but cannot be ignored when we are estimating the progress of religion and religious opinion in the nation. When Secker died Bute's Ministry had been replaced by that of the Marquis of Rockingham, and that again by the Duke of Grafton's, wherein Pitt, who had been raised to the peerage by the title of Earl of Chatham (1766), thereby for the time lost all his popularity in the country. As Lord Chesterfield said, "He has had a tumble upstairs, which has done him so much hurt that he will never stand on his legs again." When Secker died he was still holding office, but had for some time been incapacitated by illness. In the course of the same year he gave up his office, and at the same time recovered his health. Events of vast importance were drawing nigh, both at home and abroad. *Apparebant dirœ facies.* Before the next Archbishop of Canterbury passed away (in 1783), Frederick the Great had achieved his great victories, the United States of America had won their independence, and France was drawing nigh to the Revolution.

W. BENHAM.

ART. III.—THE JUDICIAL AND LEGISLATIVE AUTHORITY OF THE CHURCH DISTINGUISHED.

THE separation between judicial and legislative functions is one of the features which differentiates fully developed from primitive organizations, whether civil or ecclesiastical. In the earliest stages of a State no laws exist. When two individuals dispute as to a matter of right, or one commits an offence against the other, the ruling authority is appealed to, and decides the case judicially. The decision forms a precedent, or, in other words, a law, which regulates subsequent similar cases; and as this process is multiplied, a code of laws is gradually built up. It is then found that the power of deciding individual cases in accordance with this code may safely and conveniently be delegated to an inferior authority, which thus acquires judicial functions; while the ruling authority reserves to itself the power of altering or adding to the general code. In other words, it retains the power of legislation. In well-ordered communities it is recognised that the judicature, in deciding individual cases, ought as a rule to be independent of the legislature; but it must, in fact, be always subordinate to the legislature, since the latter (subject to any checks which in particular cases may have been im-

posed upon it by the constitution of the community) can at any moment make a new law overriding the decision of the highest tribunal of the land. Nevertheless, although in a highly organized community the judicial and legislative functions are thus theoretically kept distinct, their absolute severance is never in practice quite possible. For, on the one hand, when a judicial tribunal decides a point of law which has hitherto been doubtful, it to that extent makes the law; and, on the other hand, the legislature sometimes assumes to settle individual rights. For example, our Parliament frequently does so, when it passes a private or local and personal Bill, after conflicting interests have been fought out in Committee. In such instances it virtually takes upon itself judicial functions. But in either case the legislature is supreme. For unless it has voluntarily hampered itself by a Constitution limiting its own powers, such as exists in the United States of America, its laws, whether public or affecting individuals, cannot be called in question by the Courts of Justice. On the other hand, although in a well-ordered State the legislature would not, unless under very exceptional circumstances, override decisions of the Courts of Justice as between the individuals actually affected by them, yet the legislature may, and frequently does, override those decisions, as far as they affect the nation at large, by enacting a new law in a sense contrary to them. No decade passes without one or more decisions being given by our Courts which are felt by the nation, or a portion of it, to be contrary to what the law in the abstract, or the law under the existing circumstances, ought to be. What happens in such cases? No complaint is made that the Courts are incompetent; no outcry is raised for their reconstitution; no suggestion is made that their decision is contrary to the existing law. But the matter is brought forward in Parliament; and if the nation as a whole, through its representatives there, considers that the decision in question is practically right, it remains the law of the land, but if not, an Act is passed which quietly supersedes it. This is a matter of continual occurrence; and from the frequency with which it happens we can estimate the mischief which would arise if the sittings of the legislature were suspended for such a comparatively short period as, say, twenty years. The Courts would in that period be sure to interpret certain doubtful points of law in accordance with the law as it actually existed, but not in accordance with what it was generally felt that the law ought to be. Under the circumstances which we are supposing, there would be no redress for this; and discontent, and possibly anarchy, would be the baleful consequence.

The details of State administration have been thus dwelt on because it may be said to the Church:

"mutato nomine de te
Fabula narratur."

The Church, like the State, is a complex organization. Like the State, it is endowed with legislative and judicial functions. According to our XXth Article, "The Church hath power to decree rights or ceremonies and authority in controversies of faith"—with the limitation that the Church may not "ordain anything that is contrary to God's Word written, neither may so expound one place of Scripture that it be repugnant to another." (In like manner, of course, the legitimate power of the State to make laws is confined within the limits of abstract right and justice.) Further, the XXXIVth Article lays down that "Every particular or national Church hath authority to ordain, change, and abolish ceremonies or rites of the Church, ordained only by man's authority; so that all things be done to edifying." The powers mentioned in these Articles are clearly legislative; though they were, no doubt, exercised judicially at times when legislative and judicial functions were as yet undifferentiated. Our own Church, for one, has frequently resorted to them; she did so notably at the Reformation, and after the Restoration of 1660. At both of those periods the powers were wielded by the whole Church—by the Convocations, as representing the Bishops and clergy; and by the Crown and Parliament, as representing the laity. The concurrence of the laity in the settlement, whether judicially or by legislation, of all Church matters (including those of faith and discipline) in the earliest ages of the Church, down to the time of Cyprian, must, to anyone who impartially studies the evidence, appear unquestionable. At the Reformation it was secured in our Church by the provision in the Act for the submission of the clergy (25 Hen. VIII., c. 19) that the Convocations should make no canon or constitution without the assent and license of the Crown; and should not, even with that license and assent, make any canon or constitution which should be contrary or repugnant to the laws or customs of the realm. This latter restriction introduces the Parliamentary element in all Church legislation. For, the Church being established, her regulations are part of the laws or customs of the realm. Consequently, no alteration of them can lawfully be made unless the law and custom of the realm is correspondingly altered—a process which necessitates Parliamentary action. So long as Parliament fairly represented the laity of the Church, the arrangement thus made was defensible in theory, and it worked tolerably well for a

century and a half. But early in the eighteenth century it was suspended by the discontinuance of the sittings of Convocation; and now that these sittings have been revived, the arrangement is vitiated by the fact that Parliament no longer consists wholly of Churchmen, or represents the opinions of the Church laity. Therefore, although, where it has been evident that the mind of the Church on a particular question has been virtually unanimous (as in reference to an alteration of the Lectionary, the changes embodied in the Act of Uniformity Amendment Act, 1872, and the extensions of the legitimate hours for marriage), the old legislative machinery has been employed, yet it clearly could never be utilized on any matter on which an acute difference of opinion exists in the Church. In reference to all such matters (which are just those most requiring settlement by legislation) our Church is at this moment practically in the position of having no legislative machinery at all.

On the other hand, she is not without a judicature. Before the Reformation, the exercise of her legislative and her judicial functions had become to a great extent divided; and the settlement made at the Reformation, besides, as we have seen, determining her future legislature, also arranged her judicial system. Her Archidiaconal, Diocesan, and Provincial Courts remained as before, with the new feature that qualified laymen were authorized to sit as judges in them. And in lieu of an appeal to Rome, or to any other body from the Provincial Courts, it was provided that, for lack of justice, appeals should be brought to the King in Chancery (as being over all causes ecclesiastical as well as civil within his dominions supreme), and should be tried by delegates appointed by the Sovereign. There was nothing intrinsically wrong in such an arrangement. A Church is not justified in parting with her legislative functions. She is bound to exercise them herself either corporally or by due representation. The utmost which she may do is to agree to exercise them concurrently with, or subject to the veto of, an extraneous body. This is a position into which, through the de-churching of Parliament, our own Church has at present drifted; and such an agreement must always be subject to the tacit condition that it is liable to be terminated if the extraneous body refuses its concurrence or exercises its veto in a manner with which the corporate conscience of the Church feels that fidelity to Christian truth and principles renders acquiescence impossible.

But with judicial functions it is different. The Church is quite justified, if she thinks it expedient, in herself delegating these functions, or in tacitly, and by way of acquiescence,

allowing them to be delegated, to whomsoever she pleases. It is, of course, desirable, but it is not ecclesiastically essential, that the persons to whom they are delegated should be members of her own body. The one essential of a Spiritual or Ecclesiastical Court is that it should have been constituted or recognised by the Church. How far do our present Courts fulfil this requisite? Clearly the Courts established at the Reformation did so; and, in fact, no one raises a question on this point with reference to any of our existing Courts except the Judicial Committee of the Privy Council. The authority of Lord Penzance, who was appointed by the Archbishops under the Public Worship Regulation Act, 1874, has been disputed by some. But without discussing that question, it is clear that his successor, Sir Arthur Charles, has been canonically appointed Judge of the Court of Arches by Archbishop Temple, and Judge of the Chancery Court of York by Archbishop Maclagan; and the fact of his having subsequently become judge under the Public Worship Regulation Act, 1874, cannot possibly derogate from those previous canonical appointments. The position of the Judicial Committee is not quite so clear. When it was substituted for the Court of Delegates in 1832, the Convocations had not resumed their sittings. But both the Church Discipline Act, 1840, and the Clergy Discipline Act, 1892, expressly recognised the Judicial Committee as a final Court of Appeal for causes under those respective Acts; and no one pretends that either of these two Acts has not been adopted by the Church. Except where proceedings are taken under the Public Worship Regulation Act, 1874, they form the only means of dealing with offending clergy; and it is surely impossible to contend that the Church has adopted these Acts in the general, and yet repudiated one important feature of them. At any rate, strong proof must be advanced for such a contention; and of such proof there is absolutely none, for the utterances of irresponsible individuals or societies cannot be accepted as the voice of the Church; and an expression of opinion that the final Court ought to be remodelled involves no repudiation of the existing Court in the meantime. The objectors to the present validity of the Judicial Committee as an ecclesiastical tribunal have only two points to urge which can be regarded as in any degree plausible. One is that members of that body need not necessarily be Churchmen. This, as we have seen, is undesirable in the case of an Ecclesiastical Court, but is not an essential objection to its validity. But it may be urged, secondly, that the Church Discipline Act, 1840, provided for an episcopal element in the Judicial Committee, and that, without the concurrence of the Church, this element was

eliminated in 1876, the Bishops being then reduced to being mere assessors, without a voice in the actual decision of the Committee. So far as regards moral offences, we have seen that this reconstitution of the Committee was acquiesced in by the Clergy Discipline Act, 1892; but as regards questions of doctrine and ritual, all that can be urged in favour of the proposition that the change has been accepted by the Church, is that no collective protest has ever been made against it by the Church.

The real opposition to the Judicial Committee, however, has arisen, not owing to its constitution, but owing to its powers and to the manner in which it has exercised them. First, it is said to be monstrous that a tribunal of this kind should have power to decide, unalterably and for all time, what is to be the doctrine or ritual of the Church; and, secondly, it is complained that the actual decisions of the Judicial Committee have not been in accordance with the true law of the Church. With this second objection I have no sympathy whatever. There is only one way of deciding what *is* the true law of the Church, within the limits mentioned in the XXth and XXXIVth Articles; and that is by recourse to the ecclesiastical tribunals *de facto* existing. All other decisions on the subject are simply those of irresponsible individuals or bodies of individuals. They think that the law *ought* to be so and so, and they are convinced that so it *is*. But with the first objection I have the strongest sympathy. It would be monstrous that the Judicial Committee should have power to decide unalterably and for all time what the law of the Church ought to be. But what is the right alternative? Not to hand over their power to another judicial tribunal. This would only be to repeat, and possibly accentuate, the impropriety. No; the true alternative is to rehabilitate the legislative machinery of the Church, which is the proper instrument for regulating what is to be her law from time to time. No wonder our ecclesiastical affairs are out of joint. There would be discontent, and even worse, if we were left to be governed for twenty years by our existing civil law as administered by our Secular Courts, without the possibility of recourse to Parliament to adapt it to altered circumstances. But in Church matters we are governed by laws made 250 or 350 years ago, which we have practically no power to modify by legislation in accordance with the altered modes of thought and conditions of the day. It is not surprising, though it is unreasonable, that many of us should expect the Courts and the prelates to step out of their proper province and supply the deficiency; and that they should be blamed, sometimes for doing so too much and sometimes for doing so too little.

Clear ideas on the true difference between judicial and legislative functions will enable us to perceive the reforms which the Church requires at the present time. In the first place, she needs a machinery by which she may exercise legislative powers, and decide what her law *ought* to be, as distinct from what it *is*. These powers are vested in the Church as a whole—that is to say, according to our XIXth Article, in the congregation of faithful men of which she is composed—and should be exercised through two provincial bodies or one national body, consisting of the Bishops, representatives of the clergy, and representatives of the laity. As in non-established Churches of the Anglican Communion, the consent of a majority of each of the three orders should be requisite for the making of any canon, constitution, or law, whether in the way of declaration, definition, or enactment. While the Church remains established (which, in the interests of the State and of religion, may it continue to be!), her legislative powers must be exercised with the assent of the Crown and subject to the veto of Parliament. If these conditions stood in the way of any particular measure which the Church desired, she would have to choose between the alternatives of abandoning that measure or suing for disestablishment, with all its incidents and consequences.

But, secondly, she needs Courts constituted with the view of exercising, not quasi-legislative, but strictly judicial, powers, with a constant liability to have their decisions overridden by the action of the Church legislature. I am in favour of the Provincial Courts being strengthened somewhat on the lines laid down in the Ecclesiastical Procedure Bill which was brought into Parliament by Archbishop Benson in 1888. It would be right that, for the trial of a question of doctrine or ritual, the Archbishop should sit in his own Court, with his official principal and other assessors. But it seems to me impossible to approve of the proposals of that Bill as to final appeals, even though they follow the Report of the Ecclesiastical Courts Commission which came out five years previously. Under those proposals, the Court of Final Appeal would consist of at least five legal members of the Privy Council, being also lay members of the Church of England. But where a specific question touching a particular point of doctrine or ritual was in controversy, the question would be referred by the Court to the whole body of Archbishops and Bishops, who would meet apart from the Court, hear arguments if they thought fit, and return an answer to the Court before the decision on the appeal was given. There are many objections to the details of this scheme, as is evidenced by the amendments to it suggested by the Houses

of Convocation, who have been recently reconsidering it; and those amendments themselves appear equally objectionable. The proposal that the question should be referred to the episcopate by the Court would leave it in the hands of the Court to frame the exact terms of the question, and we can easily see how much the answer might depend upon the precise language in which the question was formulated. This, however, was inevitable under the scheme; but the Bill went on to provide that the question should be referred to the prelates in the same manner, so far as circumstances would admit, in which a reference is made to the judges by the House of Lords in a case which is heard before that House. This has a constitutional ring about it, and seems calculated to disarm criticism by appeal to precedent. What, then, must be our astonishment to find upon examination that, so far from allowing the method of the House of Lords to be followed, the Bill immediately goes on to prescribe a totally different course of procedure. The judges, when consulted by the Lords, are summoned to sit with them and hear the case fully argued, so that both the Lords and the judges have the case submitted to them upon the same arguments. Then the judges deliver their opinions separately, and the Lords consider these opinions, and deliver judgment after weighing them and the other points in the case together. But under the Bill of 1888 the prelates are to meet apart from the Court, eighteen being a quorum. They may or may not hear arguments; and, if they do, these may be entirely different from those previously addressed to the Court. The opinion of the majority is to be returned as the answer to the question; and the Court will not be put in possession of the views of the minority, nor be informed by what proportion of the whole assembly the answer which they actually receive is supported.

The discussion of these details has somewhat led us astray from our main subject. In reference to that, I will point out, in conclusion, how the scheme appears to me to violate the cardinal principle for which I have been contending. The Bill, no doubt, as it stands, does not propose that the opinion of the prelates on the question of doctrine or ritual referred to them shall be final and authoritative. But it would be a grievous slight on the episcopate to treat it as otherwise. Yet a final definition of doctrine or ritual is the function of the Church, consisting of her Bishops, clergy and laity together, in her legislative capacity, and not of any one of the three orders alone, acting in the judicial or quasi-judicial manner. Given a Church legislative body to define and alter the law, as occasion requires, and the best form of a Final Court of Appeal under existing circumstances, to decide cases

as between individuals, would seem to be a mixed tribunal—again after the model adopted in non-established Churches of our communion—consisting of, say, four lay members of the Church of England, being judges or ex-judges, appointed by the Crown, and the Archbishop of the province other than that from which the appeal is presented, and two other Bishops, according to a rota settled by the Crown.

This, however, is a minor point. The foregoing observations will have answered their general purpose if they serve to emphasize the distinction between judicial and legislative functions, and the fact that no reform of the Ecclesiastical Courts can meet the present requirements of the Church unless there be also provided a satisfactory legislative machinery by which, with the assent of the Crown and subject to the veto of Parliament, she may exercise her power to decree rites and ceremonies and her authority in controversies of faith.

PHILIP VERNON SMITH.

ART. IV.—ST. JOHN, THE BELOVED DISCIPLE.

"The disciple whom Jesus loved."—ST. JOHN xx. 2.

IN almost every age of the Christian Church devout believers have dwelt upon the character and personality of St. John. The favoured disciple and the precious Fourth Gospel have ever been most edifying and welcome subjects of Christian meditation. In the first place, he was probably the youngest of our Lord's twelve Apostles, perhaps younger than his Master. If so, he was, in the language of Da Costa, the "Benjamin" of the revered company, and, as we gather from his own words, he was "the beloved disciple." The New Testament affords us far more than a mere glimpse of the life of St. John in its relation to his fellow-disciples and to the Master. With perhaps the exception of St. Paul, no inspired writer has left a deeper personal impression on the sacred records. The notices of St. John which are furnished by the synoptists are all most instructive and important. They reveal certain additional facts of an honourable nature which St. John himself passes over in silence. If they must be recorded, it was enough that other writers should set them forth. In the spirit of true humility, he either did not consider them of primary importance to the substance of the inspired records, or else he simply preferred to pass them over in his own writings. In some instances, too, these notices afford glimpses into the character, and not merely the exist-