Theology on the Web.org.uk

Making Biblical Scholarship Accessible

This document was supplied for free educational purposes. Unless it is in the public domain, it may not be sold for profit or hosted on a webserver without the permission of the copyright holder.

If you find it of help to you and would like to support the ministry of Theology on the Web, please consider using the links below:

https://www.buymeacoffee.com/theology

https://patreon.com/theologyontheweb

PayPal https://paypal.me/robbradshaw

A table of contents for *The Churchman* can be found here:

https://biblicalstudies.org.uk/articles_churchman_os.php

Art. V.—REPORT ON THE ECCLESIASTICAL COURTS.

EVERY compromise must necessarily be illogical; that is to say, it never can be expected to commend itself as theoretically reasonable to either of the contending parties, if both parties have been professedly basing their whole claims upon reason. It is unnecessary to inquire whether both of the two parties now contending over the body of the National Church of this country have been reasonable in their claims, or whether only one has been. At all events, the maintainers of the Established Church must not expect to find the compromise lately proposed by the Ecclesiastical Courts Commission entirely satisfactory to their sense of logic and justice. That the proposals of the Commissioners are in the nature of a compromise between the different members of the Commission is manifest to everybody. Whether they can be accepted by the loyal party is a question which it is hopeless to discuss with any man who cannot make up his mind to accept what appears to him unreasonable and unjust. In coming to the consideration of the question, we cannot forbear from quoting what we must say seem to be the very sensible words of the new Dean of Windsor—words which, whether we agree with them or not, suggest reflections which must be reckoned with by all reasonable people.

Speaking at the Reading Congress, the Dean said:

"The Commissioners had to consider not merely what they or other people would like, but what they or other people could get. We have to consider in a report of this kind, not our *à priori* idea of a good Church and a good Court, but practically what in these days and in this land of England could be got for the Church we love, and want to make as good as we possibly can. . . . It is impossible for any Commissioner to lay down a scheme to which no hypothetical objection could be imagined. But in the report of the Commissioners, we have a plan given to us which is deliberately intended for the existing state of things, in order to meet difficulties which have been fully and candidly stated by a very large body of witnesses. . . . It will be a responsible task indeed which will devolve upon those who have to introduce in Parliament any measure founded upon this report. When they bring it forward, let their hands be strengthened instead of weakened. We should help them so as to enable them to go forward with their difficult task, not with the certainty that men will rise on every side primed with extracts from Church and secular papers, professing to give expressions to the views of a large body of Churchmen who object to the report. No; enable them to come before the Legislature, and say that the report has been before the eyes of England for so long, and that, taking it all in all, it has been favourably accepted by the Church at large. Let them ask the Houses of Parliament to accept this report—to give it validity, because it will bring about the peace of the Church we hold so dear, and because it is the voice,

not only of the Commissioners, but the practically unanimous voice of the Church of England at large."[1]

Now, first, what is our own position? *We* are not the people who caused the appointment of this Commission; *we* were not dissatisfied with the Constitution and working of the Ecclesiastical Courts. It is not we who dispute the spiritual validity of the established tribunals; we are not the impugners of the Queen's supremacy; we, duly considering whose authority she hath, whose minister she is, to whose service she was anointed by the Archbishop[2] on the 28th day of June, 1838, find no difficulty in allowing her from our hearts the position and powers of the godly prince, which have been enjoyed with more or less tranquillity by all her predecessors in this realm, and are still in words conceded by every clergyman who owes thereto his own position and income. We are satisfied, and have been all our lives satisfied, as our fathers before us were satisfied, and as the ritualist clergy were (or are presumed to have been) satisfied when they, by their own free choice and individual wish, took their orders in the Church, that the Protestant Church of England, as by law established, was and is a true member of the Catholic Church of Christ, and that none of its established institutions are inconsistent with true doctrine or edification. It is an article of our religion that to the Queen the chief government of all estates of this realm of England, whether they be ecclesiastical or civil, in all causes doth appertain.[3] We have no desire to draw the article aside in any way, but we submit to it in the plain and full meaning thereof, and take it in the literal and grammatical sense.[4] We have, indeed, been occasionally surprised and perplexed at first sight by the judgments of the Privy Council, as for instance in the Bennett case, and in that part of the Ridsdale judgment which related to the position of the consecrating minister; but taking them all in all, as the Dean of Windsor would have us take this report, we are not dissatisfied with the general result.

But we have to deal with men who declare that in spiritual things there must be no appeal to the Crown;[5] who cannot see their way to any final appeal to the Queen, even though the Court advising the Queen were composed wholly of ecclesiastics;[6] who admit that they were not dissatisfied till the Courts decided against them;[7] and that no Court would satisfy

[1] *Guardian* of 17th October, 1883.
[2] "As kings, *priests, and prophets*, were anointed."
[3] 37th Article of Religion.
[4] Declaration prefixed to the Articles.
[5] Rev. Berdmore Compton, Q. 2691. Hon. C. L. Wood, Q. 939, 964.
[6] Rev. Berdmore Compton, Q. 2833, 2836.
[7] *Ibid.*, Q. 2664.

them which would not reopen the Ridsdale judgment;[1] who quote Gardiner and Bonner as the proper authorities to explain away the Royal Supremacy;[2] whose general wisdom is such, that they cannot recollect a case in which they have had difficulty in "saying ditto" to Mr. Bright for thirty years except in matters of religion;[3] and, worst of all for the prospect of that peace which the Dean of Windsor anticipates, who openly repudiate all finality in the compromise, and proclaim that they will accept it only as a basis, and not as a coping-stone.[4]

We do not for a moment mean to say that all the ritualists agree in all the above points, except perhaps the last. On the contrary, nothing is more remarkable than the total want of any agreement between them either as to the fundamental principles on which they profess to rest their objections, or as to the historical facts which they imagine or invent to support them; or as to the remedies they propose for easing the burden which the recollection of their solemn undertakings must necessarily cast upon their consciences. But this very circumstance is an additional reason why it is so hard to make concessions to demands which are based upon no common ground or settled principle except that of "Home Rule."

For this is really what we are asked to do. We are to give, but not to take. The one thing really pressed as a matter of principle before the Commissioners was the abolition of the iniquitous episcopal veto; but even this is denied us. It is absurd, therefore, to recommend our acceptance of this Report, on the ground that it will place us in a better position than we are in at present. On the contrary, if it were a mere question of approving or disapproving the Report as it stands, apart from the chance of peace, we should reject it without the slightest hesitation whatever.

But it would undoubtedly be a serious mistake to allow the question of the acceptance of the Report to be settled off-hand upon that consideration alone. If peace is to be restored to the Church by means of the adoption of a certain set of recommendations, the result would counterbalance a great deal that is highly objectionable in the recommendations themselves. The individual Commissioners, differing as we know they do in matters of religion, have yet found it possible to join in signing this Report; and the question, therefore, is forced upon us, If the Commissioners have agreed, cannot the parties also whom the Commissioners represented be brought to

[1] Dean of Manchester, Q. 4483.
[2] Hon. C. L. Wood, "Minutes of Evidence," p. 42.
[3] Dean of Carlisle, in the *Times* of 23rd October, 1883.
[4] Mr. Beresford Hope's speech at the Reading Church Congress, *Guardian* of 17th October, 1883.

agree? The loyal party in the Church will not be found to refuse agreement where agreement is possible; and even if agreement be impossible, still acquiescence may be found not incompatible with even outspoken disapproval.

The first recommendation which demands notice is, that the primitive and almost legendary duty of judging in their own consistorial and provincial Courts is to be restored or given to the Bishops. In point of practical common sense, the proposal is about as rational as if it were suggested that the Queen should again sit as judge in the Court of Queen's Bench. But it is one of the contentions of the ritualists, not adequately disposed of before the Commissioners, that laymen ought not to be judges where spiritual matters are concerned. They have not yet settled whether, if a Bishop appoints a layman to be Chancellor, it is a mere impropriety or a fatal objection to his spiritual validity.

Now we may trace most of our present difficulties to the introduction of the Bishop in person, as distinguished from the Bishop acting by his legal deputy, which was effected by the Church Discipline Act of 1840. Till that time the Courts worked smoothly enough for all practical purposes. The delights of a clerical Chancellor, at the present day, may be appreciated on reading the evidence of Mr. Shelly, given before this Commission (Q. 3097-3136).[1] The confidence inspired by the Bishops may be measured by the fact that in not a single instance has the power given by the Public Worship Regulation Act, of leaving the whole matter to the Bishop without appeal, been accepted by the clergyman whose conduct has

[1] Extract from the abstract of Mr. Shelly's evidence:

"The practice of the Court (the Consistory Court of Exeter and Truro) is, that before the petition (for a faculty) is presented, a draft of the petition with plans annexed must be sent for the Chancellor to peruse; and if the Chancellor objects to the draft as he sees it, he requires it to be altered; and if it is not altered to his satisfaction, he will not allow it to be filed at all. In a case in which he was concerned, an application was made for a faculty to authorize the erection of a reredos containing a representation of the crucifixion, some years ago; the Chancellor had the draft and the sketch of the reredos presented to him, and he refused to allow the petition to be filed. The witness had a large quantity of evidence, and had given great attention to the subject, and he believed that it would be legal, as it has since been held to be; but in that case he had no power of appeal, no hearing was granted, and he could move no further (3097). In the end, the reredos was put up without a faculty (3099). No doubt the Chancellor's action was not in accordance with the law of the Church (3103), and a mandamus might have been obtained; but the cost would have been great (3105). . . . Practically, the Chancellor of the diocese, who is a clergyman (3125), privately decides beforehand what shall come before him publicly as judge in these faculty matters (3123). He does not know of any other kind of court in which a similar practice prevails (3130)."

been in question. A similar power was given by the Church Discipline Act of 1840, and its general rejection accentuates the same conclusion. The judicial qualifications of some of our present Bishops are illustrated by the way in which they have exercised their veto. This subject was discussed in the CHURCHMAN of November.

However, it cannot but be that if the scheme of the Commissioners remains undisturbed for any length of time, we shall have a set of Bishops more of the Thirlwall and Tait type, with considerably more legal knowledge and experience than their lordships as a body at present possess, and consequently (as we cannot help thinking) a wider diffusion among them of the more modern standards of rectitude.

The fact is that we live in an age of reaction, disintegration, relapse. The canker has begun at the head. In matters of personal purity, for instance, the force of public morality is powerful enough to have forced into suicide two *innocent* victims of mere suspicion, within the last twelve months. But in the higher sphere of what we may call intellectual purity, is it not our frequent experience to hear ordination vows and their breach treated as almost equally matters of course, or at all events as fit subjects for a casuistry which no one would venture at present to apply to the simplest commercial contract? Surely, when a young man taking orders finds that by a tacit agreement between himself and his fellow-candidates on the one hand and the Bishop on the other, the question of entering the Church with the full intention of acting like Mr. Mackonochie or Mr. Green is never discussed unless raised by the derided scrupulosity of some unsophisticated lad, the "spiritual authority" of that Bishop can have for him only a conventional reality. And when laymen see such scandals going on year after year, is it to be wondered at if you have to rely on Acts of Parliament for the support you refuse to accept from Morality?

Now this is what we may, with considerable confidence, hope to change for the benefit of our posterity by making judges of our Bishops. The necessity of finding a remedy for the discredit attaching to the clergy, from the present state of things, is too urgent to allow us to be squeamish over details, or to regard the ridicule which already hails our future Fathers in God as Fathers in Law.

The next point is the Court of Final Appeal. The Commissioners, in dealing with this question, assume "that every subject of the Crown who feels aggrieved by a decision of any such Court," viz., an Ecclesiastical Court, "has an indefeasible right to approach the throne itself with a representation that justice has not been done him, and with a claim for the full investiga-

tion of his cause. No Ecclesiastical Court can so conclude his suit as to bar this right." Nothing can be more satisfactory, so far as words go. The ritualist theory, at all events, is not accepted. And this language is a very fair acceptance of the doctrine of the State supremacy as laid down in the thirty-seventh Article. It is really matter for congratulation that our fears lest that Article might be found explained away after the fashion of the day, have not been verified.

Of course this must be paid for. The price is (in part) the Judicial Committee. That is to be thrown over. "We have a law, and by our law it ought to go," was the cry of the nonconformists; and to that cry it has been found expedient to yield. That is what it comes to. But it is the occasion of the proposed change, and not the change itself, which is to be lamented; for it does not much matter whether the Crown is advised by the Judicial Committee or by any other competent body of judges, ecclesiastical or lay. It is proposed that the appeal to the Crown shall be heard by a permanent and exclusively lay body of judges learned in the law, members of the Church of England, of whom not less than five in number are to be summoned for each case by the Lord Chancellor in rotation.[1] So long as this arrangement lasts, Churchmen need not object to it. If the ritualists can be satisfied with the change proposed, it would not be the part of a wise man to object strongly to it, on the ground that it represents the gratification of superstition or even spite. These judges, in cases of heresy and breach of ritual, are to have the power of consulting Archbishops and Bishops upon specific questions put to them for their opinion, and are to be bound so to consult them on the demand of any one or more of their[2] number present at the hearing of the appeal.[3]

---

[1] "*By the Lord Chancellor in rotation.*" By this method it is of course intended to secure the impartiality of his selection.

[2] It is to be presumed that this means "upon the demand of any one or more of the *judges* (not *Bishops*) present at the hearing of the appeal," although the ideas of the learned Commissioners have at this point outrun their command of English.

[3] The minutes of the proceedings in connection with this point afford a glimpse of what may be termed the comical aspects of these Blue Books. It is first proposed and agreed that the judges of the Court of Appeal *may* ask the Bishops for advice on specific questions; then Sir Richard Cross's suggestion is acceded to, that the Bishops *shall* be consulted whenever any one or more of the judges shall so wish. All this is reasonable enough, though people may differ as to its expediency; but then comes Lord Devon, and actually proposes in his appended reservation that the Bishops shall *always* be consulted on these specific questions, whether any of the judges wish it or not! His lordship does not vouchsafe to explain what the specific questions are to be, where *ex hypothesi* no single one of the judges requires such assistance, nor who under such cir-

Now as to this consultation of Bishops, it is obvious that it is desirable for judges to obtain as much relevant information and assistance from every available source as they can. And so far we have no objection to make to the proposed arrangement. But the important question is, how is this idea to be carried out? Are the Bishops to hear counsel? Are they to give their opinions *seriatim*, as is considered so essential in the case of the lay judges? Are they to give reasons for their opinions? Are they to be open to prosecution for heretical answers? Are counsel to have the opportunity of arguing before the lay judges the effect of the clerical deliverances? It is obvious that all these questions are left open by the Commissioners, and we are therefore at liberty to discuss them freely, without transgressing the lines drawn by the Dean of Windsor. It will never do to have these Bishops pronouncing *ex cathedrâ* some unreasoned and unreasonable opinion on the most important questions, without hearing any arguments. The proper course, the only fair course, if a man is to be prejudiced by the Bishops' answers, will be to allow him, or the Court at his suggestion, to ask the Bishops for explanations and reasons. The position claimed for the Bishops is that of expert witnesses. (Q. 2428.) It would probably not be thought consistent with their dignity, or with general convenience, that they should be put in the box and cross-examined as if they were at the Old Bailey; but some safeguard of an analogous kind must be devised.

The true principle is that when you desire to interpret the legal effect of a document, the most probably correct interpretation is that which is arrived at by a trained lawyer, before whom the point has been argued by trained advocates. It may be preferable that your trained lawyer shall have been trained in that particular subject. Look at the Judicial Committee. They are all trained in English law. It is not because they have been trained in the Hindu or Mussulman law of India, or in the law of the old French monarchy prevailing in Lower Canada, or in the Civil Code of Napoleon administered in Mauritius, or in the Roman-Dutch law of the Cape or Ceylon, or in the ancient customs of Normandy which base the law of the Channel Islands, or in the yet different jurisprudence of the Isle of Man, that they truly and indifferently and satis-

---

cumstances is to frame the questions. Perhaps the judges would resort to the Church Catechism, and ask questions thereout in turn. That would at all events be safe, and perhaps gratifying. It is to be presumed that Lord Devon's reservation conveys some definite idea to the four Commissioners who gravely concur in it; but what that idea may be, probably no one but the gentlemen themselves can tell.

factorily minister appellate justice to the inhabitants of those different countries. Would anyone contend that, inasmuch as they have not been trained in Ceylon law, therefore, as judges of Ceylon law, they are no better than any other Englishman, and far inferior to a Ceylon planter? The fact is that the legal training is the important thing, and the actual contact with the particular system is of quite secondary importance.

In legislation it is just the other way. If it is a question of *changing* the law in Ceylon, six Ceylon planters are clearly better advisers than six barristers of Lincoln's Inn, or even six judges of the Queen's Bench Division.

Now in administering and interpreting Ecclesiastical law, there being no question of legislation, the untrained Bishops are no more likely to be superior to trained lawyers, than in interpreting Ceylon law the six Ceylon planters are likely to be superior to the Judicial Committee.[1]

The next important alteration is that this Court of Final Appeal is not to pronounce sentence, but to send the case down again to the Archbishops' Court, in order that the decreed sentence may be there pronounced. This is a concession to sentiment; it is a variation from the Reformation Settlement (because the Courts of Delegates pronounced their own judgments); and if there is any danger of a contumacious Archbishop, it will plunge us straight into anarchy again, and of a more certainly irremediable kind. The possibility of this catastrophe would probably be much diminished if the Bishops consulted by the Court of Appeal have been properly cross-examined, for we are satisfied that no Court of Appeal would decide against the opinions of Bishops who had maintained them successfully against a reasonable cross-examination. It must be observed, in this connection, that the Report contains no provisions for the trial of Bishops. The Commissioners say:

"It is desirable that *any scheme*[2] of Ecclesiastical Courts and discipline should make provision for the trial of offences alleged to have been committed by Bishops or Archbishops, *and for*[2] compelling on their part obedience to the law; but on a consideration of the language of your Majesty's Commission, it does not appear that this subject is properly within its scope; and on this ground only it seems improper to deal with the subject in our report." (P. liv.)

---

[1] It is openly claimed, indeed, that the clergy should have the interpretation of the ecclesiastical law on the same grounds on which it is said that they ought to have the making of it; which in effect means that, when they don't like the law of their Church, they are to be at liberty to nibble it away in the law-courts like a rat behind a wainscot.

[2] The italics are our own.

Bearing in mind the words of the Dean of Windsor, we will forbear to criticize this conclusion. But it is clear enough from the language itself that until the omission is supplied, we shall only be following the advice of the Commissioners themselves if we decline to run the risk so plainly foreshadowed at the Reading Congress. When the omission is supplied, and with the safeguard of a suitable cross-examination of the Bishops who have advised the Court of Appeal, we think the objections to the idea of sending the case down again for judgment will not be found insuperable.

The next proposition is that only the actual decision of the Final Court of Appeal in the particular case shall be binding, but the principles of decision shall always be open to be disputed. It may be admitted that the modern notion of attaching an almost superstitious authority to the reasons given in judgments of co-ordinate or superior courts has been, of late years, carried to an excess. Thus it is no unheard-of thing in the temporal courts, that the Court of First Instance has considered itself bound by a previous decision of a Court of Co-ordinate Jurisdiction, but has been reversed on appeal, because the Court of Appeal has thought that previous decision to be incorrect, and, being of higher rank, has felt itself at liberty to overrule it. There must be something wrong when you find the Court of First Instance bound to pronounce a decision which they fully believe will be reversed by the Court of Appeal, and yet the individuals composing both Courts are all of the same opinion as to the way in which the law ought to be interpreted.

On the other hand, it is very forcibly argued that if previous decisions are not held binding, her Majesty's subjects will never know where they are; there will be no finality, no certainty, nothing on which a man can shape his conduct with safety to himself; nothing by which he can know what he is undertaking when he enters the Church. But against this it may be replied, that even as things are at present there is no finality in any decision on a new point short of the House of Lords; and even if you have got a decision of the highest Court, though according to the modern idea, it can only be reconsidered (even in future cases) by an Act of Parliament, which in fact amounts to attributing to it legislative power; yet, even then it cannot be altogether depended on, even in a similar case. In point of fact no two cases are *exactly* alike; and when they are *very nearly* alike, whether the Court will discover a tenable distinction between the two, depends very much on the question whether the earlier decision does, or does not, command the assent of the Court which hears the second case. Suppose the distinction taken. Afterwards a third case may come for decision, the facts of which we will suppose to

be rather more like the facts of the earlier of the two previous cases, than those of the later of them, but very like the facts of each of them. Now, if the Court in this third case thinks the earlier of the two former decisions to be bad law, they will very probably consider that no valid distinction can be made between the facts in the two earlier cases, and that those two cases are contradictory of one another, and that under such circumstances the later of the two must govern. And so the earliest decision becomes in fact overruled, and of no "authority" in the future. You do not therefore, in fact, get the finality which this modern theory is supposed to give you; and you are not even supposed to get it, except in the very small number of cases which are carried up to the highest Court of all.

The proposition of the Commissioners, therefore, has, at all events, this in its favour, that the opposite principle has, in the opinion of many people, been ridden too hard. Lord Penzance's separate Report deals with this question. He thinks that if the new proposal means only that *obiter dicta* are not to be considered binding, it expresses no more than what is now law; but that if it means that every case is to be argued out *ab initio* as if it were *primæ impressionis*, it will be very pernicious. There can be little doubt that the proposal is not limited to *obiter dicta;* but we do not think it necessarily follows that every case will have to be argued out as if it were *primæ impressionis.*

It ought to be mentioned that the majority of the Commissioners also propose that the judges of this Final Court of Appeal are not to be bound to give reasons for their judgment, but that if they do give them, they shall do so *seriatim*, and not by one single judgment as at present is the practice of the Judicial Committee. Now, suppose a case where the judges are unanimous in coming to a given decision, but all arrive at that conclusion by different (and it may be inconsistent) processes of reasoning. Any lawyer will at once see that the actual decision in such a case will be of far greater weight than the reasoning. This actually happened the other day in the House of Lords, in the case of Dalton *v.* Angus, which the learned reader will find reported in full in the sixth volume of the "Law Reports," Appeal cases.

Now it is difficult to see any good argument why the reasoning of the judges should *theoretically* be considered of any greater or more binding force where they agree than where they differ. Of course there must be *practically* a great difference. Suppose a barrister has to advise on a case brought before him after such a decision as that of Dalton *v.* Angus. Now, if he finds the facts exactly correspond, he will, of course, have no

difficulty in foretelling to his client how his case will be decided; but if the facts are slightly different, he will have to consider, and any Court before which he argues it will have to consider, which of the different lines of reasoning in the former case is the most correct. But if all the judges had agreed on one line of reasoning in the former case, the barrister would feel that it was practically probable in the extreme that the minds of the judges would again follow the same line, and he would confidently so advise his client. There is no need, therefore, for establishing a *theory* of the binding force of the reasoning; and we must say, that if the barrister thought there were considerations which had not been brought before the notice of the Court in the former case, and which would probably have induced the judges to decide otherwise, it is unjust and undesirable that those considerations should be for ever excluded by the mere fact of the former decision. To hold otherwise is to make the rights of Englishmen depend upon the comparative industry or negligence of previous litigants. It tends in important cases to produce a race for a decision, if the later litigant is to be prejudiced by the fate of the earlier.

It is just on this point that we respectfully think the modern tendency is mistaken. The injustice of it is occasionally recognised. The Ridsdale case, for instance, ought, according to the modern theory, to have been irrevocably decided in the Purchas case. But in the Purchas case one side did not appear, and the decision was consequently given after hearing one side only; and it was felt that the ritualists ought to be allowed a chance of a fresh argument. The same reasoning would apply, though in a less degree, if the Purchas case had been argued on behalf of the ritualists, but only by some ignorant, inexperienced, or perhaps negligent counsel, or even if new facts bearing on the question had been discovered since the previous arguments. Another evil, if it be an evil, is produced by the fashionable theory. The importance of the first decision inevitably tends to excite a very practical interest in others beside the actual litigants, an interest very different to that of a mere sympathizer. Hence the lavish expenditure on preparation and counsel's fees, and the only means of providing for such expenditure, viz., the Church Union, and its sequel, the Church Association, *et cætera similia.*

The reader will gather from the foregoing considerations that the proposal of the Commissioners possibly meets an evil. It is, however, difficult to see whether the proposal does not go considerably beyond remedying this evil, and lay itself open to the strictures of Lord Penzance.

There is, no doubt, an enormous sacrifice involved in consenting to throw away the valuable decisions already obtained

by the expenditure of so much trouble and money. And it may be questioned whether it would have been possible to yield the point, if we were not haunted by the dread of appearing to defend, on merely technical grounds, decisions which ought to rest, and, as we believe, do rest, on unassailable, though perhaps somewhat abstruse, reasoning. One thing, however, we think ought plainly to be demanded, and as plainly ought to be readily conceded, and that is, that those clergymen who have taken orders on the faith of the existing law, shall not be prejudiced or liable to be prosecuted by reason of any change which may be made in that law.

And here we must draw attention to a very singular and important discrepancy between the report itself and the resolutions of the Commissioners on which it is supposed to be founded. At their sixtieth meeting, on the 5th April, 1883, the Commissioners passed the following resolutions: "That in cases of heresy and breach of ritual, the judges" (that is, the judges of the new Court of Appeal which the Commissioners have been voting about), "shall not be bound to state reasons for their decision; but, if they do so, each judge shall deliver his judgment separately, as in the Supreme Court of Judicature and the House of Lords." Upon that, it was next moved and carried: "That the following words be added, 'And the actual decree shall be alone of binding authority; the reasoning of the written or oral judgments shall always be allowed to be reconsidered and disputed.'" It is perfectly clear that the idea of making this principle retrospective never entered into the minds of the Commissioners at *that* time. They were only thinking of the new Court which they were recommending. That being so, we should like to know how the voting went when the Commission determined to make this principle retrospective. The minutes do not show any vote on this point. And if there was no such vote, we should like to be told who is the draftsman responsible for the following sentence of the report (p. 53): "We hold it to be essential that only the actual decree as dealing with the particular case should be of binding authority in the judgments *hitherto or* hereafter to be delivered, and that the reasoning in support of those judgments and the *obiter dicta* should always be allowed to be reconsidered and disputed." We have a right to know by what authority this most important difference between the language of the report and the language of the vote was made. It is the more astonishing, because in another passage of the Report (p. 58), the language of the vote has remained unaltered. It will be a great comfort if it turns out that the obnoxious words, "hitherto or hereafter to be delivered," have not, in fact, the authority of the Commission.

One thing we are glad to see left untouched, and that is the common law remedy by indictment. This is not because we want to see it used in the future any more than it has been used in the past. But it is a good thing to leave this old, and perhaps rather obsolete, Brown Bess in the armoury. It is a standing protest against the idea that temporal judges were never intended to decide on the meaning of the rubrics to the Prayer Book; for the remedy by indictment for non-conformity is given by the very same Act that established the Prayer Book. The same fact shows the baseless character of the episcopal claim of veto, for, of course, the Bishop could not veto an indictment.

Now, if we endeavour to take a broad view of the results, actual and probable, of this Commission, we shall inevitably find that they separate themselves into two distinct classes. One of these classes consists of the positive proposals of the Report itself. But quite independently of these proposals, whether they pass into law or not, the fact remains, that owing to the labours of this Commission much light has been thrown, not only upon the constitutional history of our present Church, but upon the statements and reasoning of those who would re-write that history. Their attack has been developed, and we know the worst. Truth must gain by every investigation; and the investigations of the Commissioners, inadequate as they are in many ways, and even where the conclusions drawn are manifestly erroneous, possess a permanent value which the actual recommendations cannot destroy. "Magna est veritas, et prævalebit," is the assured faith of every Protestant; while "Magna est varietas" is the motto of the chaotic congeries of propositions and claims which the ritualist spokesmen, in the pages of these two blue volumes, have crystallized for the benefit and amusement of posterity. This is an actual result; a harvest already garnered, which we may thrash out at our leisure.

But the present and the immediate future must always possess a temporary prerogative of interest for a practical generation.

The question, therefore, to be decided is, whether this Report is, or is not, too high a price to be paid for peace? There are some things that may be loved unwisely, may even be loved too well. And it is by no means clear that the peace we are offered is not one of them. But it is a very serious thing to reject a prospect of peace. We must remember, too, that every parliamentary interference with Church Courts will be an additional argument in the future as to the National status of our Church Establishment.

It is not necessary to decide this question at once, and it is

highly inexpedient that anyone should decide it without very mature consideration. The present writer will set an example in this respect by withholding his own provisional conclusions.

But inasmuch as the only thing that could possibly induce us to make these sacrifices would be the prospect of a permanent settlement, it must be confessed that the way in which the Report has been received by the ritualists seems at first sight such as to make it unnecessary to bestow any further consideration on the matter. If it is to be a mere instalment, if there is to be no peace, not even a truce, but only a shifting of the battlefield; then we shall say, and we shall claim the sanction and approval of such men as the Dean of Windsor in saying, that we prefer to remain as we are. We must, therefore, take guarantees of permanency.

A LAYMAN.

Review.

Apostolic Succession. The Teaching of the Church of England on the Alleged Necessity of Episcopal Ordination, in Unbroken Succession from the Apostles, to the Valid Ministration of the Word and Sacraments. By the Rev. JOSEPH BARDSLEY, D.D., Vicar of Bradford and Rural Dean. Hatchards. Pp. 21.

This is a pamphlet of no ordinary value. The substance of it was read at the Lay and Clerical Conference held at Southport, May 30th, 1883. The work contains, in a short compass, so much important historical matter, and so clearly reasoned, that it may well be strongly recommended to the laity and clergy generally for their careful perusal.

The work is especially seasonable, as the subject on which it treats is engaging the serious attention of some eminently learned and influential men, Presbyterians as well as Episcopalians.

The following extract from Dr. Bardsley's able argument will exhibit the value of his work:

Mr. Perceval, in a letter to Dr. Arnold, says that "the *first* of the points which the Tractators agreed to put forth was, the doctrine of Apostolic Succession as a rule of practice; *i.e.* (1) That the participation of the body and blood of Christ is essential to the maintenance of Christian life and hope in each individual. (2) That it is conveyed to individual Christians only by the hands of the successors of the Apostles and their delegates. (3) That the successors of the Apostles are those who are descended in a direct line from them by the imposition of hands, and that the delegates of these are the respective Presbyters whom each has commissioned. . . ." In one of the "Tracts for the Times" we are told that any person who presumes, without such a commission, to minister "in holy things, is all the while treading in the footsteps of Korah, Dathan, and Abiram." Palmer, in his "Treatise on the Church," declares that "the Presbyterians in Scotland separated themselves from the Church; that their rejection of the authority and communion of the existing successors of the Apostles in Scotland mark them as schismatics;