

questions not of judicial cognizance on which the Crown may desire to be solemnly advised by persons conversant with the law.

"We are therefore of opinion that no means at present exists for trying before any tribunal competent to decide the question whether or no Dr. Colenso, the present Bishop of Natal, has advocated doctrinal opinions not in accordance with the doctrine held by the Church of England; and assuming the present Bishop of Natal to have been guilty of an ecclesiastical offence, no steps can be taken to bring him, as such Bishop, before any tribunal."

In the United States, which were, as English colonies, settled under the authority of the English laws, the ecclesiastical law is laid down to the same effect. "Churches," said Chief Justice Shaw in 1850,\* "have authority to deal with their members for immoral and scandalous conduct, and for that purpose to hear complaints, to take evidence and to decide; and upon conviction to administer proper punishment by way of rebuke, censure, suspension and excommunication. *To this jurisdiction every member, by entering into the church covenant, submits and is bound by his consent.*"

In Louisiana, Mr. Justice Nicholls held in 1843 † that the treaty of cession to the U. S. "guarantees to the inhabitants of Louisiana the unrestrained exercise of their religion, and recognizes the right of self government in the Roman Catholic Church, as then known and established." In Appeal, Martin J., reversed this decision, the learned judge being of opinion "that the treaty of cession, art. 3, provides that the inhabitants of the ceded territory, shall as soon as possible, be admitted into the Union or Confederation of the U. S. and that in the *meantime* they shall be protected in their persons, property and the free exercise of their religion. Since the 30th of April 1812, the day on which Louisiana took her rank as an independent State among her sisters, that article of the Treaty has ceased to have any political effect whatsoever, and has become obsolete." Thus in Louisiana no treaty guarantees the free exercise of the Church of Rome; yet the learned judge (Martin) concluded: "Neither the Pope, nor any bishop, has, within this State, any authority, *except a spiritual one*; and as courts of justice sit to enforce *civil obliga-*

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\* Farnsworth vs. Storrs, 5 Cushing 415.

† The Church of St. Francis of Pointe Coupée v. Martin, 4 R. 62.