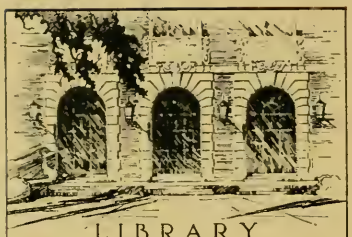

A FIRST LETTER

ON THE PRESENT POSITION OF THE HIGH CHURCH PARTY IN THE Church of England.

BY THE REV. WILLIAM MASKELL,
VICAR OF S. MARY CHURCH.

THE ROYAL SUPREMACY, AND THE AUTHORITY OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON:
WILLIAM PICKERING.
1850.

February 9th, 1850.

My dear friend,

I AM about to write to you, in one or more letters, on a subject most important, whether we consider its intimate relation to ourselves, or its bearing upon the practice, and duties, and future life of those with whom we are connected. I mean, the present position of (what is commonly termed) the High-church party in the church of England.

From the date of this you will observe, that I am writing before the decision of the Judicial Committee of the Privy Council has been pronounced in the case of Mr. Gorham against the bishop of Exeter. And so far as this first letter is concerned, I shall not care to suppose what the decision will be: whether in favour of Mr. Gorham; or, in favour of the bishop: that is, as distinctly, as firmly, and as unequivocally as was the judgment in the Court below, by Sir Herbert Jenner Fust.

These letters are intended to be as short as may be: both because many will read pamphlets who will not read a book, and because (it is hoped) a few pages will be quite sufficient for my purpose: which is not so much to argue, as to state some difficulties and leave them for your consideration.

It may be objected that to write in this way, at such a time, is sure to unsettle the minds of others:

whereas, on the contrary, the duty of a person in my position and office, as a minister of the church of England, is to keep all, so far as one may, in quiet submission and obedience to old rules, and practices, and faith. But, in days like our own, it is hard to determine what is right in all cases. They are days of doubt and peculiar trial, unlike any which our fathers have known for several generations: and we must not lay down principles, applicable enough under common circumstances, by which men are now to be judged.

The hearts of thousands are being moved and stirred in a very deep and mysterious way; not by any one or two great occurrences, so much as by the distant sounds of an unwonted voice, speaking with a power which we almost fear to recognize, and leading us, amidst the gloom of present troubles and anxiety, to the hope of a calmer and a better future. We must be prepared to meet with reproach, and misunderstanding, and contempt. Some, who have been old friends, will turn away, in bitterness and anger, as if they had been deserted and betrayed: others, not willing to be disturbed, will condemn the attempt even at the enquiry which I propose to bring before you: others, again, will look on us with a careless wonder, unable to discover any reasonable cause for making such an enquiry at all.

And I would further add this only, truly and solemnly: that no words can tell the pain with which very much of the following pages must be written. If they shall seem to be cold and (some may say) disloyal and unfeeling in their tone, it will

be because I would endeavour to write as dispassionately as I can.

You know that whilst the case of Mr. Gorham was before the court of Arches, I abstained from any publication on the subject. Far be it from me to find fault with those upon either side who may have acted differently in this respect; but I was peculiarly situated. For other persons, it is not easy to say why it was not a proper and natural course publicly to declare and to argue the truth of their particular opinions, during the time that the case was being also argued. But when the arguments of counsel were concluded, it appeared to be a somewhat unseemly thing to interfere with the deliberations of the judge and to attempt to influence his decision. An unseemliness which would be undoubtedly increased, according to the probable or anticipated weight, — whether real or fictitious, whether personal or from the accident of position, — of such an interference; it would be increased also in proportion to the deficiency of learning, and facts, and argument, by which, if ventured upon, it ought to have been supported; an unseemliness, again, which could be exceeded only by the indecency — if we can suppose it — of persons sitting, officially, as hearers of a cause, upon which beforehand they had in some formal way declared their opinions, and, so far, taken their side as partizans.

I shall avoid, therefore, of course in this letter, all that might seem to bear upon the merits of the particular matter still before the court.

In now entering on the question of our present

position, my wish is, first, to bring before you two facts, as being chiefly important in their relation to our immediate duties. And, secondly, I would suggest some further matter for your consideration. The two facts of which I am about to speak are, one, the royal supremacy; and, the other, the want of necessary dogmatic teaching in the reformed church of England.

It has been repeatedly said, during the progress of the case of Mr. Gorham, and by some whose authority we justly esteem, that, whatever the decision of the judge of the court of Arches might be, it would be merely the judgement of one man, a layman, and not the expression of the voice of the church of England. And, latterly, with regard to the judicial committee of the Privy Council, much the same language has been used: denying its right to deliberate on such a matter, and consequently the value of its decision. Hence, it was urged that we, who have been accustomed to teach the true Catholic doctrine of baptismal regeneration, would be at liberty to disregard the judgements of both the lower and the higher courts, and that our position as churchmen would be unchanged.

This from the beginning seemed to me to be a false view of the matter: and, on the contrary, that we are bound to regard the judgement of either court, and therefore, more especially, that of the court of Appeal, as involving the most weighty consequences. I have always looked upon the judgement when finally given in this case, as likely, in its results, vitally and essentially to affect the claim of the church of England to be a portion of the

Church Catholic; in short, as being probably a voice of "life or death," and, if so, sufficient in the event to determine her existence as a Church.

Surely, the court of Arches is the proper court, and the judge of that court is the proper judge, before whom the especial question involved in Mr. Gorham's case ought to have been brought. And we must further remember that this is equally true of times previous to the incidents of the sixteenth century as well as since.

The question was one, simply, of interpretation of the law of the church of England. That law was to be found in her published documents. It was not a question of what is, in itself, true or untrue, agreeable or not agreeable to the Holy Scriptures, but, solely, whether a certain doctrine has or has not been clearly defined, to the exclusion of some other statement about the same doctrine which would seem to deny or to explain it away. The church of England in her provincial synods and convocations, has, for centuries, put forth—sometimes in canons; sometimes in rituals and liturgies and rubrics; sometimes in articles about religion—statements of what she accepts and holds to be Christian Truth. These statements, so put forth, have been left to be interpreted and enforced by her own judges in her own courts.

For more than one thousand years the voice of the church of England spoke one constant uniform language, upon all the doctrines of the Faith: the language of the Catholic Church, with which, from her first foundation, she had been in perfect and visible communion. Whether for good or evil,

various changes and alterations upon many doctrines,—very holy and mysterious doctrines,—were made during the reigns of Henry the eighth, and Edward the sixth, and queen Elizabeth. These were chiefly embodied and declared in a new Form of Common Prayer and administration of the Sacraments, and in the Articles of Religion of 1552 and 1562. Other alterations were subsequently made in the reigns of James the first and of Charles the second. The duty of the court was to decide upon the effect of these alterations and changes as to one doctrine, namely, the doctrine of baptismal regeneration. No one disputes that in the year (say) 1548, the doctrine of the church of England was clear and decisive upon this matter: and that she would then have condemned as heresy the denial of the unconditional and saving efficacy of baptism conferred on infants. The doubt arose upon the meaning of certain statements made by the church of England since that year; and whether, by the necessary effect of those statements, she has permitted her clergy to teach, and to her people to believe, that the saving grace of regeneration is not always given to all infants in the sacrament of baptism. In other words; whether the reformed church of England has allowed this mysterious doctrine to be, what it had never been before, an open question.

Why then should we suppose that the case of Mr. Gorham was not within the customary and proper jurisdiction of the court of Arches? It turned upon the right construction to be given to parts of the ritual and catechism, compared with the 39 articles. And if the ancient practice has been to

suffer an appeal from a diocesan to the metropolitan, in causes such as this, it is not easy to discover in what other spiritual court or before what other judge it could have been argued.

Nor does it seem (however we might wish the contrary) that a reasonable and valid objection can be brought against the court of Appeal. It is really trifling to pretend that because in former times ecclesiastical matters were always decided, at any rate finally, before an ecclesiastical tribunal, that therefore, upon that account only, the modern church of England is not bound by the decisions of a court which, apparently, has no ecclesiastical element in it whatsoever, of which all the judges are lay, and which represents, in fact, the Queen. The same age which introduced the numerous changes, from whence spring all our present disputes, changed also the constitution of the ecclesiastical courts.

It will not be necessary for us to enter at full length into the statutes upon which the exercise of the royal supremacy is founded, whatsoever it may be. And I must disclaim all pretence of laying the case before you, as a lawyer would. On the other hand, we are not only entitled but bound to enquire into the subject, and we may be, at least, excused for venturing to speak what seems to be the truth regarding it. This is all which I would attempt to do: asking indulgence for technical errors, and desiring to be corrected in mis-statements and omissions. Let us, then, refer to some, and those the chief, Acts of Parliament which passed during the reigns of Henry, Edward, and

Elizabeth, relating to this matter. If the documents brought before you are not sufficient to establish the point which I would insist on in the present letter,—namely, the extent of the supremacy,—it will not, I suppose, be difficult for others to show how far and in what way they fail.

For, if it be allowed that in the year (say) 1520, the royal supremacy was, in some degree, different from the power exercised under the same name in 1550; and, if in the year 1532 the church of England granted some new authority, or restored some old authority, to the crown; it will remain for those who dispute the construction which I am about to put upon these statutes, to show other limits within which the supremacy was confined, and the different nature of the authority which was granted or restored. And the same remark is equally applicable to those, who are disposed to assert that the supremacy under queen Elizabeth, and since her days, is not the same as that which was claimed by her predecessors, Henry the eighth and Edward the sixth.

At the beginning of the reign of Henry the eighth, the highest and final authority in all matters of faith, and in all ecclesiastical "causes," resided in the Church Catholic: appeals ran from archdeacon to bishop, from bishop to archbishop, from the archbishop to the supreme pontiff, in their regular and appointed courts. I am now speaking of fact only: not at all discussing the further question of its propriety, or agreement with the doctrine and discipline of the primitive Church. Nor is it worth while enquiring whether from time to time men ob-

jected against or resisted this authority; more especially when its decisions happened to be against them. It was a method of proceeding which rested on men's common faith as Christians, and on a practice beyond all memory, up to the earliest ages of the whole Western Church. There are texts of Holy Scripture which speak of the powers and prerogative given to S. Peter, and to the successors of the apostolate: the people of the Church purchased by His Blood, Who gave the promise, gladly paid a due obedience, believing it to be among the best and highest of their privileges.

But in the year 1532, the stat. 24 Hen. VIII., c. 12, established the commencement of another order of things. Appeals to the see of Rome were prohibited in one class of spiritual causes, and in one class only: namely, in "all causes testamentary, causes of matrimony and divorces, rights of tithes, oblations, and obventions:" and the section of this act which I am about to quote, explains the new arrangement which, so far as these causes were concerned, was to be the course adopted in future by the English church. The fourth section having declared that whosoever should procure from or to the see of Rome, or, from or to any other foreign court or courts out of this realm, any appeals, &c. for any of the causes aforesaid, shall incur the pains and penalties of *præmunire*, the sixth provides that the appeal from the bishop diocesan, or his commissary, should be "within fifteen days next ensuing the judgment or sentence thereof there given, to the archbishop of the province of Canterbury, if it be within his province; and if it be within the pro-

vince of York, then to the archbishop of York ; — and there to be definitively and finally ordered, decreed, and adjudged, according to justice, without any other appellation or provocation to any other person or persons, court or courts." The act further provides that in any case touching the king, the appeal should be to the upper house of convocation.

There are two things to be observed here, upon the provisions of this statute. First, not only did it then make the upper house of convocation a final court for the decision of some certain causes in which the crown was a party, but it is also probable that, at least as regards those same causes, the upper house of convocation is the court before which they still legally must and ought to be decided. Hence, as a fact (if this view be not incorrect) the upper house of convocation is a court existing at the present moment, having power and authority by the statute law to exercise its jurisdiction within appointed limits. I have said, " at least as regards those causes," because it is open perhaps to doubt whether the terms of the act 25 Hen. VIII. c. 19, (to which we shall come next) placed all causes, touching the king, under the same rule. The words on which this depends are, I suppose, the following ; and it must be left for lawyers to determine their force : " all manner of appeals, of what nature or condition soever they be of, or what cause or matter soever they concern, shall be made and had by the parties aggrieved, or having cause of appeal, after such manner, form, and condition, as is limited for appeals," by stat. 24 Hen. VIII. c. 12.

And further, upon the whole matter, it is to be carefully considered, how far it is affected by the act of Will. IV. which repealed part of the 25th of Hen. VIII. c. 19.

The second thing to be observed is more important; namely, that the act of 24th Hen. VIII. c. 12, left all other causes except those particularly specified therein, to be carried on, if appealed, according to the ancient practice.* Nor does it appear that at any time whatsoever, or under any statutes, or canons of the Church, either the archbishops or the upper house of convocation were supposed to be a final court of appeal in causes involving doctrine. And it is moreover to be remembered that it is the same statute of 24 Henry VIII. c. 12, which referred, for ultimate decision, some named spiritual causes to the archbishops, and to the upper house of convocation if any of those named causes touched the king, which also spoke of the sufficiency and meetness of the body spiritual, when any cause of the law divine happened to come in question, to declare and determine all such doubts, and to administer all such offices and duties, as to their rooms spiritual doth appertain. We do not find any such assertion made afterwards, in any statute of which the subject matter was more wide and different, nor (which is to be well thought of) is the like power claimed by any later canon

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* Hence, this statute was not an example — as at first sight it might seem — of the exercise of the power of committing causes to inferior judges, "appellatione remota," which power alone belongs to those who are supreme, whether in things spiritual or temporal.

or article of the church of England. I do not mean to say—far from it—that the commencement of this famous statute is not of importance in the discussion of the question with which we are now concerned, but I do say that it has been, somewhat hastily, snatched at (if we may use the word) to prove what it will not prove, the acknowledged sufficiency and meetness of the church of England to determine, by its inherent power and acting on its own divine authority, all spiritual causes whatsoever. For, as a fact, this very statute did not give, nor did it pretend to give, its consent to so high a claim: indeed it was not claimed by the Church upon the one hand, nor was the civil power concerned with the consideration of it upon the other. And whilst the act itself remained in force, the body spiritual, "usually called the English church," had no power to decide finally all causes involving doctrine. Appeals to Rome still were permitted, and the day which saw those appeals utterly and entirely forbidden, saw them transferred to a new supreme court, which no longer derived its authority from, and exercised its jurisdiction in the name of, the Church Catholic but the crown.*

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* The first section of this statute, although well known to most of us, ought to be placed here. "Where by divers sundry old authentic histories and chronicles, it is manifestly declared and expressed, that this realm of England is an empire, and so hath been accepted in the world, governed by one supreme head and king, having the dignity and royal estate of the imperial crown of the same; unto whom a body politic, compact of all sorts and degrees of people, divided in terms, and by names of spirituality and tem-

The statute however, of which I have now been speaking, lasted for a few months only: in the next

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

I do not pretend exactly to understand or to explain this long and involved sentence. Neither am I prepared to accept as true any words of it except the last; that "both authorities and jurisdictions," the spiritual and the temporal, in every well regulated Christian state, "do conjoin together in the due administration of justice, the one to help the other."

year another statute passed, which remained in force for nearly three centuries. This act extended the prohibition against appeals to Rome to all causes, and removed them also from the archbishops of each province. And I would again remind you, that the final decision of any causes, except those specified in stat. 24 Henry VIII. c. 12, was never placed within the jurisdiction either of the archbishops, or of the upper house of convocation. The third section of this act, stat. 25 Hen. VIII. c. 19, provides that "no manner of appeals shall be had, provoked, or made out of this realm—of what nature, condition, or quality soever they be of: but that all manner of appeals, of what nature or condition soever they be of, or what cause or matter soever they concern, shall be made and had —after such manner, form, and condition, as is limited for appeals to be had and prosecuted within this realm in causes of matrimony, tithes, oblations, and obventions." The fourth section proceeds to the constitution of the new court of appeal: and our particular attention is due to it, inasmuch as the ecclesiastical causes of the church and realm of England were governed and decided by it, from the days of king Henry to our own. "IV. And for lack of justice at or in any of the courts of the archbishops of this realm, or in any of the king's dominions, it shall be lawful to the parties grieved to appeal to the king's majesty in the king's court of Chancery; and that upon every such appeal, a commission shall be directed under the great seal to such persons as shall be named by the king's highness, his heirs or successors, like as in case of

appeal from the Admiral's court,* to hear and definitively determine such appeals, and the causes concerning the same. Which commissioners, so by the king's highness, his heirs or successors, to be named or appointed, shall have full power and authority to hear and definitively determine every such appeal, with the causes and all circumstances concerning the same; and that such judgment or sentence, as the said commissioners shall make and decree, in and upon any such appeal, shall be good and effectual, and also definitive; and no further appeals to be had or made from the said commissioners for the same." These commissioners were called Delegates.

In the year 1554, the above act was repealed by stat. 1 and 2 Philip and Mary, c. 8, and revived (together with several other acts of the reigns of Henry the eighth and Edward the sixth, relating to spiritual matters,) by stat. 1 Eliz. c. 1. This last requires one or two remarks: as it bears much upon the question of the extent, and meaning, and authority of the royal supremacy. Great importance belongs also to the statutes of queen Elizabeth, from another consideration; namely, that during her reign the ecclesiastical principles and future policy of the modern church of England were rapidly developed.

This statute is entitled " An act to restore to the

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* Considering the nature of the subject, this business-like, commonplace, manner of disposing of the little details of the new arrangements, is really deserving of our admiration: " like as in case of appeal from *the Admiral's Court:*"—could any thing be better?

crown the ancient jurisdiction over the state ecclesiastical and spiritual, and abolishing all foreign powers repugnant to the same." It is not unusual for persons of the high-church party to rely on the words occurring both in the title of the act and in the act itself, "the ancient jurisdiction:" and they argue that as it is quite certain that "the ancient jurisdiction" of the crown never reached, or was asserted to have reached, so far as to the decision of doctrine, so this act, in like manner, by the use of that vague term, limits the queen's supremacy. Lawyers can best decide how far such an argument is good: we will proceed to the act itself, and perhaps its express language, together with the experience of three centuries, will incline us rather to question the value of it.

Yet, in passing, it may be well for us to enquire what a very great authority has said, as to the extent and nature of this "ancient jurisdiction" in his own day.

Bracton, in the fifth tract of his fifth book *De legibus et consuetudinibus Angliæ*, having first defined jurisdiction to be "nihil aliud quam habere auctoritatem judicandi sive jus dicendi inter partes de actionibus personarum et rerum," proceeds in the next chapter to distinguish between spiritual and ecclesiastical jurisdiction. "Est etiam jurisdictio quædam ordinaria, quædam delegata, quæ pertinet ad sacerdotium et forum ecclesiasticum, sicut in causis spiritualibus et spiritualitati annexis. Est etiam alia jurisdictio ordinaria vel delegata quæ pertinet ad coronam et dignitatem regis ad regnum in causis et placitis rerum temporalium in

foro seculari. — Clericus in nullo conveniendus est coram judice seculari quod pertineat ad forum ecclesiasticum, sicut in causis spiritualibus vel spiritualitati annexis." In the third chapter, where the author begins to speak of prohibitions, he treats of them as directed against ecclesiastical courts exercising either ordinary or delegated jurisdiction: and there is no doubt that he considers the highest source from whence any delegated jurisdiction can be derived to be the pope, and that it is rightly so derived. All this is made clear by what is stated in the 15th chapter. "In fine notandum de jurisdictione majorum et minorum, et imprimis sicut dominus papa in spiritualibus super omnibus habeat ordinariam jurisdictionem, ita habet rex in regno suo ordinariam in temporalibus, et pares non habet, neque superiores, et sunt qui sub eis ordinariam habet in multis, sed non ita meram sicut papa vel rex. Et pares esse poterunt illi qui inferiores sunt in jurisdictione sua multis rationibus, sed par in parem non habebit jurisdictionem non magis quam imperium, et multo fortius nec in superiorem." *

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* The distinction being laid down by Bracton of the two jurisdictions, ecclesiastical and temporal, he speaks in strong terms in other parts of his work, of the just authority which the king possesses in all temporal matters. Thus in the first part of the 3rd book, ch. 9. we read, "Cum autem de regimine sacerdotii nihil pertineat ad tractatum istum, ideo videndum erit de iis quæ pertinent ad regem, quis primo et principaliter possit et debeat judicare. Et sciendum quod ipse rex et non alius, si solus ad hoc sufficere possit, cum ad hoc per virtutem sacramenti teneatur astrictus.— Separare autem debet rex (cum sit Dei vicarius in terra) jus ab injuria, *etc.* — Nihil enim aliud potest rex in terris, cum sit Dei minister et vicarius, nisi id solum quod de jure potest.—Igitur dum

Returning to the stat. 1 Eliz. c. 1, the 16th section enacts, that all foreign power and authority spiritual and temporal should "be clearly extinguished;" and the 17th thus continues: "XVII. And that also it may likewise please your highness, that it may be established and

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facit justitiam, vicarius est regis æterni, minister autem diaboli, dum declinet ad injuriam." Again, in his first book, ch. 8. "Ipse autem rex, non debet esse sub homine, sed sub Deo et sub lege, quia lex facit regem. Attribuat igitur rex legi quod lex attribuit ei, videlicet dominationem et potestatem, non est enim rex ubi dominatur voluntas, et non lex." But all is prefaced, in the same chapter, by this statement: "Apud homines est differentia personarum, quia hominum quidam sunt præcellentes et prælati, et aliis principantur. Dominus papa videlicet in rebus spiritualibus, quæ pertinent ad sacerdotium:—item in temporalibus sunt imperatores, reges, *etc.*"

Lyndwood lived several generations after Bracton, and it may be objected that in his days "the ancient jurisdiction" was changed from its original state. Therefore, without quoting him at length, I would refer the reader to the second book of the Provinciale, *tit.* 1. Quidam ruralium, *verb.* Ante citationem factam. One chapter, however, of this title is the famous writ or statute Circumspecte agatis: of which the beginning runs; "De negotio tangente Norwicensem episcopum, et ejus clerum, non puniendo eos, si placitum tenuerint de his quæ sunt mere spiritualia, videlicet de correctionibus quas prælati faciunt, utputa, pro fornicatione, adulterio, et hujusmodi, *etc.*" On which last word the gloss is, "Verbi gratia stupro, incestu, et aliis quæ sub peccato luxuriæ continentur: hic potes addere alia crimina, quæ etiam sunt tractanda et punienda in foro ecclesiastico; viz. sacrilegium, hæresis, *etc.*" Also to the fifth book, *tit.* 5. Item quia, *verb.* ordinarii: where it is laid down, —"Est enim causa hæresis una de majoribus causis quæ pertinent ad solos episcopos." And to the third book, *tit.* 28. Sæculi principes. *verb.* custodia carcerali.

I would also refer the reader to Thomassin, *Vetus et nova ecclesiæ disciplina, pars* 2. *lib.* iij. *cap.* 101—114. And to the *Prompta Bibliotheca* of Ferraris, *verb.* Appellatio.

enacted by the authority aforesaid, that such jurisdictions, privileges, superiorities, and pre-eminences spiritual and ecclesiastical, as by any spiritual or ecclesiastical power or authority hath heretofore been, or may lawfully be exercised or used for the visitation of the ecclesiastical state and persons, and for reformation, order, and correction of the same, and of all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities, shall for ever by authority of this present parliament be united and annexed to the imperial crown of this realm." The 18th section created the high commission court to execute under the queen "the said spiritual and ecclesiastical jurisdiction."* This court was abolished by stat. 16 Car. I. c. 11. The 19th section contained the form of the oath of supremacy, which was changed into the form in which we now take the same oath, by stat. 1. William and Mary, c. 8. We pass on to section 36, which is highly deserving of our especial consideration.† "XXXVI. Provided always, and be it

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* Coke's fifth report, *de jure regis ecclesiastico*, Caudrey's case, bears upon the subject of this section: in which it was endeavoured to be shown, and so it was said that the judges resolved, that the act 1. Eliz. c. 1. was not introductory of a new law, but declaratory of the old; and that the king by the ancient law could make such an ecclesiastical commission. The examples which Lord Coke has produced in support of this, are proved by Stillingfleet to fall "very far short of being demonstrative proofs, as he calls them." *Ecclesiastical cases, cap.* 2. The question, however, before both writers, is not exactly the same with that into which we are now enquiring.

† It has been said that this section together with the 18th is repealed by stat. 18. Car. I. c. 11. but I believe that the point has

enacted by the authority aforesaid, that such person or persons to whom your highness, your heirs or successors, shall hereafter give authority to have or execute any jurisdiction, power, or authority spiritual, or to visit, reform, order, or correct any errors, heresies, schisms, abuses, or enormities, by virtue of this act, shall not in any wise have authority or power to order, determine, or adjudge any matter or cause to be heresy, but only such as heretofore have been determined, ordered, or adjudged to be heresy, by the authority of the canonical scriptures, or by the first four general councils, or any of them, or by any other council whereby the same was declared heresy by the express and plain words of the said canonical scriptures, or such as hereafter shall be ordered, judged, or determined to be heresy by the high court of parliament of this realm, with the assent of the clergy in their convocation; anything in this act contained to the contrary notwithstanding." I am not well acquainted with acts of parliament, and must speak doubtfully: but so far as I am aware, there is no other act, and no other clause of an act, which recognises convocation as a spiritual body entitled to give or to withhold assent in any instance whatsoever of ecclesiastical legislation.

It is further to be observed that the same section — on which, as sufficiently limiting and duly restricting the power of the State, much reliance has

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not been brought before any court of law: and, besides, it is well for us to see whether it really does limit, to the extent which some affirm, the power of the supremacy in matters of doctrine.

been placed—is open to two very serious objections to such an interpretation. First; it declares the high court of parliament to be the first mover in ordering, judging, and determining any matter to be heresy, and therefore suffers the convocation to come in only as it were secondarily, and certainly only as a party assenting, or having a veto: secondly; it places no limit, and does not pretend to place a limit, on the civil power in deciding any doctrine, cause, or matter *not* to be heresy.

In the year 1562 another statute [5 Eliz. c. 1.] passed, "For the assurance of the Queen's royal power over all estates and subjects within her dominions." This should be noticed, because it refers to and—if it may be called a definition—it defines the meaning of the oath of supremacy. "XIV. Provided also, that the oath expressed in the said act made in the said first year, shall be taken and expounded in such form as is set forth in an admonition annexed to the queen's majesty's injunctions, published in the first year of her majesty's reign; that is to say, to confess and acknowledge in her majesty, her heirs and successors, none other authority than that was challenged and lately used by the noble king Henry the eighth and king Edward the sixth; as in the said admonition more plainly may appear." The admonition so referred to in like manner declares that the oath of supremacy, enforced by queen Elizabeth, was to be accepted as intending no other duty, allegiance, or bond,—neither more nor less—than was acknowledged to be due to Henry the 8th and Edward the 6th. The old oath of supremacy, however, and its exact mean-

ing, are not the subject with which we have now to deal. What we are considering is not an oath imposed upon some persons holding certain offices ecclesiastical and lay, as a kind of qualification, but the nature and extent of the royal supremacy itself.

For nearly 300 years, the method of finally deciding all ecclesiastical causes by a court of Delegates was continued. Within our memory however, nay, within the last twenty years, a complete change was made in the constitution of the court of Appeal: and it was thought right by "the king's majesty," as "the only and undoubted supreme head of the church of England," in future "to hear and determine all manner of causes ecclesiastical," in another way, and according to a new fashion.

By the statutes 2 and 3 Will. IV. c. 92, and 3 and 4 Will. IV. c. 41, all the power and jurisdiction of appeal was transferred from the court of delegates to a judicial committee of the Privy Council. The first of these statutes abolished the old court, and placed the appellate jurisdiction in "the king in council;" whose judgment, order, and decree should have "the like force and effect in all respects whatsoever, as the same respectively would have had if made and pronounced by the high court of delegates; and that every such judgment, order, and decree shall be final and definitive, and that no commission shall hereafter be granted or authorized to review any judgment or decree to be made by virtue of this act." *

* I quote the statutes from Mr. Stephens' edition of the Eccle-

The second of these statutes of Will. IV. restricted the hearing of appeals to a "Judicial Committee of the Privy Council;" which committee is to be composed of an uncertain number of *ex officio* members, together with two other persons appointed by the crown from time to time, being privy councillors. All these persons are, without exception, laymen; and, I believe, one only of the number must necessarily be a member of the established church. The lord chancellor is not to be in the communion of the church of Rome, but he may be of any kind or denomination of dissent. The others may be of whatever religious belief they choose; presbyterian, socinian, independent, or quaker; or of no religious belief at all.

Under the previous regulation, the decision of the court of delegates was final and definitive; but not so the judgment of the judicial committee: or, rather, not necessarily definitive. Their judgment is to be in the shape of "a report, or recommendation to her majesty in council for her decision thereon." And so far as I can discover from the words of the statute, there is nothing whatever,—except,

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siastical and Eleemosynary Laws of England: and the following is one of the editor's notes on the stat. 25 Henry VIII., c. 19. The last clause is important. Referring to the *definitive* sentence of the court of Delegates, Mr. Stephens says; "The crown, after such sentence, was not precluded from granting a commission of review; first, because it was not restrained by the statute; secondly, that, after a definitive sentence, the pope, as supreme head by the canon law, used to grant a commission *ad revidendum;* and such authority as the pope had, claiming as supreme head, doth of right belong to the crown, and is annexed thereunto."—*Goodman's case*, Dyer, 273. *Haver* v. *Thorol*, Lit. 232.

perhaps, custom and precedent,—to prevent "her majesty in council" from either rejecting the report, or modifying and changing the terms and language in which it may be drawn up.

We know what is meant now-a-days by "her majesty in council." Perhaps people may think it of little consequence that the affairs of the established Church are at least *liable* to be finally decided by an irresponsible cabinet, which the English constitution has never recognized, and whose existence is an anomaly. But they may care to recollect that not only "appeals from her majesty's courts of admiralty in causes of prize," but appeals also from the courts of judicature in our Indian empire, and from all our colonies, and other dominions of her majesty abroad, are, in like manner and to no less extent, subject to the revision and approval of "her majesty in council:" who is not bound nor required by the statute to accept and ratify the Report of the judicial committee.*

But it may be objected, that the royal supremacy,—whether exercised, as of old, by a court of Delegates, or, as now, by a judicial committee of the Privy Council,—does not reach to the decision of doctrine, or to interference with any matter of Faith. The statutes, however, will give us some information on this point: and two or three extracts from them will be sufficient, probably, to show you that they do not leave the question in much doubt.

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* This liberty of the crown carries with it a power, as the reader will perceive, altogether different from the old "commission of review."

The 25th of Henry the eighth, by which the Delegates were appointed, begins with the recital of the submission of the clergy. The effect of this Submission, as expressed in the statute, is thus explained by a late writer, whose words I quote. "By this act of submission a meaning and force are given to the royal title [Supreme Head] which otherwise it need not have had. With the title the king obtains corresponding powers; the clergy give him authority over their deliberations; a negative voice in all their proceedings, and power to review and suspend the past. All laws and constitutions of the English church then in force were liable to abrogation by the king's supreme authority, and the obsolete legislation of the past liable at the same bidding to be quickened into life. [?] The church of England, convocation represented, surrendered deliberately her jurisdiction into secular hands: depriving herself of the power to make canons for her own guidance, *and of accepting the sentence of even an œcumenical council*, unless with the consent of the supreme civil authority." *

It will be well to bring before you the whole of one statute, a short one, and much to the purpose. I mean the 26th Hen. 8. c. 1. Premising, however, that I do not quote it as being now in the statute book, inasmuch as it was repealed in the reign of queen Mary, and not revived by the stat. 1 Eliz. c. 1. But it is, as I have said, greatly to the purpose, because the authority and power

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* Lewis on the nature and extent of the Royal Supremacy, p. 12, 8vo. 1847.

claimed by Elizabeth and her successors, and acknowledged by the Church, is "none other than was used" by Henry and Edward. The title of this act is, "*The king's grace to be authorized Supreme Head.*" Undoubtedly the titles are not parts of statutes, and therefore not law: but, more especially in ancient statutes, they are not to be altogether (I suppose) disregarded in the interpretation of them. "Albeit the king's majesty justly and rightfully is and ought to be the supreme head of the church of England, and so is recognized by the clergy of this realm in their convocations, yet nevertheless, for corroboration and confirmation thereof, and for increase of virtue in Christ's religion within this realm of England, and to repress and extirp all errors, heresies, and other enormities and abuses heretofore used in the same: be it enacted by authority of this present parliament, that the king our sovereign lord, his heirs and successors, kings of this realm, shall be taken, accepted, and reputed the only supreme head in earth of the church of England, called *Anglicana Ecclesia;* and shall have and enjoy, annexed and united to the imperial crown of this realm, as well the title and style thereof, as all honours, dignities, pre-eminences, jurisdictions, privileges, authorities, immunities, profits, and commodities to the said dignity of supreme head of the same church belonging and appertaining; and that our said sovereign lord, his heirs and successors, kings of this realm, shall have full power and authority from time to time to visit, repress, redress, reform, order, correct, restrain, and amend all such errors, heresies, abuses, offences, contempts,

and enormities, whatsoever they be, which by any manner spiritual authority or jurisdiction ought or may lawfully be reformed, repressed, ordered, redressed, corrected, restrained, or amended, most to the pleasure of Almighty God, the increase of virtue in Christ's religion, and for the conservation of the peace, unity, and tranquillity of this realm; any usage, custom, foreign laws, foreign authority, prescription, or any other thing or things to the contrary hereof notwithstanding." *

Rather more than ten years afterwards, a like explanation of the power of the crown was repeated, in more distinct terms (if possible) by stat. 37. Hen. 8. c. 17: which statute is now in force. Herein it was declared that the king's majesty "is and hath always justly been, by the word of God, supreme head in earth of the church of England, and hath full power and authority to correct, punish, and repress all manner of heresies, errors, vices, sins, abuses, idolatries, hypocrisies, and superstitions, sprung and growing within the same, and to exercise all other manner of jurisdictions, commonly called ecclesiastical jurisdiction;" and that "the archbishops, bishops, archdeacons and other ecclesiastical persons, have no manner of jurisdiction ecclesiastical, but by, under, and from the royal majesty;" and, that the king's majesty "is the only and undoubted supreme head of the church of England, and also of Ireland, to whom

* Compare stat. 28, Hen. 8. c. 5. [Ir.] "*authorizing the king, his heirs and successors, to be supreme head of the church of Ireland.*" This act, I believe, has never been repealed.

by Holy Scripture all authority and power is wholly given to hear and determine all manner causes ecclesiastical."

A single extract from the statutes of king Edward the sixth will suffice: namely, stat. 1. Edw. 6. c. 2, to the following effect. "Authority of jurisdiction, spiritual and temporal, is derived and deducted from the king's majesty, as supreme head of these churches and realms of England and Ireland, and so justly acknowledged by the clergy of the said realms, that all courts ecclesiastical within the said two realms be kept by no other power or authority, either foreign or within this realm, but by the authority of his most excellent majesty."

The first act of the reign of queen Elizabeth, reviving the statutes in which the royal supremacy is declared, and which had been repealed during the reign of queen Mary, has been already remarked upon; and also the modern statutes of king William 4th; and you will observe that in none of these is there the slightest appearance of any limitation upon the power granted to and to be exercised by Henry 8th and Edward 6th.

Can it then be said that the royal supremacy does not extend to the determination of questions in which doctrine and matters of the Christian Faith are concerned? for example, that the Crown, in virtue of it, is exceeding its just prerogative in claiming finally to decide the case of Mr. Gorham against the bishop of Exeter, involving, as such a cause necessarily does, the doctrine of baptismal regeneration? If so, what can be the meaning of the words of the statutes which have been quoted,

giving to the king's majesty authority to correct, &c. all manner of heresies; and to exercise all manner of jurisdictions, commonly called ecclesiastical jurisdiction; and that whatsoever spiritual or ecclesiastical power or authority hath heretofore been, for the reformation and correction of all manner of errors, heresies, and schisms, shall for ever be united and annexed to the imperial crown of this realm?

Still, it may be further objected, that all the foregoing statutes and decrees are merely acts of Parliament, or encroachments of the State, or submitted to by the Church as to a kind of persecution, and the like. It would be something strange to hear of a supposed endurance of a fictitious "persecution" for two or three hundred years; but let that pass. There is absolutely no ground or reason whatever for such a pretence. If language means any thing, the modern church of England is a willing and consenting party to the declarations of the civil statutes of the realm: and not only has she allowed this by a continued and contented acquiescence for the entire period, but the whole arrangement seems to be both in complete accordance with her positive assertions of what is right and good, and in truest harmony with her own spirit.

It may be, perhaps, a question whether the form of submission of the clergy can be referred to as furnishing any conclusive evidence on the particular point now before us. It may very fairly be said that by this submission the clergy of England promised, *in verbo sacerdotii*, never to allege or put in ure, or to enact any canons and constitutions, unless

with the consent previously obtained of the king's highness; but that, as regarded the final determination of causes ecclesiastical, it declared nothing either the one way or the other. We will not, therefore, at present delay upon this, or enquire how far in its sure consequences it involved such a result.

It has been said also, that the authority of a final court of Appeal in ecclesiastical causes is distinct from the supremacy, does not rest upon the same foundation, and may be treated of, objected against, and restrained, without injury to the royal prerogative. Certainly, it may be true, that the court of Delegates, and the judicial committee of the Privy Council, were both established by acts of parliament: and not, expressly in words, by virtue of the royal supremacy; nor, as it were, giving a required sanction of the legislature to its exercise. Whether therefore, if we look only to statutes, the "Supremacy" can be shown to be, after all, a shadow and a bugbear, I cannot tell: but a final court of Appeal, somewhere, and appointed by some sufficient authority, there must be. And it would be a new thing to learn that there is any court in this realm, which is not understood to derive its power and jurisdiction, mediately or immediately, from the crown: the civil courts from time immemorial, and the spiritual courts since the reformation. Until, however, the distinction which has been mentioned can be shewn, so as to relieve our consciences from the real, practical, grievance under which they lie, we cannot be wrong, I think, in speaking of the power of final appeal in ecclesiastical causes as based upon or springing from the

royal supremacy: and, in that case, the question of the supremacy is left to be considered as anxiously as if no such distinction could be drawn.

The title of supreme head arrogated to himself by Henry the eighth, and allowed and confirmed by repeated statutes during his reign, was altered into the somewhat less objectionable title "supreme governor" in the time of queen Elizabeth. It is positively incredible that Henry should have desired the title of supreme head to have been given to him, in the strict sense in which it belongs to our Blessed Lord: and, it is clear that he did not himself so understand the words, because he added to them continually, "in earth." Thus plainly distinguishing his own rights and authority—whatsoever it might be—as supreme head in earth, from the power and authority of Him Who is the Supreme Head in heaven of His Body, the Church. Still, the title, used in any way, was objectionable, and likely to be misunderstood: and the convocation would not suffer it to pass (in their grant of money for release of the *præmunire*) without a qualification. The acknowledgment of the supremacy was first proposed in this form; "Ecclesiæ et cleri Anglicani cujus protector et supremum caput is solus est:" i. e. the king.* But it passed as follows;—"Ecclesiæ et cleri Anglicani (cujus singularem protectorem unicum et supremum dominum et quantum per Christi legem licet etiam supremum caput ipsius majestatem recognoscimus,) *etc.*"† Much stress has been laid upon the qualifying words

* Collier. *vol.* 2. *p.* 62. † Wilkins. *tom.* 3. *p.* 742.

"quantum, *etc.*" which, after all, are loose and indefinite enough: but, in truth—and I would direct your especial attention to the point—they do not touch or bear upon the matter really before us, namely, the authority and power of the king's majesty as supreme governor in earth of the church of England. It is a clause explaining in what sense the title "supreme head" is to be taken and allowed, and explaining nothing but with respect to that: "*quantum per Christi legem licet.*" And the fact remains of the submission of the clergy to the king, as "the sole protector, the only and supreme governor and lord, of the church and clergy of England." *

It is unnecessary to remind you of the many things, deeds and circumstances, which followed, during the next hundred years, upon this concession by the church of England: such as the acceptance by bishops of commissions to execute their office and ministry; the appointment of a vicar-general; and of a high-commission; the issuing of injunctions, or articles, or admonitions: these may well be left for some future opportunity, if it should be required. Such acts are of most material importance in a discussion like the present: for it is from them that we can best learn what was understood by contempo-

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* A few years after, (in 1534) the clergy in convocation sent a petition to the king, about suspected books, addressed to him as "fidei defensorem, ecclesiæque Anglicanæ (sub Deo) caput supremum." And the proclamation which followed spoke of his highness, as "immediately under God, justly and lawfully sovereign, chief, and supreme head, immediately under Christ." Ibid. *p.* 776.

raries to be, practically, the meaning and extent of the royal supremacy. Nor is it to be said that these things were done against the will and consent of the English church. During the whole period, convocation was continually sitting, deliberating, passing articles, and canons, and forms of prayer. Where is the proof of (at least) her protest against such an improper—if it be improper—exercise of the supremacy? where is there any declaration on her part that the acts of Henry, or Edward, or Elizabeth, were not in accordance with her own desire and intention as a body spiritual, and a legitimate consequence of her course of reformation?

Rather, alas! upon the contrary, let us listen to her own words, as spoken in her convocations. The inscription of *the Institution of a Christian man* is to "Henry the eighth—supreme head in earth immediately under Christ of the church of England;" and the book is offered to the king, by his supreme power to be set forth, "without the which power and license of your majesty" the preface states "we knowledge and confess that we have none authority, either to assemble ourselves together for any pretence or purpose, or to publish any thing that might be by us agreed on and compiled."

The *Reformatio legum* declares as follows, under the head "Jurisdictio regis:" and I cite this only as an illustration. "Rex tam in archiepiscopos, episcopos, clericos, et alios ministros, quam in laicos infra sua regna et dominia, plenissimam jurisdictionem, tam civilem quam ecclesiasticam, habet, et exercere potest, cum omnis jurisdictio, et ecclesiastica

et secularis, ab eo tanquam ex uno et eodem fonte derivatur." *

Far more weighty are the canons of 1604, and the 39 articles of the reformed church of England; and with these we will conclude. Take the canons to begin with. The 55th requires all preachers before their sermons to use a form of prayer, or one to the same effect, in which the sovereign is spoken of as "supreme governor in these his realms, and all other his dominions and countries, over all persons, in all causes, as well ecclesiastical as temporal." The first of these same canons is more remarkable. "We first decree and ordain that—all ecclesiastical persons having cure of souls, and all other preachers, shall, to the uttermost of their wit, knowledge, and learning, purely and sincerely, (without any colour or dissimulation,) teach, manifest, open, and declare, four times every year (at the least) in their sermons—that the king's power within his realms is the highest power under GOD." And the title of this canon is, "*The king's supremacy over the church of England, in causes ecclesiastical, to be maintained.*" † As to the articles,

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* De officio et jurisdictione omnium judicum. *cap.* ij.

† The canons also of 1640, which were drawn up under archbishop Laud, accepted by the convocations of both provinces, and ratified by the king, might also have been referred to. The first of these speaks of the supreme power given to the most high and sacred order of kings; and orders the explanation of this supremacy, as laid down in the canon, to be preached and taught once, every quarter of the year. But this canon is chiefly remarkable, because it allows the right of excommunication to the royal supremacy: declaring that "if any ecclesiastical person whatsoever, publicly maintains any position, in impeachment of the aforesaid expli-

the 37th affirms, that "the queen's majesty hath the chief power in this realm of England, and other her dominions, unto whom the chief government of all estates of this realm, whether they be ecclesiastical or civil, in all causes doth appertain."

It is said that the article proceeds to limit this "chief power." I am quite ready to allow it: and the very limitations themselves rather serve to the establishment and acknowledgment of whatsoever power and authority they do not restrict. The article denies to our princes the ministering of God's word, or of sacraments: but this is all which it denies. And by the term "ministering of God's word," surely we cannot understand the power of deciding spiritual causes, in which doctrine is involved, to be denied to the crown, but only the office of public preaching. As it is expressed in the twenty-third article, in a parallel passage; "the office of public preaching, and of ministering the sacraments;" the same two spiritual functions which "the civil magistrate" may not exercise. But we must have some evidence to shew that "the ministering of God's word" was ever supposed to refer in any way to the decision of causes involving doctrine. Having, however, laid down these li-

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cations, he shall forthwith, *by the power of his Majesty's commissioners for causes ecclesiastical*, be excommunicated till he repent." Indeed, a like or equal power belongs to the judicial committee of the Privy Council: because excommunication being a process of courts, and the final appeal resting in that committee, it is easy to conceive how it might order a person excommunicated by the spiritual judge—whether bishop or archbishop—to be restored to communion and to the sacraments of the Church.

mits, the article declares the royal prerogative to be, that our princes should rule all estates and degrees committed to their charge by GOD, whether they be ecclesiastical or temporal. Nor can I help adding, that when the authority of *the Church* is spoken of, it is in very much more moderate language; as an authority, which need not be more than that right of *assenting* allowed by the statute of Elizabeth, already quoted. "The Church hath—authority in controversies of faith." *Art.* xx. And having said this much, we have two long sentences warning us against the possibility, and repudiating the right, of "the Church" ordaining any thing contrary to GOD's word written, or, besides the same, enforcing any thing to be believed for necessity of salvation.

We have not ended yet: there is one thing more to be remembered, and this the nearest to our own consciences: upon whose voice, after all, in the case of every one of us, this whole matter must very greatly depend. I mean the oath of supremacy taken at our ordination, our promise at the same time, and our subscription to the first article of the 36th canon. Well known and remembered as these may be, it will be desirable to place them before you: and, remembering the terms and words used in the documents which have been already cited, let me ask you to give them your anxious and careful consideration.

"*The oath of the queen's supremacy.* I. A. B. do swear, that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, That princes excommunicated

or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm. So help me GOD."

Next, the promise. "*The bishop.* Will you then give your faithful diligence always so to minister the doctrine and sacraments, and the discipline of Christ, as the LORD hath commanded, and as this Church *and Realm* hath received the same, according to the commandments of GOD; *etc.?* *Answer.* I will so do, by the help of the LORD." If the words "and realm" mean nothing, why are they inserted? mere surplusage, at such a time and in so solemn an office, would be singularly out of place. More remarkable, perhaps, is the corresponding place in the form of consecrating a bishop. "— such as be unquiet, disobedient, and criminous, within your diocese, will you correct and punish, according to such authority as you have by GOD's Word, and as to you shall be committed by the ordinance of this Realm? *Ans.* I will so do, by the help of GOD."

And, lastly, the first of the three articles of the 36th canon.

"1. That the queen's majesty, under GOD, is the only supreme governor of this realm, and of all other her highness's dominions and countries, as well in all spiritual or ecclesiastical things or causes, as temporal; and that no foreign prince, person,

prelate, state, or potentate hath, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within her majesty's said realms, dominions, and countries."

Now, certainly, I am not about to enquire whether it be, or be not, according to the Word of God that the queen is supreme governor in earth of the church of England; nor, whether all manner of jurisdiction ecclesiastical exercised by archbishops and bishops does, or does not, flow from her royal majesty; nor, whether it be right that very difficult and deep questions of the Christian Faith should be, or should not be, referred from bishops and spiritual courts to laymen, and, at last, finally determined by a court of Appeal, whose members may possibly be heretics or unbelievers: but I do say that the principle of such a system has been deliberately approved, accepted, and for three hundred years insisted on, as accordant with the true spirit of the Gospel, by the church of England. It may be that during that period the chief cases appealed from in the ecclesiastical courts, have been concerned with matters temporal rather than spiritual; such as disputed wills, and the like. But we do not accurately know, nor shall we ever perhaps learn, how great the real, practical, influence of the royal supremacy has been, over the established church, since the time of its first founder, in its modern shape, king Henry the eighth: more especially, during the reigns of Elizabeth and James the first. Whatever it may have been, good or bad, right or wrong, the supremacy is part and parcel of that pure and apostolical

branch, the reformed church of England; and as she has made her bed, so must she lie on it.

It is hard, therefore, to see upon what grounds, which shall satisfy our consciences, we may refuse to listen to the decision of the court of Appeal, in disputed questions of doctrine: more especially in such a case as Mr. Gorham's, which is, as I have said, of the interpretation of existing documents and not of the truth of any doctrine. It is, of course, impossible to draw an exact line where interpretation of doubtful documents, by a supreme and final authority, is to be distinguished and separated from the power of declaring the truth or falseness of a doctrine. However this may be, to reject the decision of a court, upon any matter really within its jurisdiction, before which we have consented to plead, and against whose creation we did not protest, because it happens to be against us, is the act of children and not of men.

There is more force, perhaps, in the suggestion, that if at any time a decision should be given by the court of Appeal, which the church of England, as a body spiritual, should believe to be in contradiction to Catholic Truth, it would be necessary for her, and not only necessary but sufficient, plainly to correct the error without delay, and reassert the doctrine which had been mistaken by the court. Yet this would be scarcely in agreement with her own positive assertions about the supreme headship of the sovereign; rather, it would be something like rebellion against a person, who "by the word of God has full power and authority to correct all

manner of heresies and to exercise all ecclesiastical jurisdiction." It is, however, so visionary a thing, to contemplate the possibility of an English convocation, assembled not merely without the permission but against the will of the queen, that one would not stop to speak of it. And it might not, moreover, be difficult to show that a convocation, now-a-days, would be likely to set at rest the claim of the reformed church of England to be a portion of the church Catholic, in a way not exactly calculated to satisfy the consciences of many people, who are anxious so to regard and believe her.*

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* The above sentence is written with reference chiefly to the present constitution of convocation. Most men have long ago agreed that, as at present formed, its members do not represent the established Church. It is monstrous that the cathedral chapters should be represented in a degree so far exceeding the parochial clergy. Besides, if it should happen that the convocation, whether with leave or without it, should meet really "for business," it will be necessary that the elections should take place subject to the knowledge of that fact. It is quite one thing to elect commonplace and respectable men to perform their parts in a farce; and another to send them to the solemn discussion of weighty questions of the Faith. Nor is it to be supposed that any man, elected for the one purpose, would venture, without a previous appeal to his constituents, to intrude upon another, so great an office. I am aware that it might be answered, the convocation *must* consist of those members already returned: they must serve, and the clergy may not now elect others in their place. But I am speaking of a convocation resolved to act according to its own judgment of what is right, and what is wrong; and not according to the opinion and policy of the State: of a convocation which will not submit to be tied down and fettered by royal writs, and summonses, and the like. The first duty of such a convocation would be, I repeat, to meet the altered circumstances of the time, and to reform itself.

Since the above was written, a friend has directed my attention to an able article on the Convocation, printed in the Quarterly

One brief word more on the question of the probability of an English convocation meeting to de-

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Review for March, 1845. The following extracts deserve consideration. "Were a convocation suddenly called again into action, it would, somewhat like the *états généraux* of France in 1789, constitute the most mischievous of all legislatures,—an ancient legislature, bearing an historical name, possessing or claiming great legal powers, unhappily revived after generations of desuetude, not by the renovation of its pristine spirit, but as an expedient at a period of popular excitement, and under the pinch of necessity: a Synod containing within it individuals who, from character and station, would deserve and command the highest respect, and yet composed of members wholly unused to act together in their canonical capacity — unaccustomed to render due submission or to enforce due obedience — untried to speech, excepting in voluntary societies, whose *ethos* is totally adverse to the constitution of an ecclesiastical assembly — taught, in these anomalous associations, to beg for external aid, instead of depending upon their own inherent powers — trained upon the platform to address themselves to the passions and imaginations of a mixed multitude rather than to appeal to the conscience and the reason of responsible teachers and chosen guides — having all to unlearn as to their habits of transacting public affairs, and all to learn as to the mode of exercising their resuscitated duties — cut off, as a deliberative Synod, from all traditions of the past, and ignorant of their true position in the present time, destitute of collective experience, and therefore of collective foresight. Such a body, stimulated into morbid activity, would combine all the inconveniences of an obsolete institution with the rashness of a new experiment; and under existing circumstances, involve the Church in inextricable confusion." — "What would be the result if, amidst the strife of theology and politics, the sources of bitterness in the Synod should be suddenly opened? Are the parties who advocate the expediency of calling their ideal ecclesiastical Parliament, 'Convocation,' into activity, aware of the process by which the Proctors are elected? Unequal, indirect, complicated, partial, and subject in many dioceses to direct episcopal nomination and control, would such a process of composing the lower house satisfy the 'rate payers,' if brought out upon them by surprise? Are people aware how the diocesan proctors are outnumbered in Canterbury by the dignitaries and cathedral clergy

cide doctrines, and to put forth fresh canons or articles of faith, without the consent and authority of the crown. Is it quite certain that the 21st article does not bear upon the matter? Is it altogether to be overlooked in discussing the extent to which the English church has recognized the royal supremacy? What does the article say? "General councils may not be gathered together without the commandment and will of princes." Here is a complete sentence, affirming one, distinct, proposition; unconnected in any way with the rest of the article, which proceeds to limit the power of a general council when it does meet. We are all aware that a common explanation of this assertion is, that when princes—whether Christian or heathen—refuse, for any cause whatsoever, to suffer the assem-

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—there being but fifty-four proctors for the parochial clergy, amidst the twenty-two deans, the fifty-three archdeacons, the dozen sub-deans, chancellors and treasurers, and the one precentor, and the twenty-four capitular proctors, who would be the mere nominees of the bishops, archdeacons, and deans? Could such an assembly, at present, possess any influence upon the uninformed and undisciplined public mind? Will the parochial clergy be contented to be thus swamped? Above all, what will be the effect of the comparison between the constitutions of Canterbury and of York? In York they have no distinction of houses, and no indirect elections. The archidiaconal proctors sit as such, and all the clergy, high and low, archbishop, bishops, deans, archdeacons, and proctors, sit in one assembly. Would not the meeting of Convocation be an immediate signal for demanding the extension of the suffrage of the parochial clergy—the abolition of the capitular Old Sarums—the union of Canterbury, York, and Ireland into one Synod—radical Convocation Reform, and this the certain prelude to radical Church Reform?"

bling of a general council, and have power by imprisonment (for example) to prevent the bishops of the Church from so meeting, then, the general council *may* not, because it *can not*, "be gathered together." If this really be the true interpretation to be given to the clause, one can only remark that the framers of our articles need not have troubled themselves to express so very obvious a truism: and, at any rate, they hardly ought to have said "may," where the proper word would have been "can not." However, as an historical fact, the bishops of the ancient Church knew nothing about "may not," and "can not" in any case where their duty both to herself and to her Divine Lord and Head called them "to be gathered together." In some way or other, *they* always did meet in council whensoever necessity obliged.

Undoubtedly, the present emergency may not seem to be a case of necessity, in the judgment of our bishops. That is another question. But to talk of imprisonments and violent persecution in these days, as a possible consequence, is almost absurd. Will any one pretend that the English convocation *could* not, as a matter of possibility, meet together, and settle disputed doctrines and pass new canons and articles, even if the crown refused its consent? Is it literally true that its members would be forcibly prevented, and that there is no place to be named where they *could* assemble? And would their deliberations be treated with contempt and opposition by the Church and people of the land?—One trembles to entertain the sugges-

tion which some have made, that the restraint upon the conscience of our convocation, is the restraint of *Endowments*.

The actual exercise of the royal supremacy, now (as some have said) for the first time brought in operation before us all in a matter which touches upon doctrine, is a very startling fact. Grant, for a moment, that it is the first time: still, in theory it has existed, and has been known to be a distinctive principle and part of the system of the church of England, for the last three hundred years. We may have managed to forget it; but it has all along been a living, real, power; waiting its time, if we may so say; ready to interfere, or, rather, ready to exercise the authority which the English Church declares to be inherent in the sovereign. It is mere accident that the same or some similar matter did not come before the ecclesiastical court, and, in appeal, before the supreme governor of the Church, ten years ago, or in the last century, or in the reign of queen Elizabeth herself.

It is rash to attempt to conjecture why, in the dispensations of the Divine Providence, it seemed good that so long a series of years should elapse, and that this authority, as regards the settlement of doctrine or anything like doctrine, should remain as it were dormant; yet we may discover in the spiritual apathy and ignorance of the last century, and in the increased learning, zeal, and piety of both clergy and laity of the present generation, some reasons why all this should not have happened *then*, but should happen *now*. Even such a doctrine as the unconditional efficacy of infant baptism,

so vital, so evidently at the root and foundation of all Catholic teaching, might have been determined a hundred years ago, as not held exclusively by the English church; and the determination might have been acquiesced in as a thing indifferent, or, at least, of inferior importance.

It has been said that the evidences of life and energy and holier practice, so remarkably shewn by the church of England during the last twenty years, are evidences also that she undeniably is, as she claims to be, a true portion of the One, Holy, Catholic, Church. We may not rest on this argument, in any sort, as conclusive. Evidences they may indeed be, as I believe they are, of the working of the Divine Spirit among the people of the land, and of an awakening of the mind both of the Church and nation, to the reality of their position in the sight of God. They are indeed tokens supplying hope and comfort in times of trial and difficulty and doubt, but they are not sure proofs of the Church's catholicity. Whatever we may be now, few will care to dispute the apathy and almost lifelessness of the English church during the last century: and, as in the natural body there can be no feeling in a senseless state, or in a mortified limb, so is it also in a spiritual body. Breath and circulation are required in the one, as they are in the other: and you must rouse, in like manner, a sleeping person, before you can make him understand.

But the cause between Mr. Gorham and the bishop of Exeter is not the first which, involving very important doctrine, has been decided by the judicial committee of the Privy Council, in appeal from

the court of Arches. In the year 1842, Lord Brougham gave judgment in the case of Escott against Mastin: and by that judgment it was finally determined that the reformed church of England recognizes and allows the validity of lay-baptism. No one will deny that this was a deep and intricate enquiry: one, which had been controverted during the last two hundred years by learned divines on both sides: one, which, no less than the doctrine of regeneration, was mixed up with and depended upon very subtle questions and principles of theology. It matters not whether it was decided by the judicial committee rightly or wrongly: the point is, that it was so decided: and there neither has been nor could be any appeal whatsoever from that decision. It would be ridiculous, moreover, to pretend that the question is any longer really open to dispute, whether the church of England recognizes or disallows the validity of lay-baptism.

And it is no slight matter that the present case of Mr. Gorham is not the first cause which has come in appeal before the judicial committee, involving doctrine. We cannot, if we would, urge now, "the first time," as an argument, whatever its value, against submitting to the jurisdiction of the court. Nor is this (to my own mind) altogether to be set aside as simply accidental: it may have been thus ordered by Him, Who, ruling over all things, especially directs every matter tending towards the acknowledging and strengthening of His Church.

The terms of the judgment of the supreme court, in the case of Escott v. Mastin, need not be examined now. It is only right to remind you that the "in-

consistency or even absurdity" of some supposed consequences following from a refusal to admit lay-baptism to be valid,—which consequences could not possibly have had any weight whatever in the determination of such a question before a spiritual court, that is, before a court composed of theologians, —was advanced as a supplementary reason for the decision. And, more than this, an argument was based upon expediency : it being said by the court that if lay-baptism should be held to be invalid, all dissenters would be excluded from the pale of the Church, and all foreigners who have been baptized otherwise than by ministers of episcopal ordination. These particulars are worth stating, because they are tokens of the kind of foundation on which the judgments in modern times of our highest court,— judgments be it remembered from which there is no appeal—will probably be based.

But it may be further asked, How is it, although this case may not be the first of its kind, yet that the supremacy should now be made so great a difficulty? Are not the statutes, and the articles, and the oath, exactly as they have been for many years? Perhaps the following suggestion will account for this : namely, that it is a characteristic of the people of England to put off difficulties and doubts as long as they can : nor will they entertain them, upon matters carrying also probably a change of practice, whether secular or spiritual, whilst they can be avoided. Hence it may be that the supremacy has been regarded as a theory, and a thing to be talked about, rather than as a reality, which was likely at any time to be called into energy and life and

power, in deciding doctrines of the Christian Faith. For myself, I am ready to acknowledge—and others have already owned the same—that the royal supremacy, whatever it seemed a year ago, has proved to be, in its actual exercise, something very different from old notions and anticipations: raising unforeseen scruples of conscience, and giving additional weight to other doubts which had been growing and accumulating. The supremacy, looked at from a distance, and through the obscurity of improbable contingencies, was scarcely more than an empty name. True, if one had but considered, there were already frequent acts of the State, prominent enough,—interference by the parliament, suppression of sees, and the like,—which ought to have been fairly dealt with. But it was not so: and we required the visible fact of six lawyers—not all believed to be in communion with us, — sitting round a table, listening to arguments founded upon intricate questions of theology, and commissioned to declare whether it be necessary for a part of Christ's Holy Church to condemn, as heresy, the denial of the truth of baptismal regeneration.

I wish now to return to a point already briefly noticed: namely, the importance of the particular case of Mr. Gorham. This has always seemed to me to be much underrated by many who are of our party, the high-church. Many would not acknowledge—probably many still do not acknowledge—that, if the case should be determined in his favour, we should literally and undeniably have no dogmatic teaching left at all upon the sacraments; and, indeed, little else, except perhaps, to some extent,

upon the very deep and solemn Mystery of the Ever-blessed Trinity.* If there *is* any doctrine, we were accustomed to say, which is clearly and positively taught in our formularies, it is the doctrine of baptismal regeneration: and a judgement in favour of Mr. Gorham would tell us that even that doctrine is not so certain, but that it may be denied and disbelieved. Together with it, by a necessary consequence, the Catholic doctrine of sacramental grace would be also rejected, as not to be thought exclusively the truth.

That which I have just said—and to this point let me request your especial attention—was readily enough consented to and indeed loudly insisted on by the high-church party in former years. Who is there that does not remember how frequent the complaints were against our bishops, for not proceeding against clergymen who denied regeneration in holy baptism: how confident the expectation was that the result must be in our favour: how bold

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* In the words here, "the mystery of the Ever-blessed Trinity," let me be understood as including other doctrines strictly and necessarily following upon the acceptance of that truth, as it is declared in the Apostles', the Nicene, and the Athanasian creeds. Such for example as the doctrine of the Incarnation; whilst, upon the other hand, one would scarcely go on to say, the doctrine of the Atonement. Indeed, remembering some books by very learned prelates of our own days, we hesitate almost to assert that Sabellianism and Socinianism are of necessity excluded by the mere acceptance, in words, of the three creeds. And if the Catholic doctrine of baptismal regeneration is not to be proved by the clause of the Nicene creed, "One baptism for the remission of sins," together with the ritual, I know not whether the doctrine of the Ever-blessed Trinity would be more likely to be proved by the creeds, together with the articles.

were the assurances that our ministrations and office themselves depended upon a right decision of the question? We are now about to listen to the long-expected, long-wished for, judgement. Let us not presuppose what course any man may take, who, years ago, did not hesitate to speak after that manner. Only this must be said: that although disappointed men are justly entitled to reconsider the whole matter, yet, in cases of conscience, the course of conduct which, beforehand, seemed to be the right one, is more likely to be correct and according to sound religious principle, than another decided on, when the pressure of the actual difficulties is upon us, and the temptations of the world, of position, of influence, and the like.

The arguments by which the refusal to acknowledge the importance of the case have lately been supported, are sufficiently different; some will place it on this ground, some upon that; these being unlike and even contradictory in principle. Two alone among them, as it yet appears, required to be discussed. One, which refused to recognize the right of the crown to interfere at all in such a question, and therefore the right also of the judicial committee to decide it. This has been already considered. The other demands a few words, when I remember that it has been urged upon me most forcibly by one — not a clergyman — whose opinion is of great authority, and to whom few among us would not readily, if possible, defer.

It is said; whatever the judgement of the court of Appeal may be,—whether to the effect that baptismal regeneration is held and taught exclusively

by the church of England, or that it is not held exclusively,—that the Church's doctrine remains exactly what it was before; and that every clergyman will be entitled and authorized to teach, and every layman will be equally called upon to believe, that the established church both teaches, as of old, the doctrine of baptismal regeneration to be certainly true, and asserts the denial of it to be undoubted heresy. In support of this it is argued that the decision of a court in a single litigated case cannot alter the doctrine of the Church: and that her formularies and canons remain precisely what they were before, in their strict and positive meaning. And, further, that nothing less than a new canon or article, put forth by the Church herself, would be sufficient to change her previous teaching upon this or any other matter. So that as long as a clergyman can say, "Do not trouble me with your decisions of a court, but shew me a new canon or article," he is entitled to continue both to hold and to teach precisely what he did before.

But, surely, the case of Mr. Gorham being simply of construction, and of the right interpretation to be put upon certain documents already existing, is one which ought to be brought before a judicial, and not a legislative, body. The documents themselves, to all outward and visible appearance, will remain exactly what they were: there will be no words added, and none removed: but they will have had a meaning put upon them by an authority to which reference, on a material and disputed point, has been solemnly made.

In times past—say, a year ago—it might have been answered to a person enquiring the meaning of our formularies, on the subject of holy baptism, "It is certain that they exclude the denial of the unconditional efficacy, in all cases, of infant baptism." Can it be so said hereafter, if the judicial committee decide that they do not exclude it? Documents and formularies of any kind whatsoever are but so many words, unless their meaning is to be ascertained by some acknowledged rule, or determined from time to time by a sufficient authority.

In short, shall we not find that this argument resolves itself, after all, into the original question of the authority of the court itself, and of the obedience which the clergy, especially, are bound to pay to it? It is confessed that although the decision in this matter—one litigated case—need not, nay ought not, to influence the future teaching of any one of us, yet that a canon of the Church would be imperative and binding: even, I suppose, if the canon merely said, that a clergyman denying the unconditional efficacy of infant baptism is not an unfit person to be instituted to a benefice. Therefore, that weight and authority which are allowed to a canon, are to be refused to the decision of a court. No doubt this court, nor any other court, cannot make canons: but, as has been before said, this is a question not of new canons and formularies, but of the right construction of old ones. Now, in such a cause, either the court of the judicial committee has authority or it has not: we will not speak of lower courts—*that* may be a different question—but we will speak of that court only with which our

present business is concerned; the highest and supreme, from which there is no appeal. If then the decision of the court is to be listened to at all, it is not easy to discover how one will be able to draw distinctions, and place limitations upon the extent to which it reaches. There seems to be no middle way between accepting and acting upon it, and repudiating it altogether as if it had never existed. I mean, repudiating it in every other respect than in the one point, comparatively unimportant and trivial, of the institution of a certain person to a certain benefice.

Now, in the first place, it is quite evident that any one who shall determine to despise and make nothing of such a decision, as regards his future faith, teaching, and practice, will have to bear the responsibility — to my mind, a very aweful responsibility — of setting up his own individual opinion against the judgement of a lawful court, to which the church of England, through the sovereign, has committed the final decision in all causes ecclesiastical, and to which decision by a silent acquiescence she shews herself willing to consent. It is true that he may find many who will agree with himself in taking such a course: but this will not, and cannot, remove his personal responsibility.

Possibly, more than this. Even supposing that the present supreme court has no authority, derived from our Church, strictly binding on conscience, — in other words, that there are methods and subtleties by which we may perhaps escape from obeying or consenting to its decisions,—yet, the judgment of six such eminent persons, so learned, patient, im-

partial, and desirous to be just, in a matter of interpretation and construction of certain documents, laid before them and diligently examined according to the separate views of the two litigant parties, must be a fact which we are imperatively called upon not to set aside or treat lightly, even as regards the merits of the subject itself, without the very gravest and careful deliberation.

And, secondly, let us think upon the practical consequences. If the decision of the court should be distinctly in confirmation of the judgement of Sir H. Jenner Fust, then, on the supposition of the argument against which I am objecting, Mr. Gorham would be himself fully and entirely justified in continuing to teach, in his present parish, the unsound doctrine for which his bishop and the two courts to which he has appealed have condemned him. He will be justified in saying, "This is a decision affecting only the one litigated point of institution to a particular benefice; I think the decision was a wrong one; and, at any rate, the formularies remain exactly what they were before. A single decision in a litigated case, cannot affect their former meaning: and I am as convinced as I was before, that, rightly interpreted, they do not exclude the view which I take of the doctrine of baptismal regeneration." Again; in like manner, the bishops would be left at the same liberty as before to exercise their private opinions on this matter: and if so, with a decision of the supreme court existing, it would in fact be placing in their hands a new and strange power. For example, a patron who should desire to nominate an evangelical cler-

gyman to a vacant benefice, would be restricted to those dioceses in which the bishops refuse to act upon, and make light of, the authority of the court. Once more: let us suppose that the decision will be in favour of Mr. Gorham: how would it affect ourselves, who have been accustomed to teach the Catholic doctrine as not only true, but exclusively the doctrine taught by the church of England? should we be justified in saying, as we now say; "The church of England holds the doctrine of the unconditional efficacy of infant baptism to be certainly and exclusively the truth; and the denial of it to be a pernicious and deadly heresy?" I own that as I look upon the matter now, it would be difficult indeed to say such words as those. To say less would be to give up an essential doctrine of the Christian Faith, and to acknowledge the fact, about which we are enquiring, namely, that the decision of the court of Appeal does, to some extent, and in some way, alter the teaching of the reformed church of England.

Here, I conclude. Yet, taking this—the earliest—opportunity of protesting against the new final court of Appeal which has been lately proposed in a bill now before the House of Lords. Perhaps in my next letter, I may feel at liberty to state briefly one or two reasons for objecting against it. At present I would say, it is strange that people have not yet discovered that so far as consciences are grieved by it, it is not only,—no, nor chiefly—the character, the qualifications, or the position, of the individuals who may compose the supreme court, which make us to be anxious, but the source from whence the

court derives its jurisdiction. The one is matter of detail, the other touches the foundation of the whole. Nor can this be remedied, if the church of England consents still to be in bondage to the State, and fears to claim again the right which belongs to every part of the One Catholic Church, of deciding all spiritual causes involving doctrine, before her own tribunals from the lowest to the highest, acting in her name, and by her appointment. The real question, let me repeat it, turns upon the source from whence the jurisdiction and power of the supreme court are derived. For fifteen hundred years, the Catholic Church owned no courts, before which spiritual causes involving doctrine could be brought, whose judges had not received their authority to decide such matters, by immediate delegation from herself. But the practice of the church of England for the last three centuries has been to demand of us submission to the jurisdiction of courts deriving their authority from the State, and to acknowledge the Queen's majesty to be supreme in all causes as well ecclesiastical as temporal. And no arrangements whatsoever, however specious and fair looking, can be satisfactory, or may avail to relieve us of the burthen under which we lie, so long as the present oath of supremacy remains a part of our Ordinal, and we are called upon to subscribe the 37th article, and the first of the three articles of the 36th canon.

I have desired to lay before you a fair and plain statement of what seems to me to be the nature and extent of the Royal Supremacy, and of the authority of the judicial committee of the Privy Council, together with reasons and evidence which may

enable you, perhaps, to form some judgment upon this solemn question: a question in which all, clergy and laity, are interested, and which no one who is bound to enquire into it may seek to avoid. Much that I have said will probably offend many: much, also, may be wrong either in argument or fact. I ask to be corrected: I seek, only, that others to whom we look, because of their office or their learning or their piety, should come forward and give us help and guidance in this time of doubt, and anxieties, and fear. And to myself it will be but little, as one among the trials which are pressing heavier and more heavy day by day, to be complained of for having done harm instead of good by endeavouring to speak the truth; provided only that it be the truth; and if it be not so, again I say, let it be shewn.

Even a more painful subject still remains; and I propose to enter upon it in another letter, which will be published as soon as the judgment of the court of Appeal has been delivered.

Meanwhile, let us pray to Him, Who rules and governs and disposes all things, that He will bring us to Himself.

Ever, your sincere friend,

W. M.

APPENDIX.

SINCE this letter was begun, there have been three pamphlets published, on the same matter; namely, the supremacy and the power of the judicial committee to decide ecclesiastical causes. It seems unnecessary to make the writers any apology for venturing to offer, in an appendix, a few remarks on some portions of these pamphlets, because the enquiry in which we are all engaged is far too great to admit of any personal considerations; and our aim is not to win a victory, or to prove that we are ourselves in the right, but to discover the truth, and to point it out to others.

But, before I direct the reader's attention to these pamphlets, there is a fourth also, which I would mention, and recommend to be read; a sermon by Mr. Dodsworth; "The things of Cæsar and the things of God." Proceeding upon similar principles to those advanced in the foregoing pages, it states the question in a solemn, earnest, manner, with no shrinking from the consequences to which, possibly, we are exposed, and without an attempt to evade the matter in debate. And nothing can be more practical than the recommendation at the end, that we should endeavour to "make ourselves acquainted with the real facts of the case."

Turning to the others, let us take, first, two sermons by Mr. Bennett, "The Church, the Crown, and the State." These sermons seem to come to much the same conclusion as the preceding Letter: and it is clearly set forth as follows. "By the oath of supremacy, there is no question but that we are bound to obey and abide by the decision of the crown, as pronounced legally in its highest court of appeal, on the great question now before it. Whatever doctrine this highest court of appeal may pronounce and declare to be the doctrine of the English Church, either involved in the fact of compelling a bishop of the Church to institute to a cure of souls one whom the Church, in her

spiritual court of Arches, has pronounced unfit, or in a more direct manner, as saying what the doctrine of the Church is—or what the doctrine of the Church is not—in whatever way the sentence may be promulgated, that sentence we are bound legally and conscientiously to accept as the Church's doctrine; for this simple reason—that *there is no higher court to say it is otherwise.* It is childish as well as dishonest, to try to escape out of this conclusion by saying, We will not heed what the judgment says: childish, because our saying so will not alter the fact; dishonest, because we have sworn before God, that the Queen's majesty is the supreme governor in these realms, and holds, as such supreme governor, this highest court of appeal, for the purpose of expressing her final will. We *know* that she *does* hold this court. We *know* that there is *no other court.* We know that (in the present state of the law) the decision of such court is *irrevocable.* Therefore, to that court, as long as it remains, we owe obedience, —merely on this simple ground, *that such is the law.*" *p.* 30.

It would be quite out of place to enter into the reasons on which Mr. Bennett founds this opinion; they are well deserving of the reader's careful consideration. I would merely desire to correct one or two statements which appear to be erroneous. The writer has told us; " 1. That, in the outset of the Reformation, the final court of appeal was not the crown, but the Church, in the person of the archbishop, each in their several provinces." *p.* 22. Again: " That at the first transfer of the court of appeal from the bishop of Rome—it was the archbishop, in his court of Arches, that was made the final court of all appellate jurisdiction." And it is further said, that such was according to the first principles of the Reformation. On this I would observe, that there is no evidence of the alleged fact, except in certain stated causes; [see above *p.* 11] and probably hence has arisen Mr. Bennett's misapprehension. Rather, on the contrary, all the evidence which we have runs the other way, unless some canons or statutes still remain to be produced.

Again; "That the clergy in their submission of convocation to the claims of Henry the eighth,— still such submission and resignation was coupled (and it must be ever remembered, for it is the turning feature of all that now awaits us) was coupled with this most solemn and express reservation, *quantum per Christi legem licet*, that is, as far as it is permitted by the law of Christ." The correctness of such an assertion must depend upon the question, whether the limiting clause does really refer to the authority of the crown, or merely to the acknowledgment of the title "supreme head." This has been remarked on already in my Letter; and I would add, that in a matter of such great moment—for I entirely agree with Mr. Bennett in the importance which he attributes to it—contemporary interpretation of the meaning of the whole passage, as shewn by contemporary words and acts and deeds, is the best and truest evidence to which we can refer. Looking at it now, amidst the doubts and the anxieties which surround us, we shall be inclined perhaps to understand it as only intending what we *wish* to be true, rather than what *is* true.

The second pamphlet is a sermon by Mr. Sewell, called "Suggestions to minds perplexed by the Gorham case." In the "advertisement" which precedes it, the author says, that "had there been time he would have wished to append to it such a review of the history of the Royal Supremacy, and of the existing state of the law, and such a catena of authorities, as would justify his assertions. But," he continues, "these are not necessary for the acceptance of the principles suggested." With submission, I must say, that they are very necessary: and, more than this: I know no man among us who is entitled to put forth his own views and opinions of this weighty matter— a matter upon which consciences are grieved—unless he explains to us his reasons also, and gives us some argument, founded upon fact, by which we may be convinced that he is not speaking hastily and unadvised. For myself, I must say, I would not dare to do so. To make mistakes in arguing such a question, if one's reasons are laid before the world, is one thing, for

the mistakes are easily corrected: but to press untrue conclusions, without attempt at reasons, either misleads the unlearned without warning, or seems to demand assent upon the self-satisfied authority of a name.

What I mean may be shewn from the following sentences, which appear to contain the marrow of the whole sermon. "Fifthly, let us never be tempted by hasty alarm, or injustice, or even persecution, lightly to abandon that salutary and Christian doctrine, that 'the sovereign hath the chief power in this realm, and other his dominions,' and that 'to him the chief government of all estates of this realm, whether they be ecclesiastical or civil, in all causes doth appertain;' in all causes, ecclesiastical or civil. In each the final reference may well be made to him, so long at least as he is a member of the Church. And yet this reference no more implies that he can sit in person, decide by his own will, choose his own arbiters, or refer the decision to any but fixed and constitutional and rightful tribunals, in ecclesiastical than in civil cases." And, immediately afterwards, it is further said, "that the fact of an ultimate appeal to the civil Power, so long as it is a member of the Church, even in questions of doctrine, is no badge of servitude, or dangerous submission, if the proceeding of the crown in spiritual matters is bounded as it is in temporal matters, to seeing that the question is decided by a proper ecclesiastical tribunal." *p.* 18. Upon this, we are bound to make two enquiries: where is the proof, in the history of the Church Catholic, of the rightness of such a principle as is here advanced? and, where is the proof that the supremacy of the crown is limited by the reformed church of England "to seeing questions of doctrine decided by a proper ecclesiastical tribunal?"

Somewhat similar is the following: that "the church of Christ in this land is a Polity, or Body Corporate; a State; a Kingdom; independent in itself, separate from the world, charged by God with its own peculiar functions, armed with all essential authority to fulfil those functions." *p.* 14. It will be answered, all this is true of the church of

Christ: but, we must reply, we are enquiring about the established church of England. And again we ask for proofs that our church is "independent in itself, &c."? But, probably, much of this arises, after all, from a confounding (with what purpose I do not see) the church of England with the Church Catholic; and from attributing to both the powers and promises given to one alone. Thus, in the next page, we read: "Thirdly, these spiritual functions, powers, and privileges of the Church, with all the independent rights, liberties, and distinct operations essential to their due exercise, are of such a nature—they are such a trust committed to us from God,—that they are absolutely inalienable and indefeasible. No lapse can extinguish, no laches forfeit, no prescription bar them. *Nullum tempus occurrit ecclesiæ*, is a fundamental maxim of our English laws. [?] No ecclesiastical authority however exalted, no prelates, or synods, or convocations, or bodies of clergy, in one age or generation, or succession of generations, through any length of usurpation, could sign them away, cancel them, surrender them, bind posterity to their surrender, detract from them, destroy them. There are rights which man cannot part with, because they are not his own. And such are the spiritual rights and independence of the Church of Christ." Were there ever such empty, sounding, words? Where, we ask in wonder and amazement, where are the promises made to the particular church of England, which were not made to the seven churches of Asia, or to the churches of Jerusalem, or Alexandria, or Carthage? where, as a separate communion, do *we* find the record of an assurance of gifts bestowed on *us*, which were the mysterious and unearthly privilege given, and given only, to that One, Holy, Catholic Church, founded on the Rock, so that we know well that the gates of hell shall never prevail against her?

Similar, once more, is the assertion — I mean, similarly put forth without evidence or proof, — that the judicial committee of the Privy Council is "a tribunal, which is a

pure creation of the civil power, and which has no place or office in the [English] Church." *p.* 24. And, again confounding the Church Catholic with the reformed church of England, we are bid to be full of hope and confidence in language such as this. "Lastly, let us join cheerfully to enter a public, a wide-spread protest, not so much against the existing tribunal itself, but against the fears and alarms of our brethren.—What can be the meaning of such fears? If to determine questions of spiritual doctrine is the inalienable, indefeasible privilege of the Church acting through its own spiritual tribunals, a privilege conferred on it by GOD Himself, and of which no earthly power can deprive it, then the decree of any external tribunal can be no more binding on its conscience than a breath of empty air." *p.* 27. Would that we could indeed echo the writer's words, What mean these fears? I, for one, cannot make so light of them, nor do I hesitate to confess it. And this is most certain: that no man, who will give himself time for consideration, as he will answer to GOD and to his conscience, will find his anxieties and doubts removed by weak evasions of the true question at issue; or by attempts to bury them beneath a confused heap of words, not supported by argument, and unsustained by facts.

I come unwillingly to the third pamphlet of which mention has been made: the first number of a series on "Church Matters in 1850," by the Rev. John Keble. I say, unwillingly: both because of the unfeigned regard and respect which we must all owe to him, and because something of the same kind of objection appears to lie against this publication as against the sermon of Mr. Sewell: that is, it contains statements requiring proof, for which little proof is offered. Thus, we are told that "the authority which really appoints the [supreme] court, is in principle alien to the [English] Church;" and "that the serious question of baptismal regeneration, is on the point of being finally decided, not by any Church [of England] authority, but by six laymen." This, it is further said, "is peculiarly hard in our case, because of the peculiar sacredness, in our view,

of the prerogative on which the judicial committee intrudes." Here the reader will observe that the question in debate is taken for granted: and the privileges and powers of the reformed church of England are presumed to be *necessarily* identical with those of the Church Catholic.

So again, in answering a supposed objection, namely, that the existing court of Appeal has been recognized by the English church, Mr. Keble replies: "thirdly and chiefly, I say that we, the clergy of the church of England, never assented to the powers, claimed for this court, of deciding doubtful points of doctrine: it is no part of the system to which we are pledged by our engagements; we have not, even ignorantly, committed ourselves to it in any manner." *p.* 10. These are strong assurances; and tending far, if correct, to satisfy the scruples of tender consciences. I can find no reasons in the tract, which seem to be sufficient.

There is one argument to which I would venture to draw Mr. Keble's particular attention. We are told that we never assented to the present supreme court of Appeal, because when the powers of the court of Delegates were transferred to it, the Church was never consulted at all upon the subject. Here I would remark that there is no evidence that the Church was "consulted" at the establishment of the court of Delegates: and there was no necessity of "consulting" the reformed church of England at all, when the change took place some twenty years ago. It was the duty of the Church to reclaim, and to refuse obedience, at the time, if she were not satisfied. To proceed. "Convocation, silenced for a hundred and twenty years, had no power to breathe a thought on the matter.—Nor do we at all know whether the majority of the bishops of that day assented to the arrangement." But do we not know that there is no evidence of any objections made by even so few as two or three bishops? do we not know that not a word was uttered by the clergy of any single diocese, from one end of England to the other?

In *p.* 20, we read: "I may just repeat in three words

what has been above argued at length. If it be said, This court is the same with the court of Delegates, which the church and realm *did* receive, I ask, *how* is it the same?—if you mean substantially and really, I say it is not the same, for it is neither accompanied with the same safeguards, nor appointed by the same authority." What the safeguards were which fenced the court of Delegates, so as to remove from it its objectionable nature, I cannot discover: whether the two courts derived their jurisdiction and authority from different sources, is a question which has been fully discussed, and some evidence offered for deciding it in the negative, in the preceding Letter.

Once more; "the 20th article says, the Church hath authority in controversies of faith: from which it would immediately follow, that a decision in a controversy of faith by a court having no authority from the church should be to us no decision at all." Perhaps it may be so: but we have first to settle the enquiry, whether this present court of Appeal has or has not received our acknowledgment of its jurisdiction in the determination of causes involving doctrine, inasmuch as the church of England has, as some of us believe, acknowledged the authority by which it has been appointed.

I gladly pass over one or two other places, (which appear to be beyond the conclusions which, at any rate as yet, the writer can safely arrive at) in order to express how fully we must all agree with some parts of the tract. Especially, where the author speaks of the fearful confusion which must necessarily follow from an adverse decision in the case now pending. And we cannot consider too carefully this weighty sentence: with which we will now end. "If the decision be adverse, it needs to be distinctly proved, that a bishop or archbishop, acting on that decision, would not involve in direct heresy both himself and all in communion with him." *p.* 26.

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