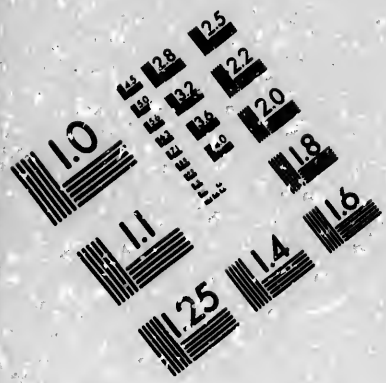

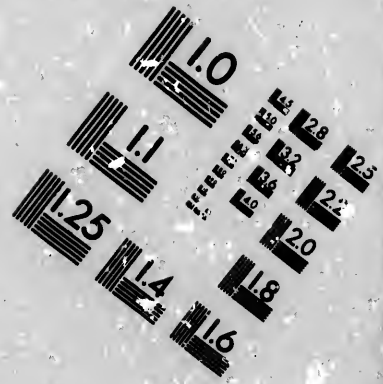

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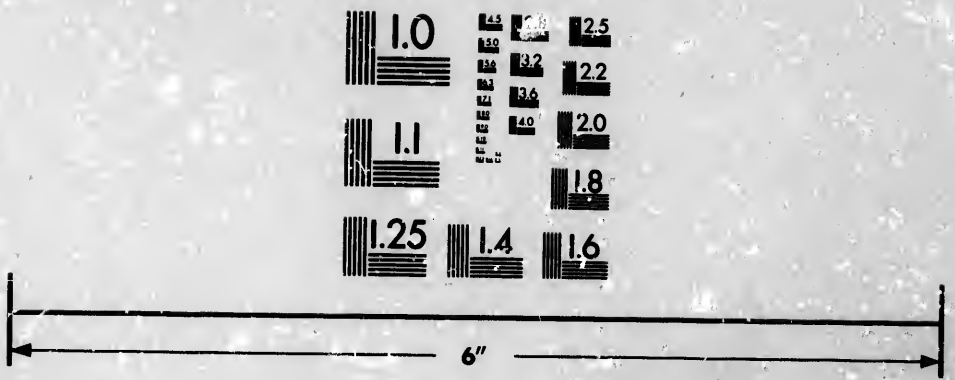

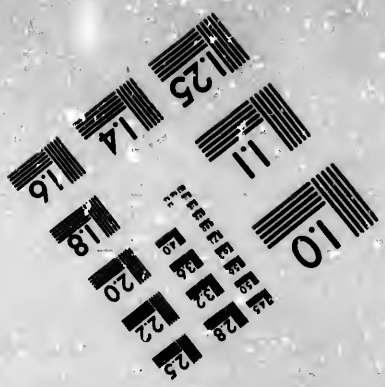

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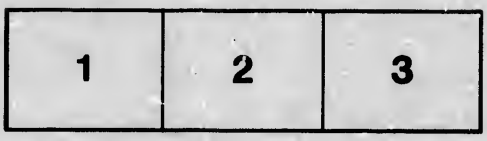

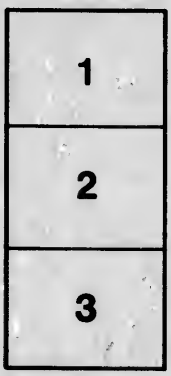

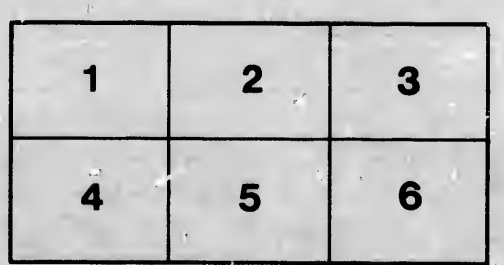

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"SYNODS."

THE BISHOP OF GRAHAMSTOWN

AND THE

COLONIAL CHURCH.

HALIFAX, N. S.
PRINTED BY JAMES BOWES & SONS, HOLLIS STREET,
1868.

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THE BISHOP OF GRAHAMSTOWN AND THE COLONIAL CHURCH.

It has been truly stated of the reports published by the Lambeth Conference, that they contain a complete scheme for the organisation of the Colonial Church, without the interference of parliament. It was, indeed, for this purpose especially that many of us came from the ends of the earth, at the express desire of our clergy and laity, that by common counsels and united action we might either form or strengthen those bonds of Church fellowship and order which hitherto we have possessed either imperfectly or not at all. These we could not expect—even if we desired—that the State would establish, and determine their conditions and limits, since in our colonies it emphatically disclaims all relations with our Church except such as it holds towards other religious bodies, and bids us, through the highest judicial tribunal in the realm, to consider ourselves "in no better, but in no worse position" than members of the Church of Rome or of the Wesleyan community.

The organisation, however, which these reports propose for the Colonial Church is no novelty. Synods have now for some time been in operation in many colonial dioceses, and in some provinces. The ecclesiastical tribunals which are recommended are already in existence in many colonies. Several bishops in Canada and New Zealand have been elected by their dioceses. Declarations of submission to synods are used very generally, wherever the authority of these assemblies depends on a consensual compact. All that the reports attempt is to consolidate and harmonise that which hitherto has been partial or disconnected.

The scheme of government which has been thus sketched out has been assailed, on one side, as giving a position and office to the laity which does not belong to them according to the order of the Church; on the other, it is represented as a bold attempt to establish a vast system of ecclesiastical

despotism. Such conflicting charges might, perhaps, be left to neutralise one another, and it is not my purpose to defend the reports from the various objections that may be made against their details. Those, indeed, who view the whole scheme with suspicion as a conspiracy against the liberties of clergy or laity, are so ingenious in detecting evidences of this, that it is impossible to anticipate or follow their objections. When, for example, an ex-M.P. professes to give a searching analysis of the scheme, and in trenchant style—much applauded by those who have never troubled themselves to study the original documents—declares it a firmly compacted system of tyranny unprecedented in the history of the world, except in the Church of Rome, it almost staggers our belief in our own intentions. We begin to fear, at least, lest, inadvertently, we have called into being some ecclesiastical monster. It is a relief to find, however, that this searching analysis is a series of most singular mis-statements, either expressly contradicted by the very language of the reports, or the mere offspring of the writer's lively imagination: such as that "it appears to be left to the bishop to suggest how many laymen, or how few" should attend a synod; that "any clergyman whom the bishop rejects will be excluded from the synod;" that "two bishops may decide the faith and fate of the third;" that "in the case of a clergyman the bishop sits alone on his tribunal;" that on the provincial tribunal of appeal the clergyman "will find his own bishop seated beside two other bishops," &c. It really comforts one to find that the writer must so utterly despise sober matters of fact in order to prove his case. And when even the *Times* newspaper is driven to the argument, in its condemnation of the proposed central tribunal, that "as seven are to form a quorum, and there is nothing said to the contrary, it follows inevitably that five American and two Scotch bishops might pronounce an irreversible sentence against an English clergyman without the presence of a single English bishop" which is about as reasonable and logical as to argue that because there are Irish and Scotch enough to make a house in parliament, therefore an English question might be settled without the presence of a single Englishman; and when it boldly affirms that "it is no mitigation, but rather an aggravation of the case," that the plan "depends for its adoption on the free will of the

Colonial Churches, and that having adopted it any Church would be equally free to withdraw from it;" such arguments cannot fail to soothe one's apprehensions.

My purpose, I have said, in the following remarks, is not to answer these or other objections to the scheme, but to call attention to some general principles which have come under my observation during my experience of Colonial Church life. My only scruple in doing so is lest, from my official relation to the two committees which prepared the reports containing this scheme of government, I should be thought in any degree to express the opinions of others besides myself, or to be giving an official exposition of these reports. Nothing could be further than this from the true state of the case. But I do not think that such a consideration ought to deter me from stating my own views, if I can contribute anything to a right understanding of these important questions. Persuaded as I am that the proposed scheme is one of constitutional government, necessary alike to perserve order and to prevent despotism, I am very desirous that those who feel the importance of such government should not regard our present action with prejudice.

The scheme sketched out in these reports is two-fold. By far the most important branch of it is that which defines the form of government, the actual constitution of the Church. The other, which deals with the tribunals for the exercise of discipline, is dependent on the former, as all exercise of judicial functions must be subordinate to legislation, and must, in due course, be of the same character. In the Church as in the State it would be impossible for arbitrary judges to continue under a constitutional government.

I. The government proposed for the Colonial Church is based on the great principle that nothing shall be done except according to fixed rules, which rules shall be determined by the general consent of those whom they affect.

If the ecclesiastical law of England either had force *proprio vigore* in our colonies, or were at all applicable, without great alterations and additions, to our unestablished and unendowed Churches, it would no doubt save us much difficulty. But no one who has had any experience of Colonial Church life is ignorant, that these laws are, as a whole, entirely unsuited for the altered condition of the Church, and that in

attempting to adapt them to our circumstances both bishops and clergy are continually meeting with difficulties, and often arriving at very different conclusions. To leave the civil courts to decide for us in each case how far English laws are applicable to us—which would be the case unless we should form some definite compact—would be to abandon us to uncertainties, would create endless confusion, and lead to interminable disputes. It would make it necessary for the bishops to retain in their own hands, as far as possible, those arbitrary powers which the English law gives a bishop over licensed curates, instead of placing their clergy in the position of incumbents. The question, then, is, how we shall adapt the laws and usages of the English Church to ourselves so as neither to depart from fundamental principles, nor yet apply them without consulting the interests of all concerned. It is difficult to conceive any other method of doing this than that already partially adopted, of synods in which bishops, clergy and laity have a voice and bear a part.

The force of the decisions of these synods must be determined by mutual agreement. But I think it important to observe that the exact amount of this authority by no means represents the real power of this mode of government. A government by representative assemblies, in which all classes in the Church have a voice, cannot be a government of bare unsupported authority. The bishop who meets his clergy and laity in synod gives up any claim to an arbitrary irresponsible authority, in order that he may possess the real power—far greater, no doubt, but a just and reasonable power—of influencing the minds of others by reason and argument. The mere fact that questions are in these assemblies argued out in public, and that men of differing opinions can express their opinions freely, of itself makes it impossible that any arbitrary measure should be enforced.

In the scheme suggested in the report on synods even objectors, who take the trouble to examine it, allow that the lay representatives, at least, are to be freely elected by members of the Church. This is, in fact, as any one who knows the Colonial Church is aware, the first essential to the success of synodical action. They suspect, however, a conspiracy against the clergy in the recommendation that "the clerical members of the synod should be those clergy who are recog-

nised by the bishop, according to the rules of the Church in that diocese, as being under his jurisdiction." They forget that the rules of the Church in the diocese are those which, being made by consent of all, limit the exercise of the bishop's power; that the recommendation, therefore, is that it should not be left to the bishop's own judgment to determine what clergy should attend the synod; that he should neither introduce nor exclude any except according to fixed rules.

Some remarks by an organ of the Dutch Reformed Church at Cape Town, on an address made by me to my Diocesan Synod last July, are so pertinent that I quote them, as showing what those who are outside our communion think of government by synods. The writer does not, I think, correctly represent the effect of synods when he describes them as giving the governing power to the laity through the command of the purse; for such organization tends to correct undue influences of this nature, which otherwise must result from the voluntary system. Some of his remarks also are quite inapplicable in many colonial dioceses, in which clergy and laity of all schools of opinion heartily co-operate with synodical action; but, as a whole, nothing can be more just. He says:

"The notion of an Episcopalian Church managing its own affairs, exercising discipline, just like a body of Wesleyans or Presbyterians without being hampered by the traditions of English practice, is something so foreign to the English way of thinking that earnest and good Christians look at it with suspicion. As soon as a Colonial bishop or synod talks of independent action in matters of discipline and government, people take the alarm, and fancy that priestly despotism is forging fetters for the Protestant liberties of the laity. Looking at the matter from an elevated point of view—that of the constitution of the Church on New Testament principles, and forgetting the Erastian and Latitudinarian practice of the English Church, it certainly seems strange that earnest Christians should be afraid of their Church being self-governed. In the United States of America the Episcopal Church occupies a position similar, we should think, to that in which it is by the course of events to be placed in the British colonies. In America synods work well; the laity have the power of making their voice very distinctly heard in the ecclesiastical assemblies. There is as little danger of spiritual despotism in the episcopal as in other churches of that country; and why should not such be the case also in South Africa and the other colonies? True, the clergy in this country do generally represent a peculiar type of Churchmanship, as they are almost all of the High Church

party. But let synods once come to the possession of an unquestioned standing, and let the laity heartily share in their proceedings and it will be found that they will gradually absorb the true governing power, which at present really rests with the bishop. The laity will have the command of the purse, and just as little as the clergy in the synod of the Dutch Reformed Church are able to carry measures contrary to the convictions or leanings of the lay elders present, so little will clerical domination be able to lord it over the laity in the English synods. But then the Evangelical party must not keep aloof as it is now doing from synodical action. It ought to leave the unfortunate position it has taken up, and boldly throw itself into the movement, trusting to the force of the popular or lay elements in the Church and its synod for a safeguard against extreme High Church measures."

The real danger in government by synods is that which more or less attends all government by representative assemblies—the danger lest a majority should domineer over a minority. The principle of this form of government that the will of the lesser part should yield to that of the greater, is doubtless sound and good; there can be no law and order except on such conditions. But it is a serious evil when a majority, perhaps acting under temporary excitement, or, at all events, partial and unsympathising, forces measures against the wishes, or principles, or even the prejudices of a minority; and this danger exists especially in small communities, such as our colonial dioceses are. If it were not, indeed, for this danger, our present attempt to extend the organisation would be less necessary. But the safeguards against this evil are many. First of all, free public discussion, by means of which alone a minority with anything reasonable to say for itself can always restrain arbitrary action. Public opinion in the colonies is as powerful in its little sphere as in England, in some respects more so, for it affects finance more directly. Again, the constitution of the synod is calculated to check the evil. It is possible, of course, but not very probable, that a majority of the laity would agree with a majority of the clergy in oppressing a minority. The necessity for the bishop concurring, which follows from the government of the Church being a constitutional monarchy, and not republican, also affords a protection to a minority. Generally, there are much the same causes in operation on a small scale to prevent a bishop from withholding his concurrence as there are to prevent a constitutional Sove-

reign from refusing to assent to an act of parliament. But if in any diocese there is a minority whose objections to a measure do not appear to a bishop to have been sufficiently weighed, he may with reason and justice defer his consent to its execution. As far as possible these synods balance the different forces and interests in our dioceses, and when they are fairly worked prevent our action from being one-sided. No doubt, partly from the small extent of the sphere of action, and partly from the mode of government being comparatively new, exceptions are to be expected. But how are these to be avoided except by enlarging the sphere—correcting the action of a single diocese by that of several dioceses uniting together in what is ecclesiastically called a province? And if it is possible to extend the sphere yet further, and to provide against idiosyncrasies (so to speak) of single provinces by the united action of the whole Anglican communion, it surely cannot be considered *a priori* an objection to the scheme.

The proposal in the report, as to the possible united action of the various provinces of the Colonial Church with the Established Church of England, is no doubt open to a class of objections which do not lie against its other recommendations. Some have objected to the report as not consistent with itself in not proceeding to recommend a synod of the whole Anglican communion similar to those in the Colonial Church; others again, who can understand no authority in the Church outside acts of parliament, regard as revolutionary even the modest suggestion of a congress, with such authority as "might be derived from the moral weight of such united counsels and judgments, and from the voluntary acceptance of its conclusions by any of the churches there represented." There would be, however, it must be confessed, great difficulty in the admixture in such a council of incongruous elements. Those who are themselves entrenched in a secure legal position, and bound to a fixed legal system, can hardly appreciate the trials, or even, it seems, understand the position, of others whose churches have no relation to the State. On the other hand, those who are accustomed to the free action of unestablished Churches, with difficulty realize the standing point of those who must regard every Church question in its relation to the State.

The only method by which the difficulty can be solved is that suggested in the report, of leaving it perfectly free to all Churches that may be represented in such a council to accept or to refuse its conclusions as they may be able or disposed. The immense practical value of united counsels will not be diminished by its liberty. But further, the practical difficulty of bringing clergy and laity from all parts of the British empire complicates the question, and makes it almost necessary that they should be present only as consultees, since it is very improbable that a sufficient number would attend to represent adequately the clergy and laity of the whole Anglican communion. The power of such a congress, as compared, for example, with that of the late Conference, must be derived, both from the publicity of its debates and proceedings, and from its decisions being formed after the opinions of its clerical and lay members had been freely expressed.

II. The judicial system proposed for the Colonial Church is framed upon the principle, distinctly marked out for that Church, when not established by law, in the judgment of the Judicial Committee of the Privy Council in the case "Long v. Bishop of Capetown."

"Where any religious or other lawful association has not only agreed on the terms of its union, but has also constituted a tribunal to determine whether the rules of the association have been violated by any of its members or not, and what shall be the consequences of such violation; then the decision of such tribunal will be binding when it has acted within the scope of its authority, has observed such forms as the rules require—if any forms be prescribed—and, if not, has proceeded in a manner consonant with the principles of justice.

"Such tribunals, however, 'are not, in any sense, courts; they derive no authority from the Crown; they have no power of their own to enforce their sentences; they must apply for that purpose to the Courts established by law; and such Courts will give effect to their decision, as they give effect to the decisions of arbitrators, whose jurisdiction rests entirely upon the agreement of the parties.'"

It is not my purpose to discuss the recommendations of the reports as to the tribunals necessary for the unestablished Churches in the colonies. It is sufficient to observe that they leave the constitution of all diocesan and provincial tribunals to the synods, in which nothing can be decided except by the common consent of bishops, clergy, and laity. It is difficult to conceive how any more liberal provision could be made.

The really difficult question, especially in the trial of a clergyman, is whether any tribunal of this nature should exist out of the colonies. In the case of ordinary offences against morality or church order, the universal feeling, I apprehend, would be that such matters should be disposed of on the spot. But in cases of doctrine, and of discipline in which doctrine is involved, would it serve to protect the clergyman himself and the interests of the whole Church if there should be some central tribunal to which appeals could be carried? This tribunal would have to determine—not what is the faith of the Church—but whether such teaching or practice is or is not permissible according to the standards of the Church. This is exactly what the Judicial Committee of the Privy Council professes to decide, and, although, the *Times* condemns it as worthy of the Inquisition, no other form of decision would be so favorable to the accused. If, however, there is to be a tribunal for appeal in spiritual questions, it cannot differ in its nature from those in the several provinces. No one who has considered the subject fails to perceive that it is in the nature of things impossible to have one final court of appeal for the Established Church of England and for the unestablished Colonial Churches; in unestablished Churches there can be no "ecclesiastical causes" to be disposed of by ecclesiastical courts, and all questions as to doctrine and discipline in them come before the Privy Council only as they are indirectly involved in civil causes, which are brought to England on appeal after filtration through the civil courts of the colony.

The report of the Lambeth committee on a central ecclesiastical tribunal for the Colonial Churches itself indicates how much difference of opinion exists as to the expediency of forming such a tribunal. But if any one sees objections either to the existence or to the proposed constitution of the central tribunal, it is surely some "mitigation," and not an "aggravation" of the case, that it must wait for the consent of the Colonial Churches to call it into life, so far as they are affected. If they refuse to co-operate, at all events they are no worse off than they were already.

There is a question which it was not the province of these reports to discuss, but which underlies the whole, namely, What is the relation between these ecclesiastical

tribunals and the civil courts both in England and in the colonies? It is impossible, indeed, to answer this question more lucidly than is done in the judgment of the Privy Council quoted above. Still it remains to be determined what would be regarded as the scope of authority of such tribunals. This the court of law will decide, and it cannot be supposed that any declaration or contract that could be introduced into the organization of the Church could, or ought to, prevent the courts from examining this point, and also whether the tribunal "has proceeded in a manner consonant with the principles of justice." The declaration recommended in the Lambeth report,* which is a modification of that which is already used in New Zealand, certainly in no way interferes with this. As to the cases in which a bishop might legally enforce such a declaration, and those in which he would be debarred, a dispatch, dated Feb. 4, 1864, by the late Duke of Newcastle when Secretary of State for the Colonies, gave the opinion of the law officers of the Crown on this subject for the guidance of colonial bishops, and nothing has since occurred to affect the principles there laid down, with which the recommendation of the report on this subject is entirely in agreement.

H. GRAHAMSTOWN.

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* In the declaration recommended for clergymen. "the 'tribunal,' appointed by the synods of the aforesaid province and diocese," is an obvious misprint for 'tribunals.'