1 - Suggestions on Ch. Reform of the Clergy of the archdeaconry of Worcester. March 1857

2 - Westminster Catechism

3 - Church Penetentiaries

4. 4 Great Sermons of great Preachers.

5 - Spurgeon Sermons

6. Miller John. visitation Sermon

7 N.J. Sermon.

8. Wordsworth Reformation

9 Endowments & Examinations Humphrey

10 Civil service Competition

11. Church Rate. J. Salter

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Wm Lea

S. Pellen

CHURCH COURTS AND CHURCH RATES.

A LETTER

TO THE

RT. HON. W. E. GLADSTONE, M.P.,

CHANCELLOR OF THE EXCHEQUER.

BY

THEODORE H. GALTON,

BARRISTER-AT-LAW.

LONDON:

JAMES RIDGWAY, PICCADILLY.

1854.

A LETTER,

ETC. ETC.

Sir,

The intention of the present Government, announced by the Solicitor-General on the 6th of April last, to introduce a measure for the reform of the Ecclesiastical Courts, induces me to address you upon a subject of deep interest to the Church of England and scarcely less important to the nation at large.

There are few who do not acknowledge the necessity of some reform, even while they would preserve the existing tribunals; and, among those who see the need of a more sweeping change, are some who, with the Solicitor-General, would incorporate the present Diocesan Courts into their new system, while others are for transferring all questions of public rights and property from the present ecclesiastical judicature to temporal tribunals. I am so convinced that any attempt to remodel those ancient Courts and suit them to the requirements of the times, would be less advantageous to the Church, and would after all, be far less effective in a public

point of view, than the adoption of a new system, that I am tempted, however feebly, to urge upon your consideration the expediency of abolishing the present tribunals and transferring all civil questions whatever—whether of probate, matrimony, tithe, or others—either to the County Courts or to new tribunals, thus leaving the Bishops of the Church of England simply clothed with a sufficient legal authority to adjudicate upon all such questions of internal discipline as other religious denominations in the country settle according to their own rules.

I am further induced to present these considerations to your notice from a conviction that the abolition of the Ecclesiastical Courts should be accompanied by the abolition of Church Rates—a species of tax upon the person (*in personam*) recoverable only in the Spiritual Courts, and an institution of the common law of the Church of England when that Church comprised, in theory if not in fact, the whole of the nation.

I shall not think it necessary to enter deeply into the grievance of Church Rates, since, notwithstanding certain speeches during the debate of the 26th of May last, I am persuaded that no person who has candidly perused the evidence taken before the Select Committee of the House of Commons in 1851, can fail to acknowledge the fact that his dissenting fellow subjects are labouring under an injustice by the existence of these rates—and that, for this reason as well as others, the Church of

England is damaged by their continuance. The defenders of the impost are content to resort to the oft-repeated fallacy of their being a common law burthen upon the land; whereas every ecclesiastical lawyer replies that they are a tax upon *each person* who contributes in proportion to the land he occupies. Others reiterate the well-sounding plea that the body of the parish church belongs to the parishioners, and that they are consequently bound to repair it. Jews as well as Christians are, under this system, admitted to vote in vestries and to act as churchwardens. The evidence before the Committee of 1851 goes to shew that, excepting in so far as their civil rights are involved, the Dissenters generally are quite willing to forfeit their so-called property in the fabric, if that proprietorship entails the keeping it in repair. And, after all, the Dissenters waive no principle by abandoning the repair of the Churches to Churchmen. The fabrics, as well as all the property of the Church, have been regarded in the light of a trust; delegated to her by the State, and which, when any other denomination becomes predominant, may be transferred from the Church of England to that denomination.* It would only be a fair return for this trust that the denomination to which they are thus confided by the State, should keep them in repair at its own cost.

* See the speech of Mr. Bright upon Sir W. P. Wood's amendment to Mr. Trelawney's motion upon Church Rates, March 13th, 1849.

Assuming the grievance of Church Rates, my object is rather to connect the remedy of that grievance with the entire reform of our ecclesiastical law; and, in order that the remedy may be complete, both as affecting the welfare of the Church and the people, I propose that this reform should extend to the details of the parochial system so as to disconnect the Churchwarden's office from all functions of a civil nature, and to separate the management of the Church fabric and worship from the general parish vestry. The great subject of Ecclesiastical Court reform was ably set forth by Mr. Collier in his speech upon the 1st of March last; and I cannot help thinking that the whole of his proposition was far more calculated to benefit the Church than the less complete change advocated by the Solicitor-General upon the 6th of April.

Neither of these propositions seems to have been entirely approved by Dr. Phillimore, whose proposed Bill upon the subject of Church Rates, upon which I would offer some remarks, involves the continuance (with certain reforms), of the ecclesiastical tribunals. I need not recapitulate the various propositions made during the last twenty years for the alteration or abolition of the present system of Church Rates. Both Churchmen and Dissenters opposed the earlier plans (Lord Althorp's and Sir Robert Peel's) of defraying the expenses of Church repairs out of the consolidated fund or the

land tax. That of Lord Monteagle, revived last May by Sir William Clay, for replacing these rates by a sum raised from an increased value to be given to Church lands, was more reasonable. Sir W. Page Wood's amendment to Mr. Trelawny's motion for their abolition in 1849, appears to have formed the groundwork of Dr. Phillimore's plan. The former differs from the latter, especially in its omission of the excommunicatory clause, which (as it seems to me, in the teeth of the Canons) is added to those civil disabilities to which both plans subject persons exempted from Church Rates.

Both these schemes require the registration of exempted persons, and both consequently ignore that equality of Dissenters in the eye of the law for which, all along, they have been contending, and which is, constitutionally, of far greater importance to them than the mere exemption from a trifling impost. The Bill is drawn up with the presumption that the Church of England can still claim to be a privileged community. It is an Act of Toleration in an age when Dissenters repudiate the idea, and demand nothing less than equality.*

These are the heads of Dr. Phillimore's proposed Bill:—

1. Dissenters shall be exempt from Church Rates upon sending a written statement to the Churchwardens or Minister of the parish.

2. Persons so exempted shall cease to be eligible

* Mr. Pellatt's Speech, 26th May, 1853.

as Churchwardens, and shall no longer be entitled to a seat in any Church, or to vote in Vestry upon any questions touching Church matters.

3. No clergyman shall be compelled or compellable to administer the rites and sacraments of the Church to or in favour of persons so exempted.

4. Provided they may at any time retract their statement and be re-admitted to Church privileges.

5. The above provisions shall be inapplicable to parishes where money has been borrowed upon the security of Church Rates, until that money is repaid.

6. All suits for Church Rates in the Ecclesiastical Courts shall henceforth be decided summarily, upon evidence taken *vivâ voce* or by affidavit, instead of by plea and proof and written depositions, as heretofore ; and, from the decision of the Judge there shall be no appeal beyond the Metropolitan Court of the province, and that only upon questions of law certified by him.

7. No person refusing to pay any Church Rate due from him shall be entitled to vote or to be present at any vestry.

Many Churchmen have been led to a favourable consideration of this bill on account of the prospect which its third section appears to hold out to them of a definition of Church-membership. In their desire for discipline of some sort they appear to overlook the fact that the standard of membership which it would enact is totally different from

any which is recognized by the canons of the Church herself. For instance, the bill would not disqualify Jews or others, still willing to pay Church Rates, from serving as Churchwardens; nor would it prevent Unitarians still contributing to these rates from using any powers of compulsion which they at present possess to enforce the solemnization, in their behalf, of the Church Offices of marriage or burial. On the other hand there are numbers of ignorant persons in our agricultural parishes, members of the Church by baptism and education, who, for the sake of avoiding a heavy rate, might be tempted to excommunicate themselves and thus to lose privileges of which they are incompetent to estimate the value. Worse than this; for by the wording of the third section, "*to or in favour of any person, &c.,*" it seems that such persons might not only excommunicate themselves but their families,* and, at the individual will of the clergyman, deprive their infants of baptism. By the 68th Canon no minister may refuse or delay to christen any child or refuse to bury any corpse unless excommunicated *majori excommunicatione.* This bill would be in the very teeth of the canon, since it virtually prohibits the Bishop from inter-

* From Dr. Phillimore's speech it was simply his intention to limit the disqualifications to the *person* exempted. But, even so, a dying man, lacking time to recal his exemptions in all parishes, might be debarred from the Sacrament—and, contrary to the Rubrics, his corpse excluded from Christian burial.

fering, where the priest shall refuse these and other rites and sacraments, *to or in favour of* persons who have exempted themselves from Church Rates.

The Parliamentary standard of Church-membership which this bill would enact is not really any approach to Canonical discipline. It seems to me that any endeavour to revive discipline by act of Parliament is Erastian in its nature and can never be attended with any real benefit to the Church of England. Many orthodox Churchmen hold that the bulk of baptized Dissenters are, unknown to themselves, *de facto* members of the Church of England, and are, consequently, not to be regarded as excommunicate *majori excommunicatione.* To such persons this new standard of Church-membership, to be established by Act of Parliament, must appear extremely revolting.

I am as ready as any one to confess the need in which the Church of England stands of revived discipline. It is perhaps a hardship that her clergy should ever be compelled to bestow the marriage blessing of the Church upon persons who openly deny her faith. But how does this compulsory power exist, excepting through the tribunals of the Church herself? The laxity of Church discipline is, in these respects, owing to the continuance of those Ecclesiastical Courts whose whole procedure is based upon the false presumption that all Englishmen are members of the Church of England.

If instead of claiming from Parliament fresh

powers of excluding Dissenters from Church ordinances and worship, the Church of England were contented to allow all that is corrupt in her system of Ecclesiastical Jurisprudence to be swept away, she would find herself in a better position to restore true Church discipline, while the country at large would be benefited by the cessation of a monstrous anomaly. It would be but a just return for her moderation, in abandoning these remnants of secular authority and advantage, that she should be suffered to possess a species of tribunals for such questions of internal discipline as have always fallen under the cognizance of her Archdeacons, Bishops and Archbishops, and such as every religious denomination in the country is allowed to manage for itself.

I seem to be writing on the presumption that persons are agreed upon the evils of the present system of Church Rates, but there is always, staring one in the face, the difficult question of how the fabrics of the Church of England are to be repaired? All the plans, with the exception of Dr. Phillimore's, seem to abandon the ancient English system of the local lay element, and, from the necessity of the case, to lead to some degree of centralization. Local rating is the keystone of English local government and the authority of the Vestry and its Churchwardens is founded upon the payment of Church Rates. I am inclined to think, however, that it might be possible to preserve the local power of a

lay element, and yet, withal, to introduce some portion of Sir William Clay's system. If the Church of England cannot preserve a legal rate, she may constitute a voluntary rate upon a plan somewhat similar to that recommended by Mr. Newsome,* the churchwarden of Headingley, but rendered more effective by ecclesiastical authority.

In the towns it is clear, as a general rule, that voluntary contributions are sufficient. In the principal towns of the West Riding of Yorkshire, Church rates have been abandoned for some years, and Churchmen find no difficulty in keeping the fabrics of the Church in repair.† Dissenters, who, as a class, are much less wealthy than Churchmen, not only maintain their own Chapels and worship, but have been constantly increasing the number of their places of worship, notwithstanding that they are subject to the payment of Church rate.

In country parishes the difficulty is far greater. Mr. Baines states, in his evidence, that the Dissenters, who possess throughout England and Wales a greater number of places of worship than the Church, experience a difficulty in maintaining self-supporting chapels in country villages. He says, that among the Wesleyans, Independents and Baptists there are, throughout England, County

* Report of Committee on Church Rates, 1851. Question 3703 and following.

† Report of Committee, 1851. E. Baines. Questions 3133, 3136, 3137.

Associations, in which the richer congregations subscribe to assist the poorer village congregations.*

If the Dissenters can, in addition to paying Church Rates, maintain upwards of 21,812 Chapels and preaching rooms, surely the Church of England, which most certainly comprises the chief wealth of the land, need not fear to confront the voluntary principle for the maintenance of her 14,000 fabrics. Nevertheless, in proposing the adoption of that principle, I would do so under certain restrictions which I desire to submit to your consideration.

I propose that in each diocese there shall be created a diocesan fund to aid in the maintenance of church fabrics and worship in poor country parishes. I submit that this fund shall be gathered from two sources. (1.) Offertory contributions raised, upon certain days appointed by the Bishop, in every church throughout the diocese, and (2.) of a certain sum, being a proportional fraction of £130,000 a year, derived from an increased value to be given to Church-lands. Here I propose the adoption of a part of Lord Monteagle's plan revived by Sir William Clay, but in a modified form, and taking as little as possible from the more important object of maintaining additional clergy. In 1837 Mr. Bethune estimated that if Lord Monteagle's plan of enfranchisement were carried into effect, a surplus revenue might be obtained from the Church Property of at least £250,000 a year

* See Report of 1851. E. Baines, Esq. Question, 3195.

beyond that which the Church was then receiving from it in reserved rents and fines. In 1839 Mr. Finlaison estimated this surplus at upwards of £300,000 a year.* If this latter estimate is correct, as there seems every reason to believe, a capital of no less than five or six millions might be realized by the sale of Reversions or by other means. I propose that a portion of this, which I estimate at about £130,000 a year, be applied to the maintenance of Church fabrics. This would allow an average of £5000 towards the Church fund in each diocese. This ought to be increased to £8000 a year by the contributions of the wealthier parishes. This is a mere general average, since it is obvious that the sum should vary according to the extent and requirements of each particular diocese.

I submit that the body of the Church should remain in the hands of the laity and their churchwardens, who would thus continue responsible to the Bishop and his archdeacons for its repair.—I propose, however, that henceforth the churchwardens shall be elected by such only of the parishioners as shall be willing to declare themselves members of the Church of England, and that none but persons in full communion with the Church of England shall be eligible to the office of churchwarden. The churchwardens so elected

* Church Leases, by W. H. Grey. London, 1851, pages 79, 80, &c.

can no longer be parish officers in the sense in which they are so at present. I propose that all the civil functions of the present churchwardens be transferred, in small parishes, to the Overseers, and, in larger parishes, to a new officer, to be called the Parishwarden. I further propose that parish meetings, called Vestries, shall no longer be held in the Church, unless with the express consent of the minister and churchwardens.

Maintaining the ancient principle of the parishioners (being churchmen), and their churchwardens being responsible for the repair of the fabric, I propose that in each Diocese there shall be appointed a Diocesan Architect to advise with the Archdeacons, when they require it, upon the condition of the fabrics within their Archdeaconries. If the churchwardens neglect to obey the admonitions of the Rural Dean it shall be competent for the Archdeacon to declare upon the amount of repairs absolutely necessary, and to determine, upon evidence, whether the parishioners are able to defray the expense of those repairs. If he shall consider that they are able to do so, he shall issue an injunction to that effect. If they fail to comply with his injunction, or refuse to raise the sum required, either by contributions or a voluntary rate, the Archdeacon may, at his discretion, depose the churchwardens and appoint certain qualified persons to assess a rate upon all the ten-pound householders in the parish, being churchmen. If the

persons so assessed shall refuse to pay their share of the rate, it shall be lawful for the Bishop to debar them from the ordinances and offices of the Church until they have severally paid the amount of rate due from them.

If, on the other hand, the Archdeacon considers that the parishioners are unable, either wholly or in part, to defray the expense of the necessary repairs, he shall apply to the Bishop for a contribution from the Church Fund above described, to supply whatever deficiencies there may be.

By such a machinery as I have described Dissenters would be liberated from a state of things incompatible with that equality of religious denominations which is the only theory consistent with the polity of the age, while the Church would be guarded from the dangers anticipated from the voluntary system. And, be it remarked, that this system of ecclesiastical jurisdiction which I propose, runs in a direction entirely parallel to the spiritual jurisdiction of the Church, since it lodges the power of exclusion from Church communion with the Bishop, who already possesses it canonically; whereas Dr. Phillimore's Bill renders the parish priest *legally* exempt from that episcopal authority to which he is *canonically* subject, and, therefore, adopts a line which is *not* strictly parallel to the spiritual functions of the Church; and is, so far, a breach of the compact between the State and the Church.

This leads me to the consideration of the Ecclesiastical tribunals in which controverted questions of liability to repair must still be decided. For, agreeing as I do, with the Solicitor-General and Mr. Collier in thinking that no time should be lost in abolishing the 372 corrupt Ecclesiastical Courts, which are a disgrace to a civilized country, I feel that there will still exist the necessity of certain courts as the basis of the *concordat* between the temporal and spiritual Church of England. The State will have ceased, it is true, to recognize those Courts as Courts of the land, but she may still acknowledge them as the ecclesiastical tribunals of that corporate body—that *Imperium in Imperio*—the Church of England.

I propose, therefore, that Archdeacons, Bishops and Archbishops shall respectively hold ecclesiastical courts as heretofore. There is no reason why the Archdeacon should not sit in person to hear and decide summarily upon ecclesiastical questions arising within his Archdeaconry. For questions of fact he might be required by the parties to empannel a jury of five persons, either clerks or laïcs, as the case might be. Upon points of ecclesiastical law an appeal should lie, in certain cases, to the Bishop's Court, which might also be reconstituted upon a County Court model, with summary jurisdiction. From this Diocesan Court there need be no further appeal, excepting upon questions of law certified by the Bishop, and such appeal should be

finally decided by the Metropolitan Court of the province, unless the supreme judicial authority of the ancient Court of Delegates, or the present Court of Privy Council, could be transferred to a Court of Convocation—answering to the House of Lords, as a Court of ultimate appeal.

There need be but a single Archiepiscopal Court in each Province, in which I also propose that the ancient system of written depositions and plea and proof shall be abolished, and all suits heard and decided summarily, upon *vivâ voce* evidence, as in our Courts of common law,—the Archbishop, or his deputy, being Judge.

In these Supreme Provincial Courts it would probably be advisable to have an ecclesiastical Judge entirely conversant with the Canon law, and, for this reason, the Archbishop would require as deputy an experienced Canonist, nominated to that post by himself. There is no absolute necessity for such deputies in the Courts held before the Bishops and Archdeacons. Originally each Bishop seems to have been the supreme ecclesiastical judge in his diocese, and I see no reason why, when questions of civil rights are removed from the Church tribunals, the Bishops and Archdeacons should not resume their functions of presiding in person over causes ecclesiastical. The amount of legal knowledge required in these courts, when all questions of a civil nature are removed from them, would not be greater than the common-law knowledge required

of country gentlemen presiding at Quarter Sessions, and certainly not greater than Bishops and Archdeacons might fairly be presumed to possess.

I submit that the Ecclesiastical Courts so constituted would be fitting tribunals for deciding any questions which might arise between the Church of England laity or their Churchwardens and the Archdeacon, upon the repair of the fabric; matters of fact being referred to a jury of five persons at the option of the parties, as in the County Courts, and points of law decided by the Bishop, without appeal, excepting upon questions certified by him, and these latter to be heard, and finally determined in the Metropolitan Court of the province. The voluntary nature of Church-membership would greatly limit the power of these Courts, which would rather possess the character of arbitrators, but with an ecclesiastical authority coincident with the spiritual authority of the Bishop—to suspend, to depose, or to excommunicate. To this extent I propose that the decisions in Ecclesiastical Courts shall continue to be recognized by the State, namely, that the law of the State shall acknowledge them as valid awards between members of the Church of England and their ecclesiastical superiors. For instance, if a person be deprived of his seat in a Church, or deposed from a benefice by the judgment of these Courts, he shall not be able to bring an action at Common law for their recovery, unless he can show that the Courts in question have ex-

ceeded their legitimate authority. Thus their decisions will be held good upon ecclesiastical questions as between members of the Church of England, and thus the Church will have all those rights of citizenship which were bestowed upon her at her first adoption by the State in the days of Constantine, when half the empire was still external to her pale. To preserve a more intimate bond of union in an age when nearly half the population of the country repudiate her claims, is, in theory, an injustice to the people; and, in practice, a hardship to the Church herself.

The abolition of Church Courts would involve the abolition of Church Rates, unless the country were prepared to continue them in a new form, and render them recoverable in the temporal Courts. Church Rates are so essentially of an ecclesiastical nature that they must go with the corruptions of those tribunals which it is proposed to sweep away. I am convinced that it is in vain to endeavour to keep them as a national impost; and that the two propositions of Sir W. Page Wood and Dr. Phillimore, for preserving them as a tax upon all but registered Dissenters, would be galling to the Nonconformists, and disadvantageous to the Church of England.

The reforms contemplated in my propositions may be summed up as follows:—

1. That all causes touching the rights of matrimony, divorces, general bastardy, subtraction and right of tithes and offerings, probate of wills, ad-

ministrations and accounts upon the same, incests, fornications, adulteries, solicitation of chastity, pensions, and all others relating to public morals, or to questions of civil rights, be transferred from the present Ecclesiastical Courts to other tribunals. In practice many of these causes are obsolete, owing to the impracticable nature of the Courts where they were to be tried. The offences against public morals, enumerated above, are irremediable at common law, probably because the Church Courts had undertaken that branch of public jurisprudence. It is possible that some portion of the civil-law system touching public morality might be incorporated with our statute law. The absence of legal remedy for the crimes of adultery and seduction has often been complained of by our moralists. I think that there is quite enough matter here to warrant the continuance of, at all events, a single reformed Civil-law Court in London, with jurisdiction in all these questions.

2. I propose that the existing 372 Ecclesiastical Courts be abolished, but that the Archbishops shall appoint, with the sanction of the Crown, certain qualified persons, as their deputies, to hear, and decide summarily in all appeals upon ecclesiastical questions brought before them from the various Diocesan Courts throughout the country. I also propose that the Bishops and Archdeacons shall severally hold Church Courts in which they shall preside in person, and refer all questions of fact to

a jury of five persons. In all these courts the evidence should be *vivâ voce* and the proceedings summary, and after the manner of the new County Courts. It is important in legislating upon questions of ecclesiastical jurisdiction to take care that this jurisdiction be maintained in a direction parallel to the spiritual jurisdiction of the Church. The Spiritual powers of the Church are derived from her Divine Head, and can neither be altered nor destroyed by any temporal ruler. According to her inherent constitution, the Bishops are the fountains of *Spiritual* Authority. By the arrangements which I propose, that *ecclesiastical* authority, which derives its force from the law of the state, but which gives temporal effect to the rules of the Church, would be placed in the hands of the same spiritual rulers—and thus the two powers would coincide.

3. It has been proposed to transfer all testamentary questions from the Prerogative Court and the ecclesiastical tribunals in Doctors' Commons, to the Court of Chancery, and to remove thither the whole staff of officials conversant with the business, and acquainted with the principles upon which it depends. Another suggestion has been to create a new court of mixed Common-law and Equity jurisdiction, which should act as a supreme Court in questions of probate, and should also have jurisdiction in causes of matrimony and divorce. Mr. R. P. Collier seems inclined to transfer the whole of the ecclesiastical causes to the County Court and Courts of Common law. In most of the States of

America the Probate Courts have been preserved as distinct Courts. There is usually a Surrogate in each county possessing a plenary jurisdiction over the goods of any testator or intestate, being at his death an inhabitant of the county. From these County Courts of Probate there lies an appeal to the Prerogative Court of the State. Even if Courts of Probate were preserved as distinct Courts in this country it would be desirable, as much as possible, to assimilate their practice to that of the Courts of Common law. I propose that a new tribunal be constituted in London, to take cognizance of all questions of matrimony, divorces, adulteries, general bastardy, incests, fornication, solicitation of chastity, and all other offences against public morality, which now fall under the cognizance of the ecclesiastical Courts. That the law of Divorce be altered according to the suggestions of the Commissioners who were appointed to consider that part of the law. The only point in which the suggestions of the Commissioners appear to have failed is touching the constitution of the new tribunal. I submit that the Judges of the present Ecclesiastical Courts might very properly be entrusted with this reformed jurisdiction. Oral evidence and summary proceedings, similar to those which prevail in our Courts of Common law would, according to the Commissioners' suggestions, be substituted for the present cumbrous system.

I further propose that the remaining juris-

diction, which by my first proposition, would be taken away from the present Ecclesiastical Courts, namely subtraction and right of tithes and offerings, probate of wills, &c., be transferred to the Court of Chancery, which, in questions of probate, would thus have supreme jurisdiction. The Solicitor-General's proposition respecting the transfer of the whole staff of the Metropolitan Court, including practitioners, registrars, clerks of the seal and proctors, to the Court of Chancery is, to my mind, most satisfactory.

In other respects I prefer Mr. R. P. Collier's plan, and trust that the whole of the testamentary jurisdiction will be taken from the Diocesan Courts and given (excepting questions for determining the validity of contested wills)* to the County Courts.

Thus the Judge of the County Court would grant probate in all cases of the death of parties *living, at the period of their deaths*, within the jurisdiction of his Court. One probate would suffice for all parts of the kingdom. Each County Court would have a registry, and, upon probate being granted, it would be transmitted to the central registry at the Court of Chancery in London.

4. The Solicitor-General proposes to transfer the staff of practitioners from Doctors' Commons to the Court of Chancery, but I would suggest that, hereafter, all doctors of civil law should be allowed

* These questions for determining the validity of contested wills would be referred to the Court of Chancery.

to practice as barristers in all Courts of Chancery and Common Law, and that the University of London be empowered to grant the degrees of Bachelor and Doctor of Law. Thus the Universities will resume their legitimate position in the commonwealth as schools of law. The opposition of the clergy to the study of English Common law first drove that study from the Universities to the Inns of Court. In these latter it has never been pursued in a scientific spirit, as is the case in the Universities of the Continent, or even of the United States. By the means which I propose the theory of our English law will stand a chance of being duly considered and a more liberal view of its study engrafted upon the minds of our advocates.

5. The abolition of Church Rates, which these propositions contemplate, together with the limitation of ecclesiastical jurisdiction to members of the Church of England, demand, as a just return to Churchmen, that those public parish assemblies called vestry meetings shall no longer be held of necessity in Churches, but that, in all parishes where there is no public hall or appropriate building, they may be held in the house of any parishioner, or in any other convenient place, and only in Churches or Dissenting Chapels with the express consent of their respective ministers, churchwardens, or chapel committees.

6. It follows as a further consequence of these reforms, that Churchwardens must cease to be

public parish officers. I propose that, in all parishes with a population of less than 500 inhabitants, the civil duties of the churchwardens shall be transferred to the overseers, unless in any such parishes there happen to be any public charities of which the churchwardens are trustees by virtue of their office. In all parishes where any such charities exist, or where the population exceeds 500 inhabitants, I propose that a new officer be elected by the rate-payers, to be called the Parishwarden. Where the charities in question are essentially Church charities, they must continue in the hands of the Churchwardens; but, where (from the nature of their institution, the founder's intention, or the custom of the place), they are open charities, the trusteeship should devolve upon the Parishwarden and Overseers. Where they are of a mixed or doubtful nature, the Parishwarden and one of the Churchwardens might be created joint trustees. All these points might be left to the decision of the new Charity Commissioners (16 and 17 Vic. c. 137), who are empowered to revise all the charities in the kingdom.

Although the Poor-Law-Amendment Act (4 and 5 W. IV. c. 76), and the regulations of the Commissioners under that Act, have virtually deprived Churchwardens of a part of their civil functions, namely the joint care and maintenance of the poor, yet they still continue to be public Parish Officers, both at Common law and by Statute. At Com-

mon law they are the Guardians of the moral character and public decency of their respective parishes; and, under a variety of old statutes, they are authorized to levy penalties for various frauds and misdemeanours. Under the Highway Act (13. G. III. c. 78), they join in appointing the Surveyor of roads, whose accounts they sign before they can be allowed by the Justices at Petty Sessions. By 1 G. IV. c. 94, s. 9., they preserve the population accounts; and, by 6 G. IV. c. 50, make out the Jury lists and affix them to the Church doors. All these duties would, in populous parishes, naturally devolve upon the Parishwarden, to whom, as Guardian of public morality and decency, might very properly be assigned the additional duty of Sanatory Inspector in his parish. This office is one of the requirements of the age, and, clothed with a sufficient authority, would be found of invaluable assistance to the Union Board of Health. In small country parishes, containing a few farmers, the Overseers might take all the civil duties now belonging to the Churchwardens.

The Churchwardens would, according to the foregoing scheme, be mere Church Officers elected by Churchmen; and it would, therefore, be an injustice to Dissenters to continue them as civil officers, since all such offices ought to be open to persons of all denominations.

7. One of the most difficult questions is that of parochial burial-grounds. I propose that in populous parishes, containing Dissenters, the Parish

Wardens be empowered to raise a Cemetery rate for the purpose of forming new burial-grounds, or maintaining those already in existence. In small country parishes, where there are only a few Dissenters, I propose that the expenses of the Churchyard shall be defrayed out of a parish-rate, levied as part of the poor-rate, and entrusted jointly to the Overseers and Churchwardens, together with the Parish Warden, where such an officer is appointed, to be spent upon all necessary expenses, enlargements, or enclosure, of the church-yard. I say nothing about the power of Dissenters to compel the clergyman to use the Church Services, since that compulsory power depends upon the Canons of the Church herself, and these would no longer form part of the general law of the land. I think that in all parishes where there is no other cemetery, Dissenters should have a right to burial in the church-yard.

8. That provision of Dr. Phillimore's Bill which proposes the continuance of Church-rates in all parishes and districts where money has been borrowed, before their abolition, upon the security of these rates, until the money so borrowed shall have been repaid, must not be omitted from any such scheme of Church reform. It might possibly be better to assess the required sum as part of the poor's-rate, and entrust it to the Overseers or Parish Wardens, as being the public officers of the parish.

In proposing these remedies I have endeavoured

to keep in view the two-fold nature of the enquiry, in order that, while our Statute-book is rendered conformable to the spirit of the age, the Church of England may not be placed in a false position.

When Constantine granted the right of citizenship (so to speak) to the Christian Church, he recognized the Canons of that Church as laws of the Empire. When heathenism was subsequently extinguished, the One Church was the universal creed of the people, and her canons were adopted and enforced by the State. It was in their adoptive, rather than in their spiritual character, that they were enforced by the sentence of public tribunals. Thus the ecclesiastical Courts are State Courts, intended to give temporal effect to the spiritual authority of the Church.

In England, in Saxon times, the Bishop presided in the County Courts, side by side with the civil Judge, and they heard, and decided, causes both spiritual and temporal. Under the Normans the Church aimed at greater separation from the temporal authority, but her Courts were no less subject to statutory limitations and regal control.

Before the age of Constantine the Bishops of the Church had only such authority as was conceded to them by the separate consent of each member of the Christian community. The persons, thus acknowledging their claims, did so, as believing them to be spiritually commissioned by the Divine Head of the Church to superintend Her discipline.

Their authority had no force beyond the feelings, or faith, of the individuals who voluntarily subjected themselves to it. When the Church was admitted to the corporate right of citizenship, her Bishops were endowed with certain temporal powers as a means of enforcing upon all their inherent spiritual authority, but, as a return to the State for this immense concession, they were required to exercise their spiritual functions within certain prescribed channels and through certain public tribunals. The uniformity and publicity thus enforced was a guarantee to the State for the due exercise of episcopal power. This I conceive to be the true view of Ecclesiastical Courts. They are channels appointed by the State for the just limitation of the spiritual authority of the Church and exist as a result of the compact between Church and State.

I submit that, in these days, when the Church of England has no longer the Spiritual control of the whole people and when all denominations are, or ought to be, upon a perfect equality in the eye of the law, it becomes both the State and the Church to revise the terms of their compact, and to place it upon a footing consistent, on the one hand, with the more enlightened and equable policy of the State, and, on the other, with the just claims of the Church and with her inherent constitution. I have, therefore, endeavoured in these propositions so to adjust the terms of that compact, as, without depriving the Church of England of her public

tribunals of Church discipline, to give greater consistency to our statute-book, and equal liberty to all.

I trust, Sir, that you will pardon my intruding these remarks upon your notice at a period when your thoughts must be otherwise engaged, but I feel that, no less than the New Reform Bill itself, this is one of the great questions of the age.

I beg to remain,
Sir,
Your obedient servant,

THEODORE H. GALTON.

LONDON:
Printed by George E. Eyre and William Spottiswoode,
Printers to the Queen's most Excellent Majesty.
For Her Majesty's Stationery Office.