that. I want, if I may say so, to deal with one point at a time, and the point I am on now, which I rather hoped I should have had your assent to, was that 'by the authority of Parliament in the second year' must as a matter of reasonable construction mean the same as it means in all the other statutes in which you get either the same words¹ or the same words with 'holden.' That put in word, of course, makes it absolutely clear beyond dispute, but, when you do not have that word, is it not the reasonable construction to say that it means the same thing?—I am not quite prepared to assent to that. I think if it referred to an Act passed in a certain Parliament it would mention the period during which the Parliament sat if it referred to the particular Parliament and not to the specific Act.

8563. (*Mr. Talbot.*) May I try to clear it up? I thought I had grasped what your point was. Do you contend that 'by authority of Parliament' in a certain year means that the Act of Parliament came into force in that year?—Yes, I mean that it came into force.

8564. Supposing, for instance, that a law is passed in this year in which a provision is made that it shall come into force in a certain future year, then you think those words refer to that future year in which it shall come into force?—No, not necessarily. I mean that when you have an Act described as passed in a certain Parliament then, so far as my recollection goes, it refers to the period during which that Parliament existed—as, for instance, 'the second and third years.'

8565. But Parliament exists throughout the six or seven years of its life?—Yes, but I mean the period during which the Act was in process of passing—passed in the second year and third year. Now the Act of Uniformity as I contend covered the second and third years.

8566. (*Chairman.*) That is really another point?—Hardly. My contention is that 'the second year' cannot refer to an Act which did not become law till the third year.

8567. (*Sir Lewis Dibdin.*) I have taken you through a great number of Acts and I could take you through a much larger number where you get what I call the same expression with more or less variation, with the verb put in, and I suggest to you that whether the verb is put in or not the meaning must be the same. I have dealt with that and I shall not deal with it again. I go now to what is the point I think that is uppermost in your mind, namely, that assuming that 'by authority

¹ 'The same words' do not occur in any of Sir Lewis Dibdin's instances.

of Parliament in the second year' does mean the authority of an Act of Parliament holden in the second year?—I must reserve my point that I cannot accept that interpretation as at present advised.

8568. It is quite clear that you do not accept it, but I submit to you that I have given you so many illustrations of it that though you do not accept it, it is, I suggest, established that 'by authority of Parliament in the second year' means that the Parliament is in the second year, because that is the form of expression used in so many different Statutes?—But is it used when the session is in more than one year?

8569. You are on a different point. What I mean is, that whatever is the meaning of the second year, the second year is something or other that relates to the Parliament, and I suggest to you that that is clear from all the extracts I have given you that it relates to action taken by authority of Parliament?—No, I do not accept that.

8570. Then I must leave it. Now the next point that I am putting to you is that Acts when referred to in other Statutes are generally cited as belonging to the year in which the first day of the session occurred; by Acts, I mean, Acts of that period. Do you follow?—Yes, until 1792.

8571. They were generally cited as belonging to the year in which the first day of the session occurred?—Yes.

8572. There is no doubt about that, I think, is there?—No, there are exceptions of course. That refers to Acts for which no specific date is given for the commencement of them.

8573. No, it refers to all Acts. What you are speaking of is the reason for it, but the rule was the general rule, applicable to all Acts as I suggest to you. Let me give it you from Hardcastle, who is an authority on the interpretation of Statutes, at page 57: 'From the reign of Edward II. it has been usual to cite by reference to the regnal year in which the Session of Parliament began, it being the Common Law rule that an Act comes into force as of the first day of the Session in which it was passed.' That is the general rule?—Yes, the general rule.

8574. Now there are a great many illustrations of that. I really do not know whether it is necessary to take you through them. I should like to refer you to an Act of 1 Mary, the third Statute, chapter seven. It is about clothmaking, and you get in the preamble these words: 'Till now of late in the fifth year of the reign of our late Sovereign King Edward VI., that a Statute was made,' etc. A Statute made, you see, in the fifth year of our late Sovereign King Edward VI.?—Yes.

8575. That refers to an Act of the 5 and 6 Edward VI., chapter eight?—Yes.

8576. You see you have there just what you were asking

me for, what you were challenging just now; you have a reference to a Statute by the first of two years, although the reference is to an Act the title of which covers two years, the fifth and sixth?¹—Yes, it refers to that one.

8577. As made 'in the fifth year of our late Sovereign King Edward VI.'?—Yes.

8578. That Act I think you will probably agree could not have had the Royal Assent until the sixth year. Let me give you the dates. The session began on the 23rd January, according to some authorities on the 30th, but I take the 23rd as being the least favourable for the contention I am putting to you, the 23rd January, 1552, and Edward's fifth year ended on the 27th January, 1552. Now, I think, you will agree that it was so unlikely as to be practically impossible that in four days the Bill could have passed through both Houses of Parliament and had the Royal Assent?—Yes.

8579. Then it could not have had the Royal Assent before the sixth year?—No.

8580. Yet you see it is referred to in the Act of 1 Mary which I have quoted as an Act made in the fifth year?—Yes, but that is quite in agreement with my view.

8581. Oh, is it?—Yes. I hold that all Acts are made by Parliament, but do not become legal until they get the Royal sanction.

8582. You draw a distinction between made and passed; I think that is your point?—I find it in the Journals of the House of Lords.

8583. I should like to ask you a few questions about that later, but I do not think it arises upon this point. Your point is—I do not know whether we have made it quite clear between us—that when an Act is spoken of as having been made in the fifth year, it does not mean that it has become an Act although it calls it an Act, but that it was a Bill which had passed through the Houses of Parliament and had not yet got the Royal Assent?—Yes.

8584. Do you think even so that this Bill was likely to have passed through both Houses of Parliament and been read three times in each in the four days between the 23rd and 27th

¹ An examination of the Journals of Parliament shows that no reliance can be placed on this example. The Bill was introduced on January 25, and was then 'committed to Mr. Secretary Petre.' It was 'redelivered *primo* Feb. 1. Nova. For Clothiers to dwell in Towns after *Anno Domini* 1556.' Later we have: 'Feb. 20. Bill for Clothiers to dwell in Towns—Mr. S. Peter.' The record is so scanty and confused that no argument, as it seems to me, can be built upon it. The first Bill was withdrawn and a fresh Bill was brought in. It is impossible to trace the stages of it. It was 'made' and remade. I repudiate any inference drawn from the mere use of the word 'made.'

January?—No, but supposing it did not, how would that affect my argument?

8585. But if it had not passed the Houses of Parliament it certainly was not made, was it?—But I understand you to say that it was possible to pass the Houses of Parliament but not to receive the Royal Assent.

8586. I do not say that it was or was not, but I ask whether you suggest that in the four days between the 23rd and the 27th January this Bill passed through Parliament although it had not received the Royal Assent?—When was it introduced into Parliament?

8587. The session began on the 23rd so that it could not have been introduced prior to that?—And when did the session end?

8588. I do not know when the session ended, but the fifth year ended on the 27th January four days later?—Surely it might easily pass Parliament. You have several Bills passing Parliament in one day.

8589. It is not very common, is it?—No. The Pardons clause in the Act of Uniformity I think passed in one day.

8590. Would that be your explanation; that that Bill passed through Parliament during the four days between the 23rd and the 27th?—I do not commit myself to that. I think it might have done so. But my contention is that 'made' is so vague a term as to make it impossible to rely upon it in a legal sense; it is used very vaguely. I think it is applied generally to the work of Parliament before it has received the Royal Assent.

8591. Then why should it not mean that in the Ornaments Rubric? There is no word at all there. If you had the word 'made' then you would say it meant that. Is it not easier still to suppose that it means it without any word?—No, I say that you cannot rely upon the word 'made' alone, because it is Parliament I understand which makes the Acts. The King has no hand in making them. He rejects or accepts them.

8592. Then why should not the words in the Ornaments Rubric 'by authority of Parliament in the second year' mean the same thing as an Act made, whatever it may be? I am taking your view that it is something vague and does not mean necessarily a completed statute. Whatever it does mean, why should not 'the authority of Parliament in the second year' mean the same thing?—Because it could not have any sanction of Parliament until it got the Royal Assent. It could not have the authority of Parliament merely because it is made by Parliament until it has got the Royal Assent.

8593. (*Chairman.*) Is not this rather playing with words? Surely the Bill is made by Parliament, it never becomes an Act until it gets the Royal Assent. Therefore you cannot say that

Parliament makes the Act?—I understand ‘made’ in the sense of compiling, composing, or drawing up; and when the thing is done surely you can speak of the Act as having been made by Parliament.

8594. (*Sir Lewis Dibdin.*) I want to ask you about that. Can you give us any instances, even a few, where ‘made’ with reference to an Act of Parliament is used in the Statute Book in the sense you give to it? I do not mean controversial cases, but cases where it is clearly used not in the sense in which we have always understood it as an Act passed, but in some lesser sense?—Various persons have quoted, I think you yourself have quoted, the Diary of Edward VI., where ‘made’ is used in the sense for which I am contending.

8595. That is not an Act of Parliament?—No, but it has been quoted.

8596. I am asking you for instances where ‘made’ has the meaning which you allege it has, anywhere in the Statute Book?—I do not know that it would be very easy to find one more precisely.¹

8597. I do not think it would at all. I think it would be very difficult. Now let me point out to you on the other side that in this very session that we are dealing with, namely, in the year of the second Act of Uniformity, the 5th and 6th Edward VI., if you go through the Statutes passed in that year you will find ten in which other Statutes are referred to, and they are always referred to without any exception at all as ‘the Act made’ so and so?—Yes.

8598. You cannot surely suppose that those are all references to Bills in Parliament which had not really become Acts, and were in some inchoate shape?—But my contention is that ‘made’ always applied to the action of Parliament.

8599. I know, but not necessarily an Act completed, as I understand?—Yes.

8600. But I point out to you that the invariable way of

¹ Sir L. Dibdin’s question ignores my point. I contend that ‘made’ with reference to an Act of Parliament is used in the Statute Book *always* in the sense I give to it. The crucial words are ‘by authority,’ and none of the instances appealed to by my cross-examiners is identical with the Ornaments Rubric and parallel phrase in the Elizabethan Act of Uniformity, where the word ‘made’ is not used at all. The whole stress is on ‘the authority of Parliament,’ which did not exist for the first Act of Uniformity till the third year. Every Act has been ‘made’ in Parliament, and when the process of making extends over one year it is said to be of *both* years, as the first Act of Uniformity, which is always entitled ‘2 and 3 Edward VI.’ If Sir Lewis Dibdin’s contention were tenable the Rubric would have said ‘by authority of Parliament in the second and third years of Edward VI.’ The Parliament in question could give no authority at all in the second year to Bills which did not receive the Royal assent—*i.e.* did not become Acts—till the third year.

referring to an Act of Parliament in another statute is by saying 'An Act made' so and so. I should have thought there could have been no doubt about it?—But are you not passing over the point, when you contend that Acts, as a general rule, take their date from the first day of the session of the Parliament that passed them—but there were exceptions, namely, in the case of Acts for the commencement of which a specific date was assigned?

8601. I do not think so. I want to ask you about that. Are we not confusing two things that differ? The Act comes into operation from the first day of the session unless a specific date was mentioned in the Act, and I am aware that you say that there was an express date in the Act of Uniformity, and I will deal with that. But this is a different point; this is whether the mode of citation of an Act was not governed by the first day of the session whenever it came into operation. You see that is a different thing. Let me illustrate it by any modern Statute. The Real Property Limitation Act, for example, which, I daresay, you know very well, was passed in the year 1874, and it did not come into operation until the year 1879?—Yes.

8602. But that Act is not cited as being of the year 1879, but as being of the year 1874?—Yes, in which it was passed.

8603. But do you not see that, on the view which I think you are putting, you would say that the fact that the Act did not come into operation until 1879 makes it inaccurate to speak about it as an Act of 1874?—No, not necessarily.

8604. But is not that the argument? 'By authority of Parliament in the second year' I suggest means 'by authority of an Act of Parliament belonging to the second year' in the sense that the first day of the session was in the second year. You say no, because that Act did not come into operation until the third year, and therefore it ought to be called an Act of the third year.¹ I want to refer you to another Act, the 35 Elizabeth, chapter 1, about Sectaries, where you get these words in the eighth section, 'in such manner and form as is limited and appointed in the Statute made in the twenty-eighth year of Her Majesty's reign touching recusants.' You get there, you see, a Statute made in the twenty-eighth year?—Yes.

8605. That refers to 29 Elizabeth, chapter 6. Although it is spoken of as in the twenty-eighth year, it is 29 Elizabeth, chapter 6. Now the session began early in the year; it began in the twenty-eighth year, but it did not meet for legislative

¹ That is not my point at all. It does not matter to my argument when the Act 'came into operation.' The question is when it became law—*i.e.* received the Royal assent. I found it extremely hard to keep my examiners strictly to my point: perhaps through my own fault.

purposes until the 15th February, 1587, which is in the twenty-ninth year?—Yes.

8606. So that the whole of the carriage of the Bill—the Royal Assent and the whole carriage of that Bill through Parliament—took place in the twenty-ninth year?—Yes.

8607. And yet that is referred to as a Statute made in the twenty-eighth year, because the first day of the session was in the twenty-eighth year? Yes, quite so.¹

8608. That you would admit to be quite right?—Yes.

8609. And you would say that the reason why that did not apply to the Act of Uniformity was because there is a special day mentioned for the Act to begin?—Yes.

8610. So that you put it really upon that point?—Yes, I do.

8611. Apart from that, you agree that the Act of Uniformity is properly referred to as belonging to the second year?—Yes, as 'made' in the second year.

8612. Now I want to refer you on that to an Act of 7 Edward VI., chapter 7. I ought to preface this by saying that it is a very curious Act, because it is a very unusual thing to get an Act of Parliament which quite reproduces the state of things in the Act of Uniformity, where you have an Act which is to come into operation, at any rate, the effective part of which is to come into operation at a subsequent date, and yet is referred to in another Act of Parliament. You have two things to find in the illustration. First, an Act referred to in another Act of Parliament, and then that Act so referred to as passed being an Act that had to come into operation at some subsequent date. I do not know whether your attention has been directed to it, but this is what we find. This Act, 7 Edward VI., chapter 7, had to do with the Assise of Fuel and it says this: 'Whereas the assise of fuel appointed and assised by an Act of Parliament made at Westminster the xxij. day of January in the xxxiv. year of the reign of our late Sovereign Lord King Henry the Eighth' so and so. You see the reference is 'An Act of Parliament made at Westminster the xxij. day of January in the xxxiv. year'?—Yes.

8613. That refers to an Act of 34 and 35 Henry VIII., chapter 3, and you will see from the first section of that Act that it did not come into operation until 'the Feast of the Purification of our Blessed Lady that shall be in the year of our Lord 1543.'² That would be the 2nd February, 1543, in

¹ And the reason is that no specific date is fixed for the coming of that Act into operation, which is not the case, as I contend, with the first Act of Uniformity.

² This again is totally irrelevant to my argument, which has nothing to do with the date on which the Act came into operation. The first Act of Uniformity did not come into operation on March 14 of the third year, but

their way of looking at things, which would be according to our computation the 2nd February, 1544—it would be in the year 1543-44?—Yes.

8614. So that it came into operation on the 2nd day of February, 1544, in the 35th year?—Yes.

8615. But it is referred to as an Act of the 34th year; therefore it seems to me that that is an exact illustration of your view of the Act of Uniformity, which I will deal with directly: that assuming that the Act of Uniformity did not come into operation until June of the third year, it would nevertheless be right to refer to the Act of Uniformity as an Act of the second year, because the first day of the session in which the Act of Uniformity was passed was in the second year? Do you follow me?—Yes.

8616. Have you anything to say to that illustration?—Well, I must repeat that I cannot really lay much stress upon the word 'made' at all, because all Acts are 'made in Parliament.'

8617. That is all you have to say upon it?—Yes.

8618. Now I want to draw your attention to four Acts of Parliament, all of which refer to Acts of the Session 2 and 3 Edward VI., chapter 18, as having been made in the second year. The first is the 3rd and 4th Edward VI., chapter 14; that is one I have already drawn your attention to, which refers to the Act of Attainder of Thomas Lord Seymour of Sudeley; then, secondly, the Act of 5th and 6th Edward VI., that is the Act of Uniformity. That, I think you will agree, is of very great importance, because it seems to me absolutely decisive, if I may say so. In the fourth section of that Act 5 and 6 Edward VI., chapter 1, it says: 'As by the Act of Parliament made in the second year of the King's Majesty's reign was ordained, limited,' and so on, referring to the first Act of Uniformity. There you have the actual authority of Parliament itself for the reading of the Ornaments Rubric which I am suggesting to you—that the first Act of Uniformity was an Act made in the second year, have you not?—But I do not dispute that.

8619. Well, you dispute it, do you not, subject to the word 'made'?—I admit that it was made in the second year, because it passed through Parliament in the second year, but it had no legal force till it received the Royal Assent on the 14th March of the third year.

8620. But then I do not understand why, if that is your view, the words 'authority of Parliament in the second year' should not mean what you say the words I have quoted from the second Act of Uniformity mean?—I hold that an Act is

it became law, it received 'the authority of Parliament' on March 14. That is the point.

made by Parliament, and that it does not have any legal existence until it receives the Royal Assent.

8621. (*Sir F. H. Jeune.*) Oh no.

8622. (*Sir Lewis Dibdin.*) Subject to that point, do you agree with me that this reference to the first Act of Uniformity in the second Act of Uniformity is conclusive, because it says, 'as by the Act of Parliament made in the second year of the King's Majesty's reign was ordained, limited,' and so on. Put 'made' out of it. Assuming for a moment that you are wrong about that, would not that show that the expression 'by authority of Parliament in the second year' properly referred to the first Act of Uniformity?—But then that is assuming everything.

8623. That is an answer and a very fair answer; you put it on that. Now there are two other statutes (1 Mary, stat. 3, ch. 10; 1 Eliz., ch. 9), both of which refer to statutes of the second year as having been made in the second year.¹ The third one is the Onger and Greenstead statute of 1 Mary, Statute 3, chapter 10, which refers really identically in the same form as the Ornaments Rubric. It says 'an Act was made and ordained by authority of Parliament in the same second year.' That refers to an Act of Parliament which was read a third time in the third year, so that it was not even a complete Bill in the second year. It was read a third time and received the Royal assent in the third year. I point to that as really a precedent for the Ornaments Rubric form. I have read your book and I gather that you do not take that view?—No, I still rely upon the word 'made.' I say that Acts of Parliament are made by Parliament, but do not become operative until they receive the Royal assent.

8624. (*Mr. Prothero.*) Where does the word 'made' occur? It does not occur in the rubric?—No, it does not.

8625. (*Sir Lewis Dibdin.*) You have not got the words before you. The words are 'An Act was made and ordained by authority of Parliament in the same second year,' and as I have told you that Bill passed the third time in the third year?—Yes, it passed the first day in the third year.

8626. Still the third reading was in the third year?—Yes.

8627. I gather from your book that you do not think much of that as a precedent. I think that is the Act which you suggest was drawn by the village schoolmaster?—No, pardon me, the suggestion is that the Act is based upon a petition from the parishioners, and Parliament quotes the petition as the reason for the Act.

8628. But what do you mean by that; the Act was in petition form, was it not? Why do you say that they quote

¹ See pp. 113–8.

the petition?—The parishioners of the two parishes make a complaint that the previous Act was passed to their prejudice, iniquitously they say, and put them to great inconvenience; and they beg Parliament and beg the Queen to dissolve the union of the two parishes, and the Act quotes the petition of the parishioners and enacts accordingly.

8629. But you are aware, are you not, that the whole of that Act, and a great many other Acts in the Statute Book, is in the form of a petition?—No.

8630. Not only what you say is quoted, but the whole thing?—The whole Act is not in the form of a petition.

8631. Yes, it is.—It enacts.

8632. You are aware, are you not, that until a comparatively late period, all Acts of Parliament, and at the time we are speaking of a great many Acts of Parliament, were made in the form of a petition and the only evidence of the Royal Assent was the *La Reine le veult*, or the form of assent written at the end, and they appear in the Statute Books still in petition form?—Yes.

8633. And that is one of them, is it not?—Yes, undoubtedly, but I think if you read the first part of the Act, the preamble, really it is the wording of the petitioners. The Act in the ordinary form of a Statute would not make the very grave and serious accusations against the Member of Parliament who 'inordinately' got the parishes united.

8634. Surely the whole Act, preamble and everything else, is the petition of the people. You suggest—it does not sound to me a very likely suggestion—that it was drawn by the village schoolmaster?—Not the Act, but the petition.

8635. I put it to you that the whole Act is the petition?—I think not. It says 'Be it enacted.'

8636. Let us look at it, because this is really in identical form with the Ornaments Rubric. It is 1 Mary, Statute 3, chapter 10. It begins 'Lamentably complaining, shewen unto your Highness your obedient and faithful subjects,' quite a familiar beginning?—Yes.

8637. Then follow the words I have quoted which I am relying upon. Then the operative part of the Statute is still the petition. 'It may, therefore, please your most excellent Highness. That it may be enacted by the same your Highness with the assent of the Lords spiritual and temporal and the Commons in this present Parliament assembled and by authority of the same, that'—Then the next sentence is 'And that'—still the petition, and so on right through the Act. From beginning to end it is a petition in absolutely familiar form, of course?—But do you suppose that Parliament would say 'That where by the sinister Labour and Procurement of one . . . inordinately

seeking his private lucre and profit?' Surely that is the petition of the parishioners.

8638. Yes, it is a part of the petition. The whole thing is the petition?—Surely not.

8639. I think I can make this clearer if I read again from Hardecastle who is the text writer on this subject. He says at page 46: 'Evidence of the Royal Assent other than the words of enactment was never required as to the earlier Statutes, public or private, and from 3 Edward I. to Henry VI. there is no mention of the Royal Assent on public or private Acts other than the words of enactment. The importance of this question with reference to old Acts lay in the fact that as the Act was in the form of a petition unless it was endorsed *Le Roi le veult* or *Soit fait comme il est desire*, the sole evidence of Royal Assent was the appearance of the Bill on record.' And we know (Sir Francis Jeune will bear me out) that there are hundreds of Acts on the Statute Book, of which the first Act of Uniformity itself is one, which so far as anything appears on the Statute Book are mere petitions?—Yes.

8640. I will not ask you any more questions about it because we are not quite agreed amongst ourselves on the Commission what the form of it is. But now the next point I want to ask you about is with regard to the special date. I quite understand your point of view, which I think is that in the first Act of Uniformity a special date was named for the coming into operation of the Act, and you say that because a special date was settled for the commencement of the use of the Prayer Book?—Yes.

8641. Now I point out to you that that is quite a different thing from the commencement of the Act. It is quite a different thing to say that the Act is to come into operation on a particular day and to say, in the course of the Act, that on a particular day the Prayer Book which is authorised by the Act is to be then first used. The two things are not the same. You will agree with me there?—I should demur to that.

8642. Then let me test it in this way. The Act contained other things besides the fact that the Prayer Book was to be used on a particular day, did it not?—Yes.

8643. In the 8th section of the Act of Uniformity it required the churchwardens to get the Prayer Book against Whitsunday, was it not?—Yes.

8644. Under what authority did the churchwardens buy the book; was it not under the authority of this Act of Parliament?—Yes.

8645. Then it must have come into operation for some purpose, for that purpose, before Whitsunday; otherwise the churchwardens could not have acted upon it?—But I under-

stand by the Act coming into operation the date upon which the transgression or neglect of the Act would be penal.

8646. Oh, no, this is not a matter, I think, that we need differ about. The date when an Act of Parliament comes into operation is the date when somebody is bound to obey it?—Yes.

8647. We are agreed, are we not, that the churchwardens were bound under the Act to get these Prayer Books ready by Whitsunday?—Yes.

8648. Then it is impossible to say that it first came into operation on Whitsunday because they had to act under its provisions before Whitsunday?—The object of the Act was to sanction the legal use of the new Prayer Book from a certain date.

8649. (*Sir F. H. Jeune.*) Do you mean the legal use or the compulsory use? You know there is a distinction. It would be legal before it was compulsory. All that the Act says is that it should be compulsory at Whitsunday, it was legal before that?—Yes.

8650. It does not say that it shall not be legal before Whitsunday?—It does say that if copies are procured before they may be used.

8651. (*Sir Lewis Dibdin.*) And not only that they may, but that they are to be used?—Yes.

8652. That if the Prayer Book was got beforehand within three weeks of the time of being obtained it was to be used?—Yes.

8653. Then the Act came into operation as to any parishes of that sort prior to the Whitsunday, did it not?—The rule that I am referring to is the rule which says that every Act of Parliament in which the commencement thereof is not directed to be from a specific time shall come under the ordinary rule that it dates from the first day of the session. But the commencement of this Act is directed to be from a specific time.

8654. That is just what I am putting to you; it was with regard to one of its purposes, but it evidently was not with regard to another purpose that I have just indicated, namely, procuring the Prayer Book?—But with all respect I should be disposed to contend that the commencement thereof is directed from a specific time, namely, Whitsunday.

8655. But that is only repeating the same thing again. You have not yet dealt with the difficulty that I put to you, that although the use of the Prayer Book was primarily for Whitsunday there were, at any rate, two purposes for which the Act would come into operation sooner; first of all the churchwardens had to get the Prayer Book under the provisions of the Act before Whitsunday, and secondly, if they did so get it in time the book was to be used and come into operation before Whitsunday?—Yes.

8656. Then how can you say that there was this date Whitsunday fixed for the Act (not the Prayer Book) coming into operation?—All the authorities, Heylin and the rest, say that the Act came into operation on that date.

8657. I do not think they do. In the popular sense, of course, it came into operation on that date because that was the day when the Prayer Book generally came into operation, but I do not think you will find any accurate description of the Act as being one of those Acts which is not to be referred to the first day of the session but is to be referred to some special date?—I should think the fixed date might cover the whole time. Heylin says, for example: 'At Easter some began to officiate by it, followed by others as soon as books could be provided. But on Whitsunday, being the day appointed by Act of Parliament, it was solemnly executed in the Cathedral Church of St. Paul.'

8658. Yes, it was the day appointed by Act of Parliament to use the Prayer Book, but Heylin does not say it was the appointed day for the Act of Uniformity to come into operation. There is another point on that. There were some people pardoned by that Act, were there not, persons who had transgressed by having unauthorised services without proper authority, and the Act by its first section pardons them, does it not?—No.

8659. Do you say that that pardon was put off till Whitsunday?—No; not till Whitsunday; it came into operation undoubtedly when the Act was passed, when it received the Royal Assent.

8660. Then there at any rate is a purpose answered by the Act of Uniformity for which purpose it certainly did not come into operation until Whitsunday?—But that is extraneous matter altogether.

8661. I have read your book and I see what you suggest is that the pardon is only in the preamble of the Act of Uniformity and that it was not carried out by the Act of Uniformity, but carried out by the General Pardon Act at the end of the session. That, I think, correctly represents your view at page 604?—Yes.

8662. I point out to you in the first place that I think you are not quite accurate as to what the Act did. It is not the fact that the pardon is only in the preamble; it is quite true that it is mentioned in the preamble, but if you look at the operative part it is in the very first section. Let me read it (this Act again is in the petition form): 'That it may be ordained and enacted by His Majesty with the assent of the Lords and Commons in this present Parliament assembled, and by the authority of the same, that all and singular Person and Persons that have offended concerning the Premisses other than such

Person and Persons as now be and remain in Ward in the Tower of London or in the Fleet may be pardoned thereof.' That is an enactment? ¹—Is it?

8663. That is not preamble?—Is that not part of the petition to the King?

8664. The whole Act is petition but it is not preamble; it is the operative part of the Act; it is actually the first thing in the Act, in the first section?—But how then do you account for the fact that an Act had to be passed carrying out that enactment, as you call it?

8665. No; the General Pardon Act did not refer, did it, to these particular persons who had committed these offences? ² It was a general pardon for all offences under different heads in which, speaking from my own study of it, you will not find this particular offence?—Yes, it was a general pardon and some people were excepted from it in the Act of Uniformity, namely, the persons confined at the time.

8666. I quite agree with you that the General Pardon Act would have covered those persons if they had not been already pardoned by this Act; but I put it to you that it is inaccurate to say that the Act of Uniformity did not pardon them, that it was only the preamble. It was the very first thing done by the operative part of the Act?—That is, of course, a matter of legal construction. What puzzles me in that case is why should it be necessary to hurry. The Act of Pardon was passed in one day, and my view is that it was found that the provisions of the Act of Uniformity did not cover the case, and therefore this Act for general pardon was passed just in time to receive the Royal Assent.

8667. But why do you assume that the General Pardon Act had anything to do with these particular offences? It covered probably hundreds of people in different parts of the country guilty of different offences. There is nothing to point to the Act of Uniformity; it is not recited in the preamble of the Pardon Act. There is nothing said to the effect that the people to be pardoned under the Act of Uniformity were intended to be pardoned under this General Pardon Act. The two things are separate. It so happened that they were both passed in the same session but that is all.—May I ask for an explanation?

¹ It does not follow. The petition might surely be granted in the General Pardon Act in the same Parliament. Moreover the title of the Act, which makes no reference to prisoners, seems to exclude Sir Lewis Dibdin's view.

² Yes, it did, as I have shown elsewhere. See p. 124. The exceptions in both Acts are the same. Is it likely that two Acts of Parliament would have been passed in the same Session and received the Royal assent the same day, when one of them would have released all the prisoners described in the other? It is incredible.

The general pardon prayed for in the Act of Uniformity was to cover all persons except prisoners in the Tower and in the Fleet.

8668. No, excuse me, the pardon in the Act of Uniformity was not a general pardon; it was a pardon in respect of particular offences?—Where does it say that?

8669. If you look at the preamble you will see that ‘And as the doers and executors of the said rites and ceremonies in other form than of late years they have been used were pleased therewith: So other not using the same rites and ceremonies were thereby greatly offended: And albeit the King’s Majesty, with the advice of his most entirely beloved Uncle the Lord Protector and other of His Highness’s Council, hath heretofore divers times assayed to stay Innovations or new Rites concerning the Premises; yet the same hath not had such good success as His Highness required in that behalf; whereupon His Highness by the most prudent advice aforesaid, being pleased to bear with the frailty and weakness of his subjects in that behalf, of his great clemency hath not been only content to abstain from punishment of those that have offended in that behalf, for that His Highness taketh that they did it of a good zeal; but also to the intent a uniform quiet and godly Order should be had’; he allowed the Prayer Book. That is the preamble?—Yes.

8670. Then the first section is ‘That all and singular Person and Persons that have offended concerning the Premises’ other than the people in the Tower ‘may be pardoned thereof.’ Then the whole Bill being in petition form¹ the Royal Assent is put at the end, and there is the Act of Parliament. May I put it to you that at any rate, assuming that you were wrong about the general pardon, it is quite clear that the pardons in the Act of Uniformity would have come into operation when the Royal Assent was given, assuming for the moment that they were not comprised in the General Pardon Act?—Yes.

8671. Then if that were so, that is another matter in this Act of Parliament which certainly did not come into operation on the Whitsunday?—True, but then the general pardons that you refer to there were extraneous to the Act enforcing uniformity.

8672. Why were they extraneous? It is part of the Act. You have four definite purposes in the Act. Summarising them, you have the pardon, the Prayer Book to come into operation, the churchwardens to buy it, and the earlier use of the Prayer Book under certain circumstances. Three out of those four things do not come into operation on the day which you say was

¹ It is not, nor the half of it.

the day appointed?—But then my contention is that the Act in so far as it dealt with ceremonial and so forth is directed to come into operation at a certain fixed date.

8673. For one purpose it is, and for the other purposes it is not?—Because there are so many Acts of Parliament which deal with a whole series of matters having no connection with each other.

8674. Then I have pointed out to you another illustration, an Act of Parliament in Henry VIII.'s reign, where exactly the same thing occurred, that is to say where the Act was to come into operation at some subsequent date, subsequent I mean to the Act passing, and yet it is referred to according to the ordinary rule by the first day of the session?—Yes.

8675. You have no explanation of that. I do not think I need ask you any questions about the Order of Communion; I think we quite understand your points of view about that, and I think I have answered them. But I want to ask you, and this is the last point of my examination, what do you refer to when you say, as you do in your memorandum, and also in your book, that Queen Elizabeth on her accession showed a determination to restore the earlier ceremonial prior to the First Prayer Book of Edward? I want to make my question quite clear. I quite understand that you might say, as many authorities have said, that Queen Elizabeth desired to restore the First Prayer Book rather than the Second Prayer Book. But that of course would not help you, that is not your point. Your point is that Queen Elizabeth wanted to go back behind the First Prayer Book to the ceremonial as it existed at the end of her father's reign, I think you say, at any rate prior to the First Prayer Book. On what is that founded? The passage in your book to which I refer is at pages 577 to 579?—It is partly founded on what I have quoted from the Simancas documents: that she expressed to the Spanish agent or ambassador her intention to restore religion as it had been at the death of her father, as it had been left by her father.

8676. Let me deal with that. You have seen that it is a mistake to put that down to De la Cuadra; it was really De Feria who made that statement?—Yes.¹

8677. Do you attach any particular weight to De Feria's representations of Queen Elizabeth's views; do not you think she was rather, to put it in a colloquial way, making a fool of him? Can you take what she said to him as being what you call in your book making a clean breast of it and expressing her real views? Do you think that is really a possible

¹ But he sent it to Philip by the hand of De la Cuadra. So that they both shared the responsibility for the despatch, and perhaps composed it together.

explanation?—I think so. I think it is admitted that her own proclivities were in that direction.

8678. If you mean in the direction of going behind the First Prayer Book to the ceremonial before it, that is not admitted so far as I am aware.¹ But do you attach weight to De Feria as a witness?—I do not attach weight to him as a witness, except where the probabilities of the case seem to me to bear him out.

8679. But do you attach weight to his representation of Queen Elizabeth's views? otherwise, I do not see why you should quote him as your authority. You thought it was De la Cuadra, but now that you know it is De Feria, I do not understand you to withdraw the quotation as making his statement any the less important, that she wanted to restore the ritual of her father?—I certainly attach weight to that paragraph, because I hold that the Queen's own inclinations were in that direction.

8680. Now, I should like to draw your attention to what De Feria said in another despatch; it is at page 16 of the same volume of Spanish State Papers. This is in a despatch from Count de Feria to the King on the 29th December, only a few weeks before this, in which he is describing an interview with the Queen, and what he says is this: 'I answered civilly, although I am displeased to see the great care they take to hide from me everything they do, both great and small, which they carry to an extent that your Majesty cannot imagine or believe; and indeed, I am afraid that one fine day we shall find this woman married, and I shall be the last man in the place to know anything about it.' That does not look as if De Feria was a man very much in the confidence of the Queen, does it?—Very likely not in her confidence, but that is no reason why she should conceal her views from him on that particular subject.

8681. You think she truly stated her views on this subject, at any rate?—Yes, I think so.

8682. May I draw your attention to another despatch from Count de Feria to the King, just a few days after the one that you rely upon, when he had an interview with her and discussed her views. It is at page 61 of the same volume: 'She answered amiably that she thanked your Majesty for your message. Subsequently in conversation with me she said three or four very bad things. One was that she wished the Augustinian Confession to be maintained in her realm, whereat I was much surprised and found fault with it all I could, adducing the arguments I thought might dissuade her from it. She then told me it would not be the Augustinian Confession, but something

¹ Yes, it is—*e.g.* by Froude, Macaulay, and Hallam, as I have shown in the body of this volume.

else like it, and that she differed very little from us as she believed that God was in the Sacrament of the Eucharist, and only dissented from three or four things in the Mass.' The Augustinian Confession I think you will agree is the Augsburg Confession?—Yes, I suppose it is.

8683. It is so stated by the Editor of these papers, 'Otherwise the Confession of Augsburg'¹; is it not common knowledge that it was the Confession of Augsburg over which Henry VIII. quarrelled with the foreign Protestants; he would not accept the Confession of Augsburg but put out the Ten Articles instead, and that was the point of divergence (I think about 1535) between Henry VIII. and the foreign Protestants; is not that so?—Yes.

8684. Then it does not look as if Queen Elizabeth was altogether consistent or frank in her expression of views to De Feria?—I do not understand that passage: 'She then told me it would not be the Augustinian Confession, but something else like it, and that she differed very little from us as she believed that God was in the Sacrament of the Eucharist.' I suppose she refers there to the Lutheran doctrine of the Eucharist, which was quite as emphatic as Transubstantiation and with as strong a sense of the Real Presence.

8685. I will not attempt to follow you there, but what I do notice is that within a week or two of her apparently telling him that she would like to restore the state of things as in her father's time, she says that for herself she accepts the Confession of Augsburg, which was the very point on which her father split with the foreign Protestants?—No, she said, 'The state of things when her father died.'

8686. But, I think, Henry had not adopted the Confession of Augsburg when he died?—It had not come out then, I think.

8687. The Confession of Augsburg came out in 1535, did it not?—Did it?

8688. I thought so. I may be wrong, you are a much greater authority than I am. I have a book here, 'Green on the Thirty-Nine Articles,' which says this at page 5: 'Negotiations had been going on in 1535, between England and the Germans who had accepted the Augsburg Confession'?—Then I am wrong.

8689. Now I want to draw your attention to a contemporary despatch in the Venetian State Papers. It is of the same date. In the calendar of State Papers of Venice (1558–1580), you will find, at page 81, that the Venetian Ambassador with King Philip writes this to the Doge and Senate on 4th May 1559: 'The Queen would still wish to some extent to feign to profess the Catholic religion, but she can conceal herself no longer. On

¹ But see p. 6.

St. George's Day (23rd April), the Patron Saint of the Knights of the Garter, she attended the ceremony then performed, never having appeared at any other,' and so on. So that it would appear that other ambassadors at the same period did not regard Queen Elizabeth's efforts to persuade them of what is here called her 'feigning to profess the Catholic religion' as being any expression of her real views?—But at her coronation she attended the old service and ceremonial, and objected to nothing but the Elevation.

8690. That may or may not be the fact, but I do not think it goes to the point whether you can rely upon sentences in the Foreign Ambassador's despatches as being really deliberate statements of Queen Elizabeth's views on matters of religion?—Well, it appears to me she told the truth as to her intention.

8691. On the subject of Queen Elizabeth's views and her intentions, there is a passage to which I want to draw your attention on page 379 of your book.¹ It is this: 'Both the Prayer Books of Edward were abolished by Mary's legislation, and when Elizabeth came to the throne she was most anxious to restore the First Prayer Book of Edward and retain the ancient ceremonial. Failing to carry her point so far, she appointed a small company of divines to revise Edward's second book under the presidency of Parker, who, however, was absent most of the time on account of illness. The Puritan element was represented by Sandys.' So far I have no question to ask you, but you go on to say, 'Secretary Cecil, doubtless by instruction from the Queen, sent a series of suggestions to the Committee, including the following,' which you proceed to give as a quotation: 'Whether such ceremonies as were lately taken away by King Edward's [Second] Book' (the word 'Second' being inserted by yourself in brackets) 'might not be resumed, not being evil in themselves?' I want to know on what authority you say that, 'Secretary Cecil, doubtless by instructions from the Queen, sent a series of suggestions to the Committee,' which suggestions you give as a quotation. I see it is quoted from Strype. Is Strype your authority?—Strype is my authority. I presume I quote him there.

8692. Strype refers, does he not, to the document on which he finds himself?—I forget at this moment.

8693. It is, of course, the well-known letter called Guest's letter, which I think you know very well?—Yes.

8694. And Strype puts the words which you have quoted, only without the word 'Second,' making 'King Edward's

¹ I deal with this point on a later page, and also in a separate chapter in this volume, and have, I think, completely vindicated my accuracy.

Book' apply to the Second Book—that is your own interpolation?—Yes.

8695. He puts the reference to the document which he takes it from. Now Guest's letter is at page 459 in 'Strype's Annals,' Volume I., Part II., and those words there are as follows: 'Of Ceremonies. Ceremonies once taken away as ill-used should not be taken again, though they be not evil of themselves, but might be well used. And that for four causes.' You observe that there is nothing about King Edward's book at all in that?—No.

8696. What I wanted to ask you was, why you quoted from Strype's imperfect summary of the document rather than from the document itself, which, if you had done, all reference to King Edward's Book, still more to King Edward's Second Book which is the point of this quotation, would have disappeared.¹ May I remind you a little of what the position was in this matter? Guest wrote the words I have read. Strype, commenting on those words, thinks it is probable—he does not go beyond that, I think—at any rate he suggests, that this document was sent in answer to questions which had been addressed to Guest, and which he is answering, and Strype's summary of what he thinks the questions probably were is this extract which you have given?—Yes.

8697. That, you will observe, is speculation on the part of Strype? ²—Yes.

8698. Strype says nothing about Cecil's questions being by instruction of the Queen?—That is my suggestion.

8699. Strype says nothing about King Edward's Book being the Second Book? ³—No, I say that expressly.

8700. So that what it comes to is this: that first of all there is no record of these questions having been sent from Cecil, which you state as a fact; that is only a speculation of Strype. Further, there is no authority whatever for the notion that these questions, if they were ever put, were put on the instructions of the Queen. There is nothing in the document to show that Edward's Book, either the First or the Second Book, was referred to at all, and the suggestion that it was the Second Book comes from yourself and not from Strype? ⁴—Yes.

8701. And yet the whole object of this extract is to show

¹ Not at all. The document makes several references to the first Prayer Book.

² That is by no means certain, though I conceded the point. Strype is known to have had access to a number of unpublished papers to which he does not always refer.

³ But he clearly implies it.

⁴ I have shown elsewhere in this volume that Sir Lewis Dibdin is all wrong here. Being taken unawares, I made unnecessary concessions. See p. 229.

that on Queen Elizabeth's accession she desired to restore the ancient ritual behind the First Prayer Book of Edward?—Yes.

8702.—So that the point for which that quotation is made does not exist in Guest's letter at all?—No, I took that from Strype as his interpretation of it.

8703. Strype refers to the original, but you preferred to use Strype instead of the original?—Yes, I have used him apparently there, but Strype's interpretation is in accordance with the well-known views of the Queen.

8704. It may be so, but it is quoted here by you in order to prove the Queen's views?—The Queen says expressly, on the testimony of Parker, that she would not have accepted the Prayer Book—

8705. There may be other grounds for your views, but what I am pointing out is that the authority which you have given entirely breaks down?—That is Strype.

8706. It is Strype, but do Strype the justice to say that he referred to the document he was dealing with, and the document he was dealing with does not seem to have been used for the purpose of this extract. I am sure you will agree with me that Guest's letter is not dated at all, is it?—No, it is not.

8707. And further, there are great authorities¹ who are of opinion that Guest's letter did not belong to this period at all?—Yes, I know that. Dr. Gee says so.

8708. Right or wrong, he is an authority who has a right to speak on these matters?—Undoubtedly. I have read his book very carefully.

8709. And Dr. Gee says that Guest's letter belonged to ten years earlier?—Yes.

8710. And if that were the case, still more surely it is entirely inadmissible to use, in order to show what Elizabeth's views were when she came to the throne, a document which is undated, and which many¹ authorities regard as belonging to a totally different period, and to use it for that purpose by putting in references to the Prayer Book, when no references to the Prayer Book, either the first or the second, exist in the document at all?—This passage in my book was written and published long before Dr. Gee published his book. I have read his book very carefully more than once, and I think the argument breaks down. I do not think he makes out his case.

8711. I am not in the least trying to get you to adopt Dr. Gee's view. What I do want to point out is that your evidence of Queen Elizabeth's intentions so far as it is based

¹ Dr. Gee is the only authority, as far as I know, and I have examined his theory and argued out the whole question in a separate chapter, to which I refer the reader on all points of Sir Lewis Dibdin's examination of me on Guest's letter.

on this document, disappears and breaks down?—I admit that, but this document does not settle the matter. Many things are weak in themselves, but attain strength when corroborated by a number of other facts.

8712. You will agree with me that you cannot add strength to this document by putting in a word of a crucial kind which does not exist in it?—I quote Strype's words, and put in an interpolation of my own, expressly and avowedly as an interpolation.

8713. I quite agree, but the point is that neither your interpolation nor Strype's exists in the original?—Apparently not.

8714. You are aware, of course, that the Ornaments Rubric has received the interpretation of a very large number of judges and, for a legal point, quite an exceptional number of judges?—Yes.

8715. And that they have all unanimously—there has been no difference of opinion amongst them all—come to the same conclusion, that the view which I have been presenting to you, that 'authority of Parliament in the second year' has a reference to the first Prayer Book, and that that is the true construction?—Yes, and it was my own until within the last two or three years. It is the popular view, and the question was never raised in any of the courts before as to the meaning of the 'second year'; it was never disputed.

8716. Pardon me, there was very great argument about it in the case of *Westerton v. Liddell*?—About the meaning of the 'second year'?

8717. Certainly.—I do not remember it.

8718. The question as to whether the authority of Parliament in the second year meant the First Prayer Book or meant something else was certainly raised in *Westerton v. Liddell*?—The judges assumed it, of course, but was it ever raised by counsel? Sir Fitzroy Kelly was the leading counsel.

8719. (*Sir F. H. Jeune.*) I can answer for that, I read it yesterday; it was elaborately raised and elaborately decided.—That is new to me. I have read the whole of the argument several times, but I do not remember it.

8720. (*Sir Lewis Dibdin.*) I will read it to you in the judgment in the *Westerton v. Liddell* case from the special report, page 156: 'Their Lordships, after much consideration, are satisfied that the construction of this rubric which they suggested at the hearing of the case is its true meaning, and that the word "ornaments" applies, and in this rubric is confined to those articles, the use of which in the services and ministrations of the church is prescribed by the Prayer Book of Edward the Sixth'?—That, of course, I admit, I know, but what I want to

ask is, whether counsel raised the point that I have been arguing?

8721. I do not think the point of the meaning of the word 'made' was raised?—And the meaning of the 'second year'?

8722. (*Sir F. H. Jeune.*) Oh yes, they go into the very dates.

8723. (*Sir Lewis Dibdin.*) There are pages upon pages of it?—I quite understand that they meant the first book; I know that. The question is whether the other view was raised at all.

8724. The question of the second year, you mean?—Yes.

8725. It was certainly raised. I do not know whether it is within your knowledge, but almost every single thing in your book was before them. For instance, Bishop Sandys' letter was quoted at page 140?—In the judgment.

8726. No; page 140 of the special report of the case, and the whole matter was argued very elaborately?—About the first and second year?

8727. Yes.

8728. (*Sir F. H. Jeune.*) This is on page 160 of the judgment, 'It was urged at the Bar that the present rubric, which refers to the second year of Edward VI., cannot mean Ornaments mentioned in the First Prayer Book, because, as it is said, that Act was probably not passed, and the Prayer Book was certainly not in use till after the expiration of the second year of Edward VI., and that therefore the words "by authority of Parliament" must mean by virtue of Canons or Royal Injunctions having the authority of Parliament made at an earlier period.' That is the very point, is it not?—Yes.

8729. That you see was 'urged at the Bar.' It goes on 'There seems no reason to doubt that the Act in question received the Royal Assent in the second year of Edward VI.'?—Yes, the judgment says that.

8730. Yes, 'There seems no reason to doubt that the Act in question received the Royal Assent in the second year of Edward VI. It concerned a matter of great urgency which had been long under consideration, and was the first Act of the Session; it passed through one House of Parliament on January 15th, 1549, N.S., and the other on the 21st of the same month; and the second year of the reign of Edward the VI. did not expire till January 28th. In the Act of the 5th and 6th Edward VI., chapter 1, section 5, it is expressly referred to as the Act "made in the second year of the King's Majesty's reign."'—Yes, I know.

8731. 'Upon this point, therefore, no difficulty can arise. It is very true that the new Prayer Book could not come into use until after the expiration of that year, because time must be allowed for printing and distributing the books; but its use, and the Injunctions contained in it, were established by autho-

riety of Parliament in the second year of Edward VI., and this is the plain meaning of the Rubric.'—Yes, but they assume that the Act received the Royal Assent in the second year. I have no doubt that it did not.

8732. (*Sir Lewis Dibdin.*) What I want to point out to you is that the view which I have been putting to you, and the reasons which I have been pressing upon you, are reasons which are entirely independent, and whether the Act received the Royal Assent in the second year, or in the third year, has nothing to do with it?—Of course, I cannot accept that.

8733. But still, I think you will accept that the grounds which I have been putting to you, be they good or bad, are independent of that?—Your grounds are quite independent of it, but with regard to your referring me to the list of eminent judicial authorities, I admit, of course, their eminence on questions with which they were familiar, but it is quite clear from the judgment that they were groping their way in the dark through questions with which they were not familiar at all.

8734. The reason why I put it to you is this. It seems to me that although this happens to be a Statute about ecclesiastical matters, this is purely and simply a question as to the meaning of an Act of Parliament and the language of Parliament with regard to its own Act, which I should have thought was essentially a matter for the judges?—But is it, when it deals with ecclesiastical matters, with which they were not familiar?

8735. (*Sir F. H. Jeune.*) But this is not an ecclesiastical matter at all. It is a question whether the Act of Parliament, according to them, was made in the second year, and they produce a quotation from a subsequent Act saying that the Act was made in the second year?—They mean by that that it received the Royal Assent in that year.

8736. I think so.—They say that.

8737. (*Sir Lewis Dibdin.*) That is quite independent of ecclesiastical matters. It happened to be a matter about ornaments: it might have been about leather or common rights?—But from my point of view it is very essential whether the Act did receive the Royal Assent in the second year or the third year. I say, with all respect, that the court was wrong—that it did not receive the Royal Assent in the second year.

8738. And so the ground upon which they decided that falls, that is your view?—Yes.

8739. I want to ask you one word about Sandys's letter. You attach great weight to Sandys's letter, and, no doubt, it is a point in favour of the construction which you are representing; but do you rely upon it? In your book at page 446 you refer to Dr. Sandys's letter, and I suppose you refer to the letter from

Dr. Sandys to Parker which is given in the Parker Correspondence of the Parker Society at page 65?—I have not given the reference. I have been searching for it lately, and I cannot find the letter.

8740. You will find it in the Parker Correspondence of the Parker Society at page 65. In order to get it on the notes I am just going to put the facts. That was a letter written by Dr. Sandys to Parker just after the Elizabethan Act of Uniformity had got through the House, and before it had received the Royal Assent, I think?—Yes.

8741. The important passage in that letter is this, is it not: 'The last book of service is gone through with a proviso to retain the Ornaments which were used in the first and second year of King Edward, until it please the Queen to take other order for them. Our gloss upon this text is that we shall not be forced to use them, but that others in the meantime shall not convey them away, but that they may remain for the Queen.' That is the important extract?—Yes.

8742. And, of course, it is quite true that Sandys refers there to the Ornaments as being those that were used in the first and second year?—Yes.

8743. Do you attach much weight to that as compared with such matters as the Acts of Parliament, for instance, to which I have been referring? Do you think that a letter written under the circumstances in which this was, before the Act was printed, when he had not got access to it, within forty-eight hours of its going through Parliament, and written, as I observe he says at the end, 'hastily' (you see the last words are 'hastily at London, April 30th, 1559') can add very much weight to it?—I do, because Sandys was a very important man. He was accepted by the authorities as the most distinguished leader of the Puritan Party; he was put on the Committee for revising the Second Prayer Book, and it is quite evident that he watched the whole process and the steps of it.

8744. Do not you think that even so important a man as Dr. Sandys might have made a mistake as to the date of an Act of Parliament which had been passed ten years before? The first Act of Uniformity was passed ten years before he was writing?—He says, 'The Parliament draweth to an end. The last book of Service is gone through with a proviso to retain the Ornaments which were used in the first and second year of King Edward.' That is an interpretation clearly of the Ornaments Rubric.

8745. It is his representation of the Ornaments Rubric which, from the nature of the case, could not have been before him?—Why not?

8746. Because the Act was not printed; it was just through

the House?—'The last book of Service is gone through with a proviso to retain the Ornaments'; why was it not before him?

8747. It had not become an Act, and there is no reason to suppose that in those days they had the facilities that we have now of getting every Bill and every amendment in print. The Ornaments Rubric section as you are aware was an amendment put in towards the end of the passage of the Act of Uniformity?—Yes.

8748. And therefore it is in the highest degree improbable that Sandys, writing within forty-eight hours of the debate, and before the Bill had received the Royal Assent and become an Act, had a copy of it with this proviso in it?—I should think very likely he had, because he would be the man of all others most anxious to get it. He was strongly opposed to the proviso himself, and I should think he wrote this letter with a copy of the Ornaments Rubric before him.

8749. I will leave it there: it seems to me very improbable. There is clearly a mistake in Sandys' reference, because either from your point of view or the received view, my view I will call it, the first and second year was wrong. It was wrong either way, because if it meant the use in the second year, then that is not the first and second year, and if it meant the Act of Uniformity then that is not the first and second year. It is a wrong reference either way, is it not?—I think not.

8750. 'Which were used in the first and second year of King Edward.'—He says 'used.'

8751. There is nothing in the Ornaments Rubric about the first year?—No, but the Ornaments of the second year were used in the first year.

8752. But that is not what the Ornaments Rubric says?—No, it is not; but it implies it.

8753. You are relying upon this as a statement of the Ornaments Rubric?—Yes.

8754. I point out that in any view it is an inaccurate statement, because he speaks of the Ornaments of the first and second year when the Ornaments Rubric only speaks of the Ornaments of the second year?—But it can be proved, as I think, that the Ornaments of the second year were precisely the Ornaments of the first year.

8755. I will not follow you in that; it may or may not be so. But it is clearly an inaccurate citation of the Ornaments Rubric, is it not?—Not of its substance if, as I think, the Ornaments of the first and second year are the same.

8756. But is there anything in the Ornaments Rubric about the first year?—No.

8757. Then if Sandys says the first and second year it is to that extent inaccurate?—But he is not quoting the rubric; he

is giving the meaning of it. He does not profess to quote the words.

8758. I suggest to you that it looks as if he was referring to some Act of Parliament, because that is the way in which people refer to an Act of Parliament, but it is not at all the way in which people refer to a date?—What Act of Parliament could he refer to?

8759. I suggest that he was thinking of the first Act of Uniformity and made a mistake in referring to it?—I do not think his words bear out that meaning, if I may say so with respect.

8760. You agree, do you not, that 'the first and second year' looks like a reference to an Act of Parliament, not to a date?—Very well.

8761. Will you take that; do you agree with me that the reference to the first and second year of King Edward in Sandys' letter looks as if he was referring not to a date, but to some Act of Parliament?—Even taking that view—

8762. But may I have an answer? Do you accept that or not?—I do not think it follows.

8763. You do not think it looks as if he was referring to an Act of Parliament when he refers to the first and second year?—No, 'the last book of service is gone through with a proviso' (that means the proviso in the book itself, does it not?) 'to retain the Ornaments which were used in the first and second year of King Edward until it pleased the Queen to take other order for them.' That is quoting the Act.

8764. That is quoting the Ornaments Rubric?—No, that is quoting the Act which sanctions it.

8765. Then it is quoting it wrongly, because the Act says nothing about the first and second year?—It does not. Sandys does not profess to be quoting either the Ornaments Rubric or the Act textually. He gives what he believes to be the meaning of the Ornaments Rubric combined with the Act which sanctioned it.

8766. Then he did not mean a particular date?—Yes, he gives the date, the first and second year.

8767. What date is that?—The first and second year.

8768. What date is that; it is two years?—1548-49.

8769. You think he meant that?—Yes.

8770. And that that is his view when he speaks about the first and second year—that he meant that?—Yes, he meant the Ornaments Rubric and the Act of Uniformity ratifying it which sanctioned the Ornaments in use in the second year and in the first year, which were I believe the same.

8771. (*Sir Edward Clarke.*) Did you not mean 1547-48?—Yes; 1548 is part of the first year, not the whole.

8772. (*Sir Lewis Dibdin.*) Is not the whole of this an illustration of what I am putting to you; is it not an extraordinary way for a man thinking of a particular year to describe it as the first and second year of somebody. He would have said surely 1548 or 1547. 'The first and second year' I suggest to you looks as if he was referring to some Act of Parliament?—The Act of Parliament that he refers to is the Act of Uniformity of Queen Elizabeth; he does quote that.

8773. That is not the first and second year of King Edward?—No. I am afraid I have not made my meaning plain. My interpretation of Sandys' letter is that he understood the Ornaments Rubric with the clause in the Act of Uniformity which sanctioned it to mean the Ornaments of the second year, which were the Ornaments of the first year.

8774. And you think that is appropriately carried out by his referring to the Ornaments of the first and second year?—Yes; it would be surplusage in the Act to refer to the first year if the Ornaments were the same as in the second year.¹

8775. (*Chairman.*) I should just like to ask you one question. Assuming your view to be correct that the words in the Act 'in the second year of the reign of King Edward VI.' refer to the words 'in use' rather than to the words 'by authority of Parliament,' why should that particular date have been taken? You have just told us that in your opinion the Ornaments were the same in the first year as they were in the second?—Yes.

8776. Why should that particular date have been taken in this Act and in the rubric?—Because Elizabeth knew that though she tried hard, so it is said, to introduce the First Prayer Book, she could not do it, and she allowed the Second Prayer Book with certain alterations to take its place; but as Parker says, she told him that she would not have accepted that compromise without the clause in the Act of Uniformity which allowed her to introduce further ceremonies in the direction of the second year.

8777. But why should not the Act have said the first year?—Because there was no specific Prayer Book at all in use then; the Order of the Communion came into force in the second year, but there was no form of Common Prayer at all

¹ I have discussed this question at length in the seventh and eighth chapters; but I may here appeal to a passage in Sir Lewis Dibdin's favourite authority, Dr. Gee (*The Elizabethan Prayer Book*, p. 107): 'If, then, Sandys weighed his words we must suppose that he meant the year 1548, which was partly first and partly second, since Edward began to reign on January 28. In that case Sandys's explanation of the proviso is intelligible. The year 1548 had its own legal ornaments.' Sandys was perfectly accurate. His use of the singular ('first and second year,' not years) proves, indeed, his minute accuracy.

then. Your point is, why did she adopt the second year instead of the first year?

8778. No, my point is something more than that. Assuming the words to apply to the use and not to the authority of Parliament, why was the second year taken as the date?—Because she wished, as I understand it, the ritual which was in use in the second year to be retained.

8779. But you have told us that it was the same as the ritual in the first year and the ritual in the third year?—Yes.

8780. I can quite understand why if the words 'the second year of the reign of King Edward VI.' referred to the authority of Parliament it was necessary to name that particular year; that is another matter, of course. But I want to know why, taking your view that the words referred to the use and not to the authority of Parliament, the second year was taken?—I do not know that I can give any definite opinion as to the secret meaning of Elizabeth in choosing that particular year, except that the usage of the second year was well known. Her Latin version of the Act of Uniformity uses the words *quemadmodum mos erat*—it was the custom of the second year—it was the usage of the second year; that is the Latin translation.

8781. My point is that the mention of the second year would be to some extent an argument in favour of the view that the words 'the second year of the reign of King Edward VI.' apply to the words 'authority of Parliament,' unless there was any special reason for taking the second year as the time of 'use,' would it not?—I do not know that it would. The usage of the second year was well ascertained; it was the usage of the Order of the Communion that is prescribed. You see the first Prayer Book does not prescribe; it is not a directory of public worship; it prescribed certain vestments. But the Order of the Communion, which was the legal formula for the administration in the second year, does prescribe the Ornaments to be used in it.

8782. (*Sir F. H. Jeune.*) I should like to ask one question. Whatever view is taken of the rubric, if the view taken by the Privy Council rightly or wrongly is correct as to the Advertisements of Queen Elizabeth, that governs the matter whether you take your interpretation of the rubric or you take the other, does it not?—Yes; but I do not admit at all the question of the Advertisements.

8783. I am not saying that you do; but if that is so that governs the whole matter in any event?—Yes, it would upset the whole thing. But I contend that the Advertisements had no legal force whatever.

8784. I know you do.

8785. (*Rev. T. W. Drury.*) Merely as a matter of accuracy,

did we rightly understand you to say that the vestments are prescribed by the Order of Communion of 1548?—No; by the First Prayer Book of Edward VI. The Order of Communion prescribes the ceremonies used in the Mass except the Elevation: it forbids the elevation.

8786. (*Rev. Dr. Gibson.*) Does it altogether forbid it?—I think it does, although it only mentions it on reconsecration.

The Witness withdrew.

Adjourned to to-morrow at half-past ten o'clock.

The Rev. CANON MALCOLM MACCOLL, recalled; and further Examined.

9045. (*Witness.*) May I just offer a few things supplementary to what I said yesterday? I sat up most of the night looking through statutes and documents, and I think I can confirm nearly all my positions of yesterday. With regard to the first and second year and Sandys' letter, I forgot to say yesterday that Strype also makes the same statement. Here is what he says on page 122 of his 'Annals of the Reformation,' Volume I., Part I. Without giving any quotation marks at all he says: 'April was almost spent before the divines had finished this new Service Book, wherein was a proviso to retain the ornaments which were used in the Church in the first and second years of King Edward VI., until it pleased the Queen to take order for them.' He does not put that within marks of quotation as if he quoted it from Sandys, but he goes on: "Our gloss upon this text," saith Dr. Sandys, in a letter to Dr. Parker, "is that we shall not be forced to use them, but that others in the meantime shall not convey them away; but that they may remain for the Queen." So far he quotes the gloss; but then he adds: 'But this must be looked upon as the conjecture of a private man.' So that Strype accepts the statement made by Sandys, but corrects him in the gloss which he adds to it, and Strype was a careful writer.

9046. (*Sir Lewis Dibdin.*) Was he?—

(*Witness.*) Then may I add a little more? I do not think that, partly through my own fault, I made my meaning quite clear with regard to the meaning of the word 'made' yesterday. My point is that 'made' is the proper expression to describe the action of Parliament as apart from that of the King. All Acts are made in Parliament—in some Parliament—but they do not become Acts, that is to say they do not become operative, until they have received the King's Assent. If I may use an illustration, all British men-of-war are made in some

shipbuilding yard or other, but they do not become men-of-war until they have received the King's Commission; yet after they have received the King's Commission it is still quite accurate to say of such and such a man-of-war that it was 'made' in such and such a building yard. So I say with regard to Acts of Parliament; they are all made by Parliament; they are all made in Parliament, and the King has no more to do with the making of them than he has to do with the making of a ship.

9047. (*Chairman.*) Yes, he has, a great deal.—No; the Government has. The Acts of Parliament are not operative, they do not become effective, until they have received the Royal Assent. Now, my point here is, first, that all the authorities, Cosin among them, declare that 'by authority of Parliament' refers to the usage of the second year and not to the authority. Cosin, as you well know, had most to do with the rubric, as it stands at present, and he says distinctly that it refers to the usage.

9048. (*Sir Lewis Dibdin.*) What page are you referring to?—Cosin's works, Volume 5, page 440.

9049. At what page in your book?—Page 596. Cosin says: 'Among other ornaments of the church also then in use in the second year of Edward VI., there were two lights appointed by his Injunctions which Parliament had authorised him to make. . . . These lights were by virtue of this present rubric' (that is, the rubric of 1559). 'Referring to what was in use in the second year of Edward VI. afterwards continued in all the Queen's Chapels during her whole reign; and so are they in the King's, and in many cathedral churches, besides the chapels of divers noblemen, bishops and colleges, to this day.' And then he goes on to add: 'To this head we refer the Organ, the Font, the Altar, the Communion Table and the Pulpit, with the coverings and ornaments of them all; together with the Paten, Chalice, and Corporas which were all in use in the second year of Edward VI. by the authority of the Acts of Parliament then made.' Now, Cosin is a great authority. He had himself to do with the last revision of the Prayer Book. Then, in the next place, I hold that no Act of Parliament which did not receive the Royal Assent in the second year could be described as having the authority of Parliament in that year. The first Act of Uniformity was made in the second year. It was not operative and therefore had no authority till it received the King's Assent in the third year. My points are two: First, that all contemporary authorities refer the 'authority of Parliament' to the usage of the second year; secondly, that there could be no authority for the Act of Uniformity until the third year. Then I wish also to add that all contemporary authorities declare that the Order of the Communion rested on the

Act which sanctioned it, which sanctioned the receiving of the Sacrament in both kinds. Dixon says so expressly.

9050. (*Rev. Dr. Gibson.*) Dixon is not a contemporary authority?—No; I beg your pardon. You have got Heylin who says so.

9051. (*Sir Lewis Dibdin.*) That you were examined about?—You have Foxe.

9052. That you were examined about?—Then I must refer you again to the last paragraph. I do not think I adequately explained myself by not quoting (I had not the words before me) the words of the first Act of Edward, which orders each parish priest in delivering the elements in both kinds to use an exhortation. It is to me incredible that each parish priest should be allowed to extemporise any exhortation he pleased. But, further than that, the clause goes on to give part of the Exhortation in the Order of the Communion itself: it quotes it. Now the Order of the Communion and the Act which, as I think, sanctioned it, were first of all drawn up by Convocation. The Act was drawn up in Convocation, and introduced by Cranmer into Parliament on the 3rd December, and it is clear to me that the draft of the Order of the Communion was before Parliament while the Act was under consideration. The Act quotes almost in the very words part of the Exhortation in the Order of the Communion.

9053. (*Chairman.*) You think so, but where is your proof?—In the words of the Act. They quote *ipsissimis verbis*, with two or three alterations, part of the Order of Communion. The Order is for each curate to use an exhortation, and part of the Exhortation is given in the Act itself.

9054. Will you quote the Act?—It is the first Act of Edward VI., chapter 1, and the words that I rely upon are these in the last clause: 'And when the day prefixed cometh——'

9055. (*Sir Lewis Dibdin.*) That is in the middle of the sentence. Will you begin before that: 'And also that the priest'?—'And also that the priest which shall minister the same shall at the least one day before exhort all persons which shall be present likewise to resort and prepare themselves to receive the same' (that is, the Sacrament). 'And when the day prefixed cometh, after a godly exhortation by the minister made (wherein shall be further expressed the benefit and comfort promised to them which worthily receive the said Holy Sacrament, and danger and indignation of God threatened to them which shall presume to receive the same unworthily, to the end that every man may try and examine his own conscience before he shall receive the same), the said minister shall not, without a lawful cause, deny the same to any person that will

devoutly and humbly desire it; any Law, Statute, Ordinance, or Custom contrary thereto in any wise notwithstanding.'

9056. That is the passage which you suggest is a direct reference to the Order of Communion?—Yes, because it quotes part of the phraseology.

9057. (*Chairman.*) Then that will do for that point?—Then with regard to the 32nd of Henry VIII., chapter 26, I at once accept the statement of the lawyers, that it was repealed by the Act of 1 Edward VI., chapter 12.¹ At the same time, I question whether that applied to the Order of Communion, because the old Act remained in force until that Act (1 Edward VI.) was passed. My point is that, though that Act repealed henceforward 32 Henry VIII., it did not repeal it until the Order of Communion, and the Statute which, I believe, sanctioned it, were before Parliament, and therefore the Order of Communion was drawn up under the authority of the Act of Henry VIII.

9058. You said that yesterday, you know?—Not that point.

9059. (*Sir Edward Clarke.*) I should like to ask you a few questions quite on a different line and apart from these books altogether. Looking at the history of the Anglican Church, would you not expect to find somewhere a definite rule as to the ornaments of the Church and of the ministers?—No, because the Prayer Book of Edward VI. was not a directory. There is no doubt that the old ecclesiastical rule was that the old state of things remained unless it was expressly forbidden. The rule of Common Law, I suppose, is that things which are not ordered are forbidden. The old rule was that things which were not forbidden were allowed.

9060. Whatever the reason may be, I will take your answer: you have told me that you would not expect to find anywhere a definite rule as to the ornaments of the ministers and of the church?—No; they take the old traditional custom.

9061. Then how do you explain the course which has been taken again and again expressed in Acts of Parliament and in the preface to the Prayer Book, of a desire to secure uniformity of practice: does not that involve the probability, at all events, that you would find somewhere a definite rule?—That uniformity applied to the Service Books, not necessarily to the practice. As a matter of fact, Grindal——

9062. Do not let us go to instances. I am going to put my questions very shortly. If you say that the history of the Church is such that you would not expect to find a definite rule, I will take that as your answer?—No; I should not.

9063. Is there, in your opinion, any definite rule anywhere

¹ This was a needless concession, for I claim to have proved (see Chapter XI.) that 1 Edward VI. c. 12 did *not* repeal 32 Henry VIII. c. 26.

governing the ornaments and vestments of the Church and the ministers?—I hold that the Ornaments Rubric is such.

9064. You think there is?—Yes; the Ornaments Rubric.

9065. Is it to be found in the Ornaments Rubric, if anywhere?—Yes, since the time of Edward VI.

9066. But taking our Ornaments Rubric as it stands at the present time, is it there, if anywhere, that you will find a definite rule?—Yes.

9067. The definite rule to be found there would probably be, would it not, a definite rule, mandatory and not permissive? There could hardly be a definite rule if it was permissive?—Well, yes and no. At the time of the Reformation a minimum and a maximum were allowed. A standard was adopted which legalised anything within that standard, but something less was permitted, because it was very difficult, if not impossible, in some cases to bring all the clergy up to the standard.

9068. Never mind what was the case at that time. I want to know whether it is your view that there is any definite mandatory rule, or that everybody was free to do as he liked?—No, not everybody was free to do as he liked. My own view is that if the law, as I hold it to be, were admitted, then the bishop ought to have very large powers.

9069. What power the bishop ought to have in certain cases has nothing to do with the question that I am now putting to you. I am putting to you this question: Where, if anywhere, do you find a definite rule as to the ornaments and vestments?—There is no definite rule except the Ornaments Rubric.

9070. It is to be found in the Ornaments Rubric, if anywhere?—Yes.

9071. Now, turning to the Ornaments Rubric: if you say that, it becomes a question of interpretation, and interpretation only; is not that so?—Yes.

9072. Now let us take the Ornaments Rubric as we have it at the present time: 'And here is to be noted, that such ornaments of the Church, and of the ministers thereof, at all times of their ministration, shall be retained, and be in use, as were in this Church of England, by the authority of Parliament, in the second year of the reign of King Edward the Sixth.' Just go for a moment to the words, 'and be in use, as were in this Church of England.' You observe that the phraseology is there altered from the rubric in Elizabeth's Prayer Book?—Yes.

9073. In Elizabeth's Prayer Book the words are 'as were in use by authority'?—Yes.

9074. Have you any suggestion to make as to any reason for the omission of those words 'in use'?—Yes; it was Cosin who drew up the rubric, and he gives his reason—namely, to

bring the words of the rubric more into conformity with the Act.

9075. Quite so. Then those words 'in use' were not found in the Act in the historic form in which they appeared in Elizabeth's rubric?—No.

9076. And, in order to prevent misunderstanding, perhaps, Cosin drew the rubric up in the terms of the Act itself?—Yes, he himself insisting that it meant 'were in use.'

9077. Never mind; it is quite indifferent to me what he did or said.¹ Now we have this rubric, and we have to construe it, you see. I will come to the question of intention later on. Then the rubric retains the things which 'were in this Church of England by the authority of Parliament in the second year of the reign of King Edward the Sixth'?—Yes.

9078. Now, apart from the question of user, that clearly points to some authority of Parliament—to some Act of Parliament?—Yes.

9079. What do you say is the Act of Parliament which is there referred to?—I say that the Act of Parliament there referred to is the Act which sanctioned the Communion in both kinds and authorised, as I believe, the Order of Communion at the same time.

9080. Let us just see how it would read according to you. According to your construction this rubric might read: 'as were in this Church of England by the authority of Parliament given in the first year of Edward VI., chapter I.' Is that the Statute which you purpose to substitute for the one with which we are dealing?—Yes; I say it rests upon that Statute, and (as Cosin maintained) on the Statute revived, the 25th Henry VIII., chapter 19. Cosin quotes that also. Sir Lewis Dibdin said that that Statute merely quoted the old provincial Synodals, but I maintain that the Statute itself gives statutory authority by sanctioning the old Synodals, and I submit respectfully that the 32nd Henry VIII., chapter 26, was not repealed when the Order of Communion was before Parliament. It has thus a three-fold statutory authority.

9081. You say, then, things that were in the Church by the authority of Parliament given in three Statutes, not in one?—Yes; three Statutes.

9082. Which are the three Statutes?—The first is 1 Edward VI., chapter 1; the next is 25 Henry VIII., chapter 19; and the third is 32 Henry VIII., chapter 26, which authorised Convocation to draw up religious rites and ceremonies; and they did draw them up, and the Bill before Parliament for sanctioning

¹ Is not this a rather strange remark? Surely the interpretation of the rubric by the man who framed it ought to have some weight.

the Order of Communion first passed through Convocation and then was introduced into Parliament by Cranmer.

9083. I only wanted to get quite clearly, and I think I have got it now, your view as to the Parliamentary authority which is referred to in the rubric?—Yes.

9084. A question was asked you by Sir Michael yesterday as to any suggestions that you had to make for the mention of 'the second year of the reign of King Edward VI.' If the Parliamentary authority which was mentioned in the rubric was to be the Parliamentary authority of the three Statutes which you have named, it would be more natural to say the first of Edward VI. than the second of Edward VI.?¹—Well, I do not know. Things were in a transition state then. Henry VIII. appointed a Committee to revise all the services. That Committee sat, and under that authority, for instance, immediately after Edward VI. came to the throne, it produced the Compline in English and a good many other things in English besides—the Processional, for example. Things were in a state of transition, and they settled down after the Order of Communion became law.

9085. But if things were in a state of transition, it was all the more important that there should be quite a clear and definite year given, as the year to which to refer?—The year was the second year. The Order of Communion came into use practically in the second year. Parliament ended, did it not, on the 23rd December in Edward's first year? The Order of Communion became law about that time, and the Order of Communion settled the ceremonial which came into legal use in the second year: and that is why the second year is referred to.

9086. The Order of Communion settled the ceremonial, you say?—Yes.

9087. As a matter of fact, has not the interpretation—the unbroken interpretation—of the Ornaments Rubric up to the last few years been the reference of that authority of Parliament to the Statute of the second of Edward VI.?—I do not know. Has it?

9088. Let me put this to you again. The Statute which you say was not assented to by the King until the third year of Edward VI. is referred to in an Act of Parliament as being a Statute made in the second year of Edward VI.?—Yes, that is quite accurate.

9089. What authority have you for saying that the Royal

¹ But the second year was partly first also. My contention is that the rubric and its covering statute refer to the usage of the second year, which was both first and second. The Act (1 Edward VI.) was passed in the first year, but the Order of the Communion, which prescribed the usage, did not come into operation till the second year.

Assent was not given until the third year?—Briefly this ; in the first place the Royal Assent determined Parliament when it was given ; the Session came to an end.

9090. Oh, no?—Pardon me, I have gone through every Statute from that time to the reign of Charles II., and I find that in every single case where the King sanctioned a Statute by Commission a provision was made for Parliament still continuing. The formal way of giving the Royal Assent to an Act by Commission was by Letters Patent, and both Houses of Parliament were present when it was done and the Session was determined then and there, unless a provision was made to the contrary.

9091. But you do not dispute, do you, that for centuries past the Assent of the Crown has been given by Commission to Acts of Parliament, without putting an end to the Parliament? The Commission¹ may have provided for the continuance of Parliament, but at all events Parliament has continued to sit after the time when the Assent has been given to an Act of Parliament?—Yes. Sir Erskine May says in his 'Parliamentary Practice' that the rule lasted till two hundred years ago. What he says is this: 'The idea that a Session was concluded by the Royal Assent being signified to a Bill ceased to exist more than two centuries ago.'

9092. He does not say that it existed till then ; he says that it ceased to exist more than two centuries ago?—Then may I refer you to my book, page 617: 'After the Royal Assent was given to 1 Car. I., chapter 7, we read as follows: "This Session of Parliament (by reason of the increase of sickness and other inconveniences of the season, requiring a speedy adjournment) nevertheless shall not determine by His Majesty's Royal Assent to this and some other Acts."' Then again: 'At the opening of the first Parliament after the Restoration an Act was passed to undo the Parliamentary irregularities of the Commonwealth. The Royal Assent was necessary at once, and it was given with the following proviso: "Provided always, and it is hereby enacted, that His Majesty's Royal Assent to this Bill shall not determine this present Session of Parliament."' And then again in 22 and 23 Charles II., chapter 1, 'The Royal Assent was given in the beginning of the Session to "an Act to prevent malicious maiming and wounding"; and to prevent the Session from being closed thereby there follows the proviso: "Provided always, and it is hereby declared and enacted, that His Majesty's Royal Assent to this Bill shall not determine this Session of Parliament."' I have gone through every single Statute from Henry VIII. to Charles II., and I find that when

¹ It was not the Commission which provided, but Parliament.

the Royal Assent was given by Royal Commission provision was made for the Session continuing.

9093. When was the Royal Assent given to this Bill?—On the 14th of March of the third year. There is a list given of sixty Bills, I think, which received the Royal Assent, and the Act of Uniformity stands at the head of them.

9094. March the 14th of the third year?—Yes.

9095. But where is the list?—I copied it from the House of Lords' Journals.

9096. (*Sir Lewis Dibdin.*) But I think you are aware that in the originals of the journals there is such a list at the end of every Session, is there not?—I only quoted the published copies.

9097. I have looked at the originals. You will perhaps take it from me that at the end of every Session of Parliament in those days there was a list of Acts passed during the Session?—Yes, I accept it from you, of course.

9098. Will you take this further, that in this particular Session the list of Acts for the Session begins on a fresh page and there is no indication of date whatever as to the Royal Assent?—No indication of date in any of them? But remember this, the second year came to an end on January 27. The giving of the Royal Assent to the Act of Uniformity required a great deal of formality; it required Letters Patent and a Commission, and it was to be done in the presence of both Houses of Parliament. Now, I maintain that there was not time for all that, and that if it did happen there would be some record of it. Edward VI. keeps a record of the second year, and he mentions various things, but he never refers to that at all though it would have been the most important event of that year.

9099. (*Sir Edward Clarke.*) Who never refers to it?—Edward VI. in his diary.

9100. Are you really arguing that this Act cannot have received the Royal Assent in the second year, because you do not find it entered in Edward VI.'s diary?—No; because that passage from Edward VI.'s diary has been quoted judicially to show that it received the Royal Assent in the second year.

9101. I understand that your point upon this is, that the Royal Assent given to the Bill would put an end to the Session unless provision were made for continuing the Session?—Yes, that is one point.

9102. And that you have no record anywhere of the date upon which the Royal Assent was given to this Bill?—Except that it is in the list of the sixty Bills which did receive the Royal Assent in the third year.

¹ This is a mistake. The General Pardon Act, which is one of them gives the date of March 14.

9103. But no record as to the specific date on which they received the Royal Assent?—Yes, the 14th March in the third year.

9104. (*Sir Lewis Dibdin.*) But there is no date on the list?—There is in the list in the journals that I have read.

9105. No?—Pardon me.

9106. (*Sir Edward Clarke.*) This is a question of fact. You find the Act in a list with regard to which you suggest that there is a date showing the date at which each of those Statutes received the Royal Assent?—The whole list is put under the date of March the 14th in the third year.

9107. (*Sir Lewis Dibdin.*) Are you referring to the original or the printed journal?—I am referring to the printed journal.

9108. That is in George III.'s reign? ¹—Yes.

9109. (*Sir Edward Clarke.*) That is very much later indeed. I only want to get from you what you say is the evidence that will establish that this Act did not have the Royal Assent in the second year. Is that your evidence?—Yes, my evidence is two-fold: First, that there was no time for all the formalities of a Commission, Letters Patent, and both Houses of Parliament being present in the course of two or three days, and in the second place that it would have determined the Session unless provision was made to the contrary.

9110. And as you do not find anything about the provision you assume that the Royal Assent was not given?—Yes.

9111. The Ornaments Rubric, as we have got it, is the rubric of 1662?—Yes.

9112. Can you point out to me any suggestion by anybody within 200 years after that time, that the Parliamentary authority mentioned in the Ornaments Rubric was not the authority of that Act of 2nd Edward VI.? I will make myself quite clear. The Ornaments Rubric has got a reference to the authority of Parliament?—Yes.

9113. And to the second year of the reign of King Edward VI.?—Yes.

9114. Can you point out to me any suggestion by anybody for 200 years after that rubric was drawn up that the authority of Parliament referred to any Statute other than that which we know as the 2nd of Edward VI.?—Cosin; and Sandys who was a contemporary; and Strype, I think. Fuller and Hayward in his Life of Edward VI. and Heylin all claim the authority of Parliament for the Order of the Communion and therefore exclude any other.

¹ But one of the Acts on the list gives the date of March 14 of the third year. It is for the objectors to prove that the other Acts on the list, or any of them, did not get the Royal Assent on the same day.

9115. Forgive me, I do not think that really meets the question. Your point is that the things were to be retained and were to be in use which were lawfully used in the second year of Edward VI. ?—Yes.

9116. That implies both user and authority of Parliament given ¹ at some time or other in the second year of Edward VI. ?—Not necessarily.

9117. Where do you find the first suggestion, or do you find any suggestion for 200 years after the Ornaments Rubric, that the authority of Parliament in the second year of the reign of King Edward VI. did not mean this Statute ?—It is impossible to prove a negative. I do not know of any distinct suggestion.

9118. I am not asking you to prove a negative. I am asking you for an instance of the contention anywhere ?—I am afraid I did not make myself understood. I find writers contemporary and subsequent to the Act claiming authority of 1st Edward VI. for the usage of the second year and if they claim that authority it excludes subsequent authorities.

9119. But do you observe that the point which you are now putting is one which makes the rubric absolutely obscure : because if the Act came into force in the second year of Edward you would have a legal use of one kind in the first part of the year, and a legal use of another kind in the subsequent part of the year ?—I do not understand. I do not see the point.

9120. Supposing that the Act of Parliament to which we are referring came into force in the middle of the second year of Edward, to which part of the year would the rubric refer ?—But it came into force in the beginning of the second year. The Act was passed, I think, on the 23rd December of the first year. I do not know when it received the Royal Assent. It may not have received it until the beginning of the second year.

9121. But you are speaking now of the Act of 1 Edward VI. ?—Yes, the Act of 1 Edward VI. passed Parliament in the end of the first year.

9122. Let me try and get at the point by another mode. You said yesterday that the question of the meaning of the words 'the second year' had not been raised, and it was pointed out to you that in *Westerton v. Liddell* the question was raised and argued, and that that very authoritative court came to the unhesitating conclusion that this Act of Parliament was passed and completed in the second year and was the Act referred to here ?—I think that the point which was raised was, whether the first Act of Uniformity received the Royal Assent in the second year.

9123. That question was raised, and the Court distinctly

¹ It does not follow that the authority of Parliament was 'given' in the second year. It may have been given previously.

said that they came to the conclusion that it did.—Was that particular point raised whether it received the Royal Assent?

9124. Yes. Let me refer you to page 160 of the judgment: 'It was urged at the Bar that the present rubric, which refers to the second year of Edward the Sixth, cannot mean Ornaments mentioned in the First Prayer Book, because, as it is said, that Act was probably not passed, and the Prayer Book was certainly not in use till after the expiration of the second year of Edward the Sixth, and that therefore the words "by authority of Parliament" must mean by virtue of canons or Royal Injunctions having the authority of Parliament made at an earlier period. There seems no reason to doubt that the Act in question received the Royal Assent in the second year of Edward the Sixth. It concerned a matter of great urgency which had been long under consideration, and was the first Act of the Session; it passed through one House of Parliament on January the 15th, 1549, N.S., and the other on the 21st of the same month; and the second year of the reign of Edward the Sixth did not expire till January the 28th. In the Act of the 5th and 6th Edward the Sixth, chapter 1, section 5, it is expressly referred to as the Act "made in the second year of the King's Majesty's reign." Upon this point, therefore, no difficulty can arise'—Well, I very respectfully maintain that the Court made a historical mistake. The Act could not, I maintain, have received the Royal Assent in the time.

9125. I am quite content to leave that. Now then, in the year 1662, when the present Ornaments Rubric was framed, if your contention were correct that rubric would have the effect of not only permitting but obliging the use of vestments?—Yes.

9126. And that is your view of it?—In strict legal language, I suppose it would.

9127. We are interpreting now the law which you believe to have been laid down?—Yes.

9128. And you believe that the law which had been laid down was that these vestments must be used?—Yes.

9129. You put a good deal of weight yesterday upon what you supposed to be the intentions of Queen Elizabeth. Do you suggest that it was the intention of those who were responsible for the rubric of 1662 to make a law to oblige every clergyman to use vestments which had been disused for more than a century?—My answer to that is that the intention of Elizabeth was to lay down a standard which would be the standard towards which all should aspire; but the Advertisements came forth in order to allow of a relaxation of the standard where it was impossible to enforce it.

9130. Forgive me, you are going back to the time of the issue of the Advertisements. I am at the year 1662 when,

according to you, a law is made that the clergy shall wear these vestments, which had been so long disused. Do you believe that it was the intention of the persons who were responsible for the Act of 1662 and the rubrics in the Prayer Book to enforce the wearing of sacrificial vestments?—So far as it was possible—yes. But recollect if you press that argument that you are landed in this difficulty; all the Courts admit that the cope was within the compass of that rubric.

9131. I assure you that I do not find any difficulty about the cope.—But it was not enforced. The Court in the Purchas Case declared the cope was obligatory, but as a matter of fact it was not enforced.

9132. Forgive me, the cope is a different, and I should say a very much smaller question with regard to cathedrals,¹ but I am speaking now of the mass of the parish clergy. Is it your suggestion that the intention of the people who framed the Act of Uniformity of 1662 and the rubrics of the Book was to make all parish priests wear a chasuble?—Where it was possible. It was not possible to make them wear a surplice.

9133. You are facing the difficulty and accepting it; you say that it was their intention to make it obligatory wherever possible?—Yes.

9134. And to oblige, so far as it was possible, all the parish priests in the country to supply themselves afresh with vestments similar to those which had been destroyed a century before?—No, they were not obliged to supply themselves; that is the point. The parish was obliged.

9135. So far as it was possible, I said?—But they were not obliged at all to supply themselves; they were not bound by law to supply themselves with those vestments, or chalices, or patens, or anything of the sort; it was not part of the duty of the parish priest. The parish was legally obliged to provide him with a surplice, but nothing else. All the other vestments had been destroyed, and it would have been very hard upon the parish clergy to oblige them to purchase them.

9136. Very hard indeed, and a most extraordinary obligation to put upon the parish or the parish priest?—Yes, but only when possible.

9137. Do you really suggest that the intention was to set up the standard—that is to say, that people who could get, either at their own expense or by the generosity of others, these vestments, were to wear them?—Yes.

9138. Is there an instance of any one of the persons who were responsible for the terms of the rubric and of the Act, actually wearing a chasuble at any time after 1662?—I do not

¹ But one of the mistakes of the Purchas judgment was to restrict the cope to cathedrals. There is no authority whatever for such restriction.

know ; but I know that in the time of Laud, Montague and other bishops they found it impossible to enforce the surplice.

9139. I am asking you, simply as a question of fact, is there any reason that you know of to believe that any one of the persons who were responsible for these things complied with the obligation, which, according to you, they were throwing upon every parish priest who could afford it or get the vestments?—But how could they?

9140. Did they?—Because the bishops were not bound to supply vestments, nor were the clergy themselves.

9141. Do you really think that that is an answer?—Yes, I do.

9142. Were not the people responsible for this, many of them priests of quite sufficient wealth to supply themselves with the proper vestments to be used in Divine worship?—I do not know whether they did or did not. We have no record that they did not.

9143. But have you any suggestion that they did ; have you any suggestion to make, founded on any bit of history or found in any diary or anywhere to show that any one of them wore a chasuble?—Not at the present moment, but I do not think it is possible to produce evidence. The evidence did not exist.

9144. But, forgive me, do you suggest that the interpretation of the rubric which you are now maintaining was the interpretation which was understood by the persons at the time the rubric was found?—Yes. May I say, in answer to your previous question, that I find in various entries in parishes that a chasuble is mentioned among the goods of the church.

9145. In what year?—There were entries certainly in Elizabeth's reign.

9146. That is going far away ; that has nothing to do with it. I am at the time of 1662. Do you suggest to the Commission that any of the people who had anything to do with this in 1662 attached to the rubric the meaning which you attach to it?—Certainly ; Cosin attached that meaning to it, for he says so, and he drew up the rubric.

9147. You see that the position which was established in 1662, if you are right, was that it was the duty, so far as it was possible, of the parish priests to wear these vestments?—Yes.

9148. You have got no instance of parish priests doing it?—No ; but may I say that it was after the Commonwealth when the Prayer Book and everything connected with the Church service was swept clean away, and it would have been impossible, except very gradually, to restore anything. It was impossible to restore the Daily Service and it never was generally restored, though it is, no doubt, prescribed, and is not now restored throughout England. Yet it is obligatory.

9149. You say that it would have been very difficult to carry it out?—Impossible.

9150. Let that be so; that would make it more remarkable that a law should be enacted which the people who enacted it must have known could not be carried out?—Which could not have been carried out then.

9151. You say it could not have been carried out then for obvious reasons. Have you any instance of a complaint being made against any clergyman for not wearing the vestments which you say were prescribed by this rubric?—I have not, nor have I of any complaint made of their using them.

9152. Of course you have not, because they were never used.—That is the question.

9153. Forgive me, you put in 'That is the question' as if it was a matter upon which the evidence was doubtful. I put it to you again. After 1662, can you point to any evidence of a parish priest using a chasuble in the ministrations of the Church for the time of two centuries?—I answer, can any case be produced?

9154. No, that is not an answer. It is quite a simple question. Let me put it again: Have you got any evidence whatever of any sort or kind that during two centuries, after 1662, any parish priest in England used a chasuble?—No, not on the spur of the moment.

9155. But you have given a great deal of attention to this subject?—Yes, I have; but I maintain that you are asking for evidence which is not procurable.¹

9156. But this is a matter which certainly would be of importance. There were a very large number of the clergy, and I daresay at that time, as now, there were different opinions among them with regard to the Sacrament?—But there were no newspapers to publish these things, and there are no detailed records left.

9157. Of course there could be plenty of records in Church accounts and the like, but that does not matter. I will pass from that. I am quite content to take your answer as to a matter of fact, you know. You used just now a word in an answer that this would come 'gradually'?—Yes.

9158. I suppose suggesting that in the then condition of the Church you could not expect everybody to take to vestments at once?—Quite so.

The Witness withdrew.

Adjourned to Thursday next, at half-past One o'clock.

¹ I give evidence in another part of this volume, where I have made a general answer to Sir Edward Clarke's questions.

The Rev. CANON MALCOLM MACCOLL, D.D., recalled ; and further Examined.

9859. (*Mr. Prothero.*) I think in your former evidence you quoted a remark of Queen Elizabeth to De Feria to the effect that she was anxious to restore religion as it had been in her father's day?—Yes, at the death of her father. I quoted from a little octavo volume by Mr. Spencer Hall, not from the Calendar of State Papers. I do not think that was quite understood.

9860. It was a more general question I wished to ask you on that. Do you think, considering her position and the necessity of remaining on good terms with Philip, that she would have told De Feria the truth?—But I think that the whole evidence with regard to Elizabeth goes to show that that was her own view, that she herself really adhered so far as she could throughout to the state of things left about the time of her father's death, and by that I understand her to mean the result of a Commission appointed by her father to revise the Service Books, which Commission was sitting at the time of her father's death, and had prepared, I believe, a draft of the Order of Communion to which she would, of course, be privy ; it was a Committee appointed by Convocation under Statutory authority.

9861. I was not asking exactly what she may have meant by it—the phrase is somewhat vague—but whether you think that she would not have been inclined to make out to De Feria that she was more disposed towards the ancient system than she actually was?—I do not think so.

9862. How do you account then for the fact that she walked out of chapel in order to avoid being present when the Host was to be elevated?—Because the Elevation of the Host was forbidden in the Order of the Communion as well as in the First Prayer Book of Edward VI.

9863. Then she cannot have intended really to restore religion to what it had been under her father?—Of course the expression is vague, but what I understand by it is that she intended to restore it as it was left practically by the legislation of her father.

9864. It is so vague that not much stress can be laid upon it, can it?—I think it indicates the state of her mind combined with her own practice. The ceremonial for the funeral of her sister and for that of Charles V. was very much the ceremonial that would have taken place about the time of the death of her father, and that was under her sanction.

9865. In another place you spoke, I think, of only 200 clergy having refused to accept the Prayer Book?—I think Hallam states the number to be about 180.

9866. The exact number is not important for my point. You

deduced from that, I think, the fact that there were very few Puritan clergy in the early part of the reign?—No; the point I wanted to draw from that was that there were then about 10,000 clergy, and that if they all conformed with the exception of about 200, that shows that the externals of public worship had not been fundamentally changed.

9867. It also shows, does it not, that the vast bulk of the clergy had no objection to the change that had been made in Edward VI.'s reign?—No; it has been said by Coke, has it not, in his charge at Norwich, that for the first eight years, I forget exactly whether it is eight or thirteen years, those whom we afterwards call Roman Catholics attended the churches, and they did so, in fact, practically until the Queen was excommunicated by the Pope. It has been said (it has been questioned by some Roman Catholics) on good authority that the Pope himself intimated that he would accept the Prayer Book provided that the Queen accepted his supremacy.

9868. But it must prove, must it not, that at any rate the great bulk of the clergy had no objection to the differences introduced in the Second Prayer Book of Edward VI.?¹—But the Second Prayer Book was not the Prayer Book of Elizabeth. There were very important differences.

9869. To go on to the point that you made about King Edward VI.'s first Act of Uniformity, I think you said that you did not think it could possibly have received the Royal Sanction before the end of the second year, because there was not time between its passing through Parliament and the end of that year?—Not merely because there was not time, but because it seems to me impossible that the ceremonial of passing it by Commission under the Great Seal, and by the King's sign manual in Letters Patent in the presence of the Lords and Commons, should have happened without any note of it being in history at all. I do not think there is another single case where the King passed before the end of the session by that process an Act of Parliament without any record of it being left, and the time was only four days.

9870. Four days? I think that is a little under the mark, is it not?—No, four days.

9871. It passed on January 22?—Yes.

9872. And the 27th was the last day of the second year?—But the 27th was Sunday, and nothing could happen on Sunday. Parliament did not sit on Sunday, and therefore there were only four days.

9873. You are aware, I dare say, that the Act of Attainder of the Duke of Norfolk at the end of Henry VIII.'s reign was

¹ The second Prayer Book had hardly come into use before Edward VI.'s death. See pp. 168-170.

passed and received the Royal Assent in even a shorter space of time?—Yes, but then you have the record of that; it was done with all the formalities of Letters Patent, etc., and there was a special King's Council for it. But here you have not a scrap of evidence to show that anything of the kind took place.

9874. I understand your argument to be not so much that there was not time, but that in such an exceptional case there would have been a record if it had happened?—Yes, you might squeeze it into the time, though of course four days is a very short time to do it in. But that is not my only evidence, because I think there is no question that the Royal Sanction was given to a list of sixty Acts on the 14th of March of the third year. If it is disputed that the Act of Uniformity which heads the list was one of the Acts to receive the Royal Assent on that day, surely the onus of proof is on those who dispute it. Is it disputed that the Royal Assent was given on the 14th of March to all the Acts there mentioned?

9875. Of that I am not sure. You say then that it is impossible to establish by actual historical proof the date at which Assent was given?—No, I think there is no doubt that it was given on the 14th of March, because the Act of Uniformity is in the list of Acts which are declared then to have passed at the end of the session.

9876. Declared to have passed; but it does not actually set down that the Assent was given?—Then I can prove that independently. The General Pardon Act was introduced into the House of Lords on the 8th of March; it passed its Second Reading I think on the 9th; it passed its Third Reading I think on the 13th; it went down to the House of Commons on the 14th and passed its three Readings that very day in order to be in time to receive the Royal Assent, and it is among the Acts passed at the end of the session. That fixes the date as the 14th. In addition to that, the General Pardon Act, which I believe really gave the pardon to those mentioned in the Act of Uniformity, gives the date for the passing as that of the 14th March.

9877. The passing of that Act—the General Pardon Act?—But it is among the list of Acts passed then.

9878. Only of the Acts passed during the Session?—It gives the date of it as the 14th March; the Pardon Act itself states that.

9879. Of the Act of Pardon?—Yes.

9880. The date at which it was passed?—But then, surely, if you dispute that the other Acts were passed at the same date you must give some evidence about it. You have a list at the end of the Parliament of sixty Acts to which the Royal Assent, it is said, was given, which passed Parliament, and

that is among them, and there is no doubt that the Act received the Royal Assent on the 14th March. It is surely for those who dispute it to prove their case that all the Acts did not receive the Royal Assent on the same day.

9881. Then your point, as I understand, is that because the Act of Uniformity is included in that list given in the General Pardon Act, therefore it must have been passed on the same day?—Yes, but not only on that ground, because it seems to me impossible that if it had been passed by Royal Commission with all the formalities involved, there should not be a single record of the fact left to us.

9882. I should have thought that there were many Acts which have taken place which were not recorded. You know that Edward records it as having passed in his second year in his own journal?—No, pardon me, that has been said; but he does not record it as having been passed in that year at all; it was “made.” He says it was made by a Committee of bishops sitting at Windsor.¹ And that note, it is quite true, in Edward’s journal is under date of the second year, but it was evidently written in the third year, because it records the Assent to the execution of Lord Sudeley, which did not take place until the third month of the third year.

9883. Do you mean that because it was written during the third year, therefore the statement that the Act was passed in the second year cannot be regarded as sound?—No, it does not say it was passed. It says the Act² was made by a Committee of Divines sitting at Windsor.

9884. May I read you the paragraph? The entry is for the second year, and the last paragraph of it is this: ‘A Parliament was called, where the Uniform Order of Prayer was institute, before made by a number of bishops and learned men gathered together in Windsor.’—That is perfectly accurate.

9885. The word ‘made’ does not apply to the passing of the Act of Parliament, but to its consideration beforehand by a body of bishops and learned men?—It refers to the *Prayer Book* being framed, compiled by the Committee of Divines, at Windsor.

9886. But you see it is stated plainly that it was in this Parliament of the ‘year 2’ that ‘the Uniform Order of Prayers was institute’?—Certainly; it passed Parliament in the second year; it did not become a legal instrument until the third year.

9887. Supposing, for the sake of argument, that it did not receive the Royal Assent until the beginning of the third year, do you hold that it could not have been spoken of as an Act of

¹ This was a slip on my part. What Edward VI. says was ‘made’ was the Prayer Book, not the Act of Uniformity.

² The Prayer Book, not the Act.

Parliament of the second year or as having been made by authority of Parliament in the second year?—It could not be said to have the authority of Parliament in the second year; it had no authority at all till it received the Royal sanction.

9888. No, of course not, but you mean that an Act got through by Parliament in the second year and only sanctioned by the King in the beginning of the third year could not have been spoken of as an Act of Parliament of the second year?—I do not go so far as that, but I say that anything ordered by a book which did not come into legal use until the third year could not be said to have the authority of Parliament—to be used by the authority of Parliament in the second year.

9889. Sir Lewis Dibdin quoted a statute, that statute of the fifth and sixth year of Edward, in which the Act of Uniformity itself is spoken of as an Act made in the second year of Edward VI.?—I admit all that. I say that the phraseology is that Acts are made in the Parliament or in the session so and so. They are all made in Parliament. The King has absolutely nothing to do with the making of an Act; he can veto it after it is made by Parliament; it is his function to accept it or reject it, but it is made before and must be made before he gives his sanction or rejection of it.

9890. But Acts of Parliament which are made or passed by Parliament in a certain year and not sanctioned by the King until the next year, or perhaps two years afterwards, are spoken of in other Acts of Parliament as having been made in the first or the last of those years; the practice varies. Let me recall another instance. In the very first year of Edward VI., in chapter 12, section 4, there is a reference to an Act of Henry VIII.'s reign, the Act about Proclamations, 'as one other Act made in Parliament holden in the thirty-fourth year of the reign of the said King Henry VIII.' Now that Parliament was held in two years just in the same way as the Parliament of the second and third years of Edward VI.?—Yes.

9891. And yet it is referred to as an Act made in Parliament holden in the first of those two years, that is in the thirty-fourth year?—Yes.

9892. Whereas it was only passed by Parliament in the thirty-fourth year and did not receive the Royal sanction until the thirty-fifth year?—But I do not know that that conflicts with my point of view.

9893. Is it not plain from that that an Act of Parliament passed in the second year, which had got through Parliament in the second year of Edward VI. and was sanctioned only in the third year, might be spoken of as an Act of Parliament or as having been done by authority of Parliament in the second year?—Would you mind quoting the expression again.

9894. The expression in the Act I quoted is 'One other Act made in Parliament holden in the thirty-fourth year of the reign of the said King Henry VIII.' An Act of Parliament then can be said to belong to the first of two years over which it runs?—But I do not see that that conflicts at all with my view. That means to say an Act made in the Parliament which began in that year.

9895. Yes, no doubt it does. But it shows that an Act like Edward's first Act of Uniformity can be called an Act of the first of two years?¹—Yes, but it cannot be said to have the authority in that year; that is my point.

(*Rev. T. W. Drury.*) I understand your position to be that the Ornaments Rubric restored in its integrity the rule of public worship in legal use in the second year of Edward VI.?—Yes, as regards ornaments.

9896. And that the old ceremonial, with certain modifications which were made in Henry VIII.'s reign and in the early part of Edward VI.'s reign, was restored?—Yes.

9897. That is your position, is it not?—Yes.

9898. Can you tell the Commission what ceremonies in public worship were modified at that time, I mean in the later part of Henry's reign and the first part of Edward's reign?—It does not say anything about ceremonies, it says ornaments.

9899. But I am quoting from your book, if I may accept the words of it?—'A great deal was modified; a great many superstitions were abolished: for instance, burning tapers before images and a number of other things.'

9900. That does not refer to public worship, does it?—Yes, it does.

9901. The burning of tapers before images refers to public worship?—Yes, a service conducted in church of a public character in processions and the like.

9902. Did not that refer to the private burning of tapers before images?—No, it referred to both.

9903. In what way was the burning of tapers in public used; in what services?—In processions at various services. I do not say in the Mass, though they may have been even there, but there were a number of other services, besides the Mass.

9904. Can you give me the ceremonies that were pruned or modified in the Mass?—If Dr. Gibson will allow me to say so, I think I was correct in saying that the Epistle and Gospel were authorised in English.

9905. You would hardly call that a ceremony, would you?

¹ No, unless 'holden' is used; and then the date refers to the beginning of the session, not to the passing of the Act, which indeed may have been introduced some years later.

—The Order of the Communion prescribes all the ceremonies in the Mass except in so far as they were modified by itself.

9906. The Order of Communion does not say so?—But I did not finish. I said the Order of the Communion says that except with regard to the points laid down by itself the ceremonies of the Mass were to be kept as they were.

9907. Exactly, that is my point; the ceremonies of the Mass were left as they were?—Will you refer me to the part of my book which you are quoting.

9908. The words are that the old ceremonial as pruned and modified in Henry VIII.'s reign and in the beginning of Edward VI.'s reign was restored in the reign of Elizabeth?—Yes.

9909. That is my point. You accept that?—Yes, I accept that, but I apply that to the whole of the services held in churches and cathedrals.

9910. Of course. But you have only given us now one modification, namely, the burning of tapers before images, which you say is a part of public worship. Can you give some others?—You cannot give me the page of my book, can you?

9911. No, but I do not think that is really material?—I think it is; the context very often alters it.

9912. But you accept the position, do you not, that the old ceremonial was restored with certain modifications; you have told us so again and again?—But what do you mean by the old ceremonial?

9913. The ceremonial of the mediæval service books, I presume?—I do not say that.

9914. You say the old ceremonial as pruned and modified. What other ceremonial do you mean?—I mean the ceremonial of public worship.

9915. But where do you find it except in the mediæval service books, the service books of Sarum, and York, and so on—the old English Uses?—I grant you that it is to be partly found in those service books.

9916. Then the old ceremonial as found in the *Sarum* books, but as pruned and modified in Henry VIII.'s and Edward VI.'s reign, was restored. Page 649 is the page in your book?—Thank you. I say it refers 'Undoubtedly to the old ceremonial as pruned and modified first toward the end of Henry VIII.'s reign, and still further in the beginning of the reign of Edward VI. by means of his Injunctions and "The Order of the Communion."'

9917. We know, of course, very well that in the reign of Edward VI. it was by Injunctions and the Order of Communion?—Then it is difficult to give chapter and verse without having the book before me, but I will give it you on the spot. For instance, there were changes made in the processions.

9918. The processions were abolished, were they not?—No; on the contrary, under Henry VIII., the processional services were put into English.

9919. They were altered?—Yes, they were altered; they were not abolished.

9920. Were they not abolished in Edward's reign?—I will not say for certain at the moment, but they were not abolished in the reign of Henry VIII.; they were altered in the reign of Henry VIII.

9921. Then something else?—A good deal of the ceremonial was altered.

9922. But you have given me now only two instances, tapers and processions?—If I were in my library, I could give you a good deal more, but that will suffice for the present. I give you instances.

9923. You have given me two. Do you suppose you could give me twelve?—I do not know that there is anything sacred in the number twelve.

9924. No, there is no sacred number at all. I want to know how many more were abolished?—I cannot tell you on the spur of the moment, but I could give you several more. I hold that saying in English what used to be said in Latin is a ceremonial.

9925. Now the same Act of Parliament as gave force to the Ornaments Rubric of Elizabeth brought into full force the Second Prayer Book of Edward VI., did it not, with certain exceptions which we need not go into, and of course with the exception of the matter of ornaments?—Yes.

9926. So that that Prayer Book had full force with those exceptions by that Act of Parliament. Now the Prayer Book as restored in Elizabeth's reign contained the Chapter of Ceremonies, did it not?—Yes, taken from the First Prayer Book.

9927. It contained that chapter, did it not?—Yes.

9928. So that that chapter, I suppose, has the same force as the rest of the Prayer Book, has it not?—Yes.

9929. I want to read a few words to you from that chapter. It speaks, as I daresay you know as well as I do, of the multitude of ceremonies which had existed. 'The great excess and multitude of them hath so increased in these latter days that the burden of them was intolerable.'—Yes.

9930. Then it goes on to say that in Augustine's time the ceremonies were so great that 'the estate of Christian people was in worse case concerning that matter than were the Jews.' Then it draws a contrast between the days of Augustine and the days when these words were written, and says: 'But what would St. Augustine have said if he had seen the ceremonies of late days used among us?' Then it goes on to speak of this 'excessive multitude of ceremonies' which was 'so great.' The

question I want to ask you is : How could those words have been given that force in the time of Elizabeth when practically, with the few exceptions you have given us, the older ritual still remained ?—But that has to do with ceremonies, and so forth.

9931. Let us keep to the point if we can. I am speaking of the multitude of them. There must have been a multitude which was done away with ?—Yes, undoubtedly creeping to the cross and various things on Good Friday ; throwing ashes on the heads on Ash Wednesday, burning candles on Candlemas, and there were whole tribes and hosts of them.

9932. You have named, so far as I know, almost all that were abolished of that kind. Now what ceremonies were abolished connected with the services which are now in the Book of Common Prayer ?—Creeping to the cross was one.

9933. That is not connected with any service at present in the Book of Common Prayer ?—Is it not for Good Friday ?

9934. The whole of that Good Friday service is abolished, as you know ; none of that part of the Good Friday service was even found in our Prayer Book ?—No ?

9935. Then can you give us another ?—The putting of ashes on the head on Ash Wednesday.

9936. Another ?—Burning candles at Easter and Candlemas, Cranmer refers to them and also the Venetian Ambassador in one of his Letters. I cannot recall them all on the spur of the moment.

9937. Now take the Service of the Mass. What was omitted ?—I have said already that the Order of the Communion says that nothing was to be omitted except with regard to the points laid down by itself at that time.

9938. You think that the ceremonies that you have mentioned are sufficient to justify the strong words of the Chapter of Ceremonies ?—There were a number of other ceremonies.

9939. But you think the ceremonies that you have mentioned, and I think you have mentioned nearly all that were altered, are sufficient ?—But I do not admit that. I could mention numbers more.

9940. Then you do not think the number that you have mentioned is sufficient to justify the words of the Chapter of Ceremonies, but you think you could bring more ?—I am sure I could.

9941. That is what we have come to then : that the number you have mentioned is not sufficient to justify the language of this chapter, but you think you could bring more ?—I know I could bring more.

9942. (*Rev. Dr. Gibson.*) I want to ask you one or two questions about a point on which you have not been questioned yet. You referred in your evidence on the first day you were

here to the Latin use ; your words, which are on page 1095 of the evidence, are that Elizabeth's ' Latin version of the Act of Uniformity uses the words *quemadmodum mos erat*—it was the custom of the second year—it was the usage of the second year ; that is the Latin translation.' I see you make a great point of that in your book. You referred to it in several places as if you laid considerable stress on it?—Yes.

9943. You are aware of the character of the Latin Prayer Book of Elizabeth ; you are aware of the extraordinary mistranslations there are in it?—Yes, I know all that.

9944. And yet you lay considerable stress on this?—But I do not think that that is any mistranslation ; I think it is a very good translation of the phrase in the Act of Parliament 'as was.' It is ungrammatical as it stands. Have you the clause of the Act of Parliament before you where 'as was' is used?

9945. But I do not think you have quite understood my question. My question is this : That being aware of the extraordinary mistranslations and inaccuracies that there are in the book, you, nevertheless, do lay stress on this point?¹—Yes, I do.

9946. In spite of the inaccuracy?—Yes. But let me say, as to the inaccuracies, that Aless's translation was a great deal more inaccurate than is the last revision of it by Haddon. Haddon was a very good Latin scholar, and Haddon corrected a good many of the mistranslations.

9947. Haddon was a very good Latin scholar ; you think his translation of the rubric in the Communion of the Sick implies that he was such a good scholar, do you? Where he says that if a sick man cannot come into the church and wishes the Sacrament to be given to him in his house *significabit tum demum postridie aut primo mane parocho* ; he is to give notice apparently the day after?—That is evidently a misprint.

9948. You think a good Latin scholar would put *postridie* instead of *pridie*?—That is evidently a slip.

9949. I think you will find that there are a good many slips, but I think we will leave that?—But may I finish it? I say that the clause in Elizabeth's Act is not grammatical as it stands ; but it is grammatical according to my view : ' Provided always, and be it enacted that such ornaments of the Church and the ministers thereof shall be retained as was '—that means 'as was the custom in this Church of England.' It must mean that grammatically ; *quemadmodum mos erat*.

9950. Now, I want to go on and ask you where you get that Latin version of the Act of Uniformity from?—I got it from the edition of the Latin Prayer Book of Queen Elizabeth.

¹ What have inaccuracies in the Book to do with the Latin translation of the Act of Uniformity? Nothing at all.

9951. Do you remember what edition it was?—I cannot on the spur of the moment.

9952. Because you will find in the reprint of the Latin Prayer Book in the Parker Society's publication, which I have tested by the original copy in the British Museum,¹ that the Act of Uniformity does not exist nor does the Ornaments Rubric. Here is Clay's edition, in which the letters patent take the place of the Act of Uniformity, and the Ornaments Rubric is omitted altogether. I have verified Clay's edition by a reference to the original edition in the British Museum, and there is no Act of Uniformity at all, nor is there any Ornaments Rubric. This, which you lay so much stress upon, comes not from what you call the only legal Latin Prayer Book and authorised Latin version, but from an unauthorised Latin version of twelve years later, 1572. You were not aware of those facts, I presume. Therefore the words *quemadmodum mos erat*, on which you lay so much stress, do not exist in the book you profess to quote from. You refer again in your book to 'the contemporary Latin version' of the Act in Elizabeth's Latin Prayer Book, at page 649; as 'the contemporary interpretation' you speak of it on page 381; you use the words 'the authorised Latin version' at page 594; the 'contemporary Latin version' at page 628; 'the fatal *quemadmodum*' on page 702; 'the only legal' book of 1560 on page 704. You see you lay great stress upon it, but it does not exist?—But I lay great stress upon it as the contemporary reading of the Ornaments Rubric.

9953. Pardon me, not only as the contemporary, but as the authorised and legal one?—Yes.

9954. It was neither authorised, nor was it legal: and it was not strictly contemporary? ²—Then you say the authorised edition of the Act of Uniformity does not exist?

9955. No; there is no Act at all nor the Ornaments Rubric in the Latin Prayer Book of 1560. I do not understand how you can lay stress upon it, not only as contemporary but as authorised and the only legal one, when the only legal Book does not contain the words?—Then I drop it.³ But with regard to the Ornaments Rubric, it is, I believe, a fact that there are only two copies existing of the first impression of Elizabeth's Prayer Book, and both contain the Ornaments Rubric. One is in the possession of Lord Aldenham and the other I saw five years ago at Quaritch's.

¹ The original copy is not in the British Museum. It is dated 1559, and there is a copy in Trinity College, Dublin.

² Dr. Gibson is quite wrong here, although I could not correct him from memory on the spur of the moment. See Chapter IX.

³ I was quite right. I have given the evidence on pp. 94–108. Its legality is not affected by its being in, or out of, 'the only legal Book.'

9956. It does appear in the unauthorised edition of 1572, Wolfe's edition; you will find it in a different translation altogether unauthorised, not legal and not contemporary. Those are the points?—1572 might be called contemporary.

9957. Not strictly; at any rate not authorised nor legal. Then if you have your evidence before you and will refer to page 1118 at question and answer 9014. I want to know whether this is accurately represented. The question was: 'Can you point out to me any suggestion by anybody for 200 years after the rubric was drawn up that the authority of Parliament referred to any Statute other than that which we know as the 2nd of Edward VI.?' and your answer was 'Cosin, and Sandys, who was his contemporary, and Strype: I think Fuller, Hayward in his Life of Edward VI. and Heylin all claim the authority of Parliament for the Order of Communion and therefore exclude the other'?—Sandys was hardly the contemporary of Cosin.

9958. I do not think you can mean that?—I do not think I said it.

9959. But do you assert now that all these people whom you here mention claim the authority of Parliament for the Order of Communion?—I do.

9960. And that thereby they exclude the other by which I presume you mean the Statute of the 2nd of Edward VI., the Act of Uniformity?—Yes.

9961. Where do you find that Cosin claims the authority of Parliament for the Order of Communion?—I have given it in my book. Cosin claims more than one authority for that; he claims the authority of the revived Statute, 25 Henry VIII.

9962. But I am asking about his claiming it as authority for the Order of Communion—not about other things. This is an assertion that he claims the authority of Parliament for the Order of Communion. If I may venture to say so, I rather think it was a slip of yours saying that, and that what you meant really was that Cosin claims the authority of Parliament for the Injunctions; you refer to that on an earlier page, page 1113?—Yes, I have given what I meant in my book in two quotations from Cosin, but it is difficult to find on the spur of the moment the passages in my own book even. I had in my mind the Injunctions, he mentions the Injunctions.

9963. Quite so?—And he mentions the Act of Henry VIII. as reviving the old Synodals Provincial.

9964. But I am not aware that Cosin has any allusion to the Order of Communion?—No, I referred there to Sandys, Fuller, Hayward, and Heylin.

9965. Is Cosin there by accident? Cosin ought not to be in?—No, he ought not to be in there.

9966. But if you substitute the Injunctions for the Order of Communion then you would still refer to Cosin, would you, as an authority for the Ornaments Rubric of Elizabeth referring to the usage before the First Prayer Book was published?— I have not the Injunctions before me, but certainly Cosin claims that the Ornaments Rubric sanctions what existed as in use in the second year of King Edward VI.

9967. Yes, and he refers to the Injunctions certainly. But are you aware that he is historically inaccurate about the Injunctions, because he says they were mentioned in the Act of Uniformity, that they received Parliamentary authority from the Act of Uniformity of Edward VI. which is a historical blunder?— Undoubtedly.

9968. Cosin is a great authority : that you told us yourself quite definitely when you referred to him on page 1113 of your evidence : ‘ Now Cosin is a great authority. He had himself to do with the last revision of the Prayer Book.’ And you then quoted some words from Cosin. I take it it is admitted that it was a slip in your evidence referring to Cosin as an authority for the statement that the Order of Communion had Parliamentary authority?—Yes.

9969. But what you do refer to Cosin for is the Injunctions?—Yes, I quote him ; I quote a passage where he mentioned the Injunctions among other things.

9970. Then did you notice when you referred to Cosin that the passage to which you referred does not only refer to the Injunctions but to the Act of Uniformity and the First Prayer Book of Edward VI. as belonging to the second year of Edward VI. ?—Yes.

9971. Because you did not give any indication of that in the quotation you made?—No, the curious fact is that Cosin and Fuller both regard the Order of Communion and the First Prayer Book—

9972. I am not dealing with the Order of Communion now ; we have got away from that?—Pardon me, I am answering the question if you will let me finish it. It is a curious fact that Cosin and Fuller regard in a manner the First Prayer Book of Edward VI. as an enlargement of the Order of Communion, and Fuller speaks of them really as one book.

9973. But Fuller makes a historical blunder about it for which he is taken to task by Heylin?—Yes, I quote Heylin.

9974. I do not think you can take much from Heylin, but I should like to read you this from Cosin and see what you would like to say about it ; it is volume 5, page 438 : ‘ The particulars of these ornaments (both of the church and of the ministers thereof as in the end of the Act of Uniformity) are referred not to the fifth Edward VI., as the service itself is in the beginning

of that Act, for in that fifth year were all ornaments taken away (but a surplice only) both from bishops and priests, and all other ministers, and nothing was left for the church, but a font, a table, and a linen cloth upon it (at the time of the Communion only), but to the second year of that King, when his service book and Injunctions were in force by authority of Parliament.¹ Then he goes on, '*Such ornaments as were in use in the second year of King Edward VI.* In that year, by the authority of Parliament, was this order set forth, in the end of the service book then appointed.' And then he goes on to quote very fully from the directions not of the Order of Communion, but of the First Prayer Book?—Yes.

9975. And then he says, 'Hereupon when a Parliament was called, in the fifth year of King Edward, they altered the former book, and made another order.' 'But by the Act of Uniformity the Parliament thought fit' (going on to Elizabeth's reign) 'not to continue this last order but to restore the first again which since that time was never altered by any other law, and therefore it is still in force at this day.' There is a good deal in that series of notes which is actually in the passage to which you refer, on the very page to which you refer, which connects the Ornaments Rubric with the First Prayer Book of Edward VI. and asserts that it refers to the Act of Uniformity and the First Prayer Book?—Yes, but I have read it over and over again, it is a very confusing passage.

9976. I do not see any confusion whatever?—Pardon me.

9977. What is the confusion?—When you read an author you must take what he says altogether, and, certainly, Cosin declares that the Ornaments Rubric sanctions ornaments and ceremonies which preceded the First Prayer Book, and he refers to the revival of the Statute of Henry VIII. by the Statute of Elizabeth covering it.

9978. He alludes to it, certainly, and to the Injunctions, and historically, as I told you, he makes a blunder about the Injunctions?—But not about the Act of Elizabeth.

9979. About the Act of Henry VIII., you mean, do you not?—The Act of Elizabeth reviving the Act of Henry VIII.

9980. He does not say anything about it?—Pardon me, I have quoted it.

9981. Not about the Act of Elizabeth reviving the Act of Henry?—It did not exist unless it was revived. It was repealed by Mary.

¹ If by Service Book Cosin meant the first Prayer Book, he was certainly wrong, for that Book was not 'in force' in any sense in Edward's second year. The Injunctions had the authority of Parliament, but not by the Act of Uniformity.

9982. He does not refer to that.¹ Then I want to read to you further from what is printed as the second series of notes which is now generally thought to be still later than that given as the third series—it belonged to a later period. Cosin says, ‘And at the celebration of the Holy Communion it was ordained, by the rules and orders of the first liturgy set forth by the Church of England, and confirmed by authority of Parliament, in the second year of the reign of King Edward VI.’ There again he thinks the first liturgy was ‘confirmed by Authority of Parliament, in the second year of the reign of King Edward VI.,’ and he quotes the rubrics fully, ‘*And at all other times of his ministration*]. That is, as is set forth in the first liturgy of King Edward before-mentioned,’ and he refers to the singing and saying of Matins ‘*by Authority of Parliament*’] (his note is) ‘which confirmed both the first liturgy and the Injunctions of King Edward VI.’ So that all through Cosin takes it that the First Prayer Book of Edward VI. belongs to the second year of his reign and that the Act of Uniformity of Elizabeth and Elizabeth’s Ornaments Rubric refer to that book and that Act. Cosin, as you tell us yourself, is a great authority, and Cosin was one of the 1662 revisers to whom our present rubric is due?—Yes.

9983. Does not it look then as if in Cosin’s opinion the Ornaments Rubric by which we are bound referred to the First Prayer Book of Edward VI?—I read that.

9984. Could you answer me, does it not look as if in Cosin’s opinion the Ornaments Rubric by which we are bound referred to the First Prayer Book of Edward VI.?—It looks from my point of view as if it referred to that and the Ornaments Rubric together.

9985. There is no reference to the Order of Communion?—He has referred to the ceremonial existing under the Order of Communion.

¹ Dr. Gibson misses the point. Cosin (v. 438–9) says that by the Ornaments Rubric ‘many other ornaments are appointed besides those named in the first Prayer Book,’ namely, ‘those ornaments of the Church which by former laws, not then abrogated, were in use by virtue of the Statute 25 Henry VIII., and for them the provincial constitutions are to be consulted, such as have not been repealed, standing then in the second year of King Edward VI., and being still in force by virtue of this rubric and Act of Parliament.’ This is quite plain. In Cosin’s view the Ornaments Rubric legalised the usage of the second year of Edward, and that usage included ornaments not specified in the first Prayer Book, but which were legalised by 25 Henry VIII., which was repealed by Mary and revived by Elizabeth. It is all very clear and simple, and I am surprised that Dr. Gibson could not see it even after I explained it to him. Cosin, it is true, blunders about the second year, which, in common with several writers of that period, he thought was 1549. Dr. Gibson seems to be of the same opinion, judging from what he says in No. 9982 in the official report of his examination of me. I have discussed the whole question in Chapter XIV.

9986. There is no reference whatever to the Order of Communion?—There is reference to the ceremonial that existed before the First Prayer Book.

9987. Under the Injunctions, yes?—And under the Act of Henry VIII. as revived by Elizabeth. Cosin embraced (as Fuller did afterwards) the whole of that legislation as covered by Statute law.

9988. Where does Cosin refer in any way to the Order of Communion; can you show me a single passage in Cosin's writings (you may be able to, I do not know) which has any reference to the Order of Communion?—I think I could. It is so difficult, when you have my book to mark passages to cross-examine me upon, to meet you on the spur of the moment without some time. What does he mean here at page 650 in my book? 'When his Service Book and Injunctions were in force by authority of Parliament,' he goes on, 'And in these books many other ornaments are appointed; as, two lights to be set upon the altar or Communion Table; a cope or vestment for the priest and for the bishop'?

9989. He is referring to the Service Book and the Injunctions, the Service Book being the First Prayer Book of Edward VI.?—But he goes on 'and those ornaments of the Church which by former laws——'

9990. But that is not a reference to the Order of Communion?—'Those ornaments of the Church which by former laws, not then abrogated, were in use, by virtue of the Statute 25 Henry VIII.'

9991. That is entirely different from the Order of Communion. You have claimed statutory authority for the Order of Communion?—Yes.

9992. By the Act of Edward VI. which ordered Communion in both kinds?—Yes, and by the 25th of Henry VIII.

9993. You were examined on those, we cannot go back to those. I think it was shown that they have not much bearing?—But I submit that if you are to go back on my evidence I ought to be allowed to say I was right. I was right, for example, in saying that 32 Henry VIII., chapter 26, was not repealed till Queen Victoria's reign. I have gone into that question.

9994. That I leave if it is important: after that I suppose Sir Lewis might examine you again if necessary, but I am not going to deal with a matter like that. I think we have done with Cosin now. Now to go back to your answer to question No. 9114. Sandys, you say, claims the authority of Parliament for the Order of Communion. Where does Sandys claim the authority of Parliament for the Order of Communion?—By referring to the first and second year.

9995. You think that letter of Sandys that the ornaments of the first and second year of Edward VI. are to be revived justifies you in saying definitely that Sandys claims the authority of Parliament for the Order of Communion?—I think so.

9996. And Strype, where do you find Strype?—Strype I have given, have I not? It is Strype 1st Volume, Part I.

9997. What are the words?—The words are the words that Sandys uses.

9998. Simply that again?—But he does not give them as a quotation.

9999. He does not give them as a quotation, they are not in inverted commas; but there can be no question whatever that he is referring to Sandys as his authority. They are almost a verbal quotation?—Yes, but he corrects Sandys.

10000. But that is your only authority?—For Strype—yes.

10001. Then, Fuller, as I think you know, bungles about it altogether, so that his authority is of no value. He thinks the Act of Uniformity gave the authority of Parliament to the Order of Communion at a subsequent date to its publication?—No, not that it gave authority to it, but that it inflicts penalties to enforce it.

10002. Heylin, you were examined about, and the Commissioners can judge for themselves as we have it down on the notes?—Yes, I have quoted Heylin.

10003. The Commissioners can judge for themselves whether Heylin bears out your interpretation. Then you refer to Hayward's 'Life of Edward VI.'?—Yes.

10004. But those are the only authorities you can give us for your belief that the Order of Communion had the authority of Parliament?¹—Yes, and Foxe, but there is a whole consensus of authorities showing that it is the 'use' that is prescribed in the Ornaments Rubric, and that the stress must be on the 'use' and not on the 'authority of Parliament' including a most important authority, namely, the Committee appointed by the House of Lords in the year 1641, consisting of ten earls, ten barons, ten bishops, and a number of eminent divines, including Ussher. They suggested that the rubric should be abolished which commanded the use of such ornaments 'as were in use in the second year.'

10005. Yes, we know about that Parliamentary Committee of 1641. I do not think you can take much from that?—I think a great deal—ten bishops.

10006. But it is merely a phrase that is practically the same as that in the Act of Uniformity?—But there is nothing about 'authority.' The stress is laid on 'use,' and Baxter in 1688

¹ I have quoted others—*e.g.* Canon Dixon and Dr. Cardwell.

refers to it as ordering the vestments that were in use in the second year of Edward.

10007. That is a different point—Baxter. But if you want to refer to that Parliamentary Committee, can you give us the page of your book?—It is page 423 ‘whether the rubric should not be mended, where *all* vestments in time of divine service are now commanded which were used, 2nd Edward VI.’ There is nothing about ‘the authority of Parliament’ there.

10008. That is very little different. You cannot I mean argue much from it as an interpretation of the words which were in Elizabeth’s Ornaments Rubric, namely, ‘such ornaments in the Church as were in use by authority of Parliament in the second year of the reign of King Edward VI.’?—I can argue this. The contemporary interpretation, and the interpretation down to our time, was that what the Ornaments Rubric referred to was the usage of Edward’s second year and not the authority of Parliament.

10009. But it is little more than a quotation of the actual words of the Ornaments Rubric?—Yes, but leaving out the ‘authority’ shows that they referred to what was in use in that year.

10010. No, indeed; I do not think it does. You can take your interpretation as you please. Now I think I understood from what you said just now in answer to Mr. Drury that you wanted to reassert your statement that the Epistle and Gospel were used in English in the reign of Henry VIII.?—Yes.

10011. Would you give me the evidence for that?—Have you got the Injunctions of Henry VIII. of 1536?

10012. I am afraid I have not.—I think you will find that they authorise it.

10013. Have you brought them with you?—No, I have not. I found it asserted by Gee in his ‘Elizabethan Prayer Book.’

10014. That the Epistle and Gospel were ordered to be used in English?—Authorised in English by the Injunctions of 1536.

10015. Can you give us the reference to Gee?—No, I cannot. I got the book last night and I looked it up just before I was starting and, afraid of being too late, I could not verify it. But it is in Gee’s book.

10016. It is rather difficult if you come with an assertion of something you say you have looked up and cannot give us the reference?—It is not half so difficult as to be asked to give references without any knowledge beforehand of the questions that are going to be asked.

10017. But you are only being examined on your own statements in the past.¹

¹ That is not correct. I was examined without warning by Dr. Gibson and others on my book on *The Reformation Settlement*, which I had not read for five years.

10018. (*Sir Lewis Dibdin.*) It is at page 65 of Gee's book.

10019. (*Rev. Dr. Gibson.*) Gee says: 'The Epistle, Gospel and Commandments in English had been legalised by the Injunctions of 1536 and those have never been repealed'—An English translation was authorised then for Processionals. Henry's Primer in English was authorised then.

10020. The Primer was not a service book?—I said occasional services.

10021. That was private devotion?—Yes, partly.¹

10022. That is a very different thing from the authorised services.² I take your statement as to the Epistle and Gospel of course being legalised; whether there is any evidence that they were used I am not aware. The Processional of course is covered by the Litany which you spoke of before, and was admitted. Was there anything else that you can tell me of in English?—Of course the authorisation of the English translation of the Bible was an important fact.

10023. But how far does that bear on the services in English?—All I meant was that there was a tendency considerably before the death of Henry in the direction of changing the services to the reformed use.

10024. A tendency you meant, but your words were that 'a great part of the service was in English'?—The Litany, the Epistle, and Gospel. You are quoting my book.

10025. No, I am quoting from page 1065 of your evidence; that is the place where I interposed the questions. You said, 'A great many things had been abolished under Henry VIII., and in the early years of Edward VI., and a great part of the service was in English'?—In the early years of Edward VI.

10026. Then I asked you, 'Did I rightly understand you to say that at the death of Henry VIII. a great part of the service was in English,' and you were questioned on that?—I meant Edward VI. at the beginning. The Compline was in English just at the death of Henry VIII.

10027. Not at the death, after the death?—Well, immediately after.

10028. Then, I think, I must press you on this. You do not seem to me to realise the extraordinary difference there was between the last year of Henry VIII. and the first and second years of Edward VI. You argue from Elizabeth's language to *De Feria*, where she speaks of restoring religion as it was at the death of her father, as if that meant that she was going back to the early years of Edward VI.?—No.

10029. Excuse me, that is your argument?—But surely I can explain myself. I did not mean that, because I have said in

¹ But public also.

² But the Primers were 'authorised services.'

other parts of my evidence (as well as in my book) that she regarded probably as a legacy of Henry VIII. the result of the committees appointed by Convocation under Statutory authority to revise the Service Books, and that they had finished a great part of their work at the death of Henry VIII., and you will find in the very first sitting of Convocation the Lower House of Convocation asked the Upper House to produce the revisions they had made under that Commission of Henry VIII. All that was known to Elizabeth, and she regarded that as part of the legacy left to her by her father.

10030. You are reading a great deal into your words. According to you¹ she said, 'That she was resolved to restore religion precisely as it had been left by her father,' and you infer that in saying that she made a clean breast of her religious convictions and political intentions with a frankness which left nothing to be desired?—Yes.

10031. You take it as Elizabeth's own authentic interpretation of the ornaments clause in the Act of Uniformity, but then you go on to say, 'With her usual astuteness the Queen made her brother, instead of her father, the figure head of her religious restoration' ?—Yes.

10032. And then you say, 'Elizabeth, therefore, fixed on the ceremonial of Edward's second regnal year as the goal of her reformation.' In point of fact, this was precisely what she told, in other phrase, to the Spanish confidential envoy?—Yes.

10033. I can only understand those words as meaning that religion in the second year of Edward VI. was the same as it was left by Henry VIII.?—No, I may explain my own words. She knew what the Commission appointed by Henry VIII. had done, a great part of their work was finished at the death of her father, and was ready for publication—ready for authorisation.

10034. But 'religion as left by her father' included what is commonly known as the Whip with Six Strings, or sometimes referred to as the Bloody Statute of the Six Articles?²—Yes.

10035. And you know what that meant. And it also included the whole system of chantries and included hardly any service in English—a little but that is all?—I should not admit that that came at all within her meaning.

10036. Then you are putting into her words a meaning which certainly they do not bear on the surface?—No, I think they quite legitimately bear the meaning I put upon them. She

¹ This is not quite fair. The words quoted by Dr. Gibson as mine are really quoted by me from Spencer Hall's book on the Simancas Documents.

² That Act was much modified before Henry's death. The whole of these sentences is a great exaggeration. See Chapter XIII.

could not possibly mean the Act called the Whip with Six Strings. That was an Act of Parliament; that was not religion.

10037. It had nothing to do with religion, do you say?—I did not say it had nothing to do with religion. It was not religion. What she meant by 'religion' was the externals of public worship. An Act of Parliament is not religion; it is not a rite, it is not a ceremonial.

10038. But that Act had a great deal to do with religious belief and practice?—So it had; but it was not religion.

10039. You seem to me to minimise the term 'religion' when you whittle it down to ceremonial?—No, I understand that she meant that she would leave the faith and its external expression very much as it was left by the legislation of her father, including the Revision of the Service Books.

10040. And you are aware that to restore the services as they were left by Henry VIII. was exactly what Elizabeth's sister did?—No, pardon me; Mary repealed several Statutes of Henry VIII.

10041. But she restored the ceremonial. Mary's first Act of Repeal said definitely, 'That no other kind nor order of Divine Service nor Administrations of Sacraments be after the said 20th day of December used or ministered in any other manner, form or degree within the said Realm of England or other the Queen's Dominions than was most commonly used, ministered and frequented in the said last year of the reign of the said late King Henry VIII.'?—Yes.

10042. So that, according to you, Elizabeth wished to do at the beginning of her reign exactly what Mary had done at the beginning of hers in regard to ceremonial?—No, I do not admit that at all. You cannot take expressions divorced from all their context and the historical acts of the person who speaks.

10043. The language is the same, that is enough for me.—But the context makes all the difference.¹

10044. (*Sir John Kennaway.*) Would you kindly tell me whether my view of your reading of all these documents is correct: that when Queen Elizabeth got into power her sympathies were entirely with the old system of religion?—That very much depends upon what you mean by the old system of religion.

10045. The religion as it was in the time of Henry VIII.?—

¹ The system of religious worship which Mary abolished was that established by the second Prayer Book; and that system Elizabeth also abolished by the Ornaments Rubric, which legalised public worship much as it had been left by her father. 'The language is the same, that is enough for me,' is surely a shallow kind of historical criticism. I have dealt with the whole of Dr. Gibson's criticism on these particular points in Chapter XIII.

What I mean is that her own sympathies would persuade her to sanction the religious ceremonial existing in practice in the second year of King Edward VI. She wanted, I believe, the First Prayer Book of Edward VI. adopted with the ceremonial which was legally in use in the second year of Edward; that of course would be the service in English. The Latin Mass would have been done away with; but the Holy Communion as celebrated in the First Prayer Book of Edward VI. with the ceremonies that had been in use in the second year of Edward would have her sanction.

10046. That she took the steps which she took with a view of bringing about a restoration of that state of things?—Yes, I think so.

10047. And that nothing was done, no further order was taken, to alter that?—No; whatever further order she took (and she took more than one) was in the direction of introducing additional ceremonial and usages.

10048. It was all additional ceremonial?—Yes.

10049. And that the sympathies of the country were with her?—Undoubtedly. Froude says that three-fourths of the population in England were entirely with her, at least three-fourths.

10050. In fact, everything was done really to bring about the state of things as it existed in the second year of Edward VI.?—Yes, generally speaking, that is to say, in public worship.

10051. Then can you explain to me how it is that these ceremonials and ordinances disappeared for nearly 200 years and were almost entirely dropped out of use?—I do not think they had at all disappeared so much as people imagine. For example, you find that when Grindal became Archbishop of York in 1570 or 1571 he found the old ceremonial still in existence—the crucifix, the rood loft, incense, vestments and all the rest.

10052. That was in one church, in the Cathedral of York?—No, he does not say in one church; he says in the whole diocese.

10053. When did they disappear, because you will admit that they had disappeared at the end, say, of the 18th century?—No, not all.

10054. Almost entirely?—You see the Commonwealth made a clean sweep of everything, the surplice and everything, and the Prayer Book was made illegal. It is only within fifty or sixty years that we began to recover from that devastation.

10055. But how would the state of things come about which it is admitted existed at the end of the 18th century?—I quote in my book a letter from Burleigh, who gives a most awful account of the state of religion in a large part of England. People ceased to go to church, the Holy Communion was not

celebrated even once a year, and cock-fights were held in churches on Sundays. The state of things he describes at the latter end of the reign of Elizabeth would be perfectly incredible if we had not evidence for it. Irreligion became rampant in the country, and public worship ceased in a great part of the land.

10056. (*Bishop of Oxford.*) You said in answer to Sir John Kennaway that Elizabeth on more than one occasion took further order, and that it was always in the direction of introducing additional ceremonial. Was that so?—I think so.

10057. What were the occasions?—Wafer bread for one, the crucifix for another.

10058. When did she take further order?—I give the authority in my book. She sent orders to the Bishops under formal Letters Patent. She added various things to the Prayer Book; for example, Stephens in his book on the Prayer Book gives a number of things which she added to the Prayer Book in addition to the shape it had when it came from Parliament.

10059. You are familiar with certain Visitation Returns which are often quoted as showing the disorder in the Church of England prior to the issue of the Advertisements?—Yes.

10060. It was in the year 1561, or thereabouts, that these Visitation Returns were made?—You have some coming down from the beginning of Edward VI.

10061. But I am speaking of Elizabeth's reign, and of a special Report based on Visitation Articles, I think, showing the irregularity; how some celebrated the Holy Communion at an Altar and some at a table set on trestles?—Yes.

10062. Do you remember the document?—Yes, I do; I know the document.

10063. Can you account for this, that in the diversity there is, I think, no mention of deviations in the direction which you suppose the Queen's mind to have gone?—There are bitter complaints on the part of Jewel and a number of other leading Puritans of the Queen's reactionary proceedings: of her restoring the crucifixes in the churches.

10064. I am not asking about that, if you will pardon me; I am asking about the account of the diversity of order which led up to the issue of the Advertisements, and I am asking you whether you can account for the fact that while there is mention of a great irregularity in the Puritan direction there is no mention of irregularity in the contrary direction?—But I do not know what you would mean by irregularity in the contrary direction. It would not be irregularity if they were obeying the law.

10065. Then I will use my former word, deviation?—But it would not be deviation if they were following the law laid down.

10066. (*Archbishop of Canterbury.*) I am not quite sure that I quite caught in its fulness your reply to a question that was put down about the explanation you would give of the discontinuance, practically, of the use of vestments and ornaments for some 300 years. If I caught you aright you replied that religion itself was at a very low ebb, and that the disappearance of these things with such small exceptions as do not come to very much is to be explained by the decay of religion?—And the iconoclasm of the Puritan Party, especially in towns. We have very little information of what took place in rural districts.

10067. But take the teaching and policy of trained men like Andrews, Laud, Cosin, and many more. If it were at that moment of legal obligation that the Ornaments Rubric, as you interpret it, should be obeyed, is it, or is it not, startling to you that those men do not seem to have taken the course which you in their position would have taken of insisting that these vestments and other things should be used?—My answer to that would be that they found it extremely difficult to get the Puritans to wear a surplice. For instance, a Puritan incumbent in the City of London, when Laud was Bishop of London and issued a peremptory order for the use of the surplice at least, professed to obey the order, as a contemporary describes it, by going in his ordinary dress into the reading desk and putting his leg over the side of the reading desk and hanging the surplice on his foot in derision, thereby obeying, as he said, the order of the Bishop and bowing the knee to Baal.

10068. What was done by the non-jurors?—The non-jurors tried to restore the ornaments of the Ornaments Rubric as they understood it.

10069. Do you find that the non-jurors were in the habit of celebrating the Holy Communion in vestments?—They used incense certainly.

10070. Do you find that they were in the habit of celebrating the Holy Communion in vestments?—I cannot answer on the spur of the moment, but I should think probably so.

10071. Is there any evidence that they did?—I cannot answer at the moment.

10072. But I am sure you have studied the subject fully?—Yes, but I did not go much into the question of the non-jurors. But let me quote you here what I think is a rather important piece of evidence. In a letter to the *Guardian* in July 1874, Dr. Christopher Wordsworth says, 'It has been left on record by a Fellow of Balliol College, Oxford, that his Master Theophilus Leigh wore a vestment at the Communion in his country parish at Huntspill, near Bridgewater, about 1770.' I have no doubt that if we had the evidence we could find many of those cases existing.

10073. There has been, of course, a very careful search, and you think that that search if it had been more effective would have shown a great deal more use?—Yes, a great deal more. But remember that for a long time after the last revision the Bishops found it extremely difficult to get the ordinary rubrics of the Prayer Book observed at all. Daily service went out of use. It is admitted by the Judicial Committee, is it not, that the cope was obligatory all along in cathedrals upon certain days, but the cope went clean out of use.

10074. Does that tell on your side?—I think so. If the cope, which is admitted not only to have been legal but peremptorily legal, went out of use it shows that the authorities of the time were either negligent or, where they were not negligent, found that they could not enforce the cope.

10075. Supposing it was put the other way, that so complete was the disappearance of the kind of usages of which that was one, that even that particular usage, though prescribed in the canon, disappeared with the rest, what should you say?—But if you admit that the cope was legal and obligatory, it shows that no argument, in my humble opinion, can be built upon the fact of its disappearance with regard to its not having been legal.

10076. (*Chairman.*) Now, if there is any statement you wish to make will you please do so?—May I answer a question that I did not fully answer last time? It is on pages 1094–95 of my evidence. You asked me this question, ‘I should just like to ask you one question. Assuming your view to be correct that the words in the Act “in the second year of the reign of King Edward VI.” refer to the words “in use,” rather than the words “by authority of Parliament,” why should that particular date have been taken? You have just told us that in your opinion the ornaments were the same in the first year as they were in the second?’ My answer to that is this: The Act giving statutory force as I hold (I know it is disputed) to the Order of Communion was passed in the first year of Edward, but its use was not legal until the second year. I mean to say it did not come into force until Easter of the second year, and that is my explanation. The Ornaments Rubric referred to the usage of the second year which had been legalised in the first year, whereas Sandys takes both years into consideration. The usage of the second year was legalised by the first year.

10077. (*Sir Lewis Dibdin.*) You did say very much what you say now in answer to the Chairman, but then you were asked when the Order of Communion did come into operation, and if my memory serves me you were not able to tell us?—Then I can tell you now. It came into legal use at Easter in the second year.

10078. How do you know that?—Because the circular letter, the letter of Somerset and Cranmer and the Privy Council to the Bishops, says so.

10079. (*Mr. Talbot.*) I understood you to say in answer to Sir John Kennaway that your view of the earlier part of Queen Elizabeth's reign was that the Queen was anxious to bring back as much as she could of what was called the old religion, and that three-fourths, I think you said, of the nation were on her side in that desire?—Yes.

10080. If so, how was it that the wish of three-fourths of the nation was so entirely disappointed?—Because I think that a great many of those, for instance Dudley, who now turns out to have been a crypto-Roman Catholic all the time, had great influence with the Queen, and her courtiers had great influence with her, and those who wanted the spoils of the Church used their influence, and she had all that influence working upon her in that direction. But all authorities are agreed, Macaulay, Froude, and the rest, that about three-fourths of the nation at least would have been content with the old state of things, but that the Jesuits and the Pope precipitated matters. It is on record that a number of the Roman Catholic seminary priests figured as Dissenting preachers, Puritan preachers, denouncing the Prayer Book.

10081. That means, I suppose, that the influence of these people prevailed over the desire of the great majority of the nation?—Yes, I believe, undoubtedly so; so Macaulay says, and so Hallam, I think, says too.

10082. Could you explain at all how this desire of the large majority of the nation expressed itself?—It expressed itself, I think, by their acquiescence in the old state of things as I believe it, as we have it on record from Grindal, whom I have just quoted, that the old ceremonial remained at York when he went there in 1570. And Macaulay, Hallam, and the rest say that a large part of the nation would have been content with the old religion, but many of them were somewhat indifferent—they were not enthusiastic one way or the other; but on the whole they preferred the old religion. You remember there was rather a formidable rebellion in Devonshire when the Order of the Communion was introduced.

10083. They could not have been very keen in their desire for the maintenance of the old form of religion if they acquiesced so easily in its removal?—No, but they were content with it; they had no objection to it. The Puritans called themselves '*pusillus grex*'—a tiny flock.

10084. And you think that by these machinations of Roman Catholic emissaries the wish of the people was neutralised?—Yes, and Bacon says so in a very important State document

that I quote in my book. He says the trouble of the time was how to settle the matter between the outrages and violence of Puritans on one side and the intrigues and machinations of the Romanists on the other. The Queen tried to steer the best course she could under the difficulties.

10085. (*Chairman.*) Is there any other statement you wish to make, only on matters of fact?—It is entirely on matters of fact. I wish to say first to Sir Lewis Dibdin that I was quite in error in admitting the other day that I relied entirely on the statement in Strype.

10086. (*Sir Lewis Dibdin.*) What statement in Strype do you allude to?—About Guest. I find from a package of notes of mine that I did look up the original. I went into the whole question when I was writing my book, and I have made up my mind that Gee has not made out his case, and I do not believe there is any doubt at all, for all the authorities (and Hallam among them) attribute that string of questions to Cecil, and that Guest's statements are as Strype suggests, answers to those questions. I do not want to argue the matter; I merely want it to be put on record that I withdraw the admissions I made on that point as not having consulted the authorities referred to by Strype. I did refer to them and formed my own conclusion.

10087. Can you give the reference to Hallam?—'Constitutional History,' volume I., page 110, I think. May I go to another point of fact? I was very much struck in the first Act, chapter 12 (is it not?) of Edward VI., which in the marginal note of one edition of the Statutes says, 'Repealed 32 Henry VIII., chapter 26.' Statutes and chapters said to be repealed are enumerated till it comes to the 31st Henry VIII., and then it jumps down to the 34 and then to the 35, and then it says, 'And all other Acts,' and so forth, are repealed. I looked it out, and I have examined the Statutes of the Realm, which are the only authentic edition of the Statutes that we have, namely, the Statutes issued by the authority of Parliament in the reign of George III. You remember that that edition of the Statutes has the very highest authority. The House of Commons made an address to the King that a new authentic and complete edition of the Statutes should be published. The King replied by appointing a very able and powerful Commission, including Pitt, the three principal Secretaries of State, the Law Officers of the Crown, the Lord Advocate of Scotland, and a number of other eminent men to revise the Statutes entirely. That was in the year 1800. A second Commission was appointed carrying on the work in the year 1806, and I find that in that edition of the Statutes, which in the introduction they say is the only complete and authentic edition of the

Statutes, they leave out the marginal note that the first Statute of Edward VI. repeals it and put in this: 'All Acts respecting doctrine and matters of religion repealed,' and then they enumerate those that were repealed by number, 5 Richard II., Statute 2, chapter 5; 2 Henry V., Statute 1, chapter 7; 25 Henry VIII., chapter 14; 31 Henry VIII., chapter 14; 34 Henry VIII., chapter 1; and 35 Henry VIII., chapter 5. So that they leave out as unrepealed 32 Henry VIII., and omit the marginal note in the previous editions, which said it was repealed.

10088. As I understand your point it is this: that although in the Statutes at Large and all authorised editions¹ of the existing Statutes there is a note against this Act of Henry VIII., upon which you rely, saying that it was repealed by the Act of 1 Edward VI., chapter 12, by the general words in that Act, nevertheless when you look at the Statutes of the Realm, which, as you rightly say, is a very authoritative publication, you do not find any note of that kind?—Yes.

10089. That is the point?—That is one point.

10090. We will deal with that first. Do you seriously put that before the Commission?—I do, because—

10091. Never mind because; but you do?—Yes, I do.

10092. Then I must ask you: Are you not aware that the Statutes of the Realm is an edition of all the Statutes that ever were passed, repealed and unrepealed, and that there is no note of any Act having been repealed at all, it not being the purpose of the edition, but the purpose of the edition being to supply an authoritative edition of the Statutes repealed and unrepealed. Are you not aware of that?—I do not know that. I accept it absolutely as you put it.

10093. May I refer you then to an Act that you have mentioned to-day, the 1st Mary, chapter 2, which repealed all the Reforming Statutes up to that date? I have it before me in the Statutes of the Realm, it is at page 202 of the volume of Mary's Statutes, and that is also given without any note at the end that it has been repealed?—Yes.

10094. Can you explain that on your view?—Yes, I accept that, if you mean that point.

10095. But surely this is not a matter of controversy? The Statutes of the Realm is, as I say, is it not, an edition of the Statutes, whether repealed or unrepealed, and if you or any of us want to find the terms of a repealed Statute we should go not to the edition of Statutes now in force, but to this folio edition of the Statutes of the Realm; is not that so?—May I interject one question? It does not, does it, give all the Statutes? For instance, I looked for one that you used your-

¹ The only 'authorised' edition is *The Statutes of the Realm*.

self for the union of the parishes of Ongar and Greensted, in Essex. It is not in that book.

10096. No; that it is quite true, it is not; it does not appear to be on the Roll of Parliament. But it gives, does it not, all the Statutes which are on the Roll of Parliament, which is, with very small exceptions, every Statute?—Yes.

10097. The Greensted Statute was really a private Act?—Yes.

10098. Can you draw any inference from the fact that a Memorandum does not exist in the copy of the Act 1 Edward VI., chapter 12, as to its effect in repealing former Statutes?—Not by itself.

10099. I will deal with the other point afterwards. Can you point to any Memorandum in the Statutes of the Realm indicating that a Statute which is given in the text has been repealed?—No, not at the present moment.

10100. Now let us deal with the marginal note. The marginal notes in the copy of Acts of Parliament in the Statutes of the Realm are, are they not, to indicate what is in the text—what the text consists of?—Yes.

10101. Like any other marginal notes?—Yes.

10102. And these marginal notes you have read are merely those, are they not, the marginal notes to the second section of the Act which deals with repeals?—Yes.

10103. That is the nature of them?—Yes.

10104. They are not, as I think you have read them, in one marginal note, but against the words of repeal of each separate Statute, you get in the margin the short reference to that Statute?—Yes.

10105. And that is the practice in all Acts of Parliament, ancient and modern. It is the practice to this day, is it not?—Yes.

10106. You know what is said in the Statutes at Large that the Act of Henry VIII. that you are referring to was repealed by the general words at the end of that section. Would you have expected against the part of the text with the general words in it to have a reference to specific Statutes? You see what I mean?—Not quite; I do not quite grasp your meaning.

10107. First of all, you get the repeal of certain specific Statutes, and then in the marginal note you have a short reference to those Statutes, do you not?—Yes.

10108. Then you get to the general words of repeal which has no marginal note against it?—Yes.

10109. In the first place, would you expect to find specific references to Statutes when the nature of the text is in itself a general repeal?—But the question is whether the nature of the text is a general repeal here.

10110. That is another point, which I will deal with separately, but your point now is that the marginal note does not

bear out the statement in the Statutes at Large, that this Statute was repealed by general words, and you say that because there is no reference to this particular Act in the marginal note. I point out to you that that being a general repeal you could not have a marginal note dealing with a specific Statute. Is that not so?—But do you say that in no other case of these Statutes is there a general repeal, but only a specific repeal of other Statutes to which the marginal note applies?

10111. I do not quite follow. We have in this section two things, the specific repeals and a general repeal. I am quite with you in supposing that the specific repeals are not a general repeal; of course not, they are specific in the nature of them, and you have the names of those Statutes put in the margin. Then you have a general repeal, and I understand your point to be that a reference to the particular Statute which is said to have been repealed by those general words is not in the margin. I ask you, how could it be?—May I, in order to help me to answer that question, ask you for information: I mean, whether all the other references in this marginal note referred to specific repeals, or do they include also general repeals?

10112.—All the Acts mentioned are, of course, specific repeals; by mentioning them they become specific. Then you have a general repeal, and I put it to you whether it is possible that specific Statutes could be named against that general repeal. In other words it would cease to be general if they were named?—I have not read all the Statutes referred to in this marginal note, and therefore I ask you because you probably know, and I do not, whether there is a case of general repeal in any of them.

10113. But they are not generally repealed by this section because they are specifically repealed?—But are they all specifically repealed?

10114. Yes, they are. The first Act is the 5th of Richard II., Statute 2, chapter 5; that is referred to in the text?—Yes.

10115. Then the next is a Statute made in the second year of Henry V.; that again is referred to in the text?—Yes.

10116. Then the Act of 25 Henry VIII., chapter 14; that again is referred to in the text?—Yes.

10117. Then you get to an Act of six years afterwards—31 Henry VIII., chapter 14; that, again, is referred to in the text?—Yes.

10118. Then you get to the Act of 34 and 35 Henry VIII., and that again is referred to in the text?—Yes.

10119. And then you get finally the Act of 35 Henry VIII., chapter 5; that is referred to in the text. And then you get the general repeal of all Acts of Parliament concerning doctrine and matters of religion?—Yes, I see your point. Now do you

think that the marginal note is sufficiently explained by your explanation when it says—

10120. You must not ask me questions, you see.¹ I think the Commission quite understand your point, that there is no reference in the text to the Statute in question which is said by the Statutes at Large to have been repealed by this Statute, in the marginal note. I point out to you that it is said to be repealed by the general words, and that being a general repeal you could not have a specific reference to the particular Statute in the margin; it would cease to be a general repeal if you had. If you admit that position I will go on to something else?—I should be inclined to say, taking the words in the margin, ‘All Acts respecting doctrine and matters of religion . . . repealed; namely’ so and so, the natural inference from that would be that if they meant that the 32nd of Henry VIII. was repealed it would be referred to.

10121. Let me draw your attention to the words again, because it is not what you have said. The words are, ‘All Acts of Parliament mentioning or in any wise concerning religion’; that is to say, that there is a string of specific Acts, and then at the end of that, ‘All and every other Act or Acts of Parliament concerning doctrine and matters of religion’?—But we are quoting two different things then.

10122. That is the section of the Act of Parliament that you have been dealing with?—I quoted this morning these words, ‘All Acts respecting doctrine and matters of religion repealed, namely,’ and then they put them in.

10123. Yes, that is the marginal note. I was giving you the actual section?—I say that the marginal note there would naturally include the 32nd of Henry VIII. if it meant to include it.

10124. How could it when the repeal of the 32nd of Henry VIII. is according to the Statutes at Large² by the general words in it; and if it is by the general words how can it be by specific words?—Then it is a question whether it is repealed. I have two strong legal opinions to say it is not repealed.

10125. Then that is a question, is it not, whether it does come within those words of general repeal?—Yes.

¹ Why not? Is not this an indication of unconscious bias? I was invited by the Commission to give any information which I might possess to elucidate the Ornaments Rubric; but I found myself cross-examined—especially by Sir Lewis Dibdin, Sir Edward Clarke, Dr. Gibson, and Mr. Drury—as if the Commission were a judicial court and I a hostile witness in a criminal prosecution. What some of my cross-examiners seem to have been anxious to get was not information, but evidence in support of a foregone conclusion. The Chairman intervened but seldom, and always quite fairly and courteously.

² Which have no authority at all.

10126. Then I do not think I need trouble you any more upon that. You have the Statutes at Large saying that it was repealed by those general words, and there, so far as I am concerned, I am content to leave it?—But the Statutes at Large have never had any real authority as these have had.

10127. I quite agree with you; they have no formal authority. I think we are agreed now that the Statutes of the Realm have nothing whatever to do with this point; they are a series of all Acts of Parliament whether repealed or not repealed?—Yes, but then I give the marginal note there.

10128. (*Chairman.*) Do not go back to that again, please.

10129. (*Sir Lewis Dibdin.*) Now on that point in one of your remarks last time after I had examined you, you suggested that the Order of Communion had been authorised under this Act of Henry VIII., that there was time for it to be so authorised before the repeal of that Statute, supposing it was repealed. Do you, on further reflection, adhere to that position?—May I put it in this way: the 32nd Henry VIII., chapter 26, gives statutory force to the legislation in matters of ceremony and religion compiled by picked committees then appointed, or by committees appointed by Convocation.

10130. No, it is by Letters Patent with the advice of the bishops or some of them?—Yes, or by His Majesty or by—I forget the words.

10131. It must be by Letters Patent with the advice of the bishops or certain of them?—Yes, the committee appointed by Henry VIII. undertook—it was part of their functions—the revision of the old Service Books, and it is on record that at the first meeting of Convocation under Edward VI. the Lower House of Convocation asked the Upper House to produce the result.

10132. (*Chairman.*) We have had that before, to-day.¹

10133. (*Sir Lewis Dibdin.*) The question is a very simple one and does not really raise any of this complicated historical line that you are going upon. It is whether you still adhere to the position (I do not want to hold you to it) that supposing the Act of Henry VIII. that you rely upon was repealed in the beginning of Edward VI.'s reign it was not repealed until 1 Edward VI., chapter 18, received the Royal Assent: whereas the Order of Holy Communion was brought in before that, or it might have been before that, and that therefore although this Statute of Henry might have been repealed there was time for the Order of Communion to be authorised under the Act of Henry VIII. before the Act was repealed. That is a perfectly intelligible position which you certainly threw out last

¹ I have given a full answer on pp. 141–153.

time, and I wanted to know whether you adhered to it?—I do not think it was quite that.

10134. Then I will not ask you any questions about it. There is just one question about the Order of Communion that I want to ask you, which has emerged to-day. I think you told Dr. Gibson that in your view of the Injunctions of 1536, that is, Henry VIII.'s Injunctions, the Epistle and Gospel were to be said in English; is that so?—Were authorised to be said in English.

10135. Authorised to be said in English?—That is what I understand.

10136. But I think you told us that you were looking at the Injunctions of Henry VIII.?—No, I said I took that from Dr. Gee.

10137. You have not looked at the Injunctions?—No, I had not time. I came up from Yorkshire, and have not had time.

10138. Will you take it from me that they did not have that effect?—Yes, if you say so.

10139. They authorised the Paternoster, the Articles of our Faith and the Ten Commandments in the vulgar tongue, but I cannot find, and those who are much more experienced than I am in these matters cannot find any reference to the Epistle and Gospel, and I suggest to you that it is a mistake to say that they were authorised in English by the Injunctions of Henry VIII.?—It is a mistake on the part of Dr. Gee then.

10140. And so far, of course, it does away with the force of one of your answers to Dr. Gibson as indicating the differences between the state of public service at the death of Henry VIII. and in Edward VI.'s reign?—Yes.

10141. That point goes out?—Yes. I said at once that I took my information on that point from Dr. Gee.¹

[*The Witness withdrew.*]

¹ Dr. Gee made a slip as to the year. But I was quite right in saying, and Dr. Gibson was quite wrong in denying, that the Epistles and Gospels were used in Divine Service in English in the reign of Henry VIII. See Chapter III., where I have gone into the whole question.

APPENDIX B.

(See p. 145)

STATUTES OF THE REALM.

Vol. iv. pt. 1, pp. 18-19. 1st Edw. VI. chapt. xii.

An Acte for the Repeale of certaine Statutes concerninge Treasons, Felonyes, &c.

No thing being more godlie more sure more to be wished and desired betwixte a Prynce the Supream Hed and Ruler and the Subjecte whose Governour and Hed he is, then on the Prynces pte great clemencye and indulgencye, and rather to muche forgivenes and remission of his royall power and just punishment, then exacte severitie and justice to be shewed, and on the Subjecte behalfe that theye shoulde obeye rather for love and for the necessitie and love of a Kinge and Prynce, then for feare of his streight and severe Lawes; yet suche tymes at some tyme comethe in the comonwealthe that it is necessaire and expedient for the repressinge of the insolencye and unrulynes of Men, and for the foreseeing and provyding of remedies against rebellyon insurrection, or suche mischief as God sometyme with us displeased for o^r punishment dothe inflicte and laye uppon us, or the Devill at Godds pmission to assaye the good and Godde electe dothe sowe and sett amonge us the which Allmightie God wth his helpe and mans pollicye hath allwaies bene content and pleased to have stayed that sharper lawes as a harder brydle shoulde be made to staye those men and facte that might elle be occaçon cause and authours of further inconvenyence; The which thing cawed the Prynce of most famous memorie Kinge Henry theight father to o^r saide Sovereigne Lorde the King, and other his Highnes progenito^{rs}, with thassent of the Nobles and Comons at divers plemente in their severall tymes [holden ¹] to make and enacte certaine lawes and Statutes which might seme and appere to men of exterior Realmes and manny of the Kinge

Principles of Government and Obedience in the Prince and Subjects :

Occasional Necessity of severe Laws :

¹ helde.

Ma^{tes} Subjecte verie streighte sore extreme and terrible, althoughe theie were then when they were made not wth out grate consideraçon and pollicye moved and established and for the tyme to thadvoyd^{unce} of further inconvenyence verie expedyent and necessarie; But as in tempest or winter one course and garment is convenyent, in cawlme or warme weather a more liberrall rase or lighter garment bothe maybe and ought to be followed and used, so we have seen divers streight and sore lawes, made in one plament the tyme so requiringe, in a more cawlme and quiet reigne of a nother Prynce by like auctoritie and pliament repealed and taken awaie; the which moste highe clemencye and Royall example of his Ma^{tes} moste noble progenito^{rs}, The Kinge Highnes, of his tender and godlie nature moste given to mercye and love of his Subjecte willing to followe, and preeiving the hartie and syncere love that his most lovinge subjecte both the Lords and Cõmons dothe beare unto his Highnes now in this his Majesties tendre age, willing allso to gratifie the same therfore, and myndinge further to provoke his saide Subjecte with greate indulgentye and clemencye shewed on his Highnes bihalfe to more love & kyndnes towardes his Majestie (yf it maye be), and uppon trust that theie will not abuse the same, but rather be encouraged thereby more faithfullie and with more diligence (yf it maye be) and care for his Ma^{te} to serve his Highnes now in this his tendre age, is contented and pleased that the severitie of certaine Lawes here followinge be mitigated and remitted: Be it therefore ordeigned and enacted by the King or Sovereigne Lorde with thassent of the Lordes spüall and temporall and of the Cõmons in this present plament assembled and by thauctoritie of the same, that from hensfurthe, none acte dede or offense, being by Acte of plament or Statute made Treasone or petit Treasone by wordes writing ciping dedes or otherwise what so ever, shalbe taken had demed or adjudged to be highe Treasone or petit Treasone, but onlie suche as be treasone or petit Treasone in or by the Acte of plament or Statute made in the xxvth yere of the Reigne of the moste noble Kinge of famous memorie Kinge Edwarde the thirde touching or concerninge Treasone or the Declaraçon of Treasones, And suche offences as hereafter shall by this present Acte be expressed and declared to be Treasone or petit Treasone, and none other; Nor that anny paynes of deathe penaltie or forfaiture in anny wise ensue or be to anny of the offendo^{rs} for the doing or cõmittinge any Treasone or petit Treasone, other then suche as be in the saide Estatute made in the saide xxvth yere of the reigne of the saide Kinge Edward the thirde, or by this present Estatute, ordeyned or provyded; Anny Acte or Actes of pliament Statute or Statute had or

and of their
subsequent
Relaxation;

No Offence,
made Treason
by Statute, shall
be adjudged
such, except
under St. 25
E. III., sec. 5 c. 2,
or this Act.

made at anny tyme heretofore, or after the saide xxvth yere of the Reigne of the saide late King Edwarde the thirde, or anny other declaration or matter to the contrarie in anny wise notwithstanding.

And also be it enacted by thauctoritie aforesaide, that all Actes of plament and Estatutes towchinge mencyoninge or in anny wise concernynge Religion or opinyons, That is to saie aswell the Statute made in the [first¹] yere of the Reigne of the Kinge noble progenitor Kinge Richarde the Second, and the Statute made in the Seconde yere of the Reigne of King Henry the fifthe, and the Statute also made in the xxvth yere of the Reigne of Kinge Henry theight concerninge punishment and reformaçon of Heretykes & Lolardes, and everie provision therein conteyned, and the Statute made for the abolishment of diversitie of opinions in certaine artycles concerninge Christian Religion comonlie called the Sixe Articles, made in the plament begonne at Westmestre the xxvijth daie of Apryll in the xxxjth yere of the Reigne of the moste noble & victorious Prynce of moste famous memorie Kinge Henry theight father to our saide most drad Soveraigne Lorde the Kinge that now is, and also the Acte of plyament and Statute made at the plament begonne at Westmestre the xvjth daye of Januarye in the xxxijth yere of the Reigne of the saide late King Henry theight and after that proroged unto the xxijth daye of Januarye in the xxxijth yere of the Reigne of the saide late King Henry theight touchinge mencioninge or in anny wise concerninge bookes of the old & newe Testament in Englishe, and the pryntinge utteringe selling giving or delivering of bookes of writinge and reteyninge of Englishe bookes of writinge, and reading preaching teaching or expounding of Scripture or in anny wise touching mencionynge or concerninge anny of the same matters, And also one other Statute made in the plament holden at Westmestre in the xxxvth yere of the Reigne of the saide late King Henry theight, concerninge the qualificacon of the Statute of Sixe Articles, and all and everie Acte or Acte of plament concerninge the true doctryne [and²] matters of Religion, and all and everie br^unche artycle sentence and matter paynes and forfaitures conteyned mentioned or in anny wise declared in anny of the same Acte of pliamient or Estatutes, shall fromhensfurthe be repealed and utterlie voyde and of none effecte.

II.
All Acts respecting Doctrine and matter of Religion repealed: namely, 5 R. II. sec. 2 c. 5; 2 H. V. sec. 1 c. 7; 25 H. VIII. c. 14; 31 H. VIII. c. 14;

34, 35 H. VIII. c. 1.

35 H. VIII. c. 5.

¹ fyrst, O; fifth, some modern printed copies. The Act 5 Ric. II. sec. 2 c. 5 was doubtless intended to be referred to: see Stat. 25 Hen. VIII. c. 14 § 2.

² or, O.



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