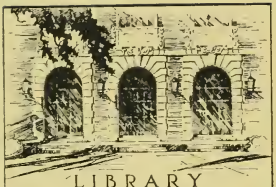

CONSIDERATIONS

ON THE

ECCLESIASTICAL COURTS

AND

CLERGY DISCIPLINE.

BY

CHARLES JAMES BURTON, M.A.,

Chancellor of Carlisle.

LONDON: JAMES PARKER & CO.
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The Church of England stands, in respect of its discipline, in a position exciting a very justifiable wonder. It is subject to the rule of no less than three different systems. There is the ancient Consistory Court; there is the jurisdiction created by the Discipline Act of 1840; and there is the Act of the last Session of Parliament, called "The Public Worship Regulation Act." We are, indeed, promised the introduction of a measure for the remedying of the defects and mistakes of the Act of 1840, but not the slightest hint has been given of the character of it; all we are permitted to suggest to ourselves is, that the Parliament of 1875 will be called on to condemn the proceeding of the Parliament of 1840; that is, as is usual in ecclesiastical legislation, those who are the most deeply interested are not to be informed until it shall be too late to remonstrate with effect. Attempts at hasty legislation are always unsatisfactory, and often mischievous. Let us take for example the Act of the last Session, to which I have referred. The debates on the subject amongst the Bishops began, as we have good reason to believe, in the month of January; but the measure itself, on which they then determined, was unknown until presented to the House of Lords towards the end of April: the consequence was its rejection, with the instant and ill-considered substitution of another, which, in its turn, yielded to another, and which, with considerable and so material alterations as to have an absolute appearance of beginning *de novo*, was sent to the Commons: there again changes upon changes were made, and the Bill was sent back to the Lords with

much that was new, and much also that was opposed to the presumed wish of that House. Thus we have a measure which in all respects satisfies no one. A proper means of out-of-doors consideration, and an ingenuous desire of shewing a singleness of purpose in the advancement of the character and of the right interests of the Clergy, who would not have been found an unreasonable body, with at the same time an unmistakeable guidance to Church principles, leaving no room for suspicion of undue leaning to party or personal purposes, would have commanded attention and deference.

I offer no excuse for the step I am taking. The state of the ecclesiastical law as to discipline has occupied my mind during many years; and I have also endeavoured to do something towards its improvement. I have hitherto worked ineffectually, though, I must add, not without encouragement, which, however, had no realization. The documents, consisting of a Charge to the Clergy of the Diocese of Carlisle in 1865, the Form of a Parliamentary Bill drawn in the same year at the instance of the then Bishop of Carlisle, and a Paper delivered at the Carlisle Diocesan Conference in August last, and all which I now reprint, will fully explain my meaning throughout. I have been Judge of the Consistory Court of Carlisle nearly twenty years, and have in that capacity been called on to decide in cases involving almost every variety of ecclesiastical law, and may, therefore, be presumed to be not indifferently acquainted with either the advantages or the defects observable. Until the year 1840 the powers, or duties, of these Courts were very extensive. They took cognizance generally of ecclesiastical matters, including testamentary; those concerning matrimony and divorce or separation were considered to be rightly of ecclesiastical cognizance, as indeed they were, marriage being of Divine ordinance and rule. In 1840 the Legislature thought fit, at the instance of the Bishops, there being then no actual

Convocation to consult, to pass the Church Discipline Act. Some years afterwards it also removed from these Courts testamentary and matrimonial and divorce causes. Then came the last measure affecting the Church, the Act for the Regulation of Public Worship. The jurisdiction of the Courts now extends but to the Churches and their appurtenances, or, to questions of rebuilding, of restoring, and of improving; of order, and government in conduct; the Act I have named last transferring elsewhere the two latter articles from a future early date. It is requisite to bear all this in mind, because the proceedings under the Act of 1840 have been much charged on the Consistory Courts, whereas they have no concern with anything relating to them. I may not disguise from either myself or others that it is the entire abolition of these Consistory Courts which seems to be desired, and likewise aimed at; nor, if the public service required, consistently with the integrity of the Church, would I raise an objection; nor would I for an instant oppose any real improvement; but, it is because I believe, that, far from the public service requiring, far from its not being detrimental to the interests of the Church, it would be directly injurious to both, that I do give it such opposition as I am enabled. The Act of 1840 professes to remove or to remedy the defects of the Consistory Courts, and throws the cases with which it deals into the hands, personally, of the Bishops, retaining only the authority of the Provincial Courts as Courts of Reference, or for removal in certain instances of them, and as Courts of Appeal: in fact, doing in some part what the Public Worship Regulation Act proposed to do still further; extending the personal powers, or, to speak more correctly, the personal responsibilities, of the Bishops. The diminution of expense, and the prevention of delays, were the alleged purposes; but, what has followed? Expenses have not been diminished; delays have not been less; and in truth it may be said of it as of much else, that the old complaint, "Reform

is a very costly affair," is not untrue. Under this Act four trials are provided; one before a Commission, having all the attributes of a regular Court of law, a Commission appointed by the Bishop, one member out of the five constituting it being named by the party implicated; the second before the Bishop himself, assisted by five Commissioners appointed by himself; the decision being in himself, however the five may differ from it; the third on an appeal to the Judge of the Provincial Court; and the fourth on an appeal to the Judicial Committee of Privy Council, one member at least of which must be a Bishop. I have often wondered with what face such a measure, with the profession of being an amendment of the law, and a simplification of proceedings, could have been proposed. This, nevertheless, was solemnly presented as a beneficial reform; and as one of kindly intention to all parties. This was the remedy for all grievances; making prosecution cheap, and defence easy. We know too well what both complaining and defending parties have been subjected to by it, the ruinous expenses, the long anxieties, the hindrances of justice, the non-settlement of doubtful questions, nay, the very adding of doubts, and the confusion not to say discredit of law. No benefit has been obtained. The Public Worship Regulation Act touches on but one point of ecclesiastical discipline, that of cases in respect of the regulation of public worship: it does not comprehend any of what we may call personal discipline; but rather directs its notice to disputed points of practice, seeming to have a character, and making it be thought to be an encourager, of contention: it does not give to the Court it institutes any cognizance in relation to personal discipline: it proposes but to interfere with certain non-compliances or certain superfluities which may now be legally declared to be such, or which may hereafter be so declared, as concerns the conduct of public worship and the character of its appliances. The notice to which I have referred, promises to deal with the whole

state of Clergy discipline, as is the only reasonable conjecture we can form of it, and that all matters relating to Clergy discipline will be brought, or proposed to be brought, under one jurisdiction ; and authorises the expectation that it shall likewise include all matters which are at present under the cognizance of the Consistory Courts ; so far effecting a revolution ; and it is on this conjecture, and I wish it were less reasonable than it is, that I have formed the purpose now in hand, and which, besides, iuduces me to set these Courts in their true light and position. It is undoubted, no one will attempt to say otherwise, that the proceedings in the Consistory Courts do require revision ; they do require to be relieved from many incumbrances and hindrances which stand in the way of as speedy decisions as may be compatible with justice, and of many expenses incident to protracted suits. This is an observation which may apply to all our Courts of Law ; and, in general defence, I will add, it is mainly to be attributed to the disputing parties themselves, not to any action of the Courts, and from the desire of each one to take advantage of other, whether by means of the creation of delays, or the captious raising of objections, and which it is very difficult for any Court sufficiently to restrain. I may add, though I am well aware of the danger I am incurring in the remark, the large items in many instances of advocates' fees : these, as has been shown frightfully of late, swell the amount of costs to an extent we may equally wonder at and lament, but, in present circumstances, cannot control. But, who are in fault? not the Courts : they have neither power nor advantage herein : it is the eagerness of litigants to which it is really attributable. All this is no new discovery, and is but of passing reference. I am now engaged on the question of the Consistory Courts ; it has during the last sixty years or more been strongly pressed on the Legislature, but any attention to the subject was long refused ; and when it did at length give an ear to the call made on it, it was only to assent to the unhappy

measure of 1840, as the first instalment; and then, some time afterwards, to relieve these Courts from their jurisdiction in testamentary and matrimonial causes; when I use the word "relieve," I must not be understood to speak approvingly, but as using a legal term; I ought, however, to mention the introduction of oral evidence as a valuable improvement; and rejoice that I can find one point to rest on with satisfaction. In other respects the Courts have been left in their original state; with, however, certain episodes in ecclesiastical legislation which may not be unnoticed; the removal of cases of slander, a true relief in its real and not legal meaning, with also that of immoral conduct in Laymen; the abolition of the penalty of excommunication; and the transferring to the ordinary Justices of Peace of the cognizance of disturbance in and about our Churches. It will not be improper that I should here express a deep regret that the question was not taken up on the early introduction of it by one, more fitted than any one else, by his vast learning and experience, the late Lord Stowell. He lived, and was in the full vigour of his strength and intellect, in the early time of its agitation; and if he had, as was at one time expected, given his mind to the subject, I doubt not that he would have settled it usefully and justly. What I am desirous of urging is, that if these Courts were allowed to proceed much in the same manner as our ordinary Temporal Courts, I do not include the Courts of Chancery, it would be more advantageous to leave all questions of discipline with them than to pass them over to any other jurisdiction. It is to be borne in mind that the offences to be dealt with are mainly such as would be offences in conscience only in other parties, and not legally amenable; other offences such as those that come under the Public Worship Regulation Act, are of the peculiar character the entertainings of which must be provided for by exceptional law; all such involving doctrine in some shape or other, if not in reason, yet in imputation; such as, for instance, the setting up of a cross, the

"eastward," or other position, a reredos, even a credence table, or a vestment. It is but in common sense that a resort in all such cases should be had to a tribunal, not only competent as to knowledge or ability, but in the direction of the mind to such peculiar subjects ; and, let any misconstrue me as they may, a distinctive Church character should be attached. How this proposition can be denied by Lawyers, with the Courts of Chancery, and all their exceptional power before us, I do not understand ; I know there is a great desire with many of the legal profession to reduce all to one system ; but I have always believed, and still do believe, that our varieties of system, comprehending every possible case and circumstance, have been a just subject, I will not say of boast, but of thankfulness. Lawyers themselves, at least those who have contemplated a course advantageous both to themselves and to the public, have directed their principle and method of education with the more special bearing on the course most suited to their presumed bent and capacity ; and thus, whatever legal question may have arisen, has always been met by a reliable answer. My view of the Public Worship Regulation Act may be learnt by a reference to the accompanying paper. I will only say here that I object to it, and am discontented with it, as partial in its proposed operation, and misunderstanding in its assumptions ; it deals with but one set of offences, or alleged offences, when such a tribunal ought not to have been constituted without a full development of its purpose, actual and prospective : it seems to be not only an experiment in law, but a drifting on unknown waters. It is also chargeable with leading, as it stands, to no final result, except where an appeal is permitted ; I mean where decisions are to rest with the Bishops. If the practice of appeals from interlocutory decrees in the Consistory Courts were abolished, and in all cases a simple declaration with counts were enabled, vexatious and delaying pleas, or allegations would be avoided, there being but one appeal, and that on points of law, in application

to the Court of Final Adjudicature. I know it is strongly maintained by some that there should be an intermediate appeal, such as to the Provincial Court. I think otherwise. The only reason for it must be, and is professed, that it would too much burthen the Final Court; but I do not doubt that it would eventually very much relieve that Court: the decisions of the Final Court would cease to be hampered with the decisions which must always be taken into some account, and so have a more simple course before them. The decisions of the Final Court would necessarily be of the highest authority; and, when we look into the constitution of it, we are satisfied not only that true law will be delivered, but be received as incontestable, as an imperative rule, and so guide the Primary Court, whatever it may be, as to be a great preventative of further dispute. It might happen with the Intermediate Court, that its decisions from some cause or other might, though faulty, be acquiesced in, and so be no authority for future cases, but to which the recorded decisions of the Final Court would always give a ready solution. The Act to which I have referred gives a large power to—or to speak more properly, for I am not to suppose it is power as such which is sought after—imposes a heavy and very undesirable responsibility on the Bishops, and with which they ought not to be burthened. Their duties are weighty enough, and in some instances actually more than enough, already. We have had constant reminders, and even complaints, from themselves that they are so. The procedures under this Act are very remarkable, and must have called forth some singular ability of invention. On a representation to the Bishop by persons named, and in form and circumstances described in the eighth section, he may stay any proceedings, simply depositing in the Registry of the Diocese and sending a copy of the same to a complaining party, and also to the party complained of. So the case will be closed for that turn. Admitting that it is very desirable and very proper that, in many cases of dispute, frivolous or

unimportant, there should be not a controlling but a persuading agency, the interposition of the Bishop may be very valuable, happily settling disputes and able to restore peace and good feeling ; and seeing that all this may be effected without legal enactment, a judicial authority in any such respect is to be deprecated. It may lead to much partial doing, and likewise injuriously interfere with other duties of the Bishop where his voice and admonitions ought to be without dispute ; it at least will not tend to the settlement of difficulties, or the discouragement or allaying of feelings inconsistent with the Christian profession. If the Bishop shall determine that there is sufficient cause for proceeding, he shall propose to the parties to submit to his decision without appeal ; if they consent, he shall hear the case in any way he may think fit, either publicly or privately, or with or without legal advice or assistance. Who, other than the Clergy, would have had such a proposal made to them ? By whom else would it have been listened to with patience ? No appeal, thus, will lie from the Bishop's decision ; and though the decision may not, as it cannot, settle any point of law, it shall be final in the case. A more un-English proceeding can hardly be imagined. "The parties may" indeed, the parties, it is to be remarked, "may at any time, after the making of the representation to the Bishop, join in stating any questions arising in such proceedings in a special case signed by a Barrister-at-Law for the opinion of the Judge ; and the parties, after signing and transmitting the same to the Bishop, may require it to be transmitted to the Judge for hearing, and the Judge shall hear and determine the question or questions arising thereon, and any judgment pronounced by the Bishop shall be in conformity with such determination." Not one party, but both parties must, in order to obtain the opinion, be concerned in the requirement. It is not likely that the two parties will so agree ; such a course may be suitable to the purpose of one and not of the other. In point of fact, this very enactment

declares the incompetency of the Bishop as a Judge ; it supposes something to arise with which he has no means of dealing. This, moreover, is one of the methods invented for the avoiding of vexation, expense, and delay. Such questions, raised whether by both or either one of the parties, will be exhaustless, very soon wearying both the Bishop and the Judge. Any Lawyer will tell us of the wretchedness of this provision : any will tell us that all might be avoided by allowing no legal sentence to be given without a means of stating and arguing it on legal authorities and in legal manner. For my own part, I cannot recognize a Judge *in camerâ* unpossessed of the usual qualities and circumstances of judicial constitution. It will not be irrelevant that I state, in observation of the assigning to the Bishop the office of a Judge without appeal on consent of the parties a strong case in point. Many years ago, on a proceeding in my own Court, the respective parties proposed that I should settle the matter on the allegations and the evidence, without argument on either side ; accepting their joint undertaking to abide by any decision without appeal. I accepted the former part of the proposal, but refused the latter. I would not incur the responsibility of such a method ; accordingly, I decided the case as requested, saving the right of appeal : and what followed ? Both parties became dissatisfied : each one submitted a case to eminent Counsel, seeking advice on the fitness of an appeal. An appeal was not advised. If I had assented to the proposal of an obligation not to appeal, a lasting discontent would have been entertained by both, and the judgment would not have been respected ; and the question would, in all probability, have been raised again in some other form. I may add that the judgment has to this day been regarded with satisfaction. A strong lesson is this, not to abrogate, even with the consent of the parties concerned, a positive right : the abrogation will some day be quarelled with, with the aggravation of a presumed act of folly in the assent to it. Now we are to see

how the matter can be brought before the Judge appointed under the Act. To qualify themselves for this privilege, the arbitrary decision of the Bishop must be resisted or refused; the Bishop will then send the representation to the Archbishop of the Province, and the Archbishop will send it to the Judge, requiring him to appoint a hearing at any place within either the Diocese or the Province, or in London or Westminster. We should not forget that the lessening of expense is one point said to be aimed at; but, how that so desirable object shall be accomplished by the removal of a cause from Carlisle to York or London, with all its array of witnesses, I am at a loss to imagine. The Judge is then directed to give twenty-eight days notice to the several parties of the time and place when and where he will hear the cause; having before such notice required from the complainant or complainants such security for the costs as he shall think fit. This is the most sensible part of the whole measure. It is to be remarked that the Judge is not bound to any space of time within which he is to give his notice; he may possibly give it within a month, or a year, or even a longer term; nor indeed can he be confined to any limited period; for, if the amount of business should at all approach to such as alone could authorize this measure, the fixing of a date for any one case would be almost an impossibility. Within twenty-one days after the Judge's notice the party complained of may "make a succinct answer" to the representation; and, if he shall not do so, he shall be taken to deny the allegations. Of course he will make no "succinct answer"; he would gain no advantage, but might rather damage himself by it: if the silence were to be taken for confession, I could understand it; but, as it stands, I must be permitted to say that it looks very much like nonsense. We next arrive at the tribunal of the Judge. I have no observation to make on the proceedings before him; it may be taken as certain that they will be conducted with every form and feature befitting his office, I have none to

offer on the Court which is to decide definitively, that is, on appeal. Our open Courts of Justice may always be relied on. But, I will ask, how is a single Judge to perform all this work, and such more work as I apprehend will be assigned to him? Then, if we are to have an additional Judge or Judges, will it not be found necessary that there should be an additional Court or Courts? and, if so, where will be the pecuniary gain which is so much looked to in legislative reforms? This brings me to a very material point, very material assuredly with some, with most people, the general expense: a certain stipend is to be appointed to the Judge, no provision being made for anything beyond. The travelling expenses of the Judge may be large, and ought not to be scant; and he must have officials usually appurtenant; with much circumstance besides, necessitating expenses of the amount of which we can form no calculation. And what if we should have two or more Judges? Our æconomicals do not seem to have taken these points into consideration. But they must be both considered and met. There was indeed a notable scheme of charging the expenses on the funds of the Ecclesiastical Commission, or on our ill-endowed benefices to which in fact, in law, and in justice, those funds belong. I believe that is, as it ought to be, finally abandoned. Our Consistory Courts are no charge on the public revenue; all their expenses are provided by fees, and these individually of small amount, however it has suited some persons, by taking the full amount of all as a reflection on each one, to make out a swollen aggregate, much swollen also by the non-deduction of necessary charges and expenses; I say they are of small individual charge on litigating parties, and others who seek to its authority in aid of their own lawful purposes; assisted, too, by the fees on marriage licences which are no harm on and no burthen to any one, a portion, and not a small one of which too, goes into the public purse as stamp duty; and let me add that the office of Judge in

these Courts is not sought for emolument; if any shall so seek to it, except in a very small number of the more populous Dioceses, they will be grievously disappointed. The Court of the Judge may be holden anywhere. Let us look at the matter in its most serious light, that of the nature of the business to be transacted. If it were to end within the limits of the Regulation Act, the contentious business under it might be managed by the Court it constitutes, or the Courts it will be found necessary to constitute, provided the active interference of the Bishops were abstracted; being but one portion, and that a very important one, of what is contemplated. The powers of the Act of 1840 are, I doubt not, to be transferred to this Court; and he must be a bold man, who will venture to enter so broad a battle-field; all questions relating to the conduct of the Clergy are to be contested and decided in it. Need I say more? Next, for the Regulation Act may not be considered but as a step in legislation on this particular subject, all questions, I say, relating to all ecclesiastical matters now cognizable by the Consistory Courts, are, we may, not unsafely presume, to be referred to the Court of this Act, or the Courts which are contemplated, provided the Bishops so agree; with all applications for faculties or licences for the improving, or restoring, or rebuilding of Churches, and other licences which the Consistory Courts may now grant for various privileges and liberties; all questions, also, concerning the difficult and delicate and doubtful meaning of the law of Church seats. These, and all other kinds of business, which at present are under the direction and responsibility of twenty-seven Courts, and the personal jurisdiction of twenty-seven Bishops, under the Act of 1840, will have to be placed, as the law now stands, and we believe is to be proposed, in the hands of one, if there shall be but one so ill-starred a Judge. But, I presume and I repeat, it is not really intended there should be but one Judge, and this the Bishops will do well to consider; they

will do well rather to turn their minds to the improvement of their own Courts, by labouring for a better facility and readiness of action. The principle of their Constitution is right; and it is but a regulation in conformity with the natural improvements which a different state of society may have called for, and which have been recognized in other departments, that are required. I refer to the draft of a Bill appended hereto, as setting out my whole plan; and if the difficulties be removed in some such sort as it points to, I do not see what more can be required. Twenty years' experience, and many more than twenty years of anxious thought, have satisfied me that these Courts may be made available to every purpose of ecclesiastical regulation.

I do not think it necessary to observe further on the Regulation Act, whatever opinion I may have on the remaining parts of it, many difficulties as I may see in its operation, especially as relating to the questions which may arise between the Consistory Courts if they shall be permitted to remain, with the authority of the Bishops, and with that of the Judge, and also as to the penalties and the methods to be applied to in regard of them; I merely wish to show how unadvisable it is in its principle; and, if I be conceded to therein, the other portions will be easily disposed of; and I will proceed at once to and conclude with some few observations on the Consistory Courts. They form a subject of vast importance, and are to be dealt with in a very serious manner. The business, now left to these Courts, as I have said already, concerns the maintenance and care of the Churches, the preservation of order within them, and that general superintendence which is necessary to the securing of them in the possession of their proper purposes. They are presided over by a Judge, the Chancellor of the Diocese, the Chancellorship being combined of two offices, that of Vicar-General and that of Official-Principal of the Consistory Court; in the Diocese of Canterbury these offices are divided, and the holder of neither is called Chancellor; there is a

Vicar-General, and there is a Judge of the Court of Arches, who is both the Diocesan and the Provincial Judge : there is also a Commissary, as is the case in some other dioceses, either for the convenience of remote parties, or from some peculiar circumstances belonging to them ; an arrangement of very early existence. Attached to these Courts, each one, are a Registrar and an Apparitor ; and, until within the last few years, all causes were conducted by advocates called Civilians and Proctors, and all of whom were appointed or admitted by the Bishop, presumed to be a competent judge of their fitness respectively ; and who were also considered to be, by their education and learning, specially skilled in ecclesiastical and civil law. The courts are now thrown open to all branches of the legal profession. All Barristers may plead in them; all Solicitors or Attorneys may practise in them. By the confinement of the practice to the original parties, a more particular attention to the principles and rules of the Courts was necessitated ; and I must say in justification, that, even when the Courts were in full possession of their former powers, the business, impeded as it was by the difficulties I have spoken of, was admirably conducted. Any inquiry into appeals would shew that *they* were comparatively few, and that, even when they did take place, the decisions of these Courts were very rarely reversed. I do not think the extension to have been beneficial ; nor do I think the public have gained by the system which has carried business from it elsewhere : the expenses in testamentary matters have been undoubtedly increased, and but few will be found to believe that either public or private morality or domestic peace has been better maintained under the new matrimonial and divorce law. The division of legal practice into several branches used to be looked on as a great excellence of our system ; some one, under it, was always to be found who had made each case as it arose his special study ; thus, we had the accomplished Chancery Lawyer ; thus, the ready and skilled Advocate in Statute and Common Law ;

thus, the Civilian, and the Ecclesiastical Lawyer; thus, navigation, and mercantile, and international law had their special proficients. Let the case be what it would, some one could be found conversant with all the legal bearings of it. I doubt, I say, the advantageousness of the change. A multifarious study is not the most profitable; that is a general rule; and the study of law is not exempt from it. Well, to return to the immediate point. The Consistory Courts are constituted as I have shewn. The Chancellors are the Judges, Judges as Officials-Principal. And who are the Chancellors? They are appointed by the Bishops, and are their representatives, as our other Judges are the representatives of the Crown; and, in their action, they are as independent of the influence, direct or indirect of the Bishops, as those others of their source and head—the Crown. By the Canons, the Chancellor must be "one that is learned in the civil and ecclesiastical laws, and is at least a Master of Arts, or Bachelor of Law, and is reasonably well practised in the course thereof." The changes in the jurisdiction of the Courts have modified these requirements, but a competent knowledge of the law on which they act is still essential. He may be either a Layman or an Ecclesiastic. At present there are twenty Lay Chancellors or Judges, and seven Ecclesiastics. The office of Chancellor, it should be borne in mind, as stated, consists of two parts, that of Vicar-General, and that of Judge or Official-Principal of the Consistory Court; and it is in the latter character he presides in that Court. The office of Vicar-General is of a different description. It is thus in every diocese, except that of Canterbury, where the Vicar-General is one individual and the Judge of the Court, or Dean of Arches, another. "The word Chancellor is not mentioned in the commission, and but rarely in our ancient records, but seemeth to have grown into use in imitation of the like title in the State; inasmuch as the proper office of a Chancellor as such was to be keeper of the seals of the Archbishop or Bishop, as appears from divers entries in the

Registry of the Archbishops of Canterbury. This office, as it is now understood, includeth in it two other offices, which are distinguished in the commission by the titles of Official-Principal and Vicar-General. The proper work of an Official is, to hear causes between party and party. The proper work of a Vicar-General is, the exercise and administeration of jurisdiction purely spiritual, by the authority and under the direction of the Bishops, as visitation, correction of manners, granting institutions, and the like, with a general inspection of men and things, in order to the preserving of the discipline, and good government, of the Church. And although these two offices have been ordinarily granted together, yet we find in the Acts and Records of the several Sees frequent appointment of Vicars-General separately upon the occasional absences of the Archbishops or Bishops."* All Lawyers agree that "this office is so necessary to support the Episcopal power, that, in case a Bishop shall neglect to dispose it, the Archbishop may nominate and impose one upon him."* These authorities are sufficient to this point; and I avoid all multiplication. An objection has been raised to the holding of the office of Chancellor by an Ecclesiastic: it being urged that it ought to be in the hands of a professional Lawyer; and I might be thought disingenuous if I did not state that Bishop Gibson has expressed an earnest wish that the two offices of Vicar-General and Official-Principal should be holden separately; the former being an Ecclesiastic, and the latter a Layman—a Lawyer; and mainly on the principle that the Judge of the Court should be an actual legal practitioner; but he in somewhat overthrows his own argument by insisting that the Vicar General should be a resident Clergyman, competent to advise the Bishop in all matters; and how is he to exclude legal matters from either requirement or consideration? The Bishop seems to suppose that an Ecclesiastic can have no skill in ecclesiastical or civil law.

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* Gibson, Burn, Stephens, &c.

He was himself a striking example to the contrary ; and many others likewise might be so named. It is not for me to say much on the holding of the office by an Ecclesiastic ; but I will presently offer a few words on that point. I must first observe on the exclusive appointment of a professional Lawyer. I do not intend either to argue or to object; but I will ask a first and an important question,—Can you ensure the actual performance of the duties by such an one ; the regular and constant performance, not the occasional attendance on the demand of some extraordinary cause ; but the ever-watchful care ? We know that the professional and non-resident Chancellors have been largely represented in the Courts by Surrogates, usually Clergymen in the Cathedral towns. These Chancellors are for the most part resident in London, the abiding place of all Lawyers of eminence. It is only necessary to name this difficulty in order to shew that the office cannot be effectively filled by the confinement of it to such persons. It may be so in London ; it may to a certain extent be so in Canterbury ; but not elsewhere. The London resident will never find it worth his while, it would be a serious damage to him personally, to travel once a month, or once a quarter, to a considerable distance, for the purpose of presiding in the Consistory Court. He has never done so hitherto. Besides, there is a great advantage of the residence within the Diocese, of which neither Bishop nor Clergy ought to be deprived, of a Legal Adviser to both : many questions may thus be settled without litigation ; and much useful advice may be given, disinterested and reliable, in more matters than can be named. I will say but little on the appointment of an Ecclesiastic. He can always be resident ; with him near at hand there need be no delays in the holding of Courts, and the consideration of causes. With him, as one of themselves, there will be neither difficulty nor scruple in the resort to him for advice where they may consider it to be required. He, also, as *Pars Episcopi,* may to the advantage of both parties, be, on fitting occasions, the

agent, if I may so term him, of both Bishop and Clergy. It may be presumed, that twenty-five or even twenty-seven, qualified for the office, may be found amongst our thirteen thousand ecclesiastical Incumbents; twenty-seven, who may have added the study of ecclesiastical law to that of theology. There has been but little failure where they have holden the office; and, as I have noticed, from the rarity of appeals, and the still more remarkable rarity of reversals, but little complaint can be made, and no ground, assuredly, for general incompetence.

A few observations are now requisite on the business to which the jurisdiction of the Consistory Courts is confined. The most prominent part of it is that of faculties as relating to Churches and their appurtenances. In all cases of ordinary repair, the interference of the Court is neither needed nor intended; but in any unusual or essential changes, such as improvement, or restoring, involving any change, or rebuilding, it is obvious enough that the work cannot be safely or satisfactorily accomplished without due authority, and that what may so materially affect the Parishioners as well as the Church should not be enterprized without an adequate inquiry before and with the assent of a competent and responsible authority. The Church is of public interest; and we are bound to maintain that interest with care and even jealousy; and to fence it in with every possible safeguard. This is the intention of the Consistory Courts. They are, or should be, watchful over every proposed change, assuring that even in improvement no interests, public or private, are damaged, and that no innovations should be permitted to exercise either a false ingenuity or a capricious taste: we know the mischiefs which have arisen and which may arise from any such doings; and experience has shewn me that improvers and restorers, yea, and even architects, do require a restraining power upon them. I am sure that, if the Courts had been invariably applied to, much that we may regret might have been avoided. The Consistory Court

enters into a full inquiry ; it acts openly ; it enables all who are interested to appear, and to assent or dissent ; if it were otherwise, private, to the detriment of public, interest might prevail, and common rights be disregarded ; and I fear that, if such public inquiry were to be stayed, such would be a very usual case. Heretofore, under the existence of Church rates, the very question of costs, which had to be borne proportionately by every one, should have been reason enough for every one who should be under liability to be heard in any such matter. Now that that part of the circumstance has been removed, and that the cost must fall on those only who promote the change or whatever it may be, there is still the right or the interest which every one has in his Church, and in which he ought to be protected ; and even because others find the material means, and may, perhaps naturally, though not reasonably, claim a more commanding voice, even because of this I will say that the general interest and feeling are to be yet more jealously guarded, and care be taken that an undue ownership be not usurped ; mere local influence might thus be too powerful, and common and equal rights be disregarded or denied. It is the duty of the Consistory Courts to maintain these rights, and none but public Courts can maintain them ; and, if the authority of these Courts be taken away, or they be destroyed, all such questions being left to less authorized parties, it may and most probably will end in that abuse of power which is always to be looked for in those who are enabled to act less publicly, less formally, and are, therefore, in their own ideas, less responsible. The very knowledge that such a power, as that of these Courts, does exist, and can be applied to, and will act on public principle, and is to be unswayed by personal feeling, and inaccessible to personal influence, will be a wholesome restrainer of even a thought of abuse. Schemes that I have heard of local arbitration, or permission, or what may be rather called connivance, will I trust never be realized. The question, so delicate, so difficult, and so

dangerous, of claims to Church seats, is another object of consideration and settlement by the Consistory Courts. It is one of great importance, from the very bitterness it sometimes creates, requiring prudence, and kindness too, in the decision; and we ought to have the ability of saying that an Ecclesiastical Judge will be specially qualified in either respect; while he adheres to the law in true exposition, he may well be expected so to declare it as to shew the obligation of Christian submission, as well as of all avoiding of contentious feeling. But, I may ask who will be satisfied without an actual decision of responsible authority where differences do unfortunately arise? Is this obligation to be thrown on the Bishop? He can act only on inquiry, and information, that is, he must depend on others for the ground on which he has to form his judgment; others in whom is no responsibility; besides which, it is here, as in other cases, to be seen, that such a multiplication of duties will be overwhelming to one who is already too heavily burthened. There is yet a great question to be considered, reverting to the subject of faculties: it regards the permission to erect monuments, to appropriate ground to individual families for vaults or graves. There may be circumstances in which such privileges are proper, but they ought to have legal limits, and, in consequence, must be subject to some jurisdiction, whether for permission or restraint. The Consistory Court is at present this authority; and, when we consider that the Church and its appurtenances are, strictly speaking, the general property, and that the larger privilege allowed to one is in effect an encroachment on the rights of others, my position will be admitted at once. It may be desirable that this privilege should be granted; it may happen that it ought to be refused; in either case there should be a fitting resource. The Minister may object; the Churchwardens may object; any Parishioner may object. It may be observed that such privilege has often been granted by the local authorities, that is, the Court has

not been applied to. A few words of explanation may be useful. The Court trusts that neither Minister nor Churchwarden, nor others will permit what in itself is wrong, nor any appropriation which may be reasonably objected to. The Rector or Vicar is the more concerned as the *quasi* owner of the freehold, and also in his more responsible character, and may be presumed to have a higher interest in it, on either account, than any other; and the Court naturally trusts that he will be careful in any sufferance to which he may be a party. It is usual, and it is natural, where there is an ability, to desire the erection of some memorial to the departed; hence the multitude of ordinary grave stones, and more costly monuments; this desire could not be realized, if upon every occasion it would be requisite to apply to the Court, and, as I have said, it trusts to the discretion of the parties I have named. With respect to the more costly monuments, if they encroach too much, the sanction of the Court should be solicited, and opportunity be given for objection. Thus, also, with respect to vaults. We do not quarrel with the desire of relatives to have their resting places as near together as may be; "Let me be buried in the grave of my father and of my mother," is a holy feeling; but its due consideration should be given to the general interest: it should never be forgotten that the right of each one is a sacred right, and is entitled to the fullest protection. I should lament, and most sincerely, any impediment placed in the way of monumental erections; I respect also the other point I have just mentioned; but appropriations and privileges should have limits; and there must, in common sense, be an authority to apply to, when any attempt shall be made to overpass them. I may remark that the Regulation Act has made no change in the position of the Churchwardens in relation to the Consistory Court. They yet remain as heretofore; whether, or in what manner it is intended to interfere with this relation we know not, but it is hardly to be expected

that it will be left untouched. They are the officers of the Court, and they are also the guardians of the interests of the Parish on all matters concerning the Church and its services: all furniture, all things necessary to be provided for the due celebration of the offices of the Church are to be provided by them,—must be provided by them; or I should rather say, they may be called on or required to provide them; and it is for the Court to take cognizance of any neglect, or, I may add, any unlawfulness, as to them. The Regulation Act imposes penalties on the Incumbent of a Church, but takes no notice of what may be done by those whose especial duty it is to take care that all things be done "decently and in order." All this is still left to the Court. There is another and a very important duty, connected with the Consistory Courts, yet to be mentioned; the issuing of sequestrations on the vacancy of a benefice. It is essential, that, on a vacancy, the spiritual charge of the parish should be immediately settled, and also that the temporalities should be secured. To this end the law has directed the Chancellor of the Diocese to issue a writ, appointing competent persons, usually the Churchwardens and a neighbouring Clergyman, to provide, under the direction of the Bishop, for the former, and also to protect the temporalities. It is, or ought to be, the practice of the Churchwardens to give instant notice to both the Bishop and the Chancellor of the vacancy; without this provision, or in any instance of the neglect of it, great damage might ensue in either respect; the Parishioners might be deprived of their rightful services, or they might be given carelessly and irregularly; and an injury in regard to temporalities might be inflicted on the succeeding Incumbent. I have known this in either case. I repeat such is the duty of the several parties I have mentioned. The Chancellor is bound to issue his writ at once; there is a just confidence that he will issue it; if he do not I will say that just complaint will lie against him, for he cannot free himself from his responsibility. This duty lies upon him as Official-

Principal of the Consistory Court; and we may remark that, being so, great caution in this, as in any other respect ought to be exercised in any dealing with these Courts: it shews how all off-hand measures ought to be avoided, and how care should be taken that important interests, such as those may be, should not be trifled with. We have been, as I have said, during many years past, very unfortunate in ecclesiastial legislation; and no one deserves blame who presses for more care, and urges a better insight into what is really required, and warns of the further danger which wrong steps may yet occasion. High interests are not to be dealt with on sudden impulse, or without the most searching inquiry into what may be the results. It is real improvement, it is permanency, it is as well the maintenance of what is right as the removal of what is wrong, which it is to be hoped will be the ground on which the Legislature will stand; and that it will be remembered that change does not necessarily lead to improvement.

In conclusion, let me not be misunderstood. In all that I have said, I have had no mere view, and been influenced by no mere consideration, of Ecclesiastical Chancellors; but I have certainly acted on a purpose of maintaining their true and proper character to our Ecclesiastical Courts; and this, so far as I can see, is a principle which is now in danger. Let this principle be maintained in its thoroughness, and let professional Lawyers alone be appointed to the office, if you will, and if you can. But let them be such as will be rightly interested in and fairly transact the business of these Courts in person, and with promptitude and dispatch; and here will be found the difficulty should any such expedient be resorted to. I will add, that, except in extraordinary emergency, unavoidable emergency, no such one ought to act as Judge. It seems to me, and has I know so seemed to many others, that a practising Advocate should not act as Judge: there is some little of inconsistency in the Advocate of yesterday and of to-morrow acting as the

Judge of to-day; and I do hope, I do anxiously trust, that the office of Chancellor, of Judge in points of deepest interest, will not be made an appendage of Assize or Quarter Sessions practice. That I feel strongly is natural; but that I am wedded to a system solely because I occupy a prominent place in it, is not true: it is the principle of the system to which I look; it is the right of our Church, which has assuredly an equal claim with any other religious body, I wish to uphold; and it is the frittering away of its just means of support, and, above all, the security of its sacred character and vital usefulness, for which I do, and to which I always will, with God's permission, direct my endeavours. The exclusion of Ecclesiastical Chancellors from counselling in episcopal adjudication, which runs through all our proposed measures, is sufficiently ominous. I need not dwell upon it; while I do understand it. Take care lest it go further than is even intended. If the true service of the Church, and if the true interests of our people demand our retirement, I will cheerfully yield, and pray that all the advantages looked for may be obtained; but I will not willingly submit to a sacrifice which shall be injurious to the cause and to the duties of it which I have solemnly engaged myself to support and to perform. May God, in His wisdom and goodness, direct our rulers aright, and effect, that, uninfluenced by favour as by fear, they may proceed steadily on a straightforward path, obtaining to themselves the blessing of His Church, and the gratitude of His people.

CLERGY DISCIPLINE.

A CHARGE

TO THE CLERGY OF THE DIOCESE OF CARLISLE,

DELIVERED IN MAY, 1865.

Reverend Brethren,

Our Church has taught us in terms strong and unmistakeable, the two great qualifications, on which, under God, the usefulness of its Ministers must depend. In the former of the prayers, directed to be used in the Ember Weeks, it is the language of supplication, "To those which shall be ordained to any holy function, give Thy grace and heavenly benediction, that both by their life and doctrine they may set forth Thy glory, and set forward the salvation of all men."—In the latter, "So replenish them with the truth of Thy doctrine, and endue them with innocency of life, that they may faithfully serve before Thee, to the glory of Thy great name, and the benefit of Thy Holy Church."—In the Litany, "That it may please Thee to illuminate all Bishops, Priests, and Deacons, with true knowledge and understanding of Thy word, and that both by their preaching and living they may set it forth and shew it accordingly."—In the prayer for the Church militant, "Give grace, O heavenly Father, to all Bishops and Curates, that they may both by their life and doctrine set forth Thy true and lively word, and rightly and duly administer Thy Holy Sacraments." And, does not each of the solemn services for the Consecration of

Bishops, and for the Ordination of Priests and of Deacons, breathe the same spirit, and speak to the same effect? Life and doctrine,--conduct and preaching,—are clearly they by which the way of salvation is to be shewn, under the guiding influence of that Holy Spirit which it is its constant and earnest endeavour to invoke for all who may be enlisted into this its special and most responsible service--conduct, manifested in innocency and righteousness; and preaching, in the performance of every duty demanded by the ministerial offices. At this time, when the Church seems to be standing very singularly on trial, the direction of our thoughts to these points not only cannot be out of place, but may very much aid in the work set us to do. Genuineness of doctrine, and unexceptionableness of living, are they which must distinguish the Minister of Christ's truth, if he would be justified of God and man. He must be learned in the doctrine, and convinced of the integrity of his own sense of it: he must be of innocent life, because the true fruit of the doctrine is holiness; and, it must be evident to all men that this fruit has been produced in himself. "Doctrine" is a word of large signification; and we cannot but be aware how different conceptions of Gospel-doctrine even, that doctrine which is really single in itself, men have suffered themselves to form. We cannot, also, but be aware of the differences which prevail with respect to the deductions our own Church has drawn from the Scriptures, and the various interpretations which have been given to them. It is a weakness of our nature we may not hope to see remedied in a state of imperfectness, that it should be so; still, it adds to our difficulties, and stands greatly in the way of our meeting the more glaring errors that may arise. There are errors, we know too well, so militating against our convictions of truth, as to draw us perforce into a direct resistance; a resistance involving hostility; and, thus, it becomes a serious question, Who is to judge? The authors of such errors will, undoubtedly, press upon us the disagree-

ments amongst ourselves; and, although their objection may be of an easy refutation, it will equally give a damaging blow to any decision that may be had, and place inconveniences in the progress towards it. I have no intention of entering into a disquisition on subjects of doctrine; and I do but design, in this preliminary remark, to shew the desirableness, yea, the need, of an endeavour on the part of us all to be right in matters of faith, and not to permit pride or conceit to draw us from a godly agreement. We admit the necessity of truth in our confession of faith, and our teaching, and, further, the obligation of "driving away false doctrine." How is this to be done? Assuredly, it is the first and the readiest answer, by being true in doctrine ourselves. Knowledge, and an honest application of it, are the immediately obvious requisites. Whatsoever persons obtain admission into our Ministry, not provided and qualified by adequate knowledge, do it a grievous wrong, and peril their own welfare; and, whoever, having the due knowledge, either pervert it, or neglect the opportunities it gives them, that is, the obligations it imposes on them, do wrong also, and incur a fearful risk. They, the Bishops, to whom the admission into holy orders is entrusted, may prevent the first case by "laying hands suddenly on no man," and by "faithfully and wisely making choice of fit persons to serve in the sacred Ministry of God's Church." A great charge has been committed to them, and an awful responsibility lies on them. The giving of a commission to teach, and to bring into the way of salvation, is, indeed, a responsibility we may not doubt deeply felt by every Bishop: the safety of souls lies in the performance of this duty; and let us hope they have that assurance of it, which shall, with Divine help, lead them rightly, and serve to the constant supply of well instructed Ministers. In the other part of the question, they cannot be so assured: they cannot dive into the depths of a man's mind; they cannot judge of the genuineness of his professions; they cannot see where he

will be strong, and where he will be weak ; and sad experience has told us that the apparently most hopeful may be led astray, and that, moreover, the most profound knowledge does not always avail to maintain in the truth. The pride of knowledge does sometimes, oftentimes, lead into the veriest fallacies, shewing us all, in the strongest light, that our dependence must not be on our own strength. To be satisfied of that other qualification which our Church demands, innocency of life in candidates for holy orders, may seem an easier matter. Our goings out and our comings in are of instant intelligence ; and it is generally well understood whether a man be correct or incorrect in his conduct, morally speaking ; and the bishop must receive the prescribed testimony as fact : he must rely upon it for its purpose. Nevertheless, neither is there a certainty here : the heart is deceitful above all things ; and the very correct man of to-day may be otherwise to-morrow. The Bishop accepts as presented to him, with the addition of his own careful inquiry ; trusting that God will direct all to His own just ends, and, in the event of any dissappointment or failure, will look on himself with a gentle eye, not visiting him with his anger for what has not been of his wilful default ; and will consider, that he, like his brethren, is but a weak and short-sighted man, and must depend for acting aright on the Only-Wise and Holy Guidance. I now come to my instant proposal. How are failures in either of these respects to be met ? How is false doctrine to be dealt with ? How, ill personal conduct ? Repeating, Who is to judge ? It is certain that false doctrine ought not to be endured ; its permitted, unresisted, existence must be injurious to our Christian Church. We are under a strict obligation to withstand it, and to drive it away. It is the solemn question at the ordination of a priest, " Will you be ready, with all faithful diligence, to banish and drive away all erroneous and strange doctrines, contrary to God's Word"—and the same is repeated, at the consecration of a Bishop, with the addition, " and both privately and openly

to call upon and encourage others to do the same?" Christian truth calls for this; and an indifference to truth or falsehood is of natural tendency to drive truth out of the world: but, Christian prudence is likewise to be regarded, and its directions are to be sought and submitted to: it behoves us to be circumspect even in the resistance of error: an unwise method, a weak argument, or an unconsidered action, may be detrimental to its own good cause. In the first place, we must be careful that we ourselves do not depart from what our consciences, under the correcting influence of God's Word, and with supplication for His assisting grace, shall tell us to be the truth; we must defend it in that best of ways—the maintenance of our people in it by our own teaching, and the manifestation of our own convictions; and if we do by this means defeat the adversary, our success will be the more satisfactory. If however, in the next place, we be compelled to resort to other means,—to a more public refutation, our proceeding must be marked by prudence; we must be sure of our ground; and on every step we take, while we do not shrink from duty, stern as it may be, we must contend, or, to speak more properly, plead as the disciples of a merciful and loving Saviour, who came to recover, and not to condemn. If, again, such means fail, we must, in scriptural language, "tell it unto the Church," seeking the expulsion of what is wrong, from rightful authority; compassing the casting away of the unworthy member, if he be persistent in his error; applying to such means as shall relieve ourselves from the offence, and vindicating our faith before that tribunal which the united voice of the spiritual and temporal authorities shall have established for our protection and justification. Our Church has always had tribunals for the trial of such cases. I do not design to enter into any account of their origin; it would serve to no present useful purpose to do so; nor will I take any historical view of their proceedings: it may be sufficient to observe, that they have been adjudged, at least in

principle, until later times, adequate to their intention; and we may add that, if partaking of the imperfectness which must attach to all things of time, they have, in their descent to us, become in some instances, unsuitable to modern notions and practice, they yet contain in them the ability of every safe and reasonable improvement. Changes indeed, they have undergone within no very distant space; but that those changes have not been altogether improvement the general dissatisfaction testifies. It will be convenient to unite in one argument the case of them in their cognizance of offences in matters whether of doctrine or of personal conduct. These are, both of them, of vital concernment to the interests of the Church. The subject of ecclesiastical discipline, more especially as regarding personal conduct, has long and painfully occupied the public attention: again, and again, has the notice of the Legislature been called to it; scheme after scheme has been proposed; and disappointment after disappointment has been experienced. It has seemed as though it were more difficult to deal with the Ministers of our Church than with any other members of the community; but the fault does not lie with them; I mean our portion of the Ministry: no obstacle has been offered by them: in truth, they have in many instances, submitted to what they disliked, rather than be charged with a contentious spirit; in the present respect, as well as in other matters, they have stood in patient endurance and expectation, rather than be personally pressing or importunate. They have, besides, as was natural, and as they were entitled, looked to the episcopal body for such proposals of amendment as might be thought advisable; and whatever did come from thence was always received and considered with a reverential deference. With a body so chosen, so privileged, and so possessed of influence and the power of applying it, it was not too much to hope that every interest of the Clergy should be speedily and adequately cared for; and it, undoubtedly, was not to be

expected that questions so affecting them and their usefulness should have been so protracted. We, however, cannot know what difficulties were to be encountered, of themselves or of others, and what impediments they have met with. I must, nevertheless, insist, and with equal openness and respect, that it is not becoming the condition of such a Church establishment as ours to be so pleading grievances, and so calling for correction; it casts no slight reflection on our rulers in both Church and State. But, not to occupy your time on that point, for it would not help us in our general subject—when the scheme, which ended in the Act of 1840, was propounded, the Clergy submitted; persuaded as they were for the most part that it would shew itself to be no improvement, they would still let it have its chance, and it is hardly necessary for me to remark to you how it has failed, and how it has increased instead of lessening difficulties. I admit that our Ecclesiastical Courts did call for consideration; so, from time to time, do all other Courts; the lapse of time, as I have already intimated, and changes in other institutions, had introduced inconveniences which it would have been wise to remedy, and which might have been remedied if the parties who undertook the matter had been contented with simply endeavouring after what would be useful, and had divested themselves of the vain and mischievous fancy of inventing something new. I will not refer to the removal from these Courts of large portions of their jurisdiction, as the testamentary and matrimonial, further than can be avoided: a passing notice will be sufficient. The Legislature had the fullest right to remove the former; and I will not dispute the propriety of the removal, though I may doubt the success of it: I must lament the latter, deeply lament it, as the occasion of much and serious evil, and, also, an undue interference with a sacred law—and, I say it with sorrow too, we might have hoped a better resistance of it from our spiritual heads and representatives. The avoidance

of all unnecessary delay and expense is essential to the proper administration of justice; and, it is beyond question, that this maxim applies with equal, we might almost say, greater force, in ecclesiastical suits, than in any other; those suits, I mean, in which the character and integrity of the Clergy are concerned; for, whatever affects their usefulness, is of interest to the whole community. On this ground, it had been a fair subject of regret that the practice of our Courts, or, rather, the obstacles with which their peculiar method enabled parties to encumber their proceedings, did admit much delay, and create no ordinary cost. But could not these grievances have been remedied without the invention of new tribunals? Could not our Courts have received authority from the Legislature to amend whatever had become unsuitable to circumstances? Could they not have been empowered to simplify their proceedings? I believe that whatever change was desirable might have been effected without encroachment on their jurisdiction. Had they been enabled to adapt themselves more to the usages of some of our other Courts, the conduct of a suit need not have been liable to a charge of either protraction or onerous expense. The reformers of ecclesiastical law did not, as I think, apply to their task with any such view: if they did, they have signally failed. It seems to have been a removal of jurisdiction they were endeavouring to compass; and thus their proposals and their efforts on ecclesiastical discipline ended in the Act to which I have alluded—one of the most extraordinary and unconstitutional instances of legislation this country has ever witnessed. It has not diminished, I repeat, but augmented expense; it has not saved from protraction, but carried it onwards—and, has it ensured the true ends of justice? A brief glance will give us an answer. Under it, the Bishop is authorized, of his own mere motion, or at the request of any other party, if he think fit,—mark that, if he think fit;—commencing with the bestowal upon him of an absolute and dispensing power; constituting him, primarily,

a Judge,—to issue a Commission "to five persons, one of whom shall be his Vicar-General, or an Archdeacon, or Rural Dean, within the diocese," the other four not confined to any class or condition, to inquire into any charge of "offence against the Laws Ecclesiastical" by "any Clerk in holy orders," or, "concerning whom there may exist scandal or evil report as having offended against the said laws." The power of the Consistory Court is delegated to these Commissioners, so far as their purposes require. There is all the solemnity of an usual Court of Justice, without the obligation under which all other Law Courts are constituted, the obligation of an oath to do rightly; there is the compulsory attendance of witnesses; there is the binding of the witnesses by oath; there is, or there may be, the publicity of an open court. These Commissioners are called on, ostensibly, to determine whether there be "a *prima facie* ground" for further proceeding, or not; if they find in the affirmative, the Bishop may, with the consent of the party accused, give sentence at once; otherwise a second tribunal is to be erected by him; a second trial is to take place; witnesses are to be summoned again. If the party accused shall refuse or neglect to appear and make answer to the articles of accusation, "other than an unqualified admission of the truth thereof, the Bishop shall proceed to hear the cause, with the assistance of three assessors, to be nominated by the Bishop, one of whom shall be an advocate who shall have practised not less than five years in the Court of the Archbishop of the Province, or a Sergeant-at-Law, or a Barrister of not less than seven years' standing, and another shall be the Dean of his Cathedral Church, or of one of his Cathedral Churches, or one of his Archdeacons, or his Chancellor; the position of the third, as in the previous commission, not being described or limited; and the Bishop shall pronounce sentence thereupon according to ecclesiastical law." It is the Bishop throughout. He is the accuser: he is the constitutor of the members of the Courts: he is the judge: the assessors are

but his advisers ; and he may form his sentence on his own opinion, however contrary it may be to theirs. If, however, the Bishop so please, he may, instead of hearing the cause himself, send it by letters of request to the Archbishop of the Province, in which case it will be conducted according to the ordinary rules of his Court. I need not argue on this arrangement: it has been tried, and found faulty: the expenses, more than one Bishop can tell you, are such as almost to forbid prosecution. The power which the Ecclesiastical Courts now exercise of taking oral evidence, has operated as a great relief in the jurisdiction yet remaining to them; and, if they were to be further assisted by an ability to prevent the delays occasioned by interlocutory questions, there is no doubt that two or three sittings of the Court would be sufficient for any cause. My proposal is, that the jurisdiction of the Courts in ecclesiastical discipline should be restored, with a proviso that any complainant should, as a preliminary step, give security for costs; and that they should be enabled to simplify proceedings ; and for this purpose I would extend to them the authority given by the thirteenth section of the Church Discipline Act to the Provincial Court: "Provided always, that the Judge of the said Court may and he is hereby authorized and empowered from time to time to make any order or orders of Court for the purpose of expediting such suits or otherwise improving the practice of the said Court, and from time to time to alter and revoke the same: Provided also, that there shall be no appeal from any interlocutory decree or order not having the force or effect of a definite sentence, save by the permission of the Judge of such Court." I do not consider the Bishop, personally, to be the proper Judge. The Court is the Bishop's Court, as our other Courts of Law are the Queen's Courts ; and it is idle to say that one more than the other could preside personally with advanage to justice. Those other duties, which the Bishop must discharge in his own person, would be a hindrance to him, if there were no

other reason, and would place him, of necessity, in the hands of private and irresponsible advisers.

An appeal lies to the Archbishop of the Province, and from the Archbishop to the Judicial Committee of Privy Council. It is worth considering, whether, by agreement of the respective parties, and with consent of the Bishop and Archbishop, the appeal to the Archbishop may be foregone. I think it may.

I arrive at a point of high importance, and one on which the minds of Clergy and Laity have been greatly agitated and divided—that of the Court of Final Appeal. It is not necessary to travel back over ground gone by, or to take any long view of the question of appeal; our inquiry is not so much into what has been as what is, and what is most to be desired; thus we shall the more usefully direct ourselves to the Court of Final Appeal as it stands, and consider its adaptation or unadaptation to its purposes; and, if we find it not adapted, or but partially so, to inquire how it may be amended. We are to bear in mind that the Sovereign is "the supreme governor of the Church within these her dominions," and that "unto her the chief government of all estates of the realm, whether they be ecclesiastical or civil, doth appertain." Hence it is that our final appeals are to the Sovereign. So when we speak of the appeal to the Judicial Committee of Privy Council, we mean an appeal to her; the Judicial Committee hear and advise, and the decision, though formed on that advice, is really hers. The Act of Parliament, under which this Committee has been selected, has, in fact, and notwithstanding, restrained the Royal authority by specifying the individuals of whom advice should be taken; still, as I have said, the decision is that of the Sovereign, and her supremacy is recognized in it all. The constitution of the Committee has been described by the Archbishop of Canterbury in a recent Charge to the Clergy of his Diocese; and I cannot do better than set it before you in his own words:—"There can be no doubt that

the present Court of Appeal in ecclesiastical causes is more unfavourable to the Church than that for which it was the substitute. When all appeals to Rome were forbidden by the 24th of Henry 8, c. 12, A.D. 1533, it was enacted that every cause ecclesiastical should be finally decided in the Archbishop's Court, excepting that where the rights of the King were concerned there should be a final appeal to the Upper House of Convocation. Thus far, then, the last resort in each suit was to a Court composed solely of spiritual persons. In the next year a new system was introduced. In the case of every appeal in an ecclesiastical cause, a Royal Commission under the great seal was to be issued, appointing certain persons to hear and decide the same, no further appeal from their sentence being allowed, except that in extraordinary cases the King would issue a Commission of Review to revise the sentence delivered. This was the origin and constitution of the Court of Delegates; and the power which formerly belonged to the Pope, and with which the Archbishop was for a short time invested, thenceforth rested with the Crown. But in the statute constituting the Court of Delegates a proviso was introduced, that when any cause touching the law divine or spiritual learning happened to come in question, then it was to be declared and interpreted by that part of the body politic called the Spiritualty. In consequence of this provision we find no trace of any temporal Peer, or Judge of the common law, being appointed to sit in the Court of Delegates on such a case, until the beginning of the seventeenth century. At a later period the Court used to consist of about an equal number of Bishops, of Judges of common law, and of Civilians, or Doctors in civil or canon law; and it continued to be the ultimate Court of Appeal till the year 1832. An Act was then passed transferring the final appeal in such cases from the Court of Delegates to the Privy Council. The Privy Council, however, was before long found to be a body too large to constitute a proper tribunal for these purposes, and a statute

was passed in the following year, 1833, creating a Judicial Committee of the Privy Council as the final Court of Appeal in all matters which used to be brought before the Court of Delegates ; but no spiritual persons of the Privy Council were by law appointed members of this Committee. This omission, however, was remedied by the Church Discipline Act of 1840, which provided that when any cause, commenced under this Act, should come before the Judicial Committee of the Privy Council, every Archbishop and Bishop of the United Church of England and Ireland who is a Privy Councillor should be a member of the Judicial Committee of the Privy Council for that purpose." It is the question, " Is this tribunal sufficiently protective of the interests of the Church? Various opinions have been set forth. It is said by one to be altogether wanting ; by another, to be not competent, because it is not entirely spiritual, that is, ecclesiastical, in its composition ; and by another, that the very ecclesiastical element ought to be eliminated, as is the expression. The true circumstance is much overlooked by all parties. It seems to be forgotten that the Committee is a Court of Advice to the Sovereign. I forbear to enter into controversy more than is requisite; it is more agreeable to the bent of my mind to declare what strikes me as being the best course than to enter into any contentious discussion. I am not satisfied with this Committee, as it is constituted for ecclesiastical purposes. I object to a mere spiritual Court: suspicions of encroachment would be constantly arising, and throwing discredit on its proceedings ; and who can say that its decisions would be unprejudiced, and that it would not rather tend to the setting up of new than to the maintenance of now authorized construction ? The Church is divided into parties, and the decisions would necessarily be governed by the prevalence in the Court of the one or the other; and there would be no check on any. The argument applies, qualified by the fact of the Lay element, to its present constitution even ; the

peculiar opinions of the respective members will have their influence, and, as it is not to be expected that they will have that legal intelligence which shall temper a bias, they can but add to difficulty. There is, too, another striking objection. The Lay members of the Committee are not barred by the opinion of the Bishops, even if they be unanimous; they may decide against it: and, then, where is the confidence of the Church in the decision? It had been better that the Bishops had given no opinion at all; the Church will appear, through their very presence, to have sustained a defeat. Again, is the whole body of the Church prepared to be governed by the opinion, unanimous though it may be, of the three individuals who may happen at the time to occupy the sees of Canterbury, York, and London? For, although other Bishops may be nominated to the Council, it is not likely that the long custom of confining the seats there to those three will ever be interfered with. The Church at large has no part or voice in the appointment of its Bishops, and may not always be satisfied of their fitness, and with the motives which have obtained the individual selections; and, unquestionably, those selections will have no view to the discharge of such a duty as that now under our consideration. But, if their opinion be adverse to our general feeling, will it not be injurious to the peace and welfare of the Church? What will be the condition of a house so divided, not merely in theory, be it remembered, but in practical issue? Lastly, are we to exclude the ecclesiastical element altogether? The Committee must have some means of information on any doubts or differences regarding ecclesiastical matters; some assistance therein must be open to them. Now, looking to the intention of a Court of Appeal, which is to rectify any error into which another Court may have fallen; considering that ecclesiastical causes have undergone full investigation in their own Courts, and that whatever is simply ecclesiastical has been subjected to a complete investigation before those who are best versed in its

case; and further, that the ground of appeal is, that judgment has not been given according to law and evidence, we come to a conclusion that the question is really very limited—limited to this point. The Court of Appeal may, it is true, remit for further evidence; it may direct feigned issues to be tried for its better information; yet its business is essentially law, with its bearing on evidence. It is not within its province to determine what is, or what is not, the doctrine or the discipline of the Church; that has been already settled; but whether the matter complained of be or not an offence against the one or the other. It does not, in truth, or at least usually, require the instruction of an ecclesiastical person on that point. At the same time, while, as we have seen, the Committee is complete, as the adviser of the Crown, without the ecclesiastical element, and while it must be confessed that the omission of it, as a component part, would appear to prevent the Church from being unduly compromised, it is desirable that the Committee should be enabled to resort to some quarter specially on behalf of the Church; and to this end, I propose that it should be empowered and directed to petition the Sovereign to name some person or persons, learned in ecclesiastical matters, being in holy orders, with whom to take counsel, whenever it shall be deemed requisite. This is a method, seeming to me one that would obviate the existing difficulty; it would keep the Committee unhampered by contrary judicial opinions; and even Bishops may differ one with another; and when they do, which is to be attended to? It would cease to present the Committee as at variance in itself, and would preserve intact the supremacy of the Crown. This is no mere novelty, —to me no slight recommendation: it is but enabling the Committee, as acting for the Sovereign, to do what it is the Sovereign's acknowledged right, to seek counsel in doubt.

The most reverend Prelate, to whose Charge I have referred, is of opinion, that the Committee should be composed, with a proviso, of Laymen only; he says, "When we

calmly consider this difficult and important subject, we shall at once perceive that with the theological question, there will always be a question of civil right also mixed up; and shall acknowledge it to be eminently desirable, if not absolutely necessary that points of law, strictly so called, should be decided by those who have been thoroughly conversant with the principles which ought to guide such decisions. But where points of doctrine are involved, it is equally reasonable that the legal members of the Court should have the Spiritualty to guide them. So, it may be argued, they now have, by the Act of 1840. But the anomaly of the present system is, that whereas the Court of Appeal has to interpret the teaching of the Church (albeit of the majority of that Court some may not even be members of the Church of England, and all are sure to be Laymen), a binding decision may be given as to what is that teaching, though all the ecclesiastical members of it be adverse to that view. The Church thus seems to be compromised by any such judgment (inasmuch as some of its Prelates were sitting on that tribunal), although the voice of the Church in general might be adverse to the decision at which the Court arrived. For my own part, I have always considered that the preferable system would be to have the Court composed of Laymen only; that any question of doctrine should be submitted to the Bench of Bishops for their opinion; but that this opinion should not be binding on the Court as to the sentence to be pronounced." I concur to a certain extent with this view; His Grace would have no ecclesiastical person upon the Committee; but he would give it the advantage of ecclesiastical assistance. So far, I say, I concur; but I cannot go further with him in his proposition; that is, I object to the kind and method of the assistance; and, with great and sincere respect, I prefer the mode I have suggested. The submission of the question to the Bench of Bishops would give rise to much inconvenience; it would occasion debates, perhaps to be regretted, and might make an exhibition of

differences we would all of us wish to be avoided; and the decision of the majority would place the minority, it may be, in the position of parties holding opinions contrary to the doctrines of the Church; and it would not only be setting them as a Court over the Court of Appeal, but would be bringing recognized doctrines again into dispute. It is true it is proposed that the Committee should not be bound by the finding of the Bishops; but, if they did not so decide, their decision could not have the weight it ought, and would always be regarded as faulty—a doubt would ever rest upon it. Moreover, are we prepared to put the Bishops into this position, for either their own sakes or ours? The plan I propose would have none of the inconvenience mentioned; for it would not be a judgment they would seek from the party so assigned to them by the Sovereign, but a testimony on behalf of the Church, which they would weigh and receive in aid of their own deliberations; nor would it be what might be called a standing Court, qualified or not qualified to advise or inform on the particular case, but what would be sought out as specially adapted to it. In truth, the proposal of His Grace would be to remit the question to the Upper Houses of the Convocation, and what would the Lower Houses say to that? I deprecate all such discussion before either of them. The Church would be no gainer: I conceive its doctrines to be settled in its Liturgy and its Articles; and the only question as to doctrine for the Committee is, how the subject on which it is called on to decide affects it. Let us be careful lest we provoke a dangerous jealousy, raising dissensions and conflicts it may not be easy either to allay or pass through without damage. With the help I have named, the Committee must be regarded as adequate to its purpose. Indeed, I look on it, as a Court, to be of the highest competency: it has been formed with no ordinary wisdom, and ought to be trusted; and it will be trusted, while it confines itself to the matter legitimately before it, avoiding all unnecessary disquisitions, and not falling into

that mistake, which is not without example, of prefacing a judgment with observations that may bear an injurious construction; but establishing itself, in theological and ecclesiastical questions, on the principle that the Holy Scriptures are true in all they propound, that the doctrines of the Church are definite, and that its law is precise. The temporal head cannot alter the profession of faith: it does not affect any such power, its authority consisting in the maintenance of the faith as professed; it is for it to oversee, and it is to judge of the performance or non-performance of the duties allotted and undertaken. Neither have the Ministers of the Church any power of alteration: they are to minister as they have received, and in what they are authorized. The glory of our land is our Church—our Church in its connection with the temporal government. Our kings are its nursing fathers, and our queens its nursing mothers. May the Providence of God ever continue the blessing to us!

I have addressed you on one only of the many subjects which now press upon us in relation to the Church; and it may be more useful so to confine ourselves, than to wander over the large field of inquiry that lies open to us. The subject I have chosen has a great importance, both from its direct bearing on the constitution and character of the Church, and the prominence, which, by a general consent, has been given to it. My observations have, of necessity, been concise; the occasion does not warrant a very lengthened discussion, and much that I may have failed to urge will, doubtless, have suggested itself to you. It belongs to the position I occupy to set my views plainly before you, and to invite your further deliberate consideration of them. The subject certainly is one on which we cannot be either too informed or too guarded. We must be prudent in all our proceedings upon it, well assured that they are founded in the strictness of right. We have to contend for the security of the Church, not as for our own personal authority, or influence, or advantage,—not for what would serve us, but for what would

serve it. We are servants, not masters—servants of Christ, and for His and His work's sake, servants of our brethren also. To our teaching, to our watchfulness, to our living, they are to look as guides to themselves; and if we have not both sufficiency and soundness of doctrine and innocency of life to present, we shall be doing them a wrong; and whatever may be our idea of the various schemes of ecclesiastical policy, and however we may differ with one another in respect of it, we cannot mistake those obligations, we cannot misunderstand the admonitions to them with which the Scriptures abound, nor can we swerve from them without the consciousness of guilt before God. Upon whom is it so bounden to search the Scriptures and to ascertain the truth, and to adhere to it? upon whom so bounden to cultivate holiness and to walk uprightly? upon whom to be living examples of the power of God? The evils to result from an unfaithful, an ignorant, or an undiligent Ministry are fearful—are indescribable; the thought of the souls that have been lost, and might have been saved, is overwhelming. It is too fearful a picture to dwell on; and one, I pray none of you may ever realize. Yet, may not argument be drawn from hence of the requirements in a Minister of Christ? May we not, and ought we not, to exhort one another to the performance of the duties of each one's station, to the fulness of the grace and power God has given? And, does it not justify us in our endeavour to labour after that means by which unfitness may be prevented, and unsoundness or other unworthiness be put away from us? and that we should present all help and furtherance to maintain our Christian fabric entire? The age is one of inquiry; and, unhappily, more than that: inquiry in a proper spirit we would not resist, knowing it must lead to an increased persuasion of the truth. There is, however, a dangerous spirit abroad; not a spirit of fair inquiry in an informed mind, and with an upright heart; but a spirit of pride and of vanity, causing men to seek to be "wise above that which is

written," and unsubmissive to the word and counsels of God. Here is a battle-field on which we must enter, and in which our fidelity and our courage are to be proved. Let "God and His truth" be our watchword; and may He grant us the strength for the combat, and so carry us through it as to secure the salvation both of ourselves and of those whom He has given to our charge!

PROPOSAL.

A BILL

INTITULED "AN ACT FOR CLERGY DISCIPLINE."

I. Whereas the Manner of proceeding in Causes for the Correction of Clerks in Holy Orders requires Amendment: Be it enacted by the Queen's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That an Act passed in the Third and Fourth Year of Her present Majesty, intituled "An Act for better enforcing Church Discipline," be and is hereby repealed.

II. And be it enacted, That an Act passed in the First Year of the Reign of King Henry the Seventh, intituled "An Act for Bishops to punish Priests and other Religious Men for dishonest lives," repealed by the Act aforesaid hereby repealed, shall be and continue to be repealed.

III. And be it enacted, That, unless it shall otherwise appear from the Context, the Term "Preferment," when used in this Act, shall be construed to comprehend every Deanery, Archdeaconry, Prebend, Canonry, Office of Minor Canon, Priest Vicar, or Vicar Choral in Holy Orders, and every Precentorship, Treasurership, Sub-Deanery, Chancellorship of the Church, and other Dignity and Office in any Cathedral or Collegiate Church, and every Mastership, Wardenship, and Fellowship in every Collegiate Church, and all Benefices with Cure of Souls, comprehending therein all

Parishes, Perpetual Curacies, Donatives, Endowed Public Chapels, Parochial Chapelries, and Chapelries or Districts belonging or reputed to belong, or annexed or reputed to be annexed, to any Church or Chapel, and every Curacy, Lectureship, Preachership, Office, or Place which requires the Discharge of any Spiritual Duty, and whether the same be or be not within any exempt or peculiar Jurisdiction, and also all Sinecure Rectories, holden by Spiritual Persons as such; and the Word "Bishop," when used in this Act, shall be construed to comprehend "Archbishop"; and the Word "Diocese," when used in this Act, shall be construed to comprehend all Places to which the Jurisdiction of any Bishop extends under and for the Purposes of an Act passed in the Second Year of Her present Majesty, intituled "An Act to abridge the holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy"; and the words "Clerk in Holy Orders" shall comprehend "Priest and Deacon."

IV. And be it enacted that in every Case of any Clerk in Holy Orders, of the Church of England, who may be charged with any Offence against the Laws Ecclesiastical, or who shall have been convicted of any Felony or of any Misdemeanour, wheresoever convicted within Her Majesty's Dominions, subjecting to other than a Pecuniary Penalty, and to whom Her Majesty's Free Pardon under the Great Seal shall not have been granted, it shall be lawful for the Bishop of any Diocese within which such Clerk shall be beneficed or licensed, or for any other Person having knowledge thereof, to apply to the Consistory Court of the said Diocese, notwithstanding the Offence shall have been committed or alleged to have been committed within any other Diocese, for a Citation to the Party so charged, and which Citation the Judge of the said Court is hereby directed to issue forthwith, summoning the said Party so charged, to shew Cause at the holding of the said Court next ensuing to the Issue of the said Citation, provided such holding of the

said Court be not within Thirty Days from the Service of the said Citation, and, if otherwise, at the Court which shall be so holden as to give at least the space of Thirty Days from the Day of the Service of the said Citation to the Day of the holding of the said Court, exclusively of the Day of such Service, and the Day of such holding, against Articles setting forth such alleged Offence, or such Conviction: Provided always, that, where the Party, so applying for the said Citation, be other than the Bishop of the Diocese, Security for Costs be taken to the Satisfaction of the Judge of the said Court, previously to the issuing of the said Citation.

V. And be it enacted, That the Bishop, or other Party as aforesaid, shall, Twenty Days at the least before the holding of the said Court, exclusively of the Day of the holding of the Court, and of the Day of Filing, file, in the Registry of the said Court, Articles setting forth the alleged Offence, or the Conviction, as the Case may be, approved and signed by an Advocate practising in Doctors Commons.

VI. And be it enacted, That a Copy of the Articles so filed shall be forthwith, that is, not later than the Day next following such Filing, served on the Party accused, by personally delivering the same to him, or by leaving the same at the Residence House of any Preferment holden by him, or, if there be no such Residence House, then at his usual or last-known Residence: and it shall not be lawful to proceed on any such Articles until after the Expiration of Fourteen Days after the Day on which such Copy shall have been so served.

VII. And be it enacted, That, except as hereinafter provided, at the Court next following the Expiration of Fourteen Days as aforesaid, the Party accused shall appear, and make and file his Answer in Writing, and shew Cause against the said Articles.

VIII. And be it enacted, That, if it shall seem fit to the Judge of the same Court, on the Application of either the

Party complaining or the Party accused, to adjourn the Hearing, it shall be lawful for the said Judge to adjourn for such purpose, so that the Adjourned Court be holden within Thirty Days after such Adjournment.

IX. And be it enacted, That any Notice and Requisition to be given to any Witness in the Cause shall be served on the Party to whom the same respectively relate in the same manner as is hereby directed with respect to the Service of a Copy of Articles on the Party accused.

X. And be it enacted, That, if the Party accused shall refuse or neglect to appear and make answer, and shew Cause against the said Articles, it shall be lawful for the said Judge to receive Evidence, and give Sentence thereon, notwithstanding such Non-Appearance.

XI. And be it enacted, That all Witnesses in such Cause shall be examined orally in Court.

XII. And be it enacted, That where the Charge is a Conviction in a Criminal Court, a Copy of the Record in the Case, duly attested, shall be deemed and taken to be sufficient Evidence.

XIII. And be it enacted, That the Free Pardon of Her Majesty under the Great Seal shall, at any Time pending the Proceedings, terminate any Suit on Criminal Conviction.

XIV. And be it enacted, That the Judge of the said Court may, and he is hereby authorized and empowered from Time to Time to make any Order or Orders of Court for the Purpose of expediting such Suits, or otherwise improving the Practice of the said Court, and from Time to Time to alter and revoke the same: Provided, also, that there shall be no Appeal from any Interlocutory Decree or Order, not having the Force or Effect of a Definitive Sentence: Provided, also, that such Order or Orders shall be in accordance with and under the Authority of Rules of Court, to be drawn up by the Dean of the Arches, the Chancellor of the Province of York, and the Chancellor of the Diocese of

London; and which Rules they, the said Dean and Chancellors, are hereby directed and empowered to draw up.

XV. And be it enacted, That every Suit against any Clerk in Holy Orders shall be commenced within Three Years after the alleged Commission of the Offence in respect of which the Suit shall be instituted, and not afterwards: Provided always, That whenever any such Suit shall be brought in respect of an Offence for which a Conviction shall have been obtained in any Criminal Court, such Suit may be brought against the Party convicted at any Time within Six Calendar Months after such Conviction, although more than Three Years shall have elapsed since the Commission of the Offence in respect of which such Suit shall have been so brought.

XVI. And be it enacted, That in any Case, otherwise than where Sentence of Deprivation or Deposition may be incurred, it shall be lawful for any Bishop within whose Jurisdiction any Preferment of any Party accused may be situated, on the Submission of such Party rendered under his Hand in Writing, after the Filing of Articles, and before any Answer thereto, and on Payment of Costs, to grant to such Party a Licence of Non-Residence, not exceeding Three Years from the Date thereof, in the Body of which Licence it shall be stated to have been granted "In pursuance of the Provisions of the 'Act for Clergy Discipline,'" and that such Licence, except as hereinafter directed, shall be a Bar to any Prosecution for the Offence as alleged: Provided always, That Copies of such Licence, with the Reason thereof, and a Copy of the Articles, shall within Ten Days of the Grant of it, be transmitted to the Archbishop of the Province, and the Lord President of Her Majesty's Privy Council; and that it shall be lawful for such Archbishop, or Lord President, within Fifteen Days from the Receipt thereof, to dissent from the Grant of the said Licence, and to direct the Suit to proceed.

XVII. And be it enacted, That in every Case, whether

of Suspension by Sentence of the Judge of the Court, or of Submission, as aforesaid, on the Part of the Accused, it shall be lawful for the Bishop of the Diocese, within which any Preferment of such Party shall be situated, and he is hereby required, to nominate and License a Curate or Curates, or such other duly qualified Substitute, as the Case may require, and to assign such Stipend or Stipends as may be assigned by Law to the Curate or Curates of any Non-Resident Incumbent, or any Stipend or Stipends to the amount of one-half in excess thereof, or where no such Stipend is or shall be assigned by Law, as to the said Bishop shall seem just and reasonable: Saving herein any Statutable or other Legal Rights of Cathedral and Collegiate Bodies in the Arrangement of and Remuneration for, the Performance of Divine Services in their Cathedral and Collegiate Churches.

XVIII. And be it enacted, That any Clerk in Holy Orders, suspended or licensed as aforesaid, shall not be permitted to resume the Performance of the Services of his Church, before presenting to the Bishop a Testimonial under the Hands of Three Beneficed Clergymen, countersigned as to the Credibility of such by the Bishop of the Diocese within which their Benefices may be situated, if such Benefices be within any other Diocese than of the Bishop as aforesaid, of such Clerk having been of sober Life and Conversation, and otherwise qualified, according to the usual Form and Substance of Testimonials required by Bishops in order to Institution, Collation, or Licence, of Clerks in Holy Orders, either during the Term of such Suspension, or by the Space of Three Years immediately succeeding, as the case may be; such Testimonial being subscribed, and stated to be subscribed, by the Parties thereto, in the presence of each other, and of the Archdeacon, or his lawful Substitute: and that thereupon the Licence to any Curate or Curates as aforesaid, shall cease and be void.

XIX. And be it enacted, That the Bishop shall transmit, or cause to be transmitted, to the Bishop of every Diocese

within England and Wales, a Notice of the Suspension or Licence, as aforesaid, of any Clerk in Holy Orders.

XX. And be it enacted, That no Clerk in Holy Orders, suspended or licensed as aforesaid, shall, under Pain of Penalties of Misdemeanour, perform, or assist in the Performance of, the Service of any Church or Chapel, or other Place licensed for the Performance of Divine Service, according to the rites, ceremonies, and usage of the Church of England, during the Term of such Suspension or Licence, and until the Presentation to the Bishop of a Testimonial as herein before directed.

XXI. And be it enacted, That when any Clerk in Holy Orders shall be sentenced to Imprisonment for any Offence by any Criminal Court, and no Suit be instituted in respect thereof in the Consistory Court, he shall not be liable to the Penalties of Non-Residence during the Term of such imprisonment: Provided, That in any such case the Bishop shall nominate a Curate or Curates, or other Substitute, and assign a Stipend or Stipends, as heretofore provided in Cases of Submission or Suspension.

XXII. And be it enacted, That nothing in this Act contained shall prevent or be construed to prevent any Bishop from remitting, as he has been accustomed to remit, any Case by Letters of Request to the Archbishop of the Province: Provided always, That such Suit, by such Letters of Request, shall be instituted and conducted in the Court of the said Archbishops as is here enacted and provided in the Consistory Court of the Bishop.

XXIII. And be it enacted, That it shall be lawful for any Party who shall deem himself to be aggrieved by any Sentence pronounced against him in the Consistory Court of the Bishop, to appeal to the Archbishop of the Province; and such Appeal shall be heard before the Judge of the Court of the Archbishop; Notice of such Appeal being given according to the Rule of the Consistory Court; and the said Appeal shall be proceeded with in the said Court of Appeal, in the same

Manner as in this Act provided for Suits in the Consistory Court of the Diocese; and further Appeal, according to the present Form and Condition of Appeal, may be made to the Queen in Council to be heard before the Judicial Committee of Privy Council.

XXIV. And be it enacted, That with Consent of the Archbishop and Bishop, on the joint Application of the Parties in the Case, the Appeal to the Court of the Archbishop may be foregone; and an Appeal be carried direct from the Consistory Court of the Diocese to the Judicial Committee of Privy Council.

XXV. And be it enacted, That, for the purposes of this Act, it shall be lawful for Her Majesty, on the Application of the Members of the said Judicial Committee, to call in Two or more Persons in Holy Orders, learned in Theology and Ecclesiastical Law, to inform and advise on such Points as they shall deem expedient on any Matter of Appeal: Provided always, That such Persons so called in, shall have no Vote in the Decision of the Case, even though they, any or either of them, may be a Member or Members of Her Majesty's Privy Council.

XXVI. And be it enacted, That, in any Case, where the Judge shall give Sentence of Suspension with Costs against the Party accused, it shall be lawful for such Judge, if it shall appear to him that such Party so sentenced, shall not be possessed of other Means of Payment of Costs, or shall evade Payment of them, to issue Sequestration against any Benefice of such Party within his Jurisdiction; and, where the Benefice of such Party shall be within the Jurisdiction of any other Consistory Court, the Judge of such other Court shall on Certificate from such first-named Judge, issue Sequestration against such Benefice; and which shall continue until the whole Costs be defrayed: Provided always, That it shall be lawful for such Judges respectively to allow, for the Maintenance of the Party so suspended, such Portion of the Income of the Benefice as shall seem fit.

XXVII. And be it enacted, That in any Case, in which Sentence of Deprivation shall be pronounced, and it shall appear, as aforesaid, that the Party deprived with Sentence of Costs, shall not possess the Means of defraying the Costs, the Benefice of which he shall be thus deprived shall be placed under Sequestration, and not be presented to, until such Costs be defrayed from the Revenues and Profits thereof: Provided always, That no Lapse be incurred for Non-Presentation to such Benefice, unless it shall remain vacant by the Space of Six Calendar Months after the Service on the Patron or Patrons, either personally or at his or their usual or last-known Place of Residence of a Certificate (which Certificate the Registrar of the Court is hereby directed to give), that such Costs have been fully defrayed, and such Sequestration removed.

XXVIII. And be it enacted, That no Sentence of Deprivation shall be pronounced by the Judge, but in the presence of Three Beneficed Clergymen of the Diocese, to be nominated by the Bishop.

XXIX. And be it enacted, That no Sentence of Deposition from the Ministry be pronounced but by the Bishop, on the Requisition of the Judge, or some other Bishop duly authorized by him, or by such Judge in the presence of such Bishop respectively; and in the presence, also, of Three Beneficed Clergymen of the Diocese, to be nominated by the Bishop, one of whom shall be a Dean or an Archdeacon.

XXX. And be it enacted, That nothing in this Act contained shall be construed to affect any Authority over the Clergy of their respective Provinces or Dioceses which the Archbishops and Bishops of England and Wales may now according to Law exercise personally and without Process in Court.

XXXI. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

REMARKS ON THE PUBLIC WORSHIP REGULATION ACT,

DELIVERED AT THE CARLISLE DIOCESAN CONFERENCE IN AUGUST LAST.

My Lord Bishop,—If the measure, which has lately received the sanction of the Legislature, intituled "An Act for the better Administration of the Laws respecting the Regulation of Public Worship," had received that sanction under no engagement of an enlarged consideration of the general subject of Church and Clergy discipline, I should not have undertaken the office proposed to me by your Lordship and the Conference Committee. If it could have been regarded as of final intention, I should rather have taken an independent course, in the reserving to myself the right of remarking upon it more, if I may so say, on my own responsibility. As the matter now stands, we see a distinct engagement that the whole question shall be raised, and, if possible, settled in the next Session of Parliament; and, what is important as it is significant, this measure itself is, in its very enactment, suspended as to operation until July in next year. We must, therefore, necessarily conclude, that the present provisions may be, in some degree at least, dependent on what shall then be determined; for it is obvious that all must be resolved into the one question, the great question of dealing with all offences against the laws ecclesiastical. I have, during many years past, endeavoured to draw attention to this subject; and, at one time, from certain encouragement given to me, but which failed in action, I had strong cause for believing that some success would have followed from

my efforts. I had throughout a very ill opinion of the Act of 1840. Professing to remedy and to simplify, it did but increase difficulties, expenses, and delays, forming no decisive or uniform means for the effecting of its own declared purpose, and presenting no guard against evasion or subterfuge. And it has been amazing to me, I speak with due deference, and with no wish to impute wrong or carelessness, as of design, in any quarter, that such a question, affecting both Clergy and Laity, for the interests of the one are closely interwoven with the position and circumstance of the other, should have been left so long without the called-for reconsideration. I may remind, that this Act of 1840 removed all cognizance of such offences from the Diocesan Courts; but, from the manner in which late discussions have been conducted, impressions have been made otherwise. The Archbishops' Courts alone have, so far as Ecclesiastical Courts are in any way implicated, any jurisdiction or right of interference; these may be set in motion, on the appointment of the Bishop, as Courts in the first instance, as well as Courts of Appeal from the personal (I use the word advisedly) decisions of the Bishop. The Act, on which I have to observe, deals with but one class of offences, those relating to public worship. It is intituled, as I have stated, "An Act for the better Administration of the Laws respecting the Regulation of Public Worship"—the laws as they are; it creates none of a new character. Its preamble is also to the like effect: "Whereas it is expedient that in certain cases further regulations should be made for the administration of the laws relating to the performance of Divine Service according to the use of the Church of England." It does not enlighten us as to these laws; it gives us no practical information how offences against them may be committed, or how avoided; it rather confesses, or, I should say, its promoters confess, that they do not understand them, or have no conclusive opinion regarding them, from the postponement of the operation of

this Act, and from the awaiting of certain deliberations of Convocation: it may seem, also, in default of further action, to leave the construction of the laws to the discretion of the Administrator, first of the Bishop, there securing no uniformity, and, on appeal, of the Judge appointed under it. It has been conceded, I may say voluntarily avowed, that practices in one particular direction have occasioned this resort to the Legislature; thus intimating plainly enough that either the laws have been uncertain in their voice, or that no means exist for their effectual enforcement. None of us will deny, that, if they be so defective, or so uncertain, they ought to be amended or explained; and, we shall, too, as readily admit that they ought to be obeyed, though somewhat repugnant to our feelings individually, or in somewhat of opposition to our own opinions. We have made a compact of obedience to the laws, and, while that compact exists, it must be holden sacred. Yet, surely, before we are made chargeable with an offence against or a disregard of the laws, we are entitled to an intelligible and a full instruction in their relative purpose and effect; and there, to my mind, is one great faultiness of this measure. It does not understand its own ground.

I shall best carry out what I have proposed, the setting before the Conference the inadequacy, I will not go so far as to say the result, for it is doubtful to many persons whether there will be any result at all, of this Act. It proclaims "a better administration," and leaves, I repeat, to the tribunals it creates to decide on the nature, or bearing, or character, of the laws whose better administration it seeks. In the first place, it creates the Bishop into a Court of Discretion, of Inquiry, and of Decision. On the representation of certain parties, either an Archdeacon, or a Churchwarden, or three Parishioners, he is to receive and consider the case; if he deem it frivolous, or unfounded, or likely to be futile, he may dismiss it at once; he may dismiss it, but it may be immediately renewed by some other parties, the Act giving

neither limitation nor restraint; making him, in fact, a Judge of Appeal from himself; so that his exemption from the authority of the Archbishop will be of no material advantage to him. Where he shall be of opinion that further proceedings ought not to be taken, he is to state that opinion in writing, and to transmit a copy of it, having first deposited one in the Registry of the Diocese, to each of the respective parties; where he shall decide on further proceedings, he is to offer to the choice of the parties an obligation to bind themselves by his decision without appeal; and, on their consent, shall "proceed to hear the matter of the representation in such manner as he shall think fit, and shall pronounce such judgment, and issue such monition (if any) as he may think proper, and no appeal shall lie from such judgment or monition." Here I may remark that the old grievance of interlocutory appeals is let in: at any time after representation made, either of the parties may require the opinion of the Judge, specially appointed under the Act, on any question of law arising in the proceedings. This provision declares the incompetence, I do not use the word offensively, but in a legal sense, of the Bishop, while it assists to the protraction of the case. Care should have been taken that the Court of First Instance should, as such, be competent to decide on a question of law with the usual right of appeal; and then, if bound as he ought to be to give his decision, as also to have heard the case, in open Court, it would generally happen that such care would be taken in the exposition of and acting on the law, as to save all further trouble and expense. There is a provision, which it may be well to notice before I proceed further. It is this: "Provided that no judgment so pronounced by the Bishop shall be considered as finally deciding any question of law so that it may not be again raised by other parties"—by other parties, not by those whom it affected in the former case—however erroneous the judgment may have been in point of law, *it* may not be disputed. If there be no

agreement for the hearing of the case by the Bishop, the representation is to be sent by him to the Archbishop of the Province ; and the Archbishop is to require the Judge to hear it, on the complaining parties giving security for costs ; and it is to be heard "at any place within the Diocese or Province, or in London or Westminster." The parties concerned will derive but little satisfaction from this erratic enactment. If we were not permitted to conjecture that the ultimate design is to remove all ecclesiastical cases from any cognizance of the Bishop, destroying ecclesiastical right and jurisdiction in name as well as in fact, this amendment, so called, but more properly to be named revolution, in law, would be inexplicable. The Church is in intimate connection with the State, or Temporal Government: let not that connection be made subversive of its proper condition and usefulness, its purpose and its character ; let what is due on both sides be well acknowledged and maintained ; and then the connection will continue to be a mutual support and advantage. Though having no wish, and making no pretension to any interference that may be thought undue, with Cathedral and Collegiate bodies, yet, bound as I am to consider the whole purpose of this Act, I cannot pass by its dealing with them unnoticed. It is enacted that the duties "to be performed," in respect of them, "under this Act by the Bishop of the Diocese, shall be performed by the Visitor thereof." This is somewhat obscure. The office of Visitor, and the office of Bishop, are distinct offices: they may be vested in the same person, but they are distinct in operation. An appeal lies from the Bishop, as Bishop, to the Archbishop; but there is no appeal from the decision of the Visitor. He may be put in motion by the Court of Queen's Bench ; but there all authority over him ceases. This Act gives an appeal from the Visitor to the Judge, without any saving of his authority as Visitor; serious questions may arise hereon. These bodies, so prominently placed, must have an almost greater anxiety than any other to shew

deference and obedience to the law; but it ought to be so set out and explained as to admit no mistake, to leave in no doubt, and no ambiguity.

I have, to go back a little, named the parties, who may complain, or make representation. They are, first, the Archdeacon; next, a Churchwarden; then, three Parishioners; to which I may add, in the case of any Cathedral or Collegiate Church, three inhabitants of the Diocese. A word may be introduced as to the finding of the means for payment of the costs of prosecution. Whence are they to be really derived, and who is to offer himself as security? No Archdeacon, and no Churchwarden, will consent to be the public prosecutor, under this heavy responsibility; and the law forbids, broken as it has notoriously been, the combining of parties, not immediately concerned, for any such purpose. It rightly considers that no individual can stand secure against a powerful combination; it therefore says there shall be no interference on the part of any who have not a direct interest in the matter. The three Parishioners, or the three inhabitants, may receive help from others in similar position with themselves; the Churchwarden, acting on behalf of the parish, may also be assisted by any Parishioner or Parishioners; the Archdeacon must stand alone, on his own resources. He must not seek assistance elsewhere. How, then, can he put himself forward in the execution of this Act? While he is endeavouring to maintain the law in one respect, he must not subject himself to the charge of breaking it in another. I wish not to be misapprehended. I repeat, and I do so distinctly, advisedly, unequivocally, that a combination to prosecute, other than I have admitted, is an offence against the law of England, as it is also contrary to every feeling of justice. Surely, the facilities the law allows to Churchwardens and others, as complaining parties, are sufficiently disadvantageous to an unfortunate Incumbent without leaving him subject to the overwhelming force of, it may be, a persecuting combination. It is now necessary that

I should state the cases, on which a representation to the Bishop may be made. These are contained in three Articles. The first is, "That in such Church," the Church in relation to which the representation is to be made, "any alteration in or addition to the fabric, ornaments, or furniture thereof, has been made without lawful authority, or that any decoration forbidden by law has been introduced into such Church." It is to be borne in mind that the whole of this is directed against the Incumbent: the Incumbent is the sole party contemplated in this Act. We know very well that alterations and additions cannot be legally made without a licence or faculty from the Consistory Court: that Court is the lawful authority indicated; and whoever makes any such alteration or addition, is liable to the penalties of the law. It seldom happens, the instances must be very rare indeed, where the Incumbent is thus the agent or offender. Any Churchwarden, or any Parishioner, may stay him; and the Churchwardens, who are to guard the Church, and to watch over it, and to restrain irregular and unlawful doings by calling in the aid of proper authority, will, if they neglect their duty, be cognizable parties; and the Incumbent may plead their complicity; but the Churchwardens are not prosecutable under the Act; and the Incumbent cannot be disjoined from them. Next, we have mention of ornaments or furniture, "without lawful authority." I take these words to mean the ordinary and necessary furniture from time to time, and ornaments becoming a place of public worship intended to be permanent. The question concerns the meaning of the expression "lawful authority"; and it is to be remarked that the two words "furniture and ornaments" are brought into the same description or character, and so must be governed by the same rule. The Churchwardens are the "lawful authority" for the providing of the furniture, as they are bound by their office to provide all things convenient and necessary for the performance of the Service, and the expression must be received as recognizing them to be the

lawful authority in either case. The introducing of such "furniture and ornaments" would not be received into the consideration of the Court, unless some illegal character were appended to them. Thus the Incumbent has no liability in respect to them, unless he should, which is not very likely, take upon himself a duty of the Churchwardens. The Article then directs itself against any "decoration forbidden by law"; forbidden by law: the actual forbidding of the law, the decree of the law upon it, must be shewn in order to the creation or exercise of any right of cognizance. Besides, we are not to forget, that in his Deed of Collation or Institution, the Incumbent is "invested," I use the exact words, "with the Government of the Church"; and thus, in such respect, a certain discretion is granted him. The words must have a meaning. I have stated "ornaments," in the application I have made of them, to imply a permanent character; but I do not so consider "decorations," and that, therefore, decorations, innocent in themselves, may be introduced for temporary purposes, and on seasonable occasions; and, if brought, on their account, under legal cognizance, the answer will be, They are not forbidden by law; and if not forbidden by law, how are they to be brought within the meaning of the Act? It will be seen that a large power is already possessed by the Churchwardens: but we must not misapprehend it. Furniture, and ornaments of a permanent character, are, we say, to be provided by them; yet, they have no absolute authority to reject where the Incumbent offers his aid; they may object; they may not remove; and where the Incumbent believes that the Church and its services may be benefited by ornament or furniture of his own or others' providing, and the Churchwardens do object, the decision of the Court is to be sought. A misunderstanding on this point may be hurtful: not only may the Church be wronged by the loss of serviceable gifts, but unseemly and damaging contentions may be given rise to. It is the intention of the law, not to discourage voluntary offerings, but to take care

that nothing inconsistent with the character of the Church, or incongruous or hindering to its services, be brought in. The Second Article is, "That the Incumbent has, within the preceding twelve months, used or permitted to be used in such Church or Burial Ground any unlawful ornament of the Minister of the Church, or neglected to use any prescribed ornament or vesture." Here, again, the unlawfulness must be expressly shewn and proved. It is to be remembered that this is a penal statute; charges must be distinctly specified, and the grounds of them substantial and proved: it will not admit mere argument or inference. It, likewise, orders the use of the "prescribed ornament or vesture." What are they? They are gravely and extensively disputed. There is, indeed, a direction in the Book of Common Prayer, which would seem to settle the point. "And here it is to be noted, that such ornaments of the Church and of the Minister 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." This equally applies to the ornaments of the Church, one of the subjects of the First Article; but I have reserved my notice of it until now for the better convenience of discussion. A great question has been raised upon them; some contending they are and ever must be so hidden in obscurity as to be undiscoverable; and others, that they are still in real force, and are or may be ascertained. When the framers or promoters of this Act caused it to be declared an offence against the law either to use an unlawful ornament, or not to use a "prescribed ornament or vesture," and the difference was so great, it was a bounden duty to declare what was unlawful, and what was prescribed. It might have been thought that the raising of any such point would have endangered the measure; and far better that the measure should have been endangered than that point be unsettled. There was no need for precipitation, but every reason that

the whole matter should be maturely and fully considered. It is true that the measure was a long time before Parliament, but with no real means for the formation of an advised opinion upon it. The subject was first propounded in a Bill introduced by the Archbishop of Canterbury in the month of April; but scarcely a vestige of that Bill remains; and this Act cannot be in any wise called His Grace's measure. An amended Bill was introduced at the instance of the Archbishop of York, the character of which was very soon lost. Then the Bill, to which the Lords gave their consent, received essential changes in the Commons. In all this circumstance, where changes were looked for, and indeed made, from day to day, how could any profitable consideration be given? The fact is, it was not well considered in the first instance, and hence its whole feature of impracticability. That I have a strong opinion myself, upon as well the force as the intention of the law, I will avow; but I do not judge it convenient to be more explicit at present. The Third Article is, "That the Incumbent has within the preceding twelve months failed to observe, or to cause to be observed, the directions contained in the Book of Common Prayer, relating to the performance, in such Church or Burial Ground, of the services, rites, and ceremonies ordered by the said Book, or has made or permitted to be made any unlawful addition to, alteration of, or omission from, such services, rites, and ceremonies." The word "unlawful," applied here, admits no question: the directions, as well as the rites, ceremonies, and services, are plain to any honest understanding; and any addition, alteration, or omission, come immediately under cognizance; and no defence or excuse can be fairly offered; and I must add that I cannot conceive how any Minister of our Church feels justified in any disregard or evasion of this essential Rule. He has entered, voluntarily entered, into a solemn engagement to conform to the Book, the whole Book, of Common Prayer; and it would almost seem to be a reproach,

amounting to an insult, to suppose that he would not maintain it.

Time will not permit me to go further; nor does the purpose of our Conference need it. I have said enough to shew the incompleteness of the Act before us, and its unadaptation to the necessity, as it has been termed, of passing some such one. The remaining points of it are but consequent, and do not call for our present attention. I will only, in conclusion, entreat, that the law, so far as it can be known, be obeyed: I will entreat that individual wishes yield, where the preservation of peace and unity require it, always provided that conscience be not offended; insisting, nevertheless, firmly and unalterably, that whoever shall take upon him the arraignment of another, shall be careful to keep himself within due bounds. That thus it may be, I pray God to grant: I pray that He may so order all things that our Church may be made to rest on that its sure foundation, His own Holy Will and Word; that its usefulness may grow more and more, and its blessings be enlarged; the gracious influences of the Holy Spirit keeping it in the acceptable acknowledgment of Christ's kingdom, for the glory of God, and the salvation of man.

CARLISLE, *January*, 1875.

PRINTED AT THE OFFICES OF C. THURNAM AND SONS, CARLISLE.