The Legal News.

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VAGRANCY.

Some English journals are asking that the penalties enacted by the law of vagrancy should be enforced, especially those applicable to incorrigible offenders. At present, it is said, the provisions of the law respecting "incorrigible rogues" are practically inoperative, and are limited to bringing before the court from time to time a few aged offenders, the sturdy beggar rarely making his appearance. The law still provides for the whipping of males previously convicted, but the statute is not enforced. Legislation on this subject has undergone a wonderful alteration in the direction of clemency. Sir James Stephen, in his History of the Criminal Law, thus refers to some of the old enactments upon the subject: "Some acts were passed in Henry VII's time which authorized constables and others to put vagrants into the stocks instead of committing them to gaol; but the next act of much importance on this subject was passed in 1530: it was 22 Hen. 8, c. 12, and imposed most severe penalties on vagrants. The impotent poor were to be licensed by the magistrates to beg within certain local limits. Out of those limits begging was to be punishable by two days and nights in the stocks with bread and water. Begging without a letter was to be punished by whipping. Vagrants, 'whole and mighty in body, and able to labor' were to be brought before a justice, high constable, mayor, or sheriff 'who at their discretion shall cause every such idle person to be had to the next market town, or other place most convenient, and to be there tied to the end of a cart naked, and be beaten with whips throughout the same town or other place till his body be bloody by reason of such whipping.' After this he was to be sent back to labor, being liable to more whipping if he did not go straight home. 'Scholars of the universities of Oxford and Cambridge, that go about begging, not being authorized under the seal of their universities,' were to be treated as 'strong beggars.' 'Proctors and pardoners going about without sufficient authority,' people pretending to knowledge in 'palmistry or other crafty science' and some others of the same sort, [including, we suppose, weather prophets] were to be even more severely handled. For the first offence they were to be whipped for two days together, for the second offence 'to be scourged two days, and the third day to be put upon the pillory from 9 till 11 a. m., and to have an ear cut off. For the third offence the same penalty, the other ear being cut off.'

RESTRAINT UPON TRADE.

The bar are ringing the changes upon the objection to the constitutionality of local statutes on the ground of interference with trade. One of the latest cases came up the other day before Chief Justice Wilson, at Toronto, *in re Daniel McKnight*, in which it was seriously contended that by-law No. 1231 of the city of Toronto, regulating the keeping of cows and pigs within certain limits in the city, is illegal, as constituting a restraint upon trade and commerce. It was urged that the by-law should not be directed against the animals objected to, unless they are proved to be nuisances. The notions of people about nuisances differ pretty widely, and magistrates would often have a difficult task to decide, on the accumulation of testimony, whether Patrick's pig was or was not sufficiently cleanly to be recognized as a lawful citizen. We imagine that the restraint upon trade would lie rather in the toleration of such practices as the keeping of pigs under the windows of one's neighbours, because traders with noses would be moved to carry themselves and their financial abilities elsewhere.

INTERNATIONAL COPYRIGHT.

To judge from the length and the variety of the correspondence upon the subject of international copyright which appears every day, or almost as often, in the columns of powerful contemporaries, it would appear to be in a fair way to become one of the burning questions of the day. The nations most interested in the solution of the problem are the great English speaking nations of Englishmen and Americans, and this for obvious reasons. Every scientific or historical work, every popular novel, every poem, and indeed every legal work, is, to a certain extent, calculated to obtain an equal

sale in either country, and it is not strange that authors should complain bitterly of the literary piracy which is now said to have become a custom of the publishing trade. To the honor of English publishers we believe it to be correct to say that, in this respect, they are better than their brethren in the United States, but they are not entirely without reproach. To the credit of both Americans and Englishmen again be it said, that until quite recently the honest etiquette of an honorable trade was sufficient to prevent the necessity of considering means by which literary piracy should be checked. That necessity has arisen now, and the problem presents itself to a practical mind in two different aspects. In the first place, it is proper to inquire what the law upon the subject acfually is at the present time; and in the second, it may not be improper to consider any amendments which would be likely to prove acceptable to both nations as a whole, and which are sanctioned by the principles of justice.

The English law upon the subject, which must be our chief concern, is, beyond question, in a very doubtful state; even Mr. Shortt, in his admirable work upon the law relating to works of literature and art, being unable to express a clear opinion as to its positive condition. In showing us this he does not, however, fail to indicate the fact that the difficulty has presented itself to judges upon several occasions, and that they have found it as difficult of solution as any legal writer. With a preliminary confession of obligation to the distinguished author, to whom reference has been made, it may be well to trace the history of some of the cases which have been decided with regard to this vexed question. In *Cocks* v. *Purday*, 5 C. B. 860, it was held that an alien residing abroad would acquire copyright in any work first published by him in this country as author, or as author's assignee, on the ground that copyright is purely personal property, and the same doctrine was afterward upheld in *Boosey* v. *Davidson*, 13 Q. B. 257, with regard to a musical composition by a foreigner. But in *Boosey* v. *Purday*, 4 Exch. 145, the Court of Exchequer refused to follow the above view, and expressed a precisely contrary opinion, Chief Baron Pollock saying (*inter alia*) that the Legislature must be considered *prima facie* to mean to legislate for its own subjects only. Finally, in the case of *Boosey* v. *Jeffreys*, 4 H. of L. Cas. 843, all the judges were called upon to give their views upon a similar point. Four (Barons Alderson and Parke, Chief Baron Pollock, and Chief Justice Jervis) were of one opinion, that a foreigner must be a resident of England at the time of the publication of his work there if he wished to secure the copyright, and Lord Cranworth, Lord Brougham, and Lord St. Leonards agreed with them; on the other hand six judges (Justices Williams, Erle, Wightman, Maule, Coleridge and Crompton) were of the contrary opinion. The Law Lords rested their judgment upon the argument of Chief Baron Pollock, in *Boosey* v. *Purday*, which has already been quoted. The case was again questioned in *Routledge* v. *Low*, L. Rep. 3 H. of L. Cas. 100; 18 L. T. Rep. N. S. 874, where it was held that the real condition of obtaining the advantage of copyright was the first publication of a work in the United Kingdom; and the view taken by Lord Cairns and Lord Westbury in this case is supported by the terms of the naturalization act of 1870, sect. 2 of which cannot be construed so as not to include copyright. From the statement of English law which has been made, several inferences are obvious. Any author who chooses to resort to the United Kingdom, or to any part of the British dominions, at the time when he is publishing any work for the first time, acquires copyright of that work within the sphere of the English law, and, upon going through certain formalities of registration, and the like, is entitled to put the law into operation against any persons who infringe upon his rights. The great essential is that the first publication should be in the United Kingdom, and unless this condition be fulfilled an English author is in no better position than a foreigner. It is also obvious that this state of the law is not such as to commend itself to English authors, who would be better pleased if they were enabled to secure the copyright of their works in America and England at the same time. This, at present, it is not possible for them to do, nor will it become so unless, under the provisions of the International Copyright Act, a reciprocal arrangement is made with the United States by which we shall confer on American authors the same privileges as we confer upon our own, and they in their turn, shall protect the property of Eng-

lish authors in America. Such an arrangement might unquestionably be made, but it is more than doubtful whether it would commend itself to Americans or Englishmen in general, and we have some hesitation in asserting that it is a thing which authors are entitled to demand as of right. In any case there is a great deal to be said on both sides.—London *Law Times.*

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, September 7, 1883.

Before TASCHEREAU, J.

MACDONALD v. DILLON.

Prescription—Loan—Evidence.

An action for the recovery of a loan not of a commercial nature is not prescribed by five years; and where a bon or note has been given in acknowledgment of such loan, which bon or note is prescribed, the action may be brought on the loan. The note, if prescribed, cannot serve as proof of the claim, which must be established by other evidence.

The action was brought to recover $100, the amount of a loan made by the plaintiff to the defendant in 1867. The defendant, who gave a *bon* for the amount of the loan, pleaded that the claim was prescribed.

The Court, relying chiefly upon *Whishaw & Gilmore* (6 L.C.J. 319), and the cases cited in the text of the judgment, maintained the action upon the admission of the defendant that the loan was made as alleged.

The *Considérants* are as follows:—

"La Cour, etc.

"Attendu que la présente action est en recouvrement d'une somme de $100 que le demandeur aurait prêtée au défendeur, à Montréal, le 26 novembre 1867, *plus* des intérêts accrus sur la dite somme;

"Attendu que le défendeur a par ses défenses nié l'existence du dit prêt, et a prétendu que la seule créance que le demandeur aurait contre lui résulterait d'un certain *bon* consenti à la dite date du 26 novembre 1867, et payable à demande, lequel *bon* serait maintenant prescrit;

"Attendu qu'il résulte des admissions faites par le dit défendeur lui-même dans son témoignage en cette cause, qu'il a, en effet, le 26 novembre 1867, en la cité de Montréal, emprunté du demandeur (faisant alors commerce sous la raison de de Bellefeuille Macdonald & Co.) la dite somme de $100, et qu'en reconnaissance du dit prêt il a remis au demandeur le dit *bon* produit en cette cause;

"Considérant que le dit *bon* n'a aucunement nové la dette originaire qui était un prêt d'une nature civile; que cette dette n'est pas prescrite, et qu'étant duement établie, elle offre au demandeur le recours par lui exercé en la présente cause;

"Considérant qu'il importe peu que le *bon* soit lui-même prescrit, l'action étant fondée sur la dette originaire, et l'existence de cette dette originaire étant amplement prouvée indépendamment de la production du dit *bon* lui-même (*Bagg* v. *Wurtele*), 6 L. C. Jurist, p. 30, *Gibeau* v. *Chef dit Vadeboncœur*, 14 L. C. J. 53; *Darling* v. *Brown*, 21 L. C. J., pp. 92 et 169);

"Considérant néanmoins que le demandeur n'a pas droit aux intérêts par lui réclamés;

"Rejette la défense et condamne le défendeur à payer au demandeur la somme de cent piastres, avec intérêt à compter du 29 janvier 1883, date de l'assignation, et les dépens distraits au procureur du demandeur."

D. E. Bowie for plaintiff.

J. L. Morris, counsel.

Duhamel & Rainville for defendant.

SUPERIOR COURT.

MONTREAL, September 7, 1883.

Before TASCHEREAU, J.

LA VILLE DE LONGUEUIL v. LA COMPAGNIE DE NAVIGATION DE LONGUEUIL.

Town of Longueuil—Steamboat wharf—Liability to taxation.

The limits of the municipality of the Town of Longueuil extend to the centre of the river St. Lawrence, and a wharf situated within said limits, occupied and used as the property of a Ferry Company, is liable to taxation by the municipality.

The question decided sufficiently appears by the judgment of the Court, which is as follows:

"La Cour, etc...

"Attendu que la demanderesse réclame de la

défenderesse la somme de $314, comme suit, savoir : 1o. $287.50 pour taxes de l'année 1882-3, dues par la défenderesse à la demanderesse sur les biens-fonds imposables appartenant à la défenderesse, et situés en la ville de Longueuil (étant les Nos. 23 et 26 du rôle d'évaluation de la dite ville pour 1882-83); 2o. $26.50 pour arrérages et intérêts de taxes antérieures ;

"Attendu que la défenderesse a par ses défenses nié les allégations de la demande, allégué que le rôle d'évaluation et toutes les procédures de la demanderesse relativement à l'imposition des dites taxes étaient invalides, irrégulières et nulles, et prétendu que le dit immeuble No. 26, étant un quai occupé par la défenderesse, était exempt de taxation, vû qu'il était situé dans le fleuve St. Laurent au-dessous de la ligne des hautes eaux, en dehors des limites légales de la ville de Longueuil, et qu'il appartenait au gouvernement du Canada; et de plus que le chemin conduisant au dit quai était une rue publique, aussi exempt de taxation ;

"Considérant qu'il appert par la preuve que la demanderesse s'est conformée en tous points aux exigences de sa charte (44-45 Vic., ch. 75) dans la confection et homologation de son rôle d'évaluation, dans l'imposition des taxes réclamées, et dans l'accomplissement de toutes les formalités requises ;

"Considérant que quant à l'immeuble No. 23 du dit rôle d'évaluation (étant le No. 194 du cadastre et plan officiel de la ville de Longueuil) il est constaté que la compagnie défenderesse est propriétaire du dit immeuble, l'occupe comme telle, et que les taxes réclamées sur icelui sont légitimement dues ;

"Considérant que la rue ou voie publique mentionnée dans la défense n'est pas comprise dans les limites des deux propriétés taxées, et qu'il n'est rien réclamé à raison du terrain occupé par la dite rue ;

"Considérant que les limites de la municipalité de la ville de Longueuil s'étendent jusqu'au centre du fleuve St. Laurent (section 3 de la charte, et article 19, sec. 1, du code municipal) que le quai mentionné dans la défense est situé en dedans des dites limites, qu'il ne forme pas partie du domaine public, mais qu'il appartient à la compagnie défenderesse, qui l'occupe à titre de propriétaire et doit en payer les taxes (sections 129, 229, 125 de la charte, et articles 709, 712 et 714 du Code Municipal);

"Considérant que le pouvoir donné à la demanderesse par la section 242 de sa charte, de procéder contre les contribuables par voie d'exécution parée, en certains cas, n'est pas exclusif de la faculté de poursuivre devant les tribunaux ordinaires en recouvrement des taxes dues ;

"Rejette les défenses, et condamne la défenderesse à payer à la demanderesse la dite somme de $314, avec intérêt, etc."

Action dismissed.

Lacoste, Globensky, Bisaillon & Brosseau for plaintiff.

O'Halloran & Duffy for defendant.

SUPERIOR COURT.

MONTREAL, February 28, 1883.

Before RAINVILLE, J.

ROSS et al., *es qual.* v. ANGUS.

Company—Liquidators—Chose jugée.

1. *The plaintiffs, under the Act* 41 *Vict. cap.* 38 *(Canada), possessed the powers of assignees under the Insolvent Act of* 1875.
2. *The company now represented by the plaintiffs, having accepted railway debentures in payment of calls and disposed of the debentures, the plaintiffs could not ask for the resiliation of this transaction,—especially without offering back what had been received.*
3. *A judgment confirming the discharge of an insolvent is chose jugee, and the validity of his assignment cannot be questioned afterwards in an ordinary action against him for calls.*

PER CURIAM. The plaintiffs sued in their quality of assignees of the Canada Agricultural Insurance Company. They aver that they have been duly named assignees of the said Company as well by the creditors of the said Company as as by an Act of the Parliament of Canada (41 Vic. chap. 38); that the assets of the Company have come into their hands for the benefit of the creditors and shareholders of the said company; that on the 7th September, 1874, and long before that time, the defendant was the President of the said Company, and continued to be so up to the 1st December, 1877, and as such is responsible for the illegal and *ultra vires* acts committed in the administration of said Company and by its employees, by means of which loss was incurred by the creditors and shareholders; that on the 7th September, 1874, the defendant was owner of 1,000 shares of $100 each; that a

call of ten per cent. was then payable on his subscription, and that he, said defendant, has not paid the said ten per cent. call, which amounts to the sum of $10,000, but has given debentures to the amount of $11,000 at 80 per cent, $8,800, his note for $200 since paid, and $1,000 for commission; that said transaction was illegal and that the debentures of the Montreal, Portland & Boston Railway Company given were only worth 15 per cent; that on the 26th August, 1876, the defendant transferred 500 shares to Goff and 500 to Dame Anne Lane, wife of Ashley Hibbard; that the transfer to Mrs. Hibbard is illegal inasmuch as the transferee was not authorized by her husband to accept said shares; that the defendant not having paid the call of ten per cent had no right to make a transfer, and that he is still responsible; that said transfer was never recognized by the Company nor by the plaintiffs. A second call was made on the 22nd February, 1877, and a third on the 8th November, 1877, by the Company. A fourth and fifth call were made on the 4th January, 1879, by the plaintiffs; and the plaintiffs pray that the transfer of said shares to Mrs. Hibbard be declared illegal, null, and of no effect, and that the said Dame Anne Lane and her husband be ordered to appear and hear pronounced the nullity of the transfer, and that the said defendant be declared owner of 500 shares in the capital stock of the Canada Agricultural Insurance Company.

The defendant for plea to the action of the plaintiffs alleges: That he is not indebted to the plaintiffs, and that the said plaintiffs have no right of action against him, and that the plaintiffs do not legally represent the Canada Agricultural Insurance Company; that by the Statute 41 Vic., ch. 38 and 21, the company was brought under the jurisdiction of the Insolvent Act, and the plaintiffs were placed in the position of official assignees to whom the Company assigned; but they have not been named assignees by the creditors, and he concludes for the dismissal of plaintiffs' action.

By a second plea the defendant alleges the defect of quality in the plaintiffs, and he next alleges that even supposing that the plaintiffs were qualified they cannot recover, inasmuch as they have not exercised their action within the year after their nomination (C. C. 1040), and he also alleges that the plaintiffs have endeavoured to exercise their claim during the last three years, and have offered to transfer it for $1,000.

By a third plea the defendant alleges that on December 6th, 1877, he ceded this property under the Insolvent Act, and on the 10th January, 1878, his creditors granted him a discharge, said discharge being confirmed by the Court. Before the said discharge, and said judgment ratifying it, the plaintiffs knew that the defendant was under the operation of the Act, and that about the 10th February, 1879, they filed a claim against the estate of the said defendant, and for the same reasons and for the same object for which the present action is brought, but they afterwards withdrew it.

By a fourth plea the defendant pleaded that he paid the first call of 10 per cent., to wit, $1,000 granted to him for a commission for his subscription, according to custom, and the balance of $9,000, part in money, and the remainder by a transfer or cession to the Company of debentures in the Montreal, Portland and Boston Railway, which was accepted by the board of directors. He afterwards transferred 500 shares to Mrs. Hibbard, which transfer was accepted by the authorization of her husband, and that the Company, plaintiffs, afterwards applied to Mrs. Hibbard to obtain payment of the subsequent calls, accepting and acknowledging her as proprietor of the said 500 shares. By a fifth plea they repeat about the same grounds. There is also a general denial.

The plaintiffs answered the first and second questions generally. In their answer to the third plea they admit having withdrawn their claim from the power of the assignees, when they saw themselves threatened by a contestation. By their answer to the fourth plea they admit that the company ratified the payment of $1,000 for a commission and acquiesced in it.

The first question which presents itself in this cause is the capacity of the plaintiffs. The statute which created them is far from being clear, and the fact that the Court of Appeals has refrained from pronouncing formally on this point, indicates the difficulty of the question. I believe nevertheless, that the intention of Parliament was to formally name the plaintiffs assignees; for if it intended to leave the choice of the assignees to the creditors, of what use

was it to take the trouble to add another one to the original number? If the assignees were to be nominated by the creditors it would have been legal to elect those who might have been chosen, and the duty of Parliament to name another would have been useless and unnecessary. But, without formally deciding the question, I believe that, under the circumstances, the plaintiffs are qualified. It is proved that there was a meeting of creditors, and that no objections were made to the capacity of the plaintiffs; they acted as assignees and the creditors have acted with them, treating them as such, and acquiescing in the position which they assumed and in the interpretation which they gave to the law.—*Error communis facit jus.* Unlike the case decided on the same point by the Court of Appeals, it is proved that the notice calling the first meeting did not indicate that the object of the meeting was to name an assignee; but I do not think this fact can help the defendant. If the quality of the plaintiffs was not regular and legal, the creditors could have complained; but, not having acted, it is too late to do so now; and if the defendant owes to the Company, he would be legally discharged on paying to the plaintiffs.

The second question is to know if the defendant has paid the first call of ten per cent. As to the $1,000 of commission, I believe that the defendant was in the right; that commission, by the consent of the board of directors, was paid indiscriminately to all those who had right, and the fact that the defendant was president of the Company did not deprive him of that right. As to the payment of $8,800, it was made by a transfer of $11,000 of debentures of the M. P. & B. Railway at 80 per cent. It is established that those debentures were accepted by the Company and afterwards transferred to Goff for a valid consideration, and, in fact, Goff gave his note for them, and after certain entries it would appear that this note was nearly paid in full. The plaintiffs pretend that the debentures were only worth 15 per cent. But if so why did the Company dispose of them? Why did the plaintiffs not offer them back? I think the plaintiffs cannot demand the nullity of this payment without giving back what they received.

We now come to the third question: Is the transfer of $50,000 worth of stock by the defendant to Mrs. Hibbard a nullity? The plaintiffs submit that the first call not having been paid, the defendant had no right to make this transfer; but this point having been decided against the plaintiffs this pretension falls to the ground. They submit afterwards that Mrs. Hibbard was not authorized by her husband to accept this transfer. On this point I think that the proof establishes beyond a doubt that she was authorized, and the best proof is that she afterwards transferred these same shares to a third party with the authorization of her husband for advances which were made to her, and these shares are yet in the books of the company in the name of this third party.

The fourth question is as to the discharge obtained by the defendant under the operation of the Insolvent Act. The plaintiffs answer that the defendant has never been a trader, and consequently that the assignment of his estate and the judgment confirming his discharge under the Insolvent Act are invalid. The proof establishes that the defendant did not include the Canada Agricultural Insurance Company in his list of liabilities. But there was good reason for this; he did not acknowledge the company as his creditor. But then the Company received notice from the defendant's assignee of the assignment immediately after it was made. If the Company had wished to contest the defendant's quality as a trader and the validity of his assignment it ought to have done so then. It is without right to do so now. It is only a court adjudging on the direct contestation of this assignment which would have jurisdiction to decide upon its validity. This court is now without right to pronounce upon this point. It is *chose jugée.* Besides, the judgment confirming the discharge of the defendant has freed him from his debts, and is a *fin de non recevoir* against the action of the plaintiffs. The fact that the Company was not mentioned as a creditor in the list furnished by the defendant to his assignee cannot avail the plaintiffs because the Company received notice of his assignment. This was sufficient to permit it to file its claim if it had one, but the defendant could not be obliged to mention the company as a creditor when he did not acknowledge it as such. In fact the plaintiffs did file a claim later on, but in time to be collocated with the other creditors, but on being threatened with a contestation on the part of the insolvent the plaintiffs withdrew it. The

plaintiffs, then, have had every opportunity to obtain their rights, and I am consequently of opinion that the discharge is valid and that the action of plaintiffs ought to be dismissed.

The defendant has submitted besides that the action of the plaintiffs was prescribed, not having been instituted within a year after the nomination of the plaintiffs, and he invokes article 1040 of the Civil Code. The defendant evidently makes an erroneous application of this article of the Code, because it applies to the prescription of an action *revocatoire* brought at the suit of an assignee in order to revoke an act which an insolvent has done with a third party in fraud of creditors. But it does not apply to the present suit. The action is, however, for the above reasons dismissed with costs.

Church, Chapleau, Hall & Atwater for plaintiffs.

Macmaster, Hutchinson, Knapp & Weir for defendant.

THE ECCLESIASTICAL COMMISSION.

The London *Times* (Aug. 16) publishes an abstract of the report of the Royal Commission appointed to enquire into the constitution and working of the Ecclesiastical Courts. For more than two years the commissioners have been busily engaged taking evidence, listening to complaints, enquiring into the past history of the Church Courts in England and into the successive changes which have made them what they have now become, and framing suggestions as to their constitution and powers and methods of procedure. The *Times* observes that the subjects with which the commissioners have dealt are thus of very grave interest to all parties in the Church. Their report comes with the weight of an almost unanimous expression of opinion from a body of ecclesiastics and laymen well qualified to pronounce upon the important questions submitted to them. It remains for the Legislature to give effect to such parts as it may approve, and to establish with the minimum of change a system which it may be hoped will work better and more smoothly than the existing system has been found to do, and may better command the confidence and respect which have been somewhat ostentatiously refused to Church Courts as they are now constituted. The formal recommendations of the report are the part to which chief attention will be given. They are arranged into three groups, dealing first with procedure in cases of clerical misconduct and neglect of duty; next, with procedure in cases of heresy and breach of ritual; and, lastly, with general and miscellaneous matters. The methods by which clerical offences of any sort are to be brought under cognizance of the law, and the tribunals by which judgment is to be pronounced upon them, are to be much the same in every case. A complaint, whether of misconduct or of heresy, or of breach of ritual, is to be laid before the bishop of the diocese, and it rests with the bishop to put an end to the suit at once or to allow it to proceed. If he determines that it is to proceed, he may, with the consent of the parties, pronounce a final judgment about it. If this consent is not given, the matter will come before the Diocesan Court, in the first instance—that is to say, before the bishop and his legal assessor, with the addition, in cases of alleged heresy or breach of ritual, of a theological assessor. From the decision of this court an appeal lies to the Provincial Court, or official principal of the province. In judging cases of misconduct, this functionary will sit alone. In cases of heresy or breach of ritual, the archbishop of the province may sit with him, or the court may be further strengthened by the presence of theological assessors. In every case the final appeal is to the Crown, and the court of final appeal will be a permanent body of lay judges, of whom five at least are to be summoned in rotation by the Lord Chancellor for each case. The general miscellaneous recommendations are mostly framed with the view of curing proved and admitted defects in the law as it is at present administered. The scandal of a clergyman refusing to obey the sentence of a Church Court is to be provided against, not by his imprisonment, but by the more appropriate method of temporary suspension from his ecclesiastical post. If he disobeys a third time, he may be suspended until he has satisfied the court, and he may be deprived by summary process. In order further to guard against every possible form of clerical perversity, the report suggests that disobedience to a sentence of suspension may be visited, after three months' notice, with deprivation; and that if during suspension or after deprivation a clergyman attempts to perform Divine service in a church forbidden to him, the offence is to be visited as a "disturbance of public worship." The report also recommends that the two archbishops may, if they so choose, continue to appoint the same person as Official Principal of the two provinces. Their choice is to be made subject to certain stated conditions, and the official chosen is to be bound to take the oaths prescribed by canon 127, and to sign the Thirty-nine Articles, or, in other words, to do what Lord Penzance has not done—an omission which has given grave offence to the High

Church party, and has induced them to deny him the right and title of an ecclesiastical judge at all.

The commissioners have suggested a remodelling of the courts in several ways, most notably of the Court of Final Appeal, the functions of which they seek to transfer to an entirely new body. Their reason has probably been not so much that they deem the present courts faulty in construction, as that they have thought it well to make the largest possible concessions to the prejudices and suspicions and complaints of unfair play which have come under their notice. Church Courts should command the confidence of Churchmen. As long as this is refused them there will always be some loophole or other found to escape making submission to them, or some plea of conscience for declining to obeytheir decisions.

The following are the "reservations" put on record by some of the Commissioners: The Archbishop of York, in signing the report, is compelled to record his dissent from it in two important particulars.

1. In allowing anyone to lodge a complaint, the report makes the hearing of the complaint depend absolutely upon the permission of the bishop. Except with this 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.

2. Great evils have resulted from litigation in the past. To prevent the evils for the future, something should be done to afford a means of direction and arbitration without resort to the courts. One such means is supplied by the Prayer-Book, in the reference to the authority of the bishop when doubts or divers interpretations prevail. But unless the decisions of the bishop are held to be binding, till they are appealed against, they are of no avail. Let the bishop have power to make an order in all matters affecting the conduct of public worship, which shall be binding until reversed by the Court of Appeal. Let the commencement of a suit be either from such an order, or from a trial in the Diocesan Court. Let the appeal lie from the bishop's order to the Archbishop's Court, or from the Diocesan Court to that of the Archbishop. Once make the bishop's authority a reality, and not an utterance of which no court will take notice, and he would be able to compose many of the disputes which now arise about such subjects without prolonged litigation. W. EBOR.

While agreeing generally with the suggestions of the majority of my colleagues, which, in my opinion, would effect a considerable improvement upon the present mode of procedure in the ecclesiastical courts, I feel unable to concur in the following recommendations:—1. That the bishop should preside in his own court except under certain specified circumstances:—

(*a*) I object to this, because I consider that every clerk charged with a breach of the law ought to have the best and fairest trial that the Legislature can provide. With this view, it seem to me that all judges in ecclesiastical courts should be laymen, learned in the law.

(*b*) Because also, under the recommendations in the report, it seems more than probable that in some dioceses the Court of First Instance will be presided over by the bishop, and in others by the bishop's chancellor, thus creating a very anomalous discrepancy, in the constitution of the court, between one diocese and another.

2. I also object to the continuance of the present mode of procedure, recommended in the report, which requires the consent of the bishop before any proceeding can be instituted in his own court.

3. I concur generally in the suggestion of his Grace the Archbishop of York appended to the report, for giving something of a local character to a bishop's orders as to the conduct of public worship. CHICHESTER.

1. I am unable to concur in the recommendation that there should be in all cases an appeal from the Provincial Court to the Final Court.

I think that the right to appeal should belong to the defendant only.

2. I dissent also from the recommendation that the obligation on the part of the Final Court of Appeal to obtain from the archbishops and bishops answers to specific questions as to the doctrine or view of the Church of England should only exist when one or more of the lay judges present at the appeal should demand it.

I think that this reference should be made in in all cases of doctrine or ritual. DEVON.

We concur in this reservation.

J. F. OXON,
W. C. LAKE.

We desire to express dissent from that recommendation which gives to the bishop absolute power of refusing leave to institute proceedings in cases of ritual and doctrine.

PARKER DEANE,
THOMAS E. ESPIN, D.D.

I wish to state my dissent from the words which confine the hearing of appeals to the Crown to members of a single profession. I would leave it open to the Crown to appoint lawyers, Churchmen, or any other persons who may be thought competent, as was the case with the Court of Delegates under the statute of Henry VIII. I hold that the examination of questions of this kind constantly calls for knowledge of a special kind, the presence of which is by no means implied in the professional learning of the lawyer, and which is just as likely to be found in other persons, clerical or lay. EDWARD A. FREEMAN.