

THE REPORT OF THE ECCLESIASTICAL COURTS COMMISSION.

WHATEVER may be the legislative fruits of the Ecclesiastical Courts Commission, it has at least produced a mass of lucidly arranged information of the highest value to the historical student, and which ought to make the reconstruction of our Ecclesiastical judicature tolerably easy to the Legislature. This much is evident from even a cursory examination of the Report just issued by the Commissioners, of which we proceed to give the salient features, reserving for further consideration, if necessary, any points which may seem to require fuller elucidation.

The recommendations of the Commission are preceded by a learned and interesting historical summary, in which is traced the development of the ecclesiastical judicature in England from the earliest to the present time, and which also contains a useful bird's-eye view of the ecclesiastical judicature of the rest of Christendom. After this comprehensive survey, the Commissioners proceed to make their recommendations, which are arranged under three heads. The first head embraces the procedure in cases of misconduct and neglect of duty on the part of Clerks in Holy Orders. There is here little ground for controversy or difference of opinion; so we may pass on to the next head, which deals with cases of heresy and ritual. As the law now stands, the Bishop has an absolute veto on the prosecution of a suit. It is in his discretion to allow the suit to go on or to stop it on the threshold, subject only to the condition of recording his reasons. If he allows the suit to go on, the matter passes at once out of his hands, and he is thenceforth powerless to stop proceedings, whatever mischief may arise from the litigation. This has been proved conspicuously in the cases of Mr. Green and Mr. Mackonochie. The Bishop of Manchester could not have prevented Mr. Green's imprisonment, nor have released him from prison, however anxious he may have been to do so; nor could the Bishop of London have prevented any of the lamentable consequences which have ensued from his initial mistake in allowing the Church Association to set the law in motion. On the other hand, the Public Worship Regulation Act seems, on one point, to be more favourable than the Church Discipline Act to the defendant. Under the Church Discipline Act there is no limit to the qualifications of the prosecutors. Anybody may prosecute. Under the Public Worship Regulation Act the prosecutors must be three aggrieved parishioners, resident for one year in the parish. But, in practice, this limitation has been found to be of no use whatever. Whenever the Church Association failed to find the requisite number of qualified prosecutors, they made no scruple to import them from outside for the legal period. In a notorious case one of those importations was a released felon. The futility of this supposed safeguard against mere vexations and malicious prosecutions has induced the Commission to revert to the old plan, which leaves the right to prosecute perfectly open and unrestricted. This would throw the responsibility for the prosecution entirely on the Bishop. We are sorry to observe that one of two of the Commissioners dissent from this part of the Report. "The Archbishop of York, in signing the Report, is compelled to record his dissent from it in two important particulars." His Grace, in the first place, objects to trust the Bishops with absolute discretionary power in stopping a prosecution *ab initio*. "Except with his [the Bishop's] permission, the Courts will be closed entirely to a layman, and no layman will have the right of appeal from this absolute decision, however great the wrong which he may conceive himself to have sustained." Why does the Archbishop specify the "layman" in particular? He is in no worse plight than the clergyman. Both are placed on precisely the same footing by the recommendations of the Report in regard to the rights of the prosecutors. His Grace's *ad invidiam* appeal on behalf of the layman seems to us a little out of place, for our experience is that the layman is generally, very well able, to take care of himself; and the Archbishops concern for the rights of the layman stands in harsh contrast with his next objection. "Great evils," he says truly, "have resulted from litigation in the past." How does he propose to lessen the evils? By placing the Clergy completely at the mercy of the Bishop? He thinks that the Bishop's discretion is to be absolutely trusted where a layman is concerned but to be absolutely trusted where a clergyman is concerned. "To prevent the evils" of litigation "for the future, something should be done to afford a means of direction and arbitration, without resort to the Courts." Therefore, "Let the Bishop have the power to make an order in all matters affecting the conduct of public worship, which shall be binding until reserved by the Court of Appeal." It is a simple fact that if the Bishops had possessed this power during the last fifty years, all the improvements in public worship which have taken place in the interval would have been prevented. The Bishops opposed them all. The Archbishop of York

would, in fact, give the Bishops absolute power precisely where experience shows that it would have been mischievous, and would deprive them of it where experience proves that the possession of such power is most beneficial. The Bishop's veto saved the Church the scandal and injury of the prosecution of such men as Mr. Carter, of Clewer. Does the Archbishop of York know of a single instance where the exercise of the Bishop's veto has done harm? The thing to aim at chiefly—at least, by those who wish to avoid Disestablishment—is to discourage as much as possible prosecutions for heresy and ritual offences. The Archbishop of York's two proposals would stimulate them.

Under their second group of recommendations the Commissioners deal with the Diocesan and Provincial Courts, which were practically destroyed by the Public Worship Regulation Act. The Commissioners propose to restore them to their original vitality. They recommend that the Diocesan Court shall consist of the Bishop, with whom shall sit a legal and a theological Assessor. The legal assessor will be naturally the Chancellor of the Diocese, or some other person learned in the law, at the discretion of the Bishop. The Theological Assessor is to be chosen *pro hac vice* by the Bishop, with the advice of the Dean and Chapter. An appeal, of course, will lie from the Diocesan to the Provincial Court; and here the Commissioners make some important recommendations. The appeal is to go to the Archbishop in person, and it will rest with him either to let the Official Principal hear it or reserve it for his own adjudication, assisted by the Official Principal as assessor. In the latter case, the Archbishop will be empowered to appoint any number of theological assessors, not exceeding five, to sit with the Court. And these assessors must be either a Bishop within the Province, or a Professor, past or present, of one of the English Universities. From the Provincial Court an appeal will lie to the Crown, which is to exercise its prerogative through an entirely new Court, namely, "a permanent body of lay Judges, learned in the law." The number summoned for each case shall not be less than five, and they are to be "summoned by the Lord Chancellor in rotation." The words which we have printed in italics are important. They preclude the suspicion of packing, which has been occasionally raised, by the mode of selecting the members of the present Final Court of Appeal. The proposed new Court is to be empowered in doctrinal cases, after the name of the House of Lords in legal cases, to consult experts, namely, the Archbishop of Bishops of the Province, or of both Provinces. But this consultation is to be obligatory only on the demand of one or more members of the Court. The Court shall not be bound to give its reasons for its decisions; but if it does state its reasons, each judge shall deliver his own judgment separately. One important recommendation is that the bare words of the decree are alone to be legally binding. The reasonings on which the decrees are based are to be open to controversy and reconsideration. The affect of this is that the new Court is not to be bound in any future case by any of the past decisions of the Judicial Committee. The Report is explicit on this point. "Considering," it says, "how widely different a matter the legal interpretation of documents must often be from the definition of doctrine, 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."

The third group of recommendations deals with the constitution, procedure, and powers of the Provincial Courts. The effect is to repeal the Public Worship Regulation Act, and restore the old Courts to their pristine vigour. The Dean of the Arches is to be elected, and is required to qualify, in the ancient way; and all spiritual sentences are to be pronounced by the Bishop in person in the Diocesan Court, and by the Archbishop in the Provincial Court. The two Primates are also to be empowered, if they think fit, to appoint the same person as Official Principal for both Provinces. And whenever the Final Court of Appeal varies the sentence of the Court below, it must remit the cause to that Court for execution of the judgment.

We have now enumerated the principal recommendations of the Royal Commissioners. They are not likely to give complete satisfaction to any party, and this may be one of their chief merits in the eyes of statesmen, as indicating the possibility of an equitable compromise. The Commissioners, however, lay stress on the fact that their recommendations must be regarded "as a whole," especially with regard to the constitution of the Final Court of Appeal. They reconcile themselves to the entirely secular character of that Court, on the sole condition of the acceptance of their recommendations on other points. They plainly warn us that their recommendations as to the Final Court must be considered as cancelled by any important infringement of the rest of their scheme.

This must be remembered when we consider the reservations of a few of the Commissioners. We have already commented on the reservations on the Archbishop of York, and shall only say here that they touch the essence of the scheme. That observation does not apply to the reservation of Mr. Freeman, in favor of not restricting the Final Court to laymen "of a single profession." There is much to be said in favour of having persons learned in history or archaeology on the Court, Nor do we see why the recommendation of Lord Devon, the Bishop of Oxford, and Dean Lake should not be adopted, namely, that the Final Court should be obliged in any case of doctrine to consult the Bishops. Practically, it would make very little difference, since the Court would not be bound in any case to follow the advice given it. It would, however, be a satisfaction to the feelings of a large number of Churchmen, not confined to one party. If the reference to the Bishops is to be optional, there will be room for suspicion of partiality; and this is, above all things, to be avoided. We must also express our dissent from the recommendation which requires the Judges of the new Court to make a declaration of membership of the Church of England. The declaration is quite futile, and mischievous in addition. It would deprive the Court of the incalculable benefit of having such a man as the late Sir G. Jessel shedding the light of his luminous intellect and severe impartiality on its deliberations. [At the expense of all decency—a Jew settling Christian disputes.—Ed. D.C.] Since the Court is to be purely secular, let there be no attempt at impressing a fictitious character of orthodoxy upon it.

We cannot dismiss the subject without calling special attention to an important fact which the Report, by chance or by design, has emphasised. "It has been held," it says, "by the present Dean of the Arches that on a living becoming void, the inhibition comes to an end." Lord Penzance laid this down very distinctly in the case of Mr. Green. He released Mr. Green from prison on the ground that the voidance of his living had exhausted his inhibition, and consequently his punishment. The deprivation of Mr. Mackonochie seems to be in the very teeth of this ruling, for Mr. Mackonochie's living had been voided long before Lord Penzance proceeded to pronounce sentence of deprivation upon him. It is probable that on this ground alone—and there appear to be other grounds—Lord Penzance's sentence would be reversed on appeal. It is, indeed, extraordinary that he should have gone out of his way to pronounce such a sentence,—he, a member of a Royal Commission which has pronounced sentence of death on his ambiguous Court, as well as on the Judicial Committee in its character of a Final Court of Appeal in Ecclesiastical Causes. One inevitable result of the recommendations of the Ecclesiastical Courts Commission must be the suspension of all ecclesiastical suits during the interregnum between the moribund Courts and their successors.—*Spectator*.

A NEW ART ENTERPRISE.—It has long been known that some of the finest Steel Engravings were being executed by the Bank Note Co. of Montreal, but chiefly in the line indicated by their title. The exceptionally high skill of their artists has now been called to supply a series of popular Engravings to be issued by the Art Publishing Co. of Hamilton, Ont. The first is "The Return from the Horse Fair," after Rosa Bonheur's splendid picture. These steel engravings are to be sold for the very low price of 75 cents each. We trust the enterprise will be a great success, such engravings are so cheap and so good, so lasting and fresh in comparison with common chromos or imitations of engravings, that whoever secures one will be always in possession of a picture worth looking at and pleasing to the eye.

Home & Foreign Church News.

From our own Correspondents.

DOMINION.

PROVINCIAL SYNOD.

THE FIRST DAY'S PROCEEDINGS.

The triennial session of the Anglican Synod of the Ecclesiastical Province of Canada, was opened with appropriate ceremony on inst. The members of Synod assembled in Synod Hall about 10 o'clock, and, forming into procession, proceeded to Christ Church Cathedral, where divine service was celebrated. The Metropolitan, Bishop Medley, of Frederic-