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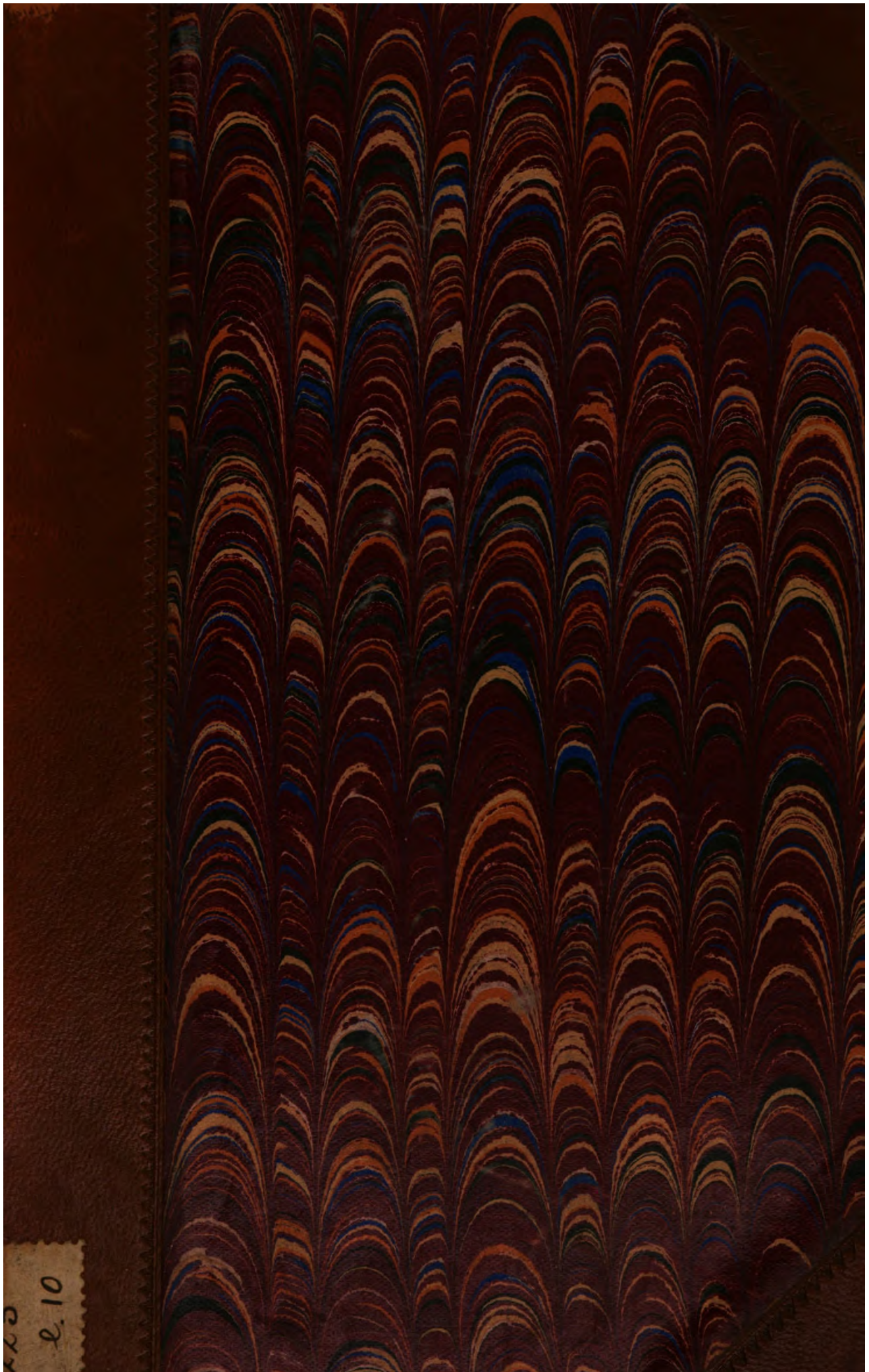
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# CORRESPONDENCE

BETWEEN

THE LORD BISHOP OF CAPETOWN

AND

F. R. SURTEES, Esq.,

BARRISTER-AT-LAW (H. M. ARBITRATOR SLAVE-TRADE-SUPPRESSION COMMISSION),

ON THE SUBJECT OF

THE INTRODUCTION OF SYNODICAL ACTION, COMPRISING A LAY  
ELEMENT (IN THE ABSENCE OF AUTHORITY FROM THE  
IMPERIAL PARLIAMENT), INTO THE DIOCESE OF  
CAPETOWN.

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WITH NOTES AND APPENDIX.

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CAPE TOWN:

A. S. ROBERTSON, ADDERLEY-STREET.

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1857.



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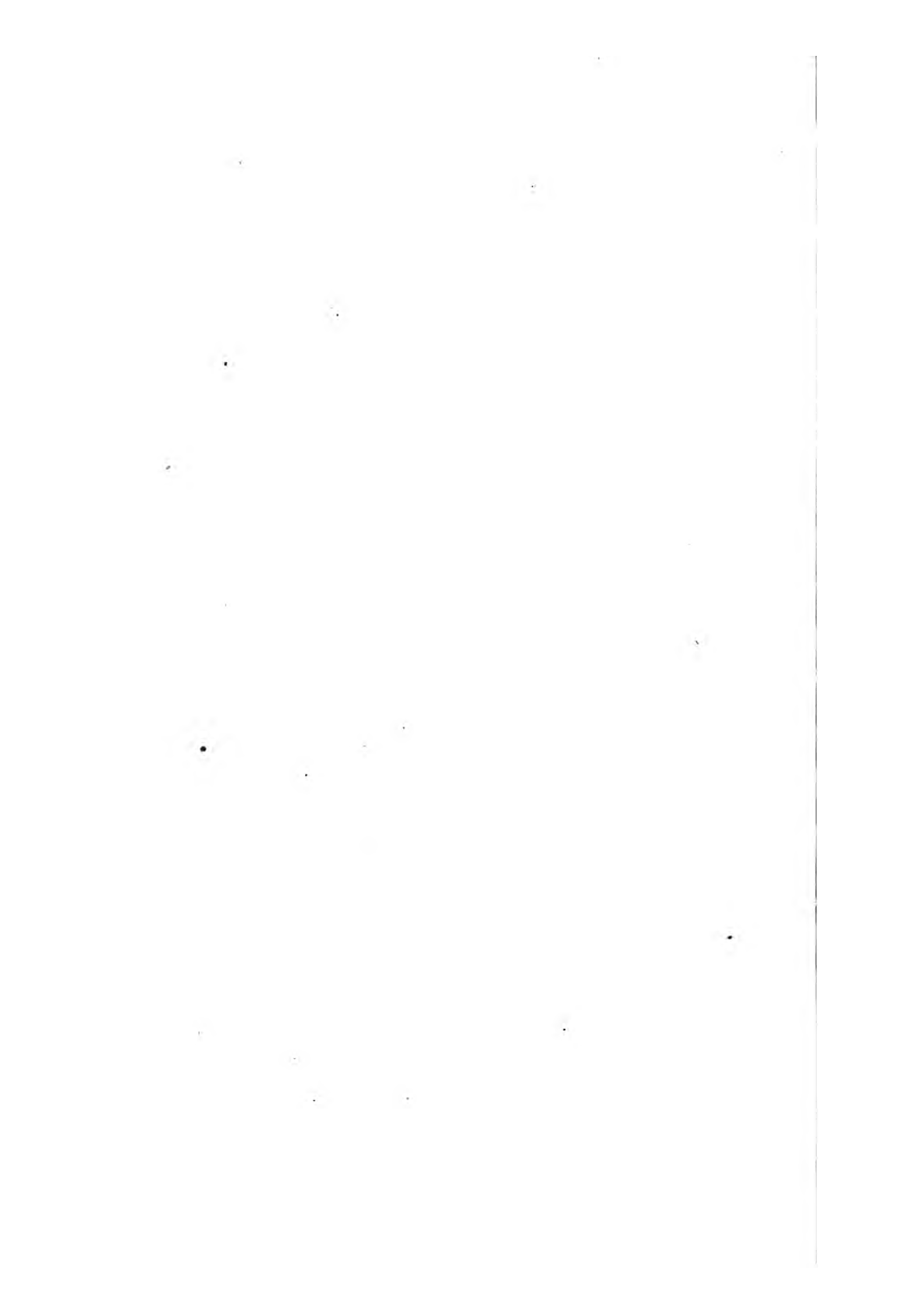
THE following pages will speak for themselves. They tell the revival of "*an old tale, but often told*,"—the struggle of the Laity of the Church of England and Ireland against clerical dictation,—the battling of the Laity, in defence of the rights of the Sovereign as supreme Head of the Church of England in matters ecclesiastical,—the old Prerogative of the Crown.

"La carone d'Engleterre qad este si frank de tout temps qele nad hien null terrein souveraine mes immediate subgit a Dieu en toutes choses touchantz la regalie de mesme la corone et a null autre. . . . Et disoient outre les communes avent dites qe les dites choses ensi attempez sont overtement encountre la corone nostre seignur le Roi et sa regalie use et approve du temps du touz ses progenitours par quoy ils et touz les lieges communes du mesme le Royalme veulant estere ovec nostre dit' seignur le Roi et sa dite corone et sa regalie en les cases ayaunt dites et en touz autres cases attempez encountre luy sa corone et sa regalie en touz pointz a vivre et murer."

—*Statute of Præmunire*, 16 Richard II, passed to check the illegal proceedings of Churchmen, who had made canons and done other matters illegally, *under* the Pope's authority.

"The Crown of England, which has been so free at all times that it has been in no earthly subjection, but immediately subject to God, in all things touching the Royalty of the same Crown, and to none other. . . . And, moreover, the Commons aforesaid say that the said things so attempted (ouster of the Crown in things ecclesiastical under Papal bulls) be clearly against the King's crown and his royalty, used and approved of the time of his progenitors; wherefore they and all the liege commons of the same realm will stand with our said Lord the King and his said Crown and regality in the case aforesaid, and in all other cases attempted against him, his crown, and regality, in all points, to live and die."





# CORRESPONDENCE, &c.

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[ No. 1. ]

## PASTORAL LETTER OF THE BISHOP OF CAPETOWN.

TO THE REV. THE CLERGY AND TO THE LAY MEMBERS OF THE CHURCH IN THE DIOCESE OF CAPETOWN.

MY DEAR BRETHREN,—The time appears to me to have arrived when it becomes my duty no longer to delay to invite the Clergy and the representatives of the Laity of this Diocese to meet together, and take common counsel with me concerning the affairs of the Church.

It is just five years since I first brought the subject officially under your notice in a pastoral letter ; and it will be within your recollection that, at a subsequent period, I requested you to consider in your several parishes—

1. The desirableness of our thus meeting together ;
2. The leading principles which were involved in such meetings.

The whole subject was at the time discussed with much interest, and the conclusions at which you arrived were forwarded to me in England by the late Dean. From his communication it appears that though, here and there, there was more or less of doubt, there was but one parish in *this* Diocese in which a majority of the Laity expressed their desire that the Bishop, Clergy, and Laity should not meet together from time to time for the better management of their own ecclesiastical affairs, and that three only of the Clergy concurred in that opinion.

With such an expression of the views of so considerable a proportion of the Clergy and Laity before me, I should, on my return to this country, have invited you to assemble together, had I not lived in the continual expectation that some act would have been passed by the Imperial Parliament which should give legal effect and validity to our proceedings and conclusions. Of this, however, there seems now to be but little prospect. The matter has, I understand, been dropped on the following grounds :—

It is alleged, 1st, That there is no necessity for such a measure, there being no reasonable doubts as to the lawfulness of Diocesan Synods.

2d. That for the Imperial Parliament to legislate at all for colonies where parliaments exist, would be to interfere with the rights and functions of such parliaments.

3rd. That to do so, in however small a degree, would give the Church a legal status and position above that of other religious bodies, and thereby interfere with their political equality.

Certainly the attempt has been made to frame a law to meet the supposed difficulty, which should not invade the province of colonial parliaments, nor give a legal superiority to the Church over other religious bodies, but without success; and there seems to be no probability that the matter will again be brought before Parliament. This appears to be clear, from a despatch by the present Secretary of State for the Colonies to the Governor-General of Canada, dated 15th of February, 1856. After expressing the "strong feeling which Her Majesty's Government have" that the difficulties attending any attempt at Imperial legislation on this subject should not "be permitted to interfere with the meeting of Clergy and Laity, by representative bodies, for the purpose of making rules for the management of Church affairs," he expresses his conviction that, for "purposes so simple, statuteable aid is not necessary:" that "if not necessary, it is highly inexpedient;" that it would be "difficult to frame such a measure, of the merest enabling character, without in some degree compromising the principle which regards legislation on the internal affairs of Canada as belonging to its own legislature, and not that of the empire at large. However guarded the expressions might be, there would be danger of constituting within the province a kind of corporate body, independent in some degree of the provincial legislature itself." There can be no doubt, therefore, that the idea of Imperial legislation is altogether abandoned. The Colonial Churches are left to act for themselves, as their wants or wishes may impel them. Nor have they been slow to avail themselves of what is now their generally recognised liberty. Assemblies, at which the Laity have been represented by their delegates, have been already held in several dioceses, both in the North American Provinces and in Australia, and are about to be held elsewhere; the basis upon which they have proceeded being that of the bill prepared by the Archbishop of Canterbury.\*

The reasons which lead me to think, after consultation with my Chapter, and with both Clergy and Laity in different parts of the country, that the period has arrived for our meeting together for mutual counsel, are many. I will touch only upon a few of them.

I. The general interests of the Church seem to me to require that we should consider the bearing which the important questions now being mooted elsewhere may have upon its present state and

\* The Archbishop's bill was considered at many meetings by the whole English Episcopate, summoned by the Archbishop for that express purpose. When completely matured, after long and anxious consideration, it was submitted to and approved by the Secretary of State. It was carried through the House of Lords; but was rejected by the House of Commons for the reasons stated above. That bill will be reprinted in the Church Magazine for December.

future prospects. Amongst the questions to which I allude, I may name—the Apportionment of Ecclesiastical Grants ; the Voluntary Principle ; the Subject of Education.

II. But the internal condition of the Church presents to my mind a still stronger reason for adopting such a course. We are, and have long been, suffering for want of some authority to lay down rules and regulations for the management of our affairs. Hitherto, almost everything in this land has rested unduly upon the Bishop. Upon him, of necessity, has devolved the responsibility of settling all questions which the Assembled Church can alone properly decide. What and how many have arisen, in the adaptation of the laws and system of our Church to the circumstances of this half-heathen land, I do not stop to detail. Sufficient it is to say, that, amidst the difficulties and peculiarities of our position, all matters have been referred to him for decision. He is not the Church, nor yet the lawgiver of the Church ; but the judge and executor of the Church's laws : and yet he has had thrust upon him to some extent the office of legislator. At least, he has had to deal with all unforeseen difficulties which have arisen, according to the best of his judgment and discretion. He has been placed in a wrong position. And the whole government and discipline of the Church, and the whole conduct of its affairs, resting as it does upon one, is in danger of being enfeebled. Nor is this all. Upon him has rested the responsibility of maintaining nearly the whole of the work which has been established since the foundation of the See. He has been personally liable for the whole expenditure ; and the funds to meet it have been mainly raised by his private appeals to the Church at home. Societies have rendered, comparatively speaking, little help. *This* whole Diocese has never had more than £600 a year from the Society for the Propagation of the Gospel. With such an addition to funds placed at his disposal by private friends, he has borne the cost of bringing out upwards of 70 clergymen, missionaries, or schoolmasters ; has guaranteed them their income for a fixed period of years ; has made up all shortcomings and neglect to fulfil engagements ; has borne all risks of loss or failure. It is in no complaining or boastful spirit that I say this ; nor is it because our financial position affords at present any great cause for anxiety or alarm,—for I am thankful to say that this is not so. I wish simply to put the fact before you, that the maintenance of the work of the Church in its new and extensive fields of labour has hitherto chiefly rested, in this land, upon the life and health of one man. It is not right or safe that it should continue to do so.

These, then, are the chief reasons which have induced me, after consultation with others, to call you together for counsel and support. For nine years I have cheerfully borne, alone, the burden of providing, maintaining, guiding, and directing the works which

have been undertaken, and the affairs of this Church,—because, in our existing circumstances, having no legitimate means of ascertaining the wishes, or receiving the concurrence of the Church at large to my measures, none could share it with me. How heavily these duties, which form no necessary or essential part of my office, have pressed upon me,—in what an unceasing round of secular business they have involved me,—few have, I believe, any conception; but what have been the anxieties and distresses which have arisen out of them, all have in some measure been able to judge. They have been enough to break the spirit and wear out the energies of men in every way more fitted to sustain them than myself. Nothing but the conviction that I was called for Christ's sake to bear them, and the belief that strength would be given to do what He gave me to do, has sustained me. They have, however, before now brought me to the verge of the grave.

It is because, then, I am persuaded that no body can exist in a state of efficiency without *the power of legislating* for the emergencies which may arise; and still more because I am convinced that the Church in this half-heathen land, emerging as it is out of its mere missionary state, and assuming a more settled and established position,—surrounded, too, as it is, by peculiar difficulties and perplexing questions,—needs the counsel and the wisdom of all orders of the Church, in order to its vigorous and healthy expansion; and because it is now clear that it is no longer necessary that I should bear alone the weight of the responsibility and labour which have hitherto been laid upon me,—that I have resolved, without further delay, to invite my brethren of the Laity, as well as the Clergy, to sustain their share of the duties which belong to them in the Church of God.

That such is the course which I ought to pursue, and indeed the only course which I could pursue, I can have no doubt. It is precisely that which has been adopted by the Bishops of our oldest and most influential Dioceses, which once were surrounded by the same difficulties and perplexities with which we are encompassed, but are now reaping the benefits of duly organised assemblies. It is that which has been marked out for us by the whole English Episcopate, and by the sense of justice of the chief authorities in the State in the mother-land.\* *There cannot, therefore, be the remotest ground for supposing that, in meeting together, we are running counter to any law, or to the views and opinions of any authorities in Church or State*

It is right that I should state the course which I shall pursue in summoning our first Assembly, and that I should name at least

\* The Queen in Council has approved of the bill framed by the Melbourne Synod, and passed at their request by the Colonial Legislature. The present Secretary of State points out this as the proper course for the Canadian Church to pursue in its peculiar circumstances, and has instructed the Governor-General to communicate his despatch to the several Bishops of that Church.

some of the more important matters which are likely to come under its consideration.

In calling together the Church by its chosen representatives, I shall take for my guide, as I believe all the other Dioceses to which allusion has been made have done, the bill prepared with great care, at repeated meetings, by the Bishops of the Church in England, under the presidency of the Archbishop of Canterbury.

The great principles of that bill are the same as those agreed to by the Clergy and Laity at their repeated public meetings in Cape Town, in the year 1852. It provides that nothing can be determined by a Synod except with the concurrence of each of the three orders therein assembled; that none but communicants can be delegates of the Laity; that all *bona fide* members of the Church shall have a voice in their election; that the standards of faith and doctrine contained in the Book of Common Prayer, and the 39 Articles, are not matters that come within the range of a Diocesan Synod's authority. In accordance with these principles, I purpose to invite each parish or congregation to elect a Lay Delegate to represent it in the Assembly which will be held,—the Cathedral Church alone, as being the mother Church of the Diocese, and chiefest in influence and numbers, being invited to send two. The delegates must, in all cases, be communicants. The electors must be *bona fide* members of the English Church. Who are such, in a country where the population is continually undergoing a change, it is not always easy to decide,—and the settlement of this point must be left to the Synod itself when duly organised. Meantime, as the basis of this constituency of this our first Assembly should be as wide as possible, without incurring the risk of the real members of the Church being overwhelmed and outvoted by those who are not her true members, it seems desirable that not only should all communicants, and all confirmed and enrolled male adults of the age of 21, be entitled to vote for delegates, but all who shall at the time of the election declare themselves to be members of the Church of England, and of no other religious denomination.

All duly licensed Clergy, being in Priest's orders, will be summoned. Deacons will be authorised to attend and speak, but not to vote. The Synod will be competent to deal with all matters except those of faith and doctrine, these being already fixed and determined, and not being within the province of such an Assembly.

It would be difficult to say what matters can be brought before a body which, previous to discussing subjects of inferior moment, must determine its own exact constitution, as well as its forms of proceedings. The precedents and decisions of other Colonial Dioceses will indeed help considerably in the settlement of these questions; but time will doubtless be taken up most properly and carefully in their discussion. When these shall have been deter-

mined, I shall wish to bring before the Synod some, at least, of the following subjects,—while I need scarce say both Clergy and Laity will have opportunities afforded them of bringing forward such other subjects as they deem of importance:—

I. The steps to be taken to place the Clergy of this Diocese in the position of Incumbents, instead of that of Licensed Curates.

II. The Appointment, Support, and Discipline of the Clergy.

III. The Tenure and Management of Church Property.

IV. Questions relating to the Formation and Constitution of Parishes.

V. Difficulties which have presented themselves with regard to Marriages, Divorces, and Sponsors.

VI. The Mission Work of the Diocese.

VII. The Subject of Education.

VIII. The desirableness, or otherwise, of sanctioning a set of Hymns.

IX. The desirableness, or otherwise, of the Bishop, Clergy, and Laity meeting periodically together, and the frequency of such meetings.

X. The desirableness, or otherwise, of seeking to obtain the assistance of the Legislature to carry out the objects of the Synod.

The elections in each parish will take place on the 22d of December, the more remote parishes being at liberty, if they see fit, to fix upon an earlier day. The place where we shall assemble will be the Cathedral Church of St. George. On the day previous to opening the Synod, the Holy Communion will be celebrated. Divine service will begin at 11 o'clock. After the sermon, which will be preached by the Dean, shall be ended, I propose to deliver a charge to the Clergy.

I have only now, in conclusion, brethren, to entreat you to consider that our meeting together in a solemn Assembly will be no ordinary event: that it will be a critical and important period in the history of our Church. Let us pray that we may be of one heart and of one mind. That we may love as brethren. That, putting aside all worldly feelings and affections, all passion and all prejudice, we may gather together with a single eye,—with a sincere and humble desire to be permitted in any degree to minister to the promotion of God's glory, and the advancement of His kingdom upon earth.

May God, for His dear Son's sake, pardon all our infirmities and sins; bless all our honest endeavours to do Him service; and send down His Holy Spirit upon us, to guide us into all peace, and into all truth.

I am, my dear Brethren,  
Your affectionate Friend and Pastor,  
R. CAPETOWN.

Bishop's Court, November 15, 1856.

[ No. 2. ]

Plumstead, Dec. 6, 1856.

THE LORD BISHOP OF CAPETOWN.

MY LORD,—Through your Lordship's kindness, I have received a copy of your Pastoral Letter, inviting the clergy and laity of your diocese (the latter by delegates) to meet your Lordship shortly in Synod. That one of the laity, so called on, should address you on the subject, will perhaps be no matter of surprise, considering its novelty and importance.

You remind us that this subject was brought by you to our notice some years ago. The case, as it then stood, I believe to have been as follows:—A general creation of Colonial Bishops having taken place some years previous, it was soon discovered that their powers of Church government and authority were limited and fettered in their several dioceses, so as to impair their utility—that the Colonial Church was, in fact, in an anomalous position, well described as a corporation unable to settle its own affairs, and unable to regulate its own discipline,—that it was worse off, in many respects, than other religious persuasions; for, whilst they possessed the right to regulate their own affairs, the Church of England possessed no power for its members, whether at home or in the colonies—even to meet, without authority of the Crown, as supreme head of our Church,—to discuss any ecclesiastical rule, with a view to change or alteration.

The cause of this was deep-seated—the organization of the Church of England, connected as it is with the State, rests on common law, on canon law, and on Act of Parliament, especially an Act of Henry the 8th, declaring the old common law supremacy of the Crown, in matters ecclesiastical, to constitute a part of the relation between the clergy and the Crown, whilst the statute of Elizabeth (on Uniformity) said, that the supremacy of the Crown should have effect in all dominions of the Sovereign, as well in foreign as in home possessions. For upwards of a century, since 1717, no laws affecting the Church have been made, save by Act of Parliament, nor could be, unless the Crown again permitted Convocation to act. Were members of the Church, therefore, in the colonies, to make any new canon, to say nothing of their accomplishing what could be effected by no body of Churchmen at home, they would arrogate the powers, and so far be placing themselves above the legislature as well as the law of England.

The question then arose, and I believe it was first mooted in Parliament in 1850, at the suggestion of the Australian Bishops,—could a power be given to colonial clergy and laity by Imperial Act of Parliament, to regulate their own ecclesiastical affairs, without trenching on the Queen's prerogative, especially as colonial Bishops were in a far worse position as regards enforcing



clergy discipline than the Episcopacy of England, aided by ecclesiastical courts, and where the exact limits of ecclesiastical law can be defined?

The attainment of this object, first attempted by Mr. Gladstone, in 1850, as regards Australia, was sought in 1852 for the colonies generally, when a bill being drawn out to legalise Colonial Church Synods, and expressly reserving the right for colonial legislatures to confirm, or otherwise, all regulations that such Synods might make,—copies of the bill were printed and disseminated throughout the colonies, in order that those interested in the subject, might have an opportunity of considering the proposal. If I remember rightly, it was about that time, that being yourself in England, you desired to know, through the late Dean, the opinion of Churchmen here, as to “the leading principles which must be involved in such meetings.”

As regards the impression conveyed to you as to the feeling in this part of the diocese:—I am unwilling to question now, after the lapse of some years, the information that may have been given you. I may be mistaken, but I should say it amounted to far more than “*doubts here and there* ;” but since you have observed, with something like reproach, that “there was but one parish in the diocese in which a majority of the laity expressed their desire that the Bishop, clergy, and laity, should not meet for the better management of their own ecclesiastical affairs,” as I attended the meetings of the parish to which I presume you allude, I would remark that your Lordship (inadvertently no doubt) has much misrepresented us. We regarded the matter on far higher grounds. Looking at the effects of such a measure hereafter, we thought with Mr. Napier (M.P. for Dublin University), that “they would tend to dissever the Church of England and the Colonial branches—that no Colonial branches of the Church ought to obtain the power to make laws on such points as Colonial Church discipline, for if they did, in each diocese there would not be one united Church, as at present, but many Churches, which would not be wise, for the Church is not to be moulded according to the wishes of the people in every district: it has its fixed standard of doctrines and discipline, and goes forth as a missionary Church with its fixed principles and fixed procedure.” We agreed, too, with Sir John Pakington, then Secretary of State for the Colonies, in what he said in Parliament; he told your Lordship himself,—“I told him” (says he, May 19, 1852) “what my opinion was respecting the bill, *founded on the highest advice I could take*, that it was a measure which I thought would break up the Church of England and cause its separation from the Church in the colonies. I also told him that *I believed it would impugn the supremacy of the Crown*.” These were ours, or at least, my own sentiments in the measure, and in sharing them with such men as

Joseph Napier, Sir J. Pakington, Sir James Stephen, and the late Sir Robert Inglis, who declared he viewed it "with aversion,"—we had no reason to be ashamed of or to disavow them.

Well! the bill was not carried in 1852, neither was it in 1853, nor '54, nor last year, though introduced, and strongly urged, by influential members in Parliament. The laity, therefore (for I confine myself to the body to which I belong), have never yet had the power given them legally to meet in Synod. Your Lordship, however, now invites us to do so, dismissing all legal doubts, such as alluded to in the very preamble of the bill appended to your letter, in a few terse words,—“There cannot, therefore, be the remotest grounds for supposing that in meeting together we are running counter to any law, or to the views and opinions of any authorities in Church or State.”

My reply to this is a very plain one:—the opinion of one of the law officers of the Crown, the present Solicitor-General, who, in introducing the bill in the House of Commons on the subject, in 1852, stated, that “there was a great deal of doubt as to the legality of the colonial clergy meeting together for the purpose of agreeing, either among themselves, or in conjunction with the lay members of the Church, on any regulations or arrangements which might be necessary for the conduct of their ecclesiastical affairs. That disability arose, *and he thought justly*, out of a statute passed in the reign of Henry 8th, and which prohibited the clergy from meeting together for the purpose of making any order, canon, or constitution, without being summoned for that purpose. That statute had become part of the supremacy of the Crown, and as the supremacy was held to extend over the whole country, as well as to any foreign possession, there was very good reason, he thought, for the apprehension that the colonial clergy, carrying with them, as they did, the obligations of obedience to that statute, would be *acting in violation of the law*, if they attempted any meeting, either by themselves or jointly with the laity, for the purpose of making any ecclesiastical regulation or arrangement, &c. ;” and again in committee on the bill, he declared,—“*The Bishop and lay members of the Church cannot meet to discuss the remedy applicable to their present state, without incurring penalties*”!!!

Has there been any abandonment, modification, or retractation of this opinion on the part of the Solicitor-General, that you can point out, since; in brief, what your Lordship asks us to do, has been declared by one of the law officers of the Crown to be “*illegal*,” and to “*subject us to penalties*”! Has Sir John Pakington changed his views? If they have neither done so, on what possible grounds can you have so summarily settled the question?—But I will point out other reasons, I will not say for suspicion, but caution, on the part of the laity, as to these proposed meetings.

Is it true—and one knows not how to deal with the statement,

standing, as it does, on the authority of an assertion made in the House of Commons when you were in England, and must (almost) have had your attention drawn to it—Is it true that your Lordship then declared your determination, should no bill pass legalising Synods, sooner or later to convene them at all risks, be the consequences what they might? Not to misrepresent, I quote Mr. Adderley's own words, as reported in Hansard (for May 19, 1852),—“ At the present minute, the Bishop of Capetown is also in this country, arguing and pressing some such measure as this—and if some such measure as this was not passed, *he declares that he will be obliged to act as the bill proposes, without authority, at the risk of coming within the penalty of the law*” !!!

Surely, it would have been better to have reminded us of this, and then called for volunteers, should any be disposed to join in the risks; for, let me ask, if the consequences of colonial Synods, *had they been legalised*, were likely to be, in the remotest degree, such as described by Sir John Pakington in 1852, what will they have to answer for in *foro conscientiæ*, at any rate, who, in opposition to the opinion of one of the first lawyers in England, for such the Solicitor-General is reckoned, set about all this *illegally*? It might have been desirable, perhaps, that the objects of these Synods had been specified more distinctly,—at one time they are treated as meetings for consultation, at another, in connexion with “the power of legislating,”—as, when you speak of Synods having been held of late years in England (I believe the Bishop of Exeter commenced them), whatsoever have been there, have only been composed of clergy, and could only be consultative, and barely that. What they have been in the Australian colonies more recently, I know not; but when it is remembered that some few years ago, in 1850, the Australian Bishops, in Synod, made a minute, the effect of which was to exclude from the Church of England in the colonies, any clergyman who concurred in the decision of the Privy Council in the Gorham case, how much reason is there again for watchfulness. I should do the Bishop of Melbourne the justice to add, that I believe he dissented on that occasion.

True it is, you propose to submit the decisions of Synod to the colonial legislature for legal sanction, as was the case in Melbourne: is it certain that the colonial legislature would approach the subject at all? It would not be the first time that public opinion here declined to take Australia as a precedent; but if it did, would it not be said that you had sought, through the influence of others, to carry measures which, whilst they relieved you of responsibility, were yours, not theirs, in reality? Certainly, from their business habits and occupations, you would hardly look from the laity of the colony for much erudition on “the tenures and management of Church property; Church discipline; difficulties as regards marriages, divorces,” &c.; or knowledge as to how far any changes

they might make would place the Church here in antagonism with ecclesiastical law at home.

Viewing the act of the Melbourne Synod in a legal point of view—should the Solicitor-General's law be right—the best one can say of it is, that it looks much like breaking the law first, and then running for an act of indemnity; for such in effect was the subsequent sanction of the colonial legislature, with Her Majesty's approval. It is one thing to make Church ordinances with the Queen's permission first obtained, and another to make them illegally without leave, and then seek for royal condonation and allowance, though Her Majesty might graciously forego a portion of her prerogative after it had been filched, as she freely yielded her royalty rights in Australian gold, even before they were asked for.

As regards the case of Canada, to which you allude, I am not acquainted with the circumstances; but, as is well known, the Church of England stands in an anomalous position there, owing to peculiarities attending the conquest of that country from France. I will only observe that, so far as appears from your extract from the Secretary of State's letter, there is nothing that seems to indicate that it was intended to apply to the colonies generally, and indeed if it had been, one would naturally expect that something resembling a circular on the subject would be addressed to the Governor of each colony.

When mention is made of want of local freedom of action in our Church in the colonies, it may be well to ascertain how far she is really behind other persuasions. If it be true that the Church of Rome admits no local jurisdiction as between bishop, clergy, and laity in the colonies,—that the General Assembly of the Church of Scotland at home, decides all matters in dispute affecting her Church in the colonies,—that the Wesleyan body have also a central authority for appeals at home,—one would hope that the singularity of our case is not so extreme as at first sight might appear: still, that the difficulties of a colonial Bishop are great, his position onerous, very responsible, and at times, perhaps, almost galling, no reflecting person can deny, or assert that the Church is in a satisfactory state. For your Lordship's particular position it is impossible not to feel much sympathy.

Should a remedy be asked for this state of things, at present it would seem to lie in awaiting the changes which time brings about, in following the course pursued by Romilly and Macintosh as regards the criminal law, at a time when their case seemed desperate,—not, at any rate, in convening Synods which have no power to bind one single dissentient, save through the intervention of the Colonial Legislature, which, in legalising Church of England canons, unless it did the like for every other denomination, would thereby create a preference, though there might be no predom-

ance, and not, in fine, in adopting a measure which, according to the showing of your own documents, must be pronounced but doubtful, —“ *Quid dubitas ne feceris.*”

Apologising for the length of this letter, which the importance of the subject could alone justify, I am, my Lord, very faithfully yours,

FREDERIC R. SURTEES.

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[ No. 3. ]

Bishop's Court, December 9, 1856.

F. R. SURTEES, ESQ.

MY DEAR SIR,—I beg to acknowledge the receipt of your letter on the subject of Colonial Synods. You have, I need not say, a perfect right to address me on such a question,—to state difficulties or objections,—and to invite my solution or refutation of them.

To reply to all the points you have raised, fully and completely, would extend this letter to an inconvenient length. I will only touch upon the more important of them.

You have mentioned some of the difficulties which surround the Church in the colonies of Great Britain. I should not altogether agree in your statement of the case, and should have put it in another shape. Without dwelling upon this, however, I would observe that you have clearly not understood the full difficulties and anomalies of our existing condition. Not only is the Church not established in our colonies generally; but it is in most of them, and here certainly, wholly without law to govern it, save in so far as the Queen's Letters Patent (which, if we are to believe those who consider themselves competent to give an opinion, are of doubtful authority) give the Bishop of the Diocese the power to enforce the laws of the Church.

Apart from these, neither the authorised version of the Holy Scriptures,—nor the Book of Common Prayer,—nor the Homilies or Canons of the Church, nor any of the laws or customs by which the Church of England is governed, have any legal force in this land. These, indeed, are our precious inheritance from our mother Church. It is an English Churchman's privilege to carry them with him wherever he goes; but it is only morally that he does so, not legally. They are binding on him *foro conscientiæ*—not by any external law. If a minister choose to put these aside, and to be governed not by the laws of the Church, but only by his own will, there is no law to compel him. He may live in the continual violation of the laws of the Church of which he is a member, with impunity. He may substitute, if he pleases, the

Roman Missal, or extempore prayer for our Book of Common Prayer; or he may be a drunkard or adulterer. I am putting extreme cases, which, it is to be hoped, may never occur, to shew, in a striking way, our anomalous condition. The Bishop, indeed, may withdraw his licence from him, but he may choose to officiate without it; and there is no remedy in such a case but that last sad one of cutting off and separating such an one from the communion of the Church. And yet it is the duty of the Bishop to administer these laws. He has made oath that he will do so. The written law of the Church is the only rule that he can abide by in the administration of the affairs of his Diocese. If he were to depart from this, he would have nothing to fall back upon. Every one would gradually do that which is right in his own eyes. There would be no law, or discipline, or uniformity. The Church would cease to be one body—become a series of independent congregations. That would come to pass which you say Mr. Napier thought would be the result of Synods, but against which they are in truth the great safeguards,—“in each diocese there would be not one united Church as at present, but many Churches; for the Church is not to be moulded according to the wishes of the people in each district.” This is surely a very serious consideration for all who love their Church. Mr. Gladstone truly described our legal position when he said, “Their state is a state of anarchy, tempered only by the good feeling and good sense which in the main regulate the religious proceedings of the great bulk of our colonies” “That, however, may not, and cannot always exist.” “Good feeling is a very good substitute for law where there is no other substitute, but you require some other substitute.”

The only remedy for this state of things, by the admission of both Church and State at home, is a Synod, in which Bishops, Clergy, and Laity, may meet together, and agree to receive the laws of the mother Church as their laws, and adopt such rules and regulations as may be suitable or requisite for their peculiar circumstances. Without the joint consent of all orders of the Church, this is impossible. It is true that our conclusions will not have the force of law,—in the sense of becoming the laws of the country, nor have I, for one, any wish that they should; but they will be regarded, if I am not mistaken, by the civil courts of the colony, as the laws of the particular body that consents to receive them, just as the rules of any common society,—an insurance office for instance, or a bank,—would be regarded as the laws of that society, if received as such by its chosen representatives.

Whether you look ultimately to the constitution of Synods by some actual law, or not, to remedy the defects to which you are not blind, I know not. Apparently you do not; for though you think that our true “remedy for this state of things” “lies in awaiting the changes which time brings about”—that is, in doing

nothing to remedy acknowledged evils,—evils which, unless remedied, must grow as years roll on, and disturb the peace and mar the prosperity of the Church,—you put prominently forward what others have said of the dangers of Synodical action. You quote Sir John Pakington and Mr. Napier on the point,—both of them excellent men. To Sir J. Pakington, indeed, you scarce do justice. Though at the time to which you refer the subject was new to him, and he did not see his way clearly, he spoke very strongly as to the necessity of Synodical action. His words, which you quote, had reference to Mr. Gladstone's particular Bill,—not to the general question. Upon it he says in his speech, published by himself, on that occasion, “I am quite ready to admit that there are respects in which the Churches in the colonies are suffering great disadvantages, and that, I believe, they stand in need of legislative assistance, in order to enable them to make regulations which are essential to their proper functions. I believe that those disabilities are chiefly three-fold,—first, the inability to make regulations for their own discipline; second, the want of greater power of Synodical action; and, third, the want of power to adapt their forms and their Liturgy to their requirements as missionary Churches, which I consider one of the most important functions which can be discharged by Churches so situated.” And he added, “If I retain my office for another year, it will not be my fault if some legislation does not take place.” As to Mr. Napier's opinion that Synods would “tend to dissever the Church of England and the Colonial Church,—that no branches of the Church ought to obtain the power to make laws on such points as colonial discipline; that the Church goes forth as a Missionary Church, with its fixed principles and fixed procedure,”—I can only say that if I understand his words, which are very vague, I do not agree with him; and I am happy to be able to inform you, as you ask the question, that he does appear to have changed his mind, for in the debate on the last Bill of the Solicitor-General, he is reported to have said that “he quite agreed that some power ought to be given to the Church in the colonies,” and that he liked the Archbishop's Bill better than the Solicitor-General's. No man, I think, who understood the principles of the Church, would have made the observations which you quote. That which binds the daughter Churches in the colonies to the mother Church from which they are off-shoots, is,—I. The Confession of the same faith, the acknowledgment of the same Creeds and Articles. II. The joining in the same Prayers. III. The partaking of the one bread at the hands of the same Ministers. IV. The same court of final appeal on all matters of Faith and Doctrine. Where these things exist, all over the world, there is the same Church, however diversified its rule may be in minor matters relating to its internal discipline. Over these grave matters a Diocesan Synod has no jurisdiction.

It is but a part of that which constitutes the whole body of the Church, which alone has power to determine such subjects. Its authority is subordinate to that of a Provincial Synod, as this is again subordinate to a National Synod.

How compatible such variety of rule on all minor matters which the circumstances of different countries, and races, and churches, may require, is with the maintenance of the unity of the Church, the condition of things in the Church in the United States may serve to show. There, there is a great variety of rule in different Dioceses, but all are knit together in one Church, under the supreme rule and authority of the General Convention. Under such a system that Church has doubled itself within a few years. There is combined in it strict unity, with abundant elasticity, and no one dreams there of "the Church being broken up into fragments."

But your main difficulty seems to be the illegality of our holding Synods. Now what is the real state of the case? An Act was passed 300 years ago, in the reign of Henry VIII, forbidding the Clergy of England to enact Canons of Convocation without the King's licence. At that time England had no colonies, and of course no colonial churches. Within the last thirty years great churches have grown up in our colonies. In many of these the laws of England and England's Church have no force. Without laws large bodies cannot long exist, or at least prosper. There has been a cry everywhere for the power to make laws. The only hindrance has been a scruple in the minds of Churchmen in the colonies, lest the Act of Henry VIII should, by a legal fiction, be construed as extending to them. The most eminent lawyers have been consulted. One of these, in the course of a debate, put the hardship colonial Churchmen endure in the strong language you have quoted. You say it was the present Solicitor-General who did so, and ask me if he has changed his opinion? I have not the debate at hand, but I presume that he has; for I find the names not only of Sir Fitzroy Kelly, your friend Mr. Joseph Napier, and Archibald John Stevens, author of the important work upon the statutes bearing upon the Church, and one of the chief ecclesiastical lawyers of the time,—but also that of Sir R. Bethell, appended to the following document:—"We are of opinion that the Act of Submission (25 Henry VIII, c. 19,) does not extend to prohibit or render illegal the holding of Diocesan Synods within the Diocese of Adelaide. Dec. 1, 1854." And I find also that he is a member of the government, which, acting under the advice of the law advisers of the Crown, and after the most mature deliberation, has sanctioned the proceedings of the two important Dioceses of Melbourne and Toronto (the latter containing more than 250,000 Churchmen in it), not, as you suggest, by way of royal condonation and allowance, but because they not only could find no fault with, but heartily approved of it. There is not the least excuse for



regarding their act in the light of "breaking the law first, and then running for an act of indemnity afterwards," or of "filching part of the royal prerogative;" and I think that you ought not to have spoken of the churches of those two great colonies in such terms. I may add that another great lawyer, Sir F. Thesiger, —late Attorney-General,—speaking on the law of the case, says:— "It appeared to him that that Act did not, and could not apply to the colonies at all, and, therefore, that there was nothing whatever to interfere with the right of the Bishops and clergy in the colonies to assemble, and make those regulations which were intended to be provided for. The 25th of Henry VIII could only apply, as he read it, to this country. It could not apply to the colonies." "So far as this Act was concerned, it had no power against the colonists, clergy, and laity, assembling together to make rules and regulations for the internal discipline of the Church." I hope, therefore, that you will be relieved from all anxieties for yourself or others, as to the penalty of *præmunire*, which appears to have alarmed you;\* but, if not, perhaps the recollection that the Act of Henry VIII applies exclusively to clergy,—not to laity,—may do so. There is no law in existence, I apprehend, which can possibly be construed into a prohibition of the *laity* meeting with the clergy for the consideration of any matters relating to their Church.

I do not believe that there is now a single person of note in Church or State at home, that has any doubt about the propriety or desirableness of the colonial churches meeting for the arrangement of their affairs in the way pointed out in the Archbishop's bill. If any entertained doubts, those doubts have been removed. All our great statesmen, Lord J. Russell, Earl Derby, the Duke of Newcastle, Earl Aberdeen, Mr. Gladstone, Sir J. Pakington, Mr. Walpole, and the whole of the present government, are now in favour of it. Not less than twenty Bishops assisted at many meetings in the framing of that bill, and unanimously concurred in it.

There are one or two points of a more personal nature, upon which I think it right to touch before concluding this letter. All the documents relating to the proceedings in this Diocese, respecting Synods, were forwarded to me, while in England, by the late Dean, and were published at the time. I had no intention to reproach or misrepresent you or any one by my remark in my Pastoral letter. I know too well the difficulty of seeing one's way clearly to find fault with those who, with a real desire to do what is right, are feeling their way to any truth.

\* The Colonial Bishops had met in Synod, as the Right Hon'ble Gentleman (Mr. Gladstone) well knew, and some of their proceedings in Synod were very remarkable. It was notorious that they met in Synod whenever and wherever they pleased; and who was to prosecute them for so doing? . . . There was not a man in the colonies who did not know that the fear of prosecution on the part of the colonial Bishops for meeting in Synod was entirely ridiculous.—*Mr Horsman, June 23, 1852, —HANSARD.*

I must decline to be responsible for words attributed to me by others,—or to them by reporters. I have often been made to say a great deal that I have never said. I have no recollection of any conversation with Mr. Adderley on the subject to which you allude; and on referring to his words, as quoted in the *Guardian*, which is always most accurate on all Church points, and whose reports alone I read, I find that he is not reported to have said that I had “declared my determination, should no bill pass legalizing Synods, sooner or later to convene them at all risks, be the consequences what they might,”—or that I had “declared that I would be obliged” to do anything at all,—or that he had any conversation or interview with me. His words, as there reported, are,—“At the present moment the Bishop of Cape Town was in this country, urging and pressing some such measure as this. And if some such measure as this was not passed, he would be obliged to act at the risk of coming within the penalty of the law.” I presume this last sentence expresses his own opinion. It certainly does not profess to repeat my words. It is, however, very possible that I may have told him what subsequent facts have justified, that the necessities of the Colonial Church would, under any circumstances, drive it, sooner or later, to hold Synods, whether the doubts raised by the Act of Henry VIII could be removed or not by Imperial legislation. It were absurd to suppose that the unguarded wording of an Act, which was never intended for us, which everybody is agreed ought not to apply to us,—but which cannot be touched for grave constitutional reasons,—were to be allowed to keep young and vigorous churches in a crippled and lawless state. How true such a view was, let the course pursued by Adelaide, Melbourne, Toronto, Nova Scotia,—and now by ourselves, show. I do not, I need scarce say, doubt that you have correctly quoted your report of Mr. Adderley’s speech, but I am sorry that you alluded to the point at all, as the only effect of it could be to excite a prejudice. The same remark will apply to the two following points. I did not “speak of Synods having been held of late years in England,” and, therefore, did not allude to the Exeter Synod. You seem, however, to have forgotten that Convocation now sits regularly at the opening of each session of Parliament for a few days for the transaction of business. I commend to your notice its last debates and resolutions on the subject of the discipline of the clergy, which will undoubtedly be the groundwork of all future legislation on a matter on which Parliament has so signally failed.

The meeting of the Australian Bishops had nothing to do with Diocesan Synods. Whether these exist or not, they can meet when and where they please. It may be their duty at any time to declare what the true doctrine of the Church is. You have, however, misapprehended the object of their minute. It was not to

exclude from the Church of England in the colonies any clergyman who concurred in the decision of the Privy Council; they themselves have said what they had in view:—"As Bishops engaged in the charge of extensive Dioceses, and debarred from frequent opportunities of conference, we do not presume to think that we can inform or guide the judgment of the Church at large; but at a time when the minds of pious and thoughtful men are in perplexity, we cannot remain altogether silent, nor refrain from stating what we believe to be the just interpretation of the Creed, Articles, and Liturgy of the Church of England."

I have not "proposed to submit the decisions of the Synod to the Colonial Legislature for legal sanction"—but to ask the Synod whether or not *it* desires to do so. I should concur in whatever decision it came to; though, for myself, I say with the present Secretary of State, "I am aware of the advantages which might belong to a scheme under which the binding force of such regulations (as might be agreed upon in Synod) should be simply voluntary." I am not sure that I understand what you mean by saying that if the Parliament here gave legal effect to our conclusions, it might "be said that I had sought through the influence of others to carry measures which, while they relieved me from responsibility, were mine, not theirs, in reality." I have told you in my Pastoral what measures I do wish to bring before the Synod. Will any man say that it is right to throw the responsibility of settling all these questions upon me alone, one day longer than it is absolutely necessary that I should bear the burden of determining them? I do not; and the clergy and laity to whom I have appealed, generally do not. All orders of the Church have their separate duties and responsibilities. Up to this time they have been laid exclusively upon me. I decline to bear them alone any longer. You think that "from their practical cast of character I can hardly look from the laity of the colony for much erudition" on the subjects which I ask them to aid in determining. It is not erudition that we want; but plain good sense and right feeling. And these we shall have. It has been generally thought that the clergy are but indifferent men of business,—that the practical cast of character and business-like habits of the laity are greatly needed in the management of Church affairs. In this I concur. What the Church needs is, that the laity should take a greater share in the management of her affairs. Some have thought that to invite them to do so, savours much of spiritual despotism. With another great lawyer, Vice-Chancellor Sir W. P. Wood, I have only to remark that it is an odd way of establishing it. I may add that it would be an odd course to pursue for one who wanted to rule everything after his own will, to invite others of probably a different way of thinking, to take counsel with him, and give their concurrence to his measures.

The clergy desire to be placed in the position of incumbents. The laity wish it also. I pointed out to the former at our Synod five years ago, the unsatisfactory position in which they stood. Cannot the laity form an opinion as to whether or not they should be inducted, as in England? If inducted there must be a court to try them. Are they and the laity unable to determine whether the courts for the trial of offending clerks established in England, ought, or ought not, to exist here?

At present, all Church property is held by the See, constituted by the Crown a corporation for this purpose. Are the laity not able to say whether they prefer this mode of investment, or another equally secure? I shall be prepared, if it can be done, to transfer to any body appointed by the Synod, under a really good trust-deed, all property now held by the See. To me, hitherto, it has been nothing but a burden and a cross, but till the Church itself shall appoint its own Board, I dare not seek to relieve myself of it.

There are difficulties as to marriages and divorces, entirely of a practical nature, not reached by the civil law of this colony, but which do affect the ministers of the Church of England. May not they hope for counsel on such matters from the practical good sense of their brethren of the laity? And so with regard to the other points which I have named. There is something ungenerous in the wish to shrink from all toil and responsibility, and throw it entirely upon the Bishop. They who do not love the Church may wish it, because they see it is a source of weakness. They who wish to have no law but their own will, may wish it; but I cannot conceive how true and sincere Churchmen should do so. How I am to make the Parliament or the Synod sanction any proceedings they do not approve of, I am at a loss to understand. No one thing can be decided in Synod, without the approbation of a majority of the laity present at it.

In Adelaide, I should observe that no legal sanction is sought from the Legislature. In Melbourne, it has been sought, because there had been previous legislation. In Canada, it has been sought and obtained for the same reason, not as you suppose in consequence of any peculiarities attending the conquest of that country from France, but because there were already laws passed there relating to the management of the Church's temporalities.

The hardship on the Church of England is not very clearly stated by you. All other religious bodies, except itself, could, up to this time, if they so pleased, meet without let or hindrance of any law, or supposed law. The Church of England, according to your view, still cannot, without incurring the risk of pains and penalties. Both Scotch Presbyterians and Wesleyans do so meet, without reference to their European connexions—in North America, and, I believe, Australia. The Dutch Church, as you well know, meets here; and I have understood that it is a favourite scheme of Mr. Shaw's that the Wesleyans should do the same.

I have now, I believe, replied to the chief points which you have raised in your letter. I dare hardly venture to believe that I shall have satisfied you; but at least I may hope that, as you feel that "the difficulties of a Colonial Bishop are great, his position onerous,—very responsible,—and at times, perhaps, almost galling," you will do what you can to lighten, not increase labours and anxieties, which have in a few months laid one noble man low; and have undermined the health and strength of him who begs to subscribe himself, my dear sir, your faithful friend and pastor,

R. CAPETOWN.

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[ No. 4. ]

Plumstead, Thursday, December 11, 1856.

THE LORD BISHOP OF CAPETOWN.

MY LORD,—Your Lordship is not satisfied with my statement of the difficulties of the Church of England in the colonies, which you inform me I do not understand;—looking at them, as we do, from different points of view, that you would have stated them differently I do not question for a moment; all that concerned me to do was to refer to them casually, as that which has led to a desire for a change in the law. Unfortunately, they are too well known and felt by those interested in such matters; so that in referring, generally, to the absence of spiritual courts and ecclesiastical laws of the Church of England, whilst I took it for granted that everybody knows that the Church of England cannot be the established Church, in colonies that possess no established Church at all, I presumed a general familiarity with the Government inquiry into these matters in 1847, and its results. As to pointing out the defects in your Lordship's Patent, or that of any other Colonial Prelate, I have as little right as inclination to do so.

What is the proper remedy for the evils complained of, there is just now no reason to ask. Sir Robert Inglis once stated that, on a casual examination of the petitions from the colonies, not one seemed to ask for anything exactly like the Colonial Church Bill. The question that I desire alone to discuss—divested, as much as may be, of surplusage—may be reduced to two points. Are the Church of England laity of our colony legally debarred from acting with you in Synod on Church matters? And if it is not perfectly clear that they are debarred, is not the matter so doubtful, that, as prudent men, they are bound to abstain, at present, from all participation in them? Let our Church of England men decide these points at issue, those who have formed any opinion at all, and those who feel at liberty to express one.

In divesting these points of redundancy, I must observe, once for all, that I shall abstain from defending myself against insinua-

tions of ignorance, and, what is worse, sinister motives ; they are, arguments which seldom or never prove anything beyond the animus of those who have recourse to them.

First,—as to the illegality of the proposed Synods, on which I quoted Solicitor-General Sir Richard Bethell's opinion, that "the Bishop and lay members of the Church cannot meet to discuss the remedy applicable to the present state of things, without incurring penalties, because such a meeting would be for the purpose of discussing ecclesiastical rules and regulations," &c. Most men would be satisfied with Sir R. Bethell's opinion. I should, in my private affairs. I ask, therefore, has he changed it? What is your reply? You presume he has, because you find his name to a case in which he thought that "the statutes of Henry VIII did not extend to prevent Diocesan Synods in Adelaide." It scarce requires a lawyer to observe that this, as it stands by itself, is worthless. We do not know the context; we have not seen the case submitted; but we do see clearly that nothing appears as to the nature of these Synods, not one word as to making Canons, or the constituent parts of these Synods, or of the laity as an element; and we know well that "there are Acts of Parliament in operation in New South Wales, in Van Diemen's Land, and in Canada, regulating the states of the churches there." On the other hand, Sir R. Bethell may be found invariably, on various occasions, laying down the law on the point precisely the same, whether as plain Mr. Bethell, or afterwards as Solicitor-General. Once, when an admission to the contrary was attempted to be snatched from him in Parliament, he immediately rose, and expressed adherence to his previous views. From 1852, therefore, to 1855, he has given but one opinion to the country as to the illegality of anything like clergy and laity adopting a synodical form of action; and this is the best evidence we have,—for it goes to the general question, not to some abstract point merely, raised in Australia.

You tell me that Sir F. Thesiger's opinion has been given in your favour, and,—so far as it goes, it was. I was not ignorant of it. If you follow him, however, you see that he is only looking to the Act of Henry VIII. from beginning to end. That statute, he thought, did not apply to the colonies. So far, therefore, as that goes, those who differ from me are welcome to it for what it is worth: but, as I observed to you, that statute was only declaratory of the old common law supremacy. Otherwise, how do you account for the fact that in Ireland, where the statute of Henry does not run, the Church of England and Ireland has no power to make canons, nor ever had? The only point of any weight I ever met against this is, the improbability that had such a common law right existed, Chancellor Sir Thomas More would have preferred to lose his head rather than admit it,—an argument which I hold as worth nothing, for I defy any

man to say, with certainty, what extravagance any other man would or would not commit.

The fact, as I take it, is, More knew well enough that the Crown was supreme in Church matters, though it was just the point, of all others, likely to be obscured by the clergy,—the lawyers of those days; for, though an acute casuist, who might have split hairs with Aquinas, he is handed down to us as having been a good lawyer. The solution is, that as he was a noble-minded creature, zealous, like Fisher, for his Church, and who knew well the value to Rome of a stout denial of the supremacy,—he sacrificed his life for its maintenance. Let any one who doubts that the supremacy of the Crown in Church matters did then exist, examine for himself the "*judgment in Lalor's case*," and refer to the circumstances attendant on the deposal of Bishop Wolstan from his Bishopric, as further arguments against the legality of your proposal. Let me refer you to the words of Vice-Chancellor Wood, in Parliament, in 1852:—"He believed, however, that no lawyer would tell the House that the question was clear, one way or the other; it was for the purpose then of relieving these doubts that there was a *necessity for the bill*." If there is a *necessity* for the bill, what is this but that it is illegal to act without one?

We have, then, the opinions of Vice-Chancellor Wood, Solicitor General Bethell, and Napier, the Irish Attorney-General, against the legality of Synods, without the sanction of the Imperial Parliament; to which let me add the strong presumptive proof,—Can any reasonable man conclude that after the subject of a bill to legalise Synods had been debated for six years in Parliament, and turned and twisted in every conceivable light, the members of Parliament should have awoke one morning lately, and discovered—not indeed that they were famous—but that they had been for so many years fatuous, discussing the merits of a bill and its difficulties, when it turns out there is no necessity for a bill at all, the colonies being at liberty to act without one!!! Objecting to the probable effects of Synods, in the language of others, you tell me that Napier has changed his opinion: and what is your authority as to a man who is deemed obstinate in the tenacity of his views? He agreed that "*some power ought to be given to the Church in the colonies*." So we all do. The expression "*given*" would denote that we ought not to seize on it before it was;—a niggard admission this, for no one could say less. And again, "he liked the Archbishop's Bill better than the Solicitor-General's Bill;"—probably, therefore, he liked neither. Let us hope he may never be accused of inconsistency on stronger grounds than these.

Then as to Sir John Pakington, you write,—"*At the time he spoke, the subject was new to him*." He was complimented, we find, by the House, on his thorough mastery of it. But what he said in Parliament, you think was in answer to Mr. Gladstone, and

not to the general question. Now, if Mr. Gladstone's bill was on the general question, and his answer was to Mr. Gladstone, I do not see your difficulty. Seriously, my Lord, such a mode of argument will never further your views. I agree with you, however, that I have scarce done justice to Sir John Pakington, nor to the sterling English terms in which he has foretold to you the effects of these Synods. In weighing them and acting upon them, I trust that the Church of England laity throughout the colony will atone for my deficiency.

If I may be permitted the remark, I would observe that I doubt from your expressions whether you see your way clearly, as to the force of any rules you might make in Synod. You seem to think that they would be regarded, and you would perhaps expect, be enforced by the law courts, as the rules of any civil society,—a bank or insurance office. For these societies, when there is a fund collected, and a trust created, in so far as the rules of the society are connected in any way, a court of law, I apprehend, would regard them, but no further. This at least is, I believe, the case at home, and so with all religious denominations; though it is common enough to speak of other religious bodies, than our Church enforcing their own rules. Where, however, a Synod would be a violation of the law altogether, the less its rules were ventilated in a court of law, the better it would be for its members.

I must demur to your attributing to me expressions that I have not used. In stating that our Church should "bide her time," I never advised she should do nothing. My advice was, simply, do not break the law, or act decidedly when you cannot be sure whether you do so or not;—and this brings me to the observations attributed to you by Mr. Adderley, and which I hoped you would have been glad that I had given you an opportunity to repudiate. Should they create a prejudice, and I do not see how it can be otherwise if accurately given,—whose is the fault? Not mine but yours. I will not be answerable for the impression they create in the mind of any one, — but without discussing whether *Hansard* or the *Guardian* is the best authority on Parliamentary reports,—if you still substantially adhere to them, as would appear from your expressing a desire that the barriers of the law should be overleaped, when it cannot be made to bend to what you desire,—I must tell you frankly, as a lawyer, and one himself entrusted by Her Majesty to administer the law,—a more dangerous doctrine, whether used by clergy or laity, I cannot conceive. What but "*words never intended to apply*" now exclude Jews from the House of Commons, at the very time that the subtlest intellect of the House is that of a Christianised member of the race?—a quibble, but yet law; and so long as it is law, universally obeyed.

In referring to the decision of the Australian Bishops, you tell me I have misapprehended the object of their minute. I wrote not



of the object, though we must often judge of the object by what it effects. I stated what the effect of the minute was likely to have been, and I feel assured that you are aware that the clergy and laity of Australia petitioned the Queen against the minute, as calculated to have that effect. Moreover, Sir John Pakington, who presented the petition himself, stated,—“*The minute would have the tendency, if carried out, to exclude from the Church of England in the colonies every clergyman who concurred in the decision of the Privy Council.*”—(*In the Gorham case.*)

And now, though the subject is far from being exhausted, there is but one point to which I would expressly allude,—the novelty of the scheme. I state that since the Reformation,—and we need go no farther,—the laity of our Church, except in Parliament, have had nothing to do with making Church laws; and if any one will trouble himself to turn to the Declaration prefixed to the Articles of our Church, he will see it was never intended at the Reformation that they should.

“We are (says the Sovereign) supreme Governor of the Church of England, and if difference arise out of the external policy concerning the injunctions, canons, and other constitutions thereto belonging,” &c., “the *clergy in their convocation* is to order and settle them, having first obtained leave,” &c., &c. And again, “that out of our princely care that the *Churchmen* may do the work which is *proper to them*, the *Bishops and Clergy* from time to time, in convocation, &c., shall have licence under our broad seal to deliberate of and do all such things as, being made plain by them and assented to by us, shall concern the settled continuance of the doctrine and *discipline* of the Church of England now established, from which we will not endure any varying or *departing in the least degree*,” &c. That, then, which you state is the work of clergy and laity, our Church, from the Reformation, through its head, has declared to be the “*proper*” business of the Bishops and Clergy only.

You remind me of Convocation. I reply,—it no longer makes canons, nor is likely so to do, so long as public opinion holds as it is at present, and that the lay element has not, and never had, any part therein.

As regards the American Church, it has the means, by contiguity of territory, of keeping up an uniformity of decision and procedure if required; but how could your Lordship’s synodal decisions be assimilated to those of Newfoundland, or the Bishop of Mauritius compare notes with his Lordship at Jamaica? The American Church, too, neither in doctrine (her rejection of the St. Athanasian creed, for instance), any more than in external policy, is the Church of England; nor is there any reason why it should be, save inasmuch as it is known to work unanimously and well, and as a Christian Church should.

I will not overlay the points at issue with more extraneous matter,—my letter has grown too long; nor will I again trouble your Lordship. I will only express a hope that the laity of our Church in this colony, while they remember what is due to your Lordship's position, earnestness, and authority, in answering the call that has been made, will do nothing that may operate to the injury of our Church now, or for after time. The question, in the form it assumes, of respecting the law so long as it exists, is one that might have been expected rather to present itself in the middle of the sixteenth century—in the days of our forefathers—than now. They, honest men, have handed down to us a Church which Southey has termed "pure in her doctrines and beautiful in her forms." Let us beware how, with rash and incongruous hands, we attempt to remedy the defects in her institutions that time has created.—I am, your Lordship's, very faithfully,

FREDERIC R. SURTEES.

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[ No. 5. ]

F. R. SURTEES, ESQ.

MY DEAR SIR,—In replying to your second letter, let me first endeavour to remove misapprehensions occasioned by my former communication. I did not mean to cast "insinuations of ignorance" upon you, or impute "sinister motives" to you; and if I intimated that you did not understand the full amount of difficulties which beset the Colonial Church, I meant only to imply that it was not likely that one who had not been brought into such close contact with them, or had had such large and painful experience of them as myself, could fully appreciate them.

You seem to think that there is something unfair in my reply to what you said about Sir J. Pakington. "Seriously, my Lord, such a mode of argument will never further your views."

Now, what are the facts? You quoted a passage from Sir J. P.'s speech against Mr. Gladstone's bill, and in the subsequent part of your letter appeared to argue as if his objections were against Colonial Synods generally; whereas the true state of the case is, that while he strongly opposed Mr. G.'s bill, he approved of the principle of Synods, and promised to bring a bill to legalize them. I might have added that he subsequently approved of the Archbishop's bill.

I am glad, however, to dismiss all irrelevant matter, and turn to the real question,—

1. Are Colonial Synods altogether illegal?
2. If not, is their legality so doubtful, that prudent men are bound to abstain at present from all participation in them?
3. Are the laity especially debarred from acting in them?

First, then, you have failed to show that there is any *law*,—common or statute,—which prohibits the *laity* from meeting with the clergy to discuss and settle their ecclesiastical affairs. At least you do not point out that my assertion that there is no such law, is wrong. As far as they are concerned, then, “*cadit quæstio*.” Their civil rights are unimpeached. The Act of Henry VIII. does not forbid *them*. They are not named in it; and that is the only Act which has ever been regarded as affecting the rights of Churchmen in the colonies on this subject. You adhere, however, to your former view as to the “illegality” of the step which I have taken in calling a mixed Synod of clergy and laity, resting mainly upon Sir R. Bethell’s opinion. Now, in justification of myself, I appealed from Sir R. Bethell in debate, seeking to carry a measure he had framed, to the same Sir R. Bethell in chamber, in consultation with some of the most eminent lawyers of the day; and I showed you that when deliberately giving his opinion on a case submitted to him, eight months subsequent to his last speech in Parliament on the subject, he had changed his view of the law. (His last speech was on April 9, 1854. His “opinion” was given December 1, 1854.) I had a right to infer from the document which I quoted, that a more careful and mature consideration of the subject, in conference with others, had convinced him that his earlier views were erroneous. You, however, are not satisfied. You think the opinion worthless, because “we do not know the context,”—“we have not seen the case submitted to him,”—“nothing appears as to the nature of these Synods,”—“not one word as to making canons,”—“or of the laity as an element;” and you think that there may be acts in Australia which might make a difference in their case. Now pardon me if I say that I cannot suffer an important document to be set aside in the way you seem disposed to do. I reply,—1. The “case” was submitted by the Bishop of Adelaide, who wished to know whether there really was any law to prevent his holding a Synod.\* He has acted upon the answer, and has held his Synod. 2. There was no “context.” I gave you the whole opinion. I repeat it here just as it stands in the *Colonial Church Chronicle*, of February, 1855:—

“We are of opinion that the act of submission (25 Henry VIII. Chap. 19) does not extend to, prohibit, or render illegal the holding of Diocesan Synods within the diocese of Adelaide.

(Signed) RICHARD BETHELL, JOSEPH NAPIER,  
FITZROY KELLY, A. J. STEPHENS.

“Lincoln’s Inn, Dec. 1, 1854.”

\* The opinion in the Adelaide case establishes nothing more than that in Adelaide, or indeed any other diocese of the Church of England, Synods may be held of the same character as those convened by the Bishop of Exeter. No one denies this, and it is believed that the Bishop of Capetown has held such Synods, composed *merely of clergy*,—the laity had neither share nor voice in them. Such Synods were not and could not be convened to exercise “a power of *legislating*” for the emergencies that may arise: as the Bishop of Capetown would now convene, they could make no rules for the *discipline* of the clergy, or touch upon such subjects as “marriages, divorces,” &c. &c.

3. The presence or absence of the laity makes not the slightest difference as to the legality.

4. The question of making of "Canons" is altogether a distinct one, upon which I have said nothing. No one pretends that a Diocesan Synod can make Canons which shall have the force of law,—or shall prevail against Canons enacted either by the Church Catholic,—or our own branch of it. But "a Canon" is "a Rule;" and if the Colonial Churches can hold Synods at all, they can assuredly frame rules for the regulation of their own affairs, provided they do not encroach upon the rights of those higher councils to which they are subordinate.

5. There were no acts of the Colonial Legislature in Australia which enabled the Bishops to summon Synods of clergy and laity; and if there were, they would not affect the question. A Colonial Parliament cannot, I apprehend, set aside an imperial statute.\* I am no lawyer, but I do not feel sure, that we are not in a more free state for this purpose than other colonies,—that the Act of Henry VIII. would have the same force in this colony (a conquered colony, the state of whose law was a subject of treaty) as in Australia. Upon that Act confessedly the whole question turns.† The only point in doubt from 1851 to 1854 has been, whether the particular statute of Henry VIII. could be so construed as to imply a doubt of the legality of Synods in the Colonies. Sir R. Bethell is the only lawyer who ever gave it as his deliberate opinion that it did apply to the Colonies, and he has changed his mind. Sir W. P. Wood's mind was not made up upon the subject. Mr. Napier never did think so. In the very last debate that took place on the subject he said, "He was ready to agree to a declaratory enactment that the Act of Henry VIII. did not bind the colonies, if any doubt existed on the subject, *though he had certainly never heard any lawyer say that in his opinion that act did extend to the colonies.*" If he ever held a different opinion, you will be glad, I am sure, to find that he is not so "obstinate" a man as you supposed. I think now having quoted Sir R. Bethell, Sir F. Kelly, Sir F. Thesiger, Mr. Napier, and Mr. A. J. Stephens, all in favour of my view of the question, I may fairly object to your applying the term "illegal" to my proceedings.

But you appear to think—I say appear, for I am not quite certain that you do so,—that if there were no "statute law" to render our meetings illegal, they would nevertheless be so by "common law;" that our doing so would be in opposition to that supremacy of

\* This would seem to convey some confusion of ideas. Although a colonial ordinance or statute could not override an imperial act, manifestly framed for the colonies, and declared therein to be intended to have effect there, it is contended that a colonial ordinance or statute, to which the assent of the Crown was given, would, within the limits of the colony, and so far simply as that colony was concerned, oust the provisions of an imperial act, having a general application.

† This, of course, begs the whole question, and is denied.

the Crown which is based upon the common law. I should be glad to know whether this really is your position. If so—your views are wholly at variance with your own chosen authorities. They do not believe that there is anything in the common law to prevent our meeting. The statute of King Henry is their only difficulty. What is the language of Sir R. Bethell, in the passage you first quoted? “That disability arose, and he thought justly, out of a statute passed in the reign of Henry VIII., and which prohibited the clergy from meeting together for the purpose of making any Order, Canon, or Constitution, without being summoned for that purpose.” What is the language of the same eminent lawyer, at a later period, in reply to Mr. H. Ellice, sen.? That gentleman in 1854, said that the simple remedy in this case was “to repeal the statute of Henry VIII., as far as the Church in the Colonies was concerned.” Does the Solicitor-General say, No, you are mistaken? If you did repeal that statute, the Colonial Churches would still be hampered by the common law? Not a word of it. But he puts forward grave reasons why that particular Act should not be repealed; and amongst the rest he says, that to do so would be to “cut the Colonial Church adrift altogether.” Others have said very much the same thing; Mr. Walpole and Sir F. Thesiger, for instance. If you, however, differ from me, and from these great authorities, I should be glad if you would state plainly and explicitly how our meeting together is a violation of the common law. I contend not only that it is not, but that there is not a shadow of ground for the suggestion. Do not misunderstand me. I am not denying that there is no “Common Law Supremacy,” though you inform us that one of the noblest characters in our history, as well as one of our greatest lawyers, Chancellor Sir Thomas More, died sooner than put his hand to a document admitting such supremacy. With our great living authorities, I admit it; but I deny that we cannot meet together to deliberate upon what is for the advantage of our Church, to settle our own internal affairs, to take counsel together as brethren, without a violation of that common law supremacy. In what the common law supremacy consists I do not now stop to inquire. What the views of our Church on the subject are may be gathered from her 36th Canon and her 37th Article. These are the authoritative documents in which the supremacy of the Crown is declared, and there is nothing in them, or in that Scripture upon which they are founded, to suggest any doubts as to the propriety of the course I have pursued.

There is one other point to which I must allude before quitting this part of the subject. You argue that the common law alone is sufficient to prohibit my holding a Synod, because the Church of Ireland, where the Statute of Henry has no force, “has no power to make Canons, nor ever had.” Now, your argument might have some weight, not against our holding a Synod, but against our enact-

ing canons, if the facts on which it rests were true. This, however, is not the case. The very reverse of what you imagine really is the fact. The Church of Ireland has, since the Reformation, held her Synods and Convocations as a national and independent Church, and has at them adopted liturgies, framed articles, enacted canons. "In 1615," says Stephens, "a Convocation of the Irish clergy assembled in Dublin." "In the third year of Eliz." was summoned "the ancient Synod of the clergy, which had the power of settling all matters concerning religion." In the reign of Edward;—in 1565,—in 1615,—in 1634,—in 1662 the clergy met in their lawful assemblies. On the first of these occasions "they received the use of the English liturgy, and expressed their conformity to the doctrine of the English Church." In the convocation of 1615 they passed 104 "Articles of Religion"—and by the "Decree of the Synod" "sentenced or deprived" "any minister" who would not "conform himself" to them. In 1634-5 (*vide* Life of Archbishop Bramhall) the Irish convocation "embraced the 39 Articles of Religion"—"adopted" such of our canons as were fit to be transplanted among the Irish," "compiled a book of canons," which having "passed in Convocation, received the royal confirmation." In 1662, "both Houses of Convocation took into consideration the Book of Common Prayer, then lately published in London, and gave their approbation of the changes made in it" (Stephens.) In a word, in the language of Dr. Elrington, Regius Professor of Divinity in the University of Dublin, in his Life of Archbishop Usher, "the Reformation in Ireland was carried on by the regular Assembly to which the affairs of the Church ought canonically to be entrusted." I am really sorry to trespass so long upon your attention in refuting your position upon these subordinate points. To disprove a short assertion, however, may require many pages. I have endeavoured to be as brief as possible. Imperfect, and necessarily hurried as my vindication of myself is, I think I am entitled to say that I have shown, not only that there is no law to prevent our meeting together, but also that there are not even such "doubts" upon the subject as to make the most cautious and prudent of men to hesitate.

But you naturally ask—Why then all this attempt at legislation? As one who has been mixed up with these fruitless attempts, I reply,—Because,

1. While any doubts existed, an injustice would be done to the Colonial Church, if they were not removed. Such doubts must necessarily weaken its position. "The effect would be," says your own favourite authority, Sir R. Bethell, "to deprive any agreement among the members of the Church in the colonies for their own regulation, of every kind of force, not only legally but morally, because it would be studiously represented that they were forbidden to meet for such purposes."

2. Because the chief rulers of the Church at home were anxious

at such a crisis in the history of the daughter Churches, to guide their counsels and to prevent their adopting any principle which might be at variance with those of the Reformed Church of England. No one can doubt—I do not for one instant—that this is a possible danger. It was to meet this that the Bishops drew up their bill, which would undoubtedly have become a law of the empire, if it had not been for the constitutional difficulties to which I have more than once adverted ; and which, whether law or not, all true Churchmen will hereafter regard as a most important document. Sir R. Bethell's bill was framed with a view, if possible, to obviate these constitutional difficulties. It consisted only of one enabling clause, relieving the Colonial Churches of all doubts that might exist in the minds of any. That bill did not, could not, contain the wise provisions and safeguards of the Bishops' Bill. It passed a second reading, however, by 196 to 63,—majority 134,—its chief opponents being, according to the *Examiner*,—Dissenters ;—10 Independents, 5 Presbyterians, 4 Unitarians, 2 Baptists, 1 Wesleyan, 1 Quaker, 4 Roman Catholics ; Mr. Hadfield, an Unitarian, moving that it be read that day six months. It was withdrawn, without a single hostile vote, simply because of the felt impossibility of legislating at all on such a subject. The attempt will never be resumed, though both Houses have, by large majorities, shown their willingness to pass a law on the subject, if it were possible to do so without interfering with the rights of Colonial Parliaments,—or infringing the privileges of other religious communions.

I regret that you have again alluded to the words attributed to Mr. Adderley. At some years' distance it would be rash to make assertions as to not having used this or that expression. But I showed you that there were different versions of his speech,—that my report did not attribute the words you quoted to me, and I told you that I had no recollection of ever having used them. I have now to add that I have never “expressed a desire that the barriers of the law should be overleaped, if it cannot be made to bend to what I desire.” What I have done is to deny that there is any law, and I think to prove my point, and to say that I am not ashamed of acting upon views sanctioned by Her Majesty's Government, including the Solicitor-General, and adopted by four devoted and eminent Bishops of our Church, viz.,—that we are not to be withheld from meeting together because a doubt once existed as to the lawfulness of our doing so, which doubt has since disappeared. If that is a “dangerous doctrine,” it is no more mine than it is that of Lord Palmerston's Government.

Your case of the oath excluding Jews from Parliament is not a parallel one. Its terms are plain and explicit. If I remember right, it is made “on the faith of a Christian.” No one doubts that it excludes the Jews. But who, except yourself, now affirms that the Act of Henry applies to us ?

There is only one other point of importance upon which I feel it necessary to touch. Your objection to Synods I perceive now lies deeper than I had at first imagined. You appear to think that the admission of the laity to take part in them will be a violation of the customs, if not of the constitution, of the Church.

This I fully admit is a subject for grave consideration. But is it as you suppose? Were not the laity consulted on all points except matters of faith and religious obligation, even by the Apostles? Were they not present, often at least, at the great Councils of the Church in later ages, and did they not subscribe their acts? Were not laws, in our own Anglo-Saxon Church, for "the outward peace and temporal government of the Church," discussed and settled "by the great Council of clergy and laity intermixed," questions of doctrine being reserved for the spirituality? And has it not practically been the same since the reformation,—Convocation, the representative of the spirituality; Parliament, which, until the repeal of the Test and Corporation Acts, consisted only of communicants, the representatives of the laity? The establishment of a Diocesan Synod in a colony, where clergy and laity may vote, and meet too, if they please, separately,—where matters of faith are not discussed, is but a revival of the actual constitution of our Church, and of the customs of the primitive and Catholic Church, in the only form in which these can be revived, in a country where the Parliament must long consist of those who are not of the communion of the Church.

The laity have a right to be consulted on matters in which they are deeply interested. In what other way can their joint opinion be more fairly or legitimately gathered than by inviting each parish to send up its delegate, to represent it in a common assembly, where different subjects may be propounded, discussed, decided, by those most concerned in them?

That evils *may* arise from such meetings I do not deny; that greater evils *must* arise without them I am deeply convinced. It is not without prayer to God for guidance; without long hesitation and delay; without taking counsel, first with every parish in the diocese, and more recently with those who are my chosen counsellors, and with others whose advice I valued, that I have determined upon this step. To its issue I cannot but look with anxiety as well as hope. Upon the Synod's proceedings, the well-being of this Church, which to me is very dear, must greatly depend. Upon the course which it follows must, in no small degree, depend the advancement of God's kingdom in this land. I ought therefore to look forward to our meeting with some degree of fear and trembling, seeing that I have incurred the responsibility of calling into existence a power which cannot fail to have a great influence for good or for evil upon that which is the cause of my Lord. The soundness and right-mindedness of this Church is, under God, our great security.



The great body of our people (there may be—there *are* exceptions, but they are *very* few) desire to adhere to the great principles of our Church, to its faith and discipline, as these have been handed down to us from our forefathers in the faith, in the Church's acknowledged standards and authorities. They have no thought of organic changes, no desire to establish a new religious system, unknown in the mother land. Their spirit is essentially conservative. They will "ask for the old paths, where is the good way, and walk therein." Their aim will be to reproduce in this land, it may be a feeble, but yet a true image of our much-loved mother Church. One of our first acts, I doubt not, will be, to follow the example of our sister Churches in the colonies, and declare our fixed, unalterable adherence to the faith and discipline of the Church of England, as we find these embodied in the Prayer Book.

Taking our stand upon these,—upon God's most Holy Word, as the sole and inspired record of the faith—upon the Prayer Book as the true exponent of the Word, and of the mind of the Church,—upon the laws of the Church, as they have been handed down to us, as our laws: and seeking only to make regulations for such matters as those laws have not provided for, we need not fear, if we meet together, regarding each other as brethren of the same "household of faith," and with prayer for God's Holy Spirit, but that we shall, in our measure, share in that promise by which the Great Head of the Church has pledged himself that "He will be with it always, even to the end of the world."—I am, sir, your faithful friend and pastor,

R. CAPETOWN.

P.S.—As the time for election is drawing on, and your opinion as a lawyer will very properly have weight, I should feel glad if this letter could appear in Tuesday's paper, that it may be read in the country districts before Churchmen are called upon to act.

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[ No. 6. ]

Plumstead, December 18, 1856.

THE LORD BISHOP OF CAPETOWN.

MY LORD,—When I stated that I had no intention again to trouble Your Lordship, I assumed that, on points of law, you would be willing then to go to the judgment of the laymen of our Church for a verdict; for I knew that the authorities I had given you were not to be impugned, and that I had given them fairly. In appealing to the members of our Church, I felt my character too much at stake not to act straightforwardly. As you are not satisfied, I am constrained again to address you.

We are still at issue as to the legality of your summoning the laity to meet you in Synod, and we have got thus far—it is admitted on all hands that one of the law officers of the Crown (the Solicitor-General) has declared such a course illegal, and that it would subject the laity to penalties. Has this opinion been withdrawn, or can it be got over? As I fully expected it would prove, could we see it, Sir R. Bethell's opinion in the Australian case is utterly worthless to decide the question. As you appear to think me at times not explicit enough, I will endeavour so to put the case that any lad of fifteen, with ordinary capacity, may understand it.

These lay meetings, says the Solicitor-General, would be illegal on *two grounds*:—*first*, because there is an Act of Parliament (of Henry VIII) that forbids it, and *secondly*, because the common law of England forbids it, *even were there no Act*. This is the law on the general question, and if your Lordship is at a loss as to what the common law means, it is the "*Lex non scripta*," or unwritten law of England, as universally acknowledged by custom, and confirmed by legal decision. How do you get over this? You bring me an opinion that *so far as Australia* is concerned, the statute of Henry is got over, but nothing whatever is said of the common law objection. There are two legal barriers in fact, and your case deals *with one only*. If there are two laws forbidding a man to do a certain act, can we say it becomes no longer illegal when *one only* is repealed? But if both were got over, you have then the difficulty I have before named, that the case submitted to counsel was a special one, and applicable only to Australia; and unless you can prove that the laws of the two countries are identical, you may as well tell me that because a certain action is no offence against the customs' law of Australia, therefore it cannot be any offence against the customs' law of the Cape.

You will want to know where the Solicitor-General has laid this down; so I give it to you:—"He would shortly say, *by the common law of England* the clergy of the United Church of England and Ireland were prohibited from holding meetings for the purpose of discussing ecclesiastical regulations. The common law was declared in the statute of Henry and Elizabeth, but the power originally resided in the common law, and that was the reason that though these statutes were limited to England, yet the prohibition equally extended to Ireland—*the common law, anterior to all statutes, assigned to the Crown a right of supremacy in all matters of jurisdiction, whether spiritual or civil.*"—Hansard, April, 1854.

Now I beg I may not be met by such objections as that Sir R. Bethell was "*new to the case*," or "*had not made up his mind*," or again be told that the "*only question from 1851 to 1854* has

been, whether the particular statute of Henry could be so construed as to imply a doubt of the legality of Synods in the colonies ;” because you are as completely at fault in the assertion as you were when you told me that there are no lawyers who agree with me that the common law of England renders your meetings illegal. Mr. Walpole, as well as Mr. Napier, both agree with me,—the former remarking that “*the supremacy of the Crown was ‘a prerogative of the Sovereign,’* which dated from a period anterior to the period of Henry VIII.” I am not surprised at your running away from any discussion as to what the supremacy is,—it is the touchstone in Church matters.

I put it to any one who reads the above, whether you were in any way justified in writing to me “Does the Solicitor-General say, if you repeal that statute, the Colonial Churches would still be disabled?—Not a word of it.” Are not those just the very words that he did say ?

It seems as dangerous now as in the mediæval ages for the clergy to attempt to interpret the law—especially in their own case. Those laws, which in a printed letter you have invited the laity to break, with all proper respect let me ask,—Who gave your Lordship an authority to interpret the law for us?—why did you not ask the laity if they would meet, and afterwards give you their opinion? Did it never occur to you, also, that in inviting laymen to meet to exercise a “*power of legislation,*” you were, however undesignedly, encroaching on the rights of the colonial legislature; while by expressing it as doubtful whether you would allow its members to touch your rules unless it suited your will, you were exciting their jealousy in leaving it doubtful whether they were to have that pleasure if they desired, as seems to have been designed under every Colonial Church Bill.

Who your Lordship’s counsellors may have been in this matter I am not anxious to enquire; that they advised you honestly I am willing to assume; but when you state that you have consulted each parish in the matter, I am at a loss to know to what you allude. In that to which I belong, permit me to state, I find the most profound oblivion as to the day or days on which you so honoured us; and, for myself, I am free to admit I never even heard of them.

As I told you in a private note, I now repeat again, I object that the laity have been authoritatively treated, and I have remarked this peculiarity in your dealing with the matter from the very first; if not to be mere instruments (not to use the word invidiously) we might have been asked, did we feel ourselves capable to form an opinion, before you summoned us to Synod? because, although, as Bishop, we look to your authority in matters spiritual, in questions affecting the law of the land, or society at large, we have duties and responsibilities, and must exert our intellect for

ourselves. This was one of the great points on which our Church was remodelled at the Reformation; and it is one we will never yield. For Rome, supreme in arts, in civilization, and in literature, in dark and stormy times, there may be some justification, when she claims to bind the free action of her children; but for our Church, which Bucer and Cranmer went hand in hand to reform, any such assumption we reject as intolerable.

I have disposed, then, or rather the law officer of the Crown has, of the measure as regards the law—it *is illegal*. What your Lordship means by stating I have raised difficulties on the score of the customs of the Church, I cannot perceive. I declare that I never used such nonsense. I know no more of the customs or traditions of the Church than of the civil code of Timbuctoo—if there be such a thing. All I do know of the customs of our Church is, that in Popish times they were too often, I am ashamed to say, very shuffling.

As to the questionable character of your measure—did any feel the law points above their comprehension,—that at any rate is established by the preamble of every bill that has ever been introduced to make it legal. Why point to a majority here and a majority there, of votes in its favour? Has it passed? Is it law? I only hope you are right in asserting it never may be.

In the matter of the Irish Church, I regret to see that I stated the case so loosely as to give you an apparent advantage, and, I should be sorry to suppose, some trouble. The point of course at issue, and intended to be so stated, is,—“Is it the case that in Ireland, where the statute of Henry does not run, the Church of England and Ireland, has not, and never had, the power to make canons *without royal authority*?” I carelessly omitted these three words. If that be so, how do you get the absolute necessity for the permission, save by bringing in the common law supremacy, as Sir Richard Bethell said.

Should you ask why I should object to see Synods established here, were their convening clearly legal, I must refer to a paper lately lent me, and purporting to be an account of “the proceedings of the Synod of Adelaide,” and which at first I doubted whether it were not some colonial *jeu d’esprit*. The preamble of the “fundamental provisions and regulations” of that Synod sets out by remarking that, “whereas the Bishop, Clergy, and Laity of the Diocese are exposed to inconveniences, &c., for want of local regulations, insomuch that if a remedy be not provided, *the discipline of the Church may be relaxed, errors of doctrine may creep in,*” &c. “The fundamental provisions” provide that a Synod be created, which is to be the court of trial of such offences as may be presented to it by the Bishop, so that it is positively possible, if the allusion to “the errors of doctrine” have any meaning in the

preamble,—a clergyman of the Church of England in Australia may be subjected for trial, as to the most abstruse points of doctrine before a jury of Australian men in trade or business, altogether ignorant (and no fault of theirs) of even what constituted the offence. Let us suppose it was for preaching the doctrine of transubstantiation, and for which, by the determination of this Synod, the Bishop is at liberty to punish as he pleases—for that supreme power is given him—“if the accused be found guilty by a majority of the assessors, the Bishop shall pass such sentence upon him, as, in the full exercise of his jurisdiction and in his conscience, he shall deem right,”—this being altogether in seeming contravention of the Colonial Church Bill, which, in its fifth clause, would put all such matters, had the Bill passed, out of the reach of consideration.

Now, this is what I term giving a Bishop a power, or rather indirect influence, by these Synods. The Australian Synod, if they convict, get the odium, but the Bishop punishes his recusant,—a Tractarian Bishop scolding, a Low Church suspending,—for there is no standard but the Bishop’s will. Were there no Synod, as in your Lordship’s case at present, you try and punish on your own responsibility, but the public eye is upon you. I wish to fix you there;—if right, the public support you, if arbitrary, it would condemn, and you take the consequences. At any rate do not come to the laity illegally to share your responsibility; they have no dispensing power over the law. How are they to help you “out of the barn floor or out of the wine-press” of their sovereign’s oldest rights? It may not be. When you advocate Synods, therefore, and tell us it is to give up power—this is true; but you get influence, which is more valuable—you give gold, but take silver, with the exchange in your favour. But let us see what remedy this unhappy recusant clergyman is to have,—he may appeal from part of the Synod to the whole Synod, and after that—why he “is entitled to receive, it seems, a copy of such sentence, under the hand and episcopal seal of the Bishop!” Cold comfort, it must be admitted. I turn from these things to “the compact” of the Australian Synod,—and what appears? All that had been done at the Synod, and it provokes a smile—these candid Synodsmen tell us with infinite naïveté,—was not their doing, but the Bishop’s; he had proposed *the whole* of it, and they accepted it in the lump, “*forasmuch*” as they took it to be good; and I feel certain in sincerity the Bishop intended it should be. It may not do mischief, or it may; but do not let us talk of this in connection with local legislation; the thing is mockery! It reminds me of an anecdote related to me long ago by a Welch member of Parliament, who, when foreman of a Welch jury, when the judge had summed up, turned to his co-jurymen for their opinion, addressing himself more particularly to one,—

“’pinion, ’pinion,” said the man, fumbling in his pocket. “I have no opinion; I agree with you, sir.”

I turn now to other matters. I would have kept them back could I have done so: and why?—because I would not create prejudices, or raise a religious cry; they are easily sometimes raised, but not so easily allayed. I wished the question to go to the country on the point of law; but I feel bound now to tell you one of my main objections to these Synods, even were they legal. They are the grand card of a party with which I have no sympathy: to quote Sir John Pakington’s words in opposing Mr. Gladstone’s Bill, were it to pass,—“it would be the first step towards a change in our ecclesiastical policy, which may indeed be desired by a certain party in this country (England), but which I believe is decidedly opposed to the opinions of the great body of the people in this country, and in the colonies not less.”\*

We must go back awhile. Those who look back in life some thirty or forty years, remember well what the apathetic state of our Church then was; as children we could see it even—drowsy and humdrum. But it is in laws politic as in the laws of nature, reaction succeeds a calm,—first a gentle swell and then the rippling wave; men’s hearts were quickened, a spirit moved on the face of the social waters; it was the spirit of our mother Church: ecclesiology became a constant study; Churches arose everywhere; Church matters became a theme of the deepest interest; then, unhappily, an over-ardent zeal arose as a meteor of delusion, onward moving; men followed, but the course was Rome. Again came reaction,—a conflict sharp and bitter, but the good prevailed. Beaten, but not dispirited, the vanquished had to look for other fields. Launch out into the deep, was the cry, and try abroad; try the colonies; try Australia! Talk of the United States! the American Church! The name of America is powerful,—gain your colonies one by one, and then when you have these successes, return and prove that changes in things ecclesiastical, which looked bad at a distance, like other changes, can be proved to be really good. Take the Australian colonies first—*fiat experimentum in corpore vili*—make Bishops, organize your party, convene Synods, infuse your views into the laity!

That this has been the case few will deny; men even who have not watched every turn and eddy of the current, are familiar with the general course of the stream. To prove it I quote, perhaps, the very best authority that could be got,—the last printed letter in the correspondence of Dr. Arnold. He had been applied to to

\* “The fact was, this question was brought forward by an active, encroaching, and not very scrupulous party in the Church, that required to be watched as much as it was distrusted.” . . . “His” (Mr. Gladstone’s) “object was to undermine and destroy the primitive purity of the Church, as established at the Reformation, and to raise in its stead a new-fangled edifice, which would be nothing but prostration of every purpose and faculty, and the establishment of episcopal tyranny and priestly dominion.”—*Mr. Horsman on the Colonial Church Bill, June 23, 1852.*—HANSARD.

contribute to the Colonial Bishops' Fund, it would seem; his hand was always open, and what says he? I must quote nearly the whole letter,—May 22, 1842, to Justice Coleridge,—

“I was not ignorant of what was going on about the Colonial Bishops, but you can well understand that all this movement wears to me rather a doubtful aspect, while I can fully enter into the benefits of giving a centre of government where there was none, and of having a clergyman of superior worth, and, probably, superior acquirements, made an essential part in the society of a rising colony; yet, on the other hand, I cannot but know that the principal advocates of the plan support it on far higher principles,—that it is with *them the enforcing their dogma* of the necessity of succession, episcopacy, to a true church,—that, accordingly, the paper which you sent me, speaks of the Church in America (U.S.), and of the various sects there,—language quite consistent in the mouths of High Churchmen, but which assumes as a truth what I hold to be the very *lamprotaton pseudos* of a false system. I feel, therefore, half attached and half repelled, doubting whether the practical administration and social advantages to be gained, are likely to outweigh the encouragement given to what I believe to be very mischievous error, and while, *dubitatio ista non tollitur*, I cannot feel disposed to come to the practical conclusion of a subscription. Believe me, it is no pleasure to stand aloof from a movement which has so much of good in it, and might be so purely and gloriously good were it not.” \* \* \* \*

Far be it from me to identify your Lordship with the party to which I allude, more than you may be disposed to admit—or any man can prove. To do so, would be both sin and shame; but when I find you urging on, precipitately, a move of that party, at present illegal, I am justified, when you invite me to join, to say “forbear!” Nor let any think that for a love of polemics or opposition, I have rushed into a controversy with one skilful and dexterous as yourself. Far different! Arnold complained that the false Church, and that was the priesthood and their authority, was placed in the place of the true; and with that I agree. “Do you call yourself a Churchman?” observed once the dearest friend I ever possessed, between whom and myself these things have created a breach that time can never heal—I carry the scar upon my heart to the grave—“Do you call yourself a Churchman? are we not early and late striving for the cause of the Church? what are we doing?” “Church indeed,” I replied, “what are you doing? I answer you in the words of the woman of old, ‘You have taken away the Lord, and I know not where you have laid him.’”

But these things are scarce fit subjects for the daily press: they lie in men's hearts too deep and sacredly. I will only say that, in 1854, when in Ireland, and seeing that the Colonial Church Bill was again introduced into Parliament, I wrote from a sick room

as strongly as I could, to Sir John Pakington, and urged him again to endeavour to defeat it. At that time I never thought it likely I should see this colony again. I had no ties with it or any other, but I knew that there were many here, some of whom had knelt at the same altar with myself, who felt on these matters as strongly and deeply. With them, as Churchmen, I had and have a common sympathy. Your measures, I fear, will tend to drive us from the Church; or rather, I should say,—as you are about, confessedly, to form a new one, for you speak of yours as a “*daughter*” Church—we shall prefer to adhere to our old and mother Church,—a Church whose laws and rules are sanctioned by our Sovereign, and which are not liable to change, now to one thing, then to another, according to the peculiar views of a High or Low-church Bishop. “We will cleave to the old paths and walk therein.”

There is but one subject more to which I allude, and that I approach with repugnance, nor would I again do so, had you not, in quitting it, adroitly left it to be inferred that I had endeavoured to fix on you words you never used,—I mean the words attributed to you by Mr. Adderley. I should have been satisfied had you not done this, to have remarked nothing, inwardly congratulating you that you had discovered that “*young and vigorous Churches*,” like “*young and vigorous men*,” must be kept within the curb of the law. That your first letter was a virtual adoption of the expression—if you question, I would be willing to leave to the decision of any six impartial men named by yourself. But you clearly now disown it. Let it be forgotten!

My duty on the day of election is very clear to me. I will, by my own vote, oppose the election of a lay delegate in the parish to which I belong; and I shall be happy hereafter to join in any protest generally expressing my views, and to be presented to his Grace the Archbishop of Canterbury, complaining of the course you have adopted.—I am, your Lordship’s, very faithfully,

FREDERIC R. SURTEES.

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[ No. 7. ]

Bishop’s Court, December 18, 1856.

F. R. SURTEES, Esq.

DEAR SIR,—I exceedingly regret that any necessity should exist for my addressing you again, as I fear the correspondence wears and harasses you. As one, however, who has hitherto been himself held in respect, you will, I doubt not, feel that your Bishop could not remain silent after receiving such a letter as that you



have thought fit to address to me, however painful it might be to him to notice it.

You must remember that you yourself began this correspondence,—that on the receipt of my last letter you wrote to say how “much you were gratified by its considerate tone.” You certainly had not prepared me for the receipt of a reply, couched in language to which, if I had thought you would have resorted, I should have declined to enter into correspondence with you.

I am happy to think that there is no need for me to enter into any further argument to show that there is no “statute law” to prevent the meeting of a Synod in this Diocese. I am quite content to leave the question as it stands, to the judgment of any who care to examine it. But you now rest your case mainly on the “common law;” and you quote again your favourite authority in support of your view, who, it will be found, will again fail you. He does not say anywhere in express terms that the common law of England prevents the holding of ecclesiastical assemblies in the colonies; but he does say that it did so previous to any statute in England and Ireland.

If his words are accurately reported, he is wrong in his facts. I could refer you to many authorities for this. I content myself with one from Fuller, vol. ii, page 43: “The Archbishops of Canterbury and York used, . . . . . *toties quoties*, as their own discretions adjudging necessary or convenient, to assemble the clergy of their respective provinces, at what place they pleased, continuing convocations in them so long, or dissolving them as soon, as they pleased. And this they did, either as metropolitans or primates, or as *legati nati* to the Pope of Rome, without any leave from the King afore obtained; and such canons and constitutions then and there concluded on were, in that age, without any farther ratification, obligatory to all subjected to their jurisdiction. Such were all the Synods from Lanfrank to Thomas Arundel, in whose time the *statute* of præmunire was enacted.” If this be a fact, all the legal argument of the Solicitor-General falls to the ground. There was nothing in the common, previous to the enactment of statute, law, to prevent the Church in England from meeting in her councils. There is nothing in the common law to prevent our meeting together now. \*

\* The case was not *mainly* rested on the common law at this stage, any more than in Mr. Surtees' first letter, in which he stated that the statute of Henry was *confirmatory of the common law*. In the face of the contradiction above, Sir R. Bethell has laid down that, “by the common law of England, the clergy of the United Church of England and Ireland (and, *a fortiori*, the laity) are prohibited from holding meetings in the colonies for the purposes of discussing ecclesiastical regulations, the common law is declared in the statute of Henry and Elizabeth, but the power originally resided in the common law.” To this the Bishop of Capetown replies above, that the Solicitor-General stated that the common law prevented such assemblies *previous* to the statute of Henry; but Sir R. Bethell could never have intended his words to be so construed, because *previous to the statute of Henry, England possessed no colonies at all*.

His Lordship continues: If the Solicitor-General has laid down the law as reported,

But, further. Whatever law there is in England, applies only to the meeting of Convocation,—to provincial or national Synods, not diocesan. There is no law in England to prevent a Bishop summoning a Synod of his diocese. If there had been, it would most undoubtedly have been called into operation at the meeting of the Synod of Exeter, to which you have referred. An attempt was made at the time, as you are aware, in Parliament, and utterly failed, the Attorney-General declaring that, “according to the law of the Church by which these Diocesan Synods were held in ancient times, though they had fallen into desuetude, they were not illegal.” “In no time,” says a great living authority on such matters, “and in no country, has the temporal law interfered with them by any enactment whatever. This is especially the case in our own country. Even the statute of Henry VIII, which forbade the holding of national or provincial Synods, without the consent of the Crown, did yet not forbid the holding of diocesan Synods, which were, and always had been, called by the Bishops on their sole authority.” And I might quote much more on the same point, but it really is not needed. I call upon you to give proof, from the history of our Church, that the consent of the Crown was ever needed for the holding of a diocesan Synod. If you cannot do this, you must not be surprised if I say that your “common law” argument is disproved as effectually and completely as that upon which you first rested as derived from “statute law.”

I am sorry that you should think that I wish to “run away from any discussion as to what the supremacy is.” I have no such wish; but the discussion of that great question, in all its wide and important bearing, does not belong to the subject before us. The simple question is, is the supremacy of the Crown invaded by a Bishop summoning a diocesan Synod, without its express leave? I deny the fact, and you have shown yourself unable to prove it. I have, myself, the deepest reverence for the true supremacy of the Crown; and were the occasion to call for the expression of my opinions, might be found to hold views on the subject far more

he is inaccurate as to his facts. The Solicitor-General was not speaking of facts, but the law as it has always been. Those facts, however, only show that certain Archbishops, Bishops, and other prelates, as *legates of the Pope*, broke the law, and superseded the ecclesiastical authority of the Crown, under bulls from Rome, previous to the passing of the statute of Præmunire, which was passed expressly to forbid the introduction of such bulls, under heavy penalties, called the penalties of præmunire; and the statute declared anew the old right of the Crown in these vigorous words:—“The Crown of England, which has been so free at all times that it has been in no earthly subjection, but immediately subject to God in all things touching the Regality of the same Crown, and to none other:” thus ousting the Pope, or, clerical domination.

The argument against Sir R. Bethell, at best, therefore, amounts merely to this: There can be no law in such and such a case, because, if there was, it can be proved that it was broken. It may be as well to add that there is no doctrine more universally laid down in all elementary works on English law, than that the Crown is supreme in matters ecclesiastical; or, as Comyns has it,—“The King of England is *supremum caput ecclesiæ Anglicanæ*.” From Coke down to Warrens’ Law Studies, this is every where to be found; and that for the Church of England ecclesiastical rules and regulations have never been made, but with the Sovereign’s permission, and knowledge, and sanction.

strict and deep than might be palatable to some, in whose mouths the expression is frequent, to serve a purpose. But I have no intention to attribute to the Crown powers which it does not claim, and which are not accorded to it by the Word of God, or by the voice of our Church, as in her Articles she interprets that Word for us. When, therefore, you quote Mr. Napier's and Mr. Walpole's language with reference to the general question of the supremacy of the Crown, you really only quote words which I assent to as readily as yourself.

I must again express my deep regret to find you resorting to personalities. 1st, You regard my proceedings as an "encroachment on the right of the Colonial Legislature." So far from this being the case, I have expressed my entire concurrence in the wisdom of the Imperial Parliament refusing to legislate for us, lest it should thereby encroach on the right of the Colonial Legislature. I have no fear that our meeting together, without asking them to pass laws to give legal validity to our conclusions, will "excite their jealousy," any more than the meetings of the Wesleyans, or the Freemasons, for the management of their affairs. The framing of rules for the conduct of our internal affairs is our concern, not theirs. 2d, I consulted, through the late Dean, every parish on the subject of the desirableness of the laity and clergy of this diocese meeting together in Synod. Upon the time for summoning it I have taken counsel with those to whose judgment I am accustomed to defer. All whom I have consulted have deemed that the proper time had arrived. If I had had any doubt upon the law, I should have hesitated. I did hesitate while there was doubt: I act when there is none. 3d, What you say of my treating my brethren of the laity as "mere instruments," I pass by. They know me, I trust, too well, to be influenced by so unjust a charge. An appeal to them to take their just and proper position in the management of the affairs of the Church,—such a position as shall prevent any new step from being taken without their concurrence,—ought to have protected me from the charge of lording it over God's heritage. I should not have thought, if you had not complained of my not doing so, that any one would have seriously proposed that I should have appealed to the diocese at large, to learn from it the state of the law about Synods. 4th, You ask me what I mean by "stating that you have raised difficulties on the score of the customs of the Church?" and add that you "declared you never used (said?) such nonsense." What you did say was, that in inviting the laity to meet and act with the clergy in Synod, I was "stating, as the work of clergy and laity, that which our Church, through its head, had declared to be the proper business of the Bishops and clergy only." If that were a just remark, my act would be an alteration of the customs, and even of the constitution, of the Church. I therefore said, "You appear to think that the

admission of the laity to take part in them will be a violation of the customs, if not of the constitution, of the Church." Agreeing with you that such an act would be a very grave fault on my part, I gave my reasons for thinking myself not chargeable with it. I see nothing "absurd" in this, or anything to call for the remarks which you have made upon it.

5th. I am thankful to find that all that you affirm now of the Church of Ireland is, that it "has not, and never had, the power to *make canons without royal authority.*" No one ever maintained that either it or the Church of England has the power. Diocesan Synods, I repeat, do not enact "canons," in the formal sense of the word.

6th. You profess to find fault with the Synod of Australia for constituting a court for the trial of offences, and ridicule the constitution of the court, because you think it may one day exhibit a clergyman "subjected for trial as to the most abstruse point of doctrine before a jury of Australian men in trade or business, utterly ignorant of even what constitutes the offence." I do not think the court they have constituted the best that could have been formed for such a purpose; but it is not to be wondered at if they should not see their way clearly, in a matter in which the Parliament of England has signally and confessedly failed. The Lord Chancellor's bill on this subject, brought in last session, was summarily rejected. The formation, however, of a court for discipline is, as I have repeatedly pointed out, and as I thought you had felt, absolutely essential to the well-being of any Church. You are in error in saying that the standard of punishment is the Bishop's will. The laws of the Church, now by the acts of the Synod in force in Australia, govern this. Where there are no laws, as with ourselves, the Bishop's will (*I* should rather say conscience and judgment) must be his sole guide. You prefer to see a Bishop in the situation of myself, without a court, without law, "punish on his own responsibility," and wish "to fix him there." That is, you desire to perpetuate arbitrary power, controlled only by what you call "public opinion;" or, as you just before said, "men in trade and business, utterly ignorant of even what constitutes the offence:" a public opinion which is, at least in this land, not the voice of our Church, but the voice of those who are not of us, and love not our Church, belong not to her communion, and love to find fault with it. But would not public opinion be brought to bear on the judgment of a regularly constituted court, as much as on an individual Bishop? And is it any consolation to a clergyman condemned by a court governed by no laws,—exercising uncontrolled power,—to be told that "public opinion" thinks he ought not to be suspended, deprived, degraded, or excommunicated? You stand alone in your singular opinion. All persons, on all sides, in all debates, are agreed that this is the one thing,

above and beyond all others, that requires a remedy, and that the Church in the colonies can alone provide that remedy.

7th. Upon your language attributing the desire of increased "influence" to myself and other Bishops of the Church, I forbear to make any other remark than that a sincere and simple desire to see the Church, of which he is pastor, placed on such a footing as shall most conduce to God's honour and man's good,—to truth and justice, and the advancement of religion, is quite sufficient to account for a Bishop's desire to take counsel with his flock.

8th. If you had told me at first what your main objections were to Synods, it would have saved a great deal of time and trouble, as I should not have discussed the subject with you. Upon that question I consulted the diocese in 1852, and after repeated public meetings and lay discussions, it pronounced its verdict unequivocally. Driven from the fair field of law and sober argument you have now recourse to other and more questionable tactics. I shall leave you to enlarge as you please on the topics you have now chosen with one or two parting observations. If the cry for Synods be a party cry—it is one in which every statesman of the day,—nearly every colonial diocese,—and nearly all our Bishops at home, have joined: men of all shades of opinion,—and men who may be said on religious matters to have no fixed opinions at all. I am sorry that you should have endeavoured to do, by appealing to religious prejudices, what you could not effect by fair and legitimate argument.

Of Dr. Arnold none can speak without respect for his Christian courage and real goodness. But Dr. Arnold did not believe in the Divine constitution of the Church,—he did not believe in a visible Church at all,—he was the friend and ally in all religious matters of the Chevalier Bunsen,—who thus wrote of the English Church and its Episcopate,—“If an angel from heaven should manifest to me that by introducing, or advocating, or merely favouring the introduction of such an Episcopacy into any part of Germany, I should not only make the Germans glorious and powerful above all the nations of the world, but should successfully combat the unbelief, pantheism, and atheism of the day, I would not do it, so help me God. Amen.” And he was not only the ally of this very able, and good man, though tinged with rationalism; but has become the founder of the Rationalistic school now struggling to obtain a footing in the English Church; and had he lived until now would have been pained to behold the effects of his teaching, not only in the Church at large, but also in his own family,—one of his sons having, after first becoming a sceptic, then a methodist,—and able to find rest nowhere,—just joined the Church of Rome. Were the secret history known of those who have been perverted, it would be found, I believe, in a large number of cases, to be similar to that of Dr. Arnold's son.

It would be found that they had not in early childhood been trained up in the distinct principles and doctrines of the Church of England,—that very many of them had been nurtured either as Non-Conformists or in the extreme Calvinistic school of our Church. It was so at least with the most remarkable of those men who are now lost to us,—with Manning, and Wilberforce, and Newman, and Pugin—and I might add the Ryders, and Sargeaunts, and Simeons.

I now take my leave of you and of this subject altogether, only regretting that you should have adopted the course which, in your concluding letter, you have done. Engaged as I am every day with my candidates for orders, my letter has of necessity been composed in great haste.—I am, dear sir, truly yours,

R. CAPETOWN.

P.S.—On looking over your letter, since writing the above, I observe that you venture to say that I am “about confessedly to form a new Church,” because I speak of the Colonial Churches as “daughter Churches.” I really do not think it necessary to reply to such a charge. It is a common expression in every one’s mouth,—and as true as it is common. I have no thought, and never had, of doing what you impute to me; and I have shown you in my former letters how the one Church, though in various and distant lands, is knit together in the same communion.

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[ No. 8. ]

TO THE EDITOR OF THE “S. A. C. ADVERTISER AND CAPE  
TOWN MAIL.”

Plumstead, December 22, 1856.

SIR,—The Bishop of Cape Town having thought fit to send his last letter to you direct, I am only anxious now to correct certain statements in his last letter, in which, did I not point them out, it might be supposed I acquiesced.

When his Lordship remarks that I commenced the correspondence with him, he is again inaccurate. I received from him first a printed letter inviting me to break the law,—to do that, in short, which one of the law officers of the Crown has laid down to be illegal and to subject the laity to penalties. This I pointed out,—not “for *solution*,” but by way of remonstrance.

That the members of our Church are now pretty well acquainted with the illegality of the measure recommended, the protest in course of signature in Capetown and elsewhere sufficiently demonstrates.

The Crown is supreme in matters ecclesiastical as regards the Church of England and Ireland ;—the Declaration prefixed to the Articles of our Church shows how the Crown is supreme, and the admission of this supremacy, originating in and existing by the old common law of England, and confirmed by statute law, attaches to the members of the Church of England in the colonies, unless relieved by law. They are no friends of the Church's best interests who deny it.

The Synod held by the Bishop of Exeter did not comprise the laity, and since the time of the Reformation nothing like the Synods now proposed by the Bishop of Capetown, nor indeed at any time before it, was ever known in our Church.

As regards what occurred in this colony respecting the Colonial Church Bill, in the year 1852, and when, according to the Bishop of Capetown, "the diocese expressed its opinion unequivocally in its favour, I wish distinctly to avow that when in Ireland, in 1854, I wrote to Sir John Pakington, and described the Bill as having been the very apple of discord. I stated that since I had been in the colony, upwards of ten years, I had never known any religious subject to have caused such "ill-blood" in Capetown and its neighbourhood ; that people were therefore far from unanimous in its favour, and that by many it was viewed, as it was by the late Sir Robert Inglis, "with aversion." *I now openly challenge refutation of the truth of my statement to Sir John Pakington!*

That the Bishop of Capetown should sneer at Dr. Arnold is no matter for surprise ; but all history, down to the days of William Wilberforce, shows that the best of men have too often unworthy sons. How far the faults of the child are to be laid to the parent's door, Heaven only knows ; one would have expected to have found this rather more a subject of condolence than triumph. Dr. Arnold was one of the dearest friends of Justice Coleridge, a truly excellent man, and one of the first scholars of his day. Had Arnold been a Calvinist he would have converted to Calvinism, not to Rome ; they are generally thought to lie at opposite extremes. Dr. Arnold, as Head Master of Rugby School for many years, has turned out some of the soundest scholars and best Churchmen of our day ; and when his enemies insinuated during his lifetime, that he was no Churchman at heart, he rebutted it with indignation, as we all may, as a piece of gratuitous Tractarian malevolence\* The Chevalier Bunsen is not only one of the first writers of our time, but he is, in consequence, it is said, on intimate terms with His Royal Highness Prince Albert. He is the personal friend of Lord Aberdeen and Lord John Russell, and was much beloved by the late Sir Robert Peel. Though not a member of the Church of England, his writings are far less dangerous to it than the writings

\* "I am called *no Churchman* because I respect not the idol which has slipped not only into the Church's place, but into God's."—*Dr. Arnold's Life and Correspondence.*

and actions of some of her professed children. Considering what has been seen in England and elsewhere of late years, it is not to be wondered at that he should have expressed himself in strong terms against the Episcopacy of the English Church. At any rate, names such as Bunsen, Guizot, and Humboldt, will ever be held in esteem and reverence as benefactors of their race, and thus promoters of Christianity as well as literature.\*

I am, Sir, your obedient servant,

FREDERIC R. SURTEES.

P.S.—In order to prevent mistake or misrepresentation in this colony or elsewhere, it is proposed to publish the correspondence between the Bishop of Capetown and Mr. Surtees, to which will be appended the resolutions of those parishes that evince a desire to maintain Her Majesty's supremacy in things ecclesiastical, and a copy of the protest now in circulation.

\* Alterations have been made in the above letter as it originally appeared. It is desired that, as it now stands, it may be considered to have formed part of the original Correspondence.

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## APPENDIX.

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### ENGLISH CHURCH MEETINGS.

#### ST. GEORGE'S, CAPE TOWN.

On Monday, 22d Dec., 1856, at 12 o'clock, a meeting of parishioners took place in St. George's boys' school-room, for the purpose of electing delegates for the approaching Synod, in accordance with the Bishop's Pastoral Letter. The attendance consisted of about seventy persons.

The Very Reverend the Dean of Cape Town, being called upon to preside, said, — Gentlemen, as I have been chosen to take the chair on this occasion, I will just state to you the object for which we have met, and the form and manner of our proceedings. We are to be guided by a letter which the Bishop has written to the clergyman of every parish,—in which he himself is guided by a bill which was agreed upon by the Archbishop and Bishops of the Province of Canterbury, and brought into Parliament—though neither it nor any similar bill has been carried through, as it was generally supposed that there was no occasion for any Act of Parliament,—there being nothing to prevent Synods from being held in the colonies if it was thought expedient. According then, to the directions contained in this letter, and also in the bill of the Archbishop of Canterbury, the first thing to be done now is, to make out a list of those persons who are here present, and who claim to take a part in the proceedings to-day. The next thing is, that those who wish to take part, if not already communicants, or not declared members of the Church, should sign a declaration now, declaring themselves to be members of the Church of England and Ireland, and of no other religious denomination. That being done, it will be for any one to propose a representative of the laity in the coming Synod. There will be perfect liberty as to proposing or seconding, and perfect liberty of asking questions. Greater liberty than this cannot, I think, be conceded; for we are not met here for discussion, but for election, and we should not go beyond the custom of elections. But as far as I am concerned, and if it be the pleasure of the meeting, if any persons shall think proper, after the election has taken place, to state their feelings and opinions upon any subject connected with the Synod, they will be perfectly at liberty to do so.

A list of the persons present was then taken.

Mr. Fell begged to ask whether any one not belonging to the parish was entitled to take any part in the proceedings?

The Dean said, this was a matter of a strictly parochial nature, and should be confined to members of the congregation; but this was one of the points of difficulty which the Synod would have to settle, as to who shall vote at parish meetings. But a person who was not an attendant at the parish Church, could not take part in the proceedings.

Mr. Fell.—A parishioner of Mowbray, for instance?

The Dean.—If a resident at Mowbray and a parishioner of Mowbray, he could not vote here.

Mr. Fell.—Then persons present in that position will follow their own discretion.

The Dean.—We are met here to elect two representatives in the Synod about to be held, and to that business we must confine ourselves. But after that, any one who has any remarks to make, will be at liberty to make them, provided he belongs to the parish of St. George's. Any gentleman who is not a communicant, but wishes to take part in the proceedings as a member of the Church of England, will now be so good as to come forward and sign a declaration that he is so.

Mr. Bridges.—There is nothing in the Bishop's letter about communicants, or signing a declaration. I am a member of the Church, but I have never signed a declaration to the Church, and never will.

The Dean.—Then I am afraid you will not be at liberty to take any part in the proceedings.

Mr. Bridges.—That is not in the Bishop's letter

The Dean.—I have here the letter, which I may as well read:—

REVEREND AND DEAR SIR,—I have fixed on Monday, the 22d day of December, for the election of lay delegates to the Synod or Assembly of the Church in this diocese, to be held in the Cathedral Church in Cape Town, on Wednesday, January 21, 1857.

You will, therefore, be good enough to fix a notice to this effect on your Church door, stating the place and hour at which the parishioners are invited to assemble to elect their representatives. When not less than five parishioners shall be assembled, the meeting will be at liberty to elect a chairman, in which capacity you will be qualified to act, if desired. The chairman will then make, or cause to be made, a list of those who shall then be present, and add thereto the names of those who shall subsequently attend before the proceedings are closed, and shall claim to vote thereat; and every such lay member, unless enrolled in your list of communicants, or in your book of confirmed members, shall, before taking part in, or voting at, such meeting, declare himself to be a member of the United Church of England and Ireland.

The only condition as to the qualification of representatives is,

that they shall be communicants. They need not be parishioners, though, of course, it is desirable that they should be. If more than two qualified persons shall be proposed as representatives, and the number of votes for each shall be equal, the chairman will have a casting vote. The chairman should deliver to the representatives elected by a majority of the meeting, a certificate of their election, and should sign the minutes of the meeting in token of its correctness. This certificate should be delivered to you (if you are not chairman) and by you be forwarded to me, that I may lay it before the Assembly at its meeting. I am, Reverend and dear Sir, your friend and brother,

R. CAPETOWN.

Very Reverend the Dean, St. George's, Cape Town.

So that I am afraid you will not be able to say anything until after the business is disposed of.

Mr. Bridges.—What will be the use of speaking then? It will be too late!

The Dean.—That is my decision, and I trust the meeting will support me in maintaining the order of our proceedings (hear, hear).

Mr. Bridges.—I was perfectly aware that no one would be allowed to be heard except you were sure of him (order)!

Mr. S. Hawkins.—It is well known that Mr. Bridges has a protest at his shop—

The Dean.—I will hear nothing of that! I beg, Mr. Hawkins, that such observations may not be made (hear, hear).

Mr. Tennant.—Mr. Dean, acting on your suggestion, and in accordance with the letter of the Lord Bishop, I now propose that Dr. Bickersteth and Col. Aston be the representatives of St. George's Church in the coming Synod.

Mr. Eaton seconded the motion.

Mr. Bridges.—Now I don't see why I should not be allowed. I have been a member of the church since ever it was built,—I helped to build it, and now why have not I a right—(“order order”).

The Rev. Mr. Quinn.—We must have order at such a meeting!

Mr. Irons.—Allow me to ask if the latter gentleman proposed in the motion, Col. Aston, has been resident here for any length of time? I think a gentleman selected for such an office should have a little colonial experience.

The Dean.—Col. Aston can answer that question for himself; but I believe he has been here many years, and is a man in whom you all have perfect confidence.

Lieut.-Colonel Aston.—Off and on, probably, I have been resident here for eight years, but that is distributed over a period of fourteen years; and now, having retired from the Indian service, I have been here for a year, and, perhaps, may remain permanently. Although my stay has been interrupted, having married into a

Cape family, I have kept up, by correspondence, my interest and sympathies in Cape affairs. But in proposing to elect me to this important office, it should be considered that I am in the Indian service, where very little of public speaking is practised. You must, therefore, not expect anything like public speaking from me; but this duty having been imposed on me, I do not feel entitled to decline it, though there are many better qualified, but who, I am aware, have not the leisure to attend to the duty. Therefore I do not feel justified in refusing, if the members think proper to elect me. With regard to my qualifications, as I have said, I am no public speaker; but my vote will always be unfettered, save by my conscience,—and if you choose to trust me, as a gentleman, and a man of honor, you may have confidence that I will do my best for the welfare of the community, the peace of the Church, and the advancement of the religion that the Church represents (cheers).

The Dean asked—Has any other gentleman any other candidate to propose?

After waiting a little time, and no other candidate having been proposed, the Dean declared Dr. Bickersteth and Col. Aston duly elected.

Dr. Bickersteth said,—I beg to return my thanks to those gentlemen who have done me the honor of choosing me as their representative. I wish their choice had fallen on an abler man. My professional avocations so fully occupy my time that I cannot depend on an hour, but I know that others who might be called on, have such legitimate excuses to make, that I feel it a duty not to shrink from the task now imposed upon me. As Col. Aston has said, I am not a public speaker,—it is a pain to me to take a prominent part in such proceedings, but this I can say, I will ever give my vote conscientiously, according to my knowledge, for the welfare of the church to which I have the happiness to belong. (cheers.)

A desire having been expressed by some person for a show of hands, the Dean said he believed there was no necessity for calling a show of hands, but he might do so, to give the meeting an opportunity of expressing its opinion.

On a show of hands, the motion was carried *nem. con.*

Major Piers then proposed a vote of thanks to the president of the meeting, for his impartial conduct in the chair;—which was unanimously passed.

The Dean said,—Gentlemen, I thank you much for the support you have given to me, and the way in which the proceedings of the present meeting have been carried on. Mr. Bridges wished to offer some opinion to the meeting, I do not know what it was—

Mr. Bridges.—I have said all I wished to say.

The Dean.—I felt constrained to stop him then, but I said I should be happy to hear any remarks he had to offer afterwards.

Mr. Bridges.—What is the use of my speaking after we have done?

The Dean.—I said if he had anything to bring before us, we would give it our best attention. I would only say further, that I hope that what we have done this day, though it appears humble, and not a great thing, yet may be the beginning of great things. There has been great mistake and misapprehension as to the purpose of the proposed Synodical action, but I believe that when the Synod meets, and the world sees—for I am afraid that the world in general has more to do with the opposition than the true members of the Church—when the world sees by the moderation of our conduct, that we are far from wishing to elevate one party above another, or to seek anything but the glory of God and the real good of the whole body. I am sure when they see this, and that nothing but good arises from our meetings, we shall have all those gentlemen coming in to support us heart and hand. (Cheers.) To suppose that there is anything illegal in the holding of such a Synod is the merest moonshine. There is not a shadow of a doubt about it. The law of England is such that the whole Province of Canterbury, or the whole Province of York, are unable to meet without the consent of the Crown, but as to Dioceses and Diocesan Synods, even in England, there is no doubt that they can meet if they think fit, and that all lawyers in England are agreed that they can do so. With regard to the colonies, there is, I believe, also, no doubt whatever, that the Act of Henry VIII.,—the only Act which bears on this subject, does not in any degree apply to them—and as to this colony, I believe if the question were gone into, we should find,—though that is more a question for lawyers here than for me, and I speak with diffidence about it,—that neither statute law, nor common law, are effectual here, and that therefore, we are certainly not less free than other colonies. So that there can be no question whatever as to the legality of the Church meeting by Synod in this diocese. Then we have the great fact that in several dioceses the Church, has already met in Synods, and in no case has it been asserted that they had not a right so to do; while in the case of one diocese, the Queen herself confirmed, by her assent in Privy Council, the decisions which were come to; and those very lawyers, who were thought to be most opposed to Synods, have been amongst the advisers of the Crown, who has sanctioned the proceedings in that particular case. It is, therefore, almost ludicrous to speak about our violating the law of England in meeting on this occasion, or in Synod. Then as to the Queen's supremacy,—no one doubts the Queen's supremacy, as well in things ecclesiastical as in things civil, but the whole question is, whether this supremacy gives her any right to interfere in matters of this kind, or not: and if we set aside any objections raised on the ground of statute law or common law,—why, the whole objection which is grounded upon the Queen's

supremacy vanishes at once. The Queen's supremacy can only have a bearing upon us through the law of England; and as I have shown, and as has been shown by others, neither the common law nor the statute law bears upon this matter. So that I am sure no one has the least right to doubt or question the legality of our proceedings, and as we are doing what is legal, so I am certain we are only doing what is right,—and I am convinced that the more it is made apparent to the perceptions of men, that the Church is a spiritual association, with its own life, under its own spiritual laws, and that it cannot carry out the purposes of its life and being without these meetings, and other means of conferring together,—we shall have even those persons who have most opposed us, coming in and joining with us heartily in making the Church thoroughly efficient for its high purposes, which is our only end and aim. We must, for the present, bear reproaches and mistaken opposition, and trust that God in his good time may make men less prejudiced, and willing to take a more clear and impartial view of the subject, and look at things with more faith and in a more simple and far-sighted way. (Cheers.)

Mr. Tennant said,—I trust it will not be deemed out of place, my adding a few words to what has been already said. There certainly does not appear to be any legal objection to the holding of a Diocesan Synod, and I think that the statute of Henry VIII., which has been quoted, applies to Provincial Synods, which were assemblies in their primary origin, of Ecclesiastics for Civil purposes. In the reign of Henry, restrictions were laid upon these Provincial Synods, but no authority has attempted to lay the same civil restrictions upon Diocesan Synods, for they are in origin spiritual and ecclesiastical, and have never subserved civil purposes. There is the clearest distinction made between the right of a Diocesan Synod to assemble under their Bishop, at his summons, and the Royal Prerogative to summon the Provincial Synod. Further, Burnet shows that Queen Elizabeth acknowledged the independence of Diocesan Synods and gave directions respecting them in the Royal Writ. The favourable countenance and co-operation of the laity in Synod, would be of great help to the Church; and it would be easy to show that Synodical action in the Church continued both before the Reformation and also afterwards. Reynolds says that “in the reigns of Queen Elizabeth, King James I., Charles I., and Charles II., it was held to be the right of every member of the community to propose his doubts to the Synod.” I might go further into the subject and show how, that in early times, the infusion of lay elements into Synods tended to the vigorous growth of the Church; but I think enough has already been said to prove that Diocesan Synods are not only lawful but desirable, not only desirable but necessary, and not only necessary but indispensable.

The Dean asked whether any other gentleman present, had any observation to make. If he had understood Mr. Bridges, he wished to say something.

Mr. Bridges.—I only wish to say this:—The chairman declared that I was out of order when I objected to signing a declaration which is not in the Bishop's letter;—now I wish to know how I was out of order?

The Dean.—My meaning was not that you were out of order in putting the question, but that it would be out of order for you to take part in our proceedings if you objected to take the preliminary step which I stated.

Mr. Bridges.—I merely went by the Bishop's rule. His letter does not say that such a declaration should be signed, and I want to know how I was out of order? I think you were out of order much more than I was, when you first declared the delegates elected and then put them to the vote. But I want to know how I could be called on to sign a declaration which is not in the Bishop's letter?

The Dean—I am sorry if I was wrong, but as chairman my decision must be final.

Mr. Bridges—I knew I should be considered an intruder.

The Dean—I beg that you will not make such remarks. I should be most delighted now to hear anything you have to say.

Mr. Bridges—I was not allowed to take any part, and what's the use of my speaking now? I say it with all due respect for you, what's the use of your talking of the legality of the thing when it was already passed and done? You should have stated these things first.

Lieutenant-Colonel Aston—I think Mr. Bridges stated that it was not in the letter;—it was not a question that he put whether it was so, but he stated absolutely that it was not.

Mr. Bridges—I say it is not in the letter that we should have to sign a declaration before we could vote. I have belonged to the Church of England ever since I was born, and I do not see that I should be so called upon; I have seen enough of signing declarations.

The Dean—I think we shall hardly subserve the purpose of the meeting to get into a petty discussion of this kind.

Mr. Bridges—You brought it on yourself. I did not begin it.

The Dean—I think if no gentleman has any remarks to make on the subject before us, we will consider the meeting as concluded.

The meeting then dispersed.

#### TRINITY CHURCH, CAPE TOWN.

The meeting of the members of Trinity Church was held at 12 o'clock, in the school room belonging to the Church; John Barry, Esq., in the chair.

The chairman opened the meeting by reading the Bishop's circular, fixing Monday for the election. He then inquired whether any member present wished to propose any one as a fit and proper person to represent Trinity Church in the coming Synod.

A short silence ensued.

Mr. Holden then rose and said—Sir, I beg to propose the following resolution :—“ That no delegate be elected by this meeting, inasmuch as it is opposed to the establishment of a Synod for the following reasons :—

“ 1st. Because it is illegal to meet in Synod without the Royal authority, and is therefore repugnant to the Constitution of the Church of England; for the 12th Canon expressly declares it to be ‘ unlawful for any sort of ministers or laymen, or either of them, to join together and make rules, orders, or constitutions, in *causes ecclesiastical, without the Queen's authority,*’ whilst the declaration prefixed to the 39 Articles of our religion states,—‘ That we (*i. e.* the Sovereign) are Supreme Governor of the Church of England;—and that if any differences arise about the external policy, concerning the injunctions, canons, and other constitutions whatsoever thereto belonging, the clergy in convocation is to order and settle them, having *first* obtained leave under our broad seal so to do, and we approving the said ordinances and constitutions, —providing that none be made contrary to the laws and customs of the land.’

“ ‘ That out of our princely care that the Churchmen may do the work which is proper unto them, the Bishops and clergy from time to time in convocation, upon their humble desire, shall have license under our broad seal to deliberate of, and do all such things, as being made plain by them, and assented unto by us, shall concern the settled continuance of the doctrine and discipline of the Church of *England* now established; from which we will not endure any varying or departure in the least degree.’

“ 2nd. Because it is an unnecessary and inexpedient innovation; inimical to the supremacy of the Crown, and will remove those wholesome restrictions which the Imperial legislature has imposed in the way of enacting canons of discipline; and at the same time it will virtually free the Bishop of this diocese from his subordination to the see of Canterbury, to which he is subject (a wise and salutary check provided by the Letters Patent against the temptations incident to spiritual rule), and will, moreover, tend to the separation of the Church in this diocese from the mother Church of England and Ireland, and render this community simply the Episcopal Church of Cape Town.

“ 3rd. Because the Church of England does not recognize the principle of investing Synods with the powers of Ecclesiastical Courts, nor are they recognized as Courts of Appeal in matters of doctrine and discipline.



“ 4th. Because nine-tenths of the clergy, being appointed and paid by his lordship out of funds committed to his charge for Church purposes, must necessarily, in a very great degree, be dependent on him ; and from men so situated, a free and full expression of opinion cannot reasonably be expected.

“ 5th. Because we believe the proposed Synod will prove injurious to the best interests of the Church of England—a call to strife and debate—and a fatal hindrance to the advancement of the Gospel of Christ, and will tend to the introduction of greater evils than those it proposes to remove.

“ 6th. Because to sanction and establish such a Synod would be, virtually, to resign a portion of that religious freedom which was acquired at the glorious Reformation, and to subject ourselves to a spiritual rule, from which there would be no appeal, or way of escape, but by secession.”

I think it unnecessary to make any remarks in offering this resolution to the meeting, as the reasons for its adoption are so fully stated in the resolution itself. These reasons might have been more numerous, because they are as plentiful as blackberries, but those given are, I think, sufficient. The one which weighs most with me is the fourth,—that referring to the position of the clergy. We know that the Bishop has the appointment of the majority—that they are dependent on him for their daily bread, and it is not likely that they would give hostile votes to his measures. Now, very properly, the clergy have great influence on their congregations, and every lay delegate will be more or less under the influence of his pastor,—how then can we expect a fair representation ? Again, the Bishop is to have a *veto*, so that the Synod’s resolutions will only be adopted when they agree with the Bishop’s views ! It is a complete farce (cheers). I beg to propose this motion.

Seconded by Mr. Mills.

Mr. Payne quite agreed with the resolution, but wished to know whether, if they refused to elect a lay delegate, the Bishop could not say that he would go on without that delegate, and legislate for the parish without consulting their wishes ? He wished to know what check they could have upon him if they sent no delegate ?

Mr. Ball—We protest against the Synod altogether.

Mr. Hutchinson—By sending delegates, we would bind ourselves to the acts of the Synod, but we do not intend to recognize the power of the Synod at all (cheers).

The motion was put and carried unanimously.

Mr. Holden—Mr. Chairman, I beg to hand in a Protest, signed by a very large majority, if not the whole, of the parishioners of Trinity Church, against the proposed Synod. The Protest is as follows :—

“ We, the undersigned, members of the congregation of Trinity Church, Cape Town, having been called upon by the officiating

Minister of the said Church, to assemble for the purpose of electing a Delegate to represent us at a meeting of the Bishop, Clergy, and Lay Representatives of this diocese, to be called a Synod, desire to record our Protest, generally, against such Synod, and especially against the election of any Delegate for Trinity Church, Cape Town, for the following and other reasons :—

“ First,—Because the proposed Synod would be at variance with the letter and spirit of the 12th Canon, and the 21st Article of Religion, having been convened without the commandment and will of the Queen’s Majesty, and would consequently be illegal ; a position virtually admitted by the promoters of the Bill rejected by the Imperial Parliament, who acknowledge in the preamble, that ‘ doubts are entertained.’

“ Secondly,—Because we do not consider that there was, on a former occasion, as alleged, an expression of the views of a considerable proportion of the laity, in favour of the projected Synods ; but on the contrary, we believe there were comparatively few who approved of the measure.

“ Thirdly,—Because we believe that the tendency of the Synod will be to consolidate and increase the power of the diocesan, while the responsibility and possible odium of his acts would be borne by the Synod.

“ Fourthly,—Because no analogy could possibly exist between the constitution of such a Synod as that proposed and the meetings of other denominations of Christians, inasmuch as nothing could be resolved or decreed, without the sanction of the Bishop, even though every other member of the Synod joined in voting for it ; while on the other hand it is a mere fallacy to affirm that the Bishop could not act without the concurrence, and even in opposition to, the sense of the Synod, for as there is no law whatever in the question, he would be as free to act as he is now.

“ Fifthly,—Because we do not believe that any of the subjects mentioned in the Pastoral letter, as intended to be proposed for discussion, by a meeting composed of such a preponderance of the Bishop’s nominees, can be attended with any beneficial results to the Church.

“ For these and other reasons, we respectfully request that the officiating clergyman of Trinity Church, Cape Town, will take no part in the proposed Synod ; and that he, or the chairman of the meeting to be holden for the election of a delegate, will transmit this, our protest, to the Bishop of this diocese.

“ Cape Town, December, 1856.

“ Jno. Barry, C. Holden, Churchwardens ; J. F. Hutton, W. Wilson, G. Ross, Geo Kinsley, T. I. C. Inglesby, J. Stow, H. J. Diederick, Thos. Inglesby, J. Dixie, George Twycross, sen., B. Dixie, Alex. Hutchinson, W. W. Ball, Robert Kearns, E. T.

Wylde, G. C. Holden, G. B. Bennett, Robert Inglesby, Chas. Banks, W. Kirby, W. J. Hawthorn, G. Spiers, M. Hansen, R. Blackall (Major-General), D. Mills, G. Kilgour, J. Adams, C. Adams, W. Fisher, A. Townsend, W. L. Higginson, T. W. Rose, S. Twycross, C. Crole, D. Dixie, H. Bevern, G. Payne, J. H. Reeler, W. Mackay, H. F. Corless, J. Baumann, Henry G. Wilmot, F. W. Wylde, P. Heeger, John Valentine.”

Mr. Payne.—If the Bishop summons our respected minister to attend the Synod, has he the power to refuse? I go heart and soul with the protest, but I fear we are placing Mr. Lamb in an awkward position.

Rev. Mr. Lamb.—With respect to the observations which have been made as regards placing me in any difficulty by the adoption of the protest before this meeting, I desire to allay any doubts or fears there may be on the subject. Considering the important principle involved, I can see nothing objectionable at this moment, and in the general principles I fully concur. I feel confident that there are many here to-day who know me too well to doubt what line of conduct I shall deem it my duty to pursue, as regards attendance at this Synod. But whatever I may be led to do, you may be thoroughly satisfied it will not be inconsistent with the allegiance and respect I owe to my Sovereign. I shall not interfere with her inalienable prerogative of supremacy in matters ecclesiastical, nor will I take any step which can, in the slightest possible degree, be likely to be injurious to the usefulness or integrity of our venerable Church. (Cheers.)

The Chairman then declared that the meeting for the election of delegates was over.

Mr. E. Wylde moved that Mr. Barry again take the chair, and proposed the following resolution:—

“That this meeting desires to record its cordial thanks to Frederic R. Surtees, Esq., for the talent, courage, and fidelity, he has so opportunely displayed in maintaining and defending the position and liberties of Protestant Christians and Churchmen in the diocese, and that the Reverend the Chaplain of Trinity Church, be requested to forward this resolution to Mr. Surtees.”

The motion was seconded by Major-General Blackall, and carried by acclamation.

Thanks having been voted to the chairman, the meeting dispersed.

The following letter was addressed to F. R. Surtees, Esq., enclosing the vote of thanks passed by the meeting:—

“Cape Town, Dec. 22, 1856.

“Frederic R. Surtees, Esq.,

“My dear Sir,—It gives me very great pleasure to enclose a resolution, unanimously adopted by a large meeting of Trinity

Church Congregation, held this morning, in appreciation of the eminent service you have, in their opinion, rendered to truth and to the Church of England in this diocese, by your able correspondence on the subject of Synodical action in the Colonial Church, and in which expression of thankfulness I need scarcely observe I heartily and entirely concur. I am, my dear sir, yours very faithfully,

“ ROBERT G. LAMB,  
“ Colonial Chaplain, Trinity Church.”

ST. JOHN'S, CAPE TOWN.

The announcement of the election of a delegate to the Church Synod, from this parish, would appear to be incorrect. Mr. Henry M. Wentzel, who was proposed, has declined to act, and another meeting will, we believe, be held in the course of next week.

ST. PETER'S, MOWBRAY.

A meeting was held in the school-room of St. Peter's Church, Mowbray, on Monday afternoon at four o'clock, for the election of delegates to the Synod. There were from thirty to forty persons present, the majority of whom were parishioners, though a few came merely as spectators.

Upon a motion by the Rev. Mr. Long, incumbent, Alexander McDonald, Esq., of the firm of McDonald, Busk & Co., took the chair, and read a letter addressed by the Lord Bishop of Capetown to the Minister of the parish, requesting him to call a meeting,—similar to the one read by the Very Reverend Dean of Cape Town at St. George's Church Meeting, reported above.

The Hon. H. E. Rutherford said,—Mr. Chairman, I do not recollect ever before attending a meeting connected with this Church, and I should certainly not have ventured to take a prominent part in this, did I not consider the subject under discussion to be one of the utmost importance. I regret that so few persons comparatively, seem to take an interest in the matter. Some with whom I have spoken, and who consider themselves very staunch members of the Church of England, call it a party question, and others a parish squabble, with which they do not think it worth while to interfere. It is no party question. It involves, I believe, our own individual spiritual welfare; the welfare of our children, and of no small portion of the community of this colony. It is not my intention to enter at any length into the legal points of the case. I hope we shall view it in all its bearings. I am not fond of parading my religious views or feelings at a public meeting, but this I can say, with truth, I have made this matter one of deep consideration and earnest prayer to God, to enable me to do what is right in his sight; for, whatever others may be, I am not indif-

ferent to the religious principles I myself hold, nor to the sound or false doctrine adopted by those who are dear to me; and, therefore, regarding the object of the meeting in this light, I trust I have come in the spirit of meekness, and with a proper degree of respect for authorities, but with an earnest determination to do that which judgment and conscience dictate to be my duty. Sir, I have read, and I suppose most persons here present have read, the very able correspondence that has taken place touching the legality or illegality of the measure proposed,—of introducing synodical action into this colony,—between a highly respected English barrister and the Lord Bishop of Cape Town. I have also signed, in common with others, a protest against the measure; but I frankly confess that I do not feel quite satisfied with the legal arguments *pro* or *con*. I will not venture an opinion of my own, but after reading them I am brought back to the simple inquiry,—“Is this a right thing to be done? Has it for its object the spiritual benefit of the Church of Christ, or the spread of those Tractarian doctrines, which, as I think, most unhappily prevail among the clergy of the Church of England in this colony?” For an answer to this question I have not to go to Bishop or priest; I must deal with it in the solemn survey of my own heart first, after prayer to God to direct me to a right conclusion; and, having so done, I feel bound to state my views on a matter of so much weight, both to my friends and the public assembled at meetings of this kind. If we are unable to ascertain the law regarding this or any other subject, we are justified in inquiring what is the view taken by wise and good men in other parts of the world; especially by those of our fellow-countrymen, members of the Church of England in our native land? I ask, then, what is the practice in our own country? Are there Synods there, or not? Mr. Surtees, I think, very wisely recommends this course for the adoption of his countrymen here. The Bishop seems to have no wish for home recollections, but directs our attention to the practice which obtains in Australia. Now, for my own part, I think I am safer in taking the advice of an independent English barrister, who directs me, if I am not satisfied with his legal opinion, to look for example to the practice of my own country, than to a Bishop, however learned, who is personally interested in the matter, and recommends us to be guided by what has taken place in Australia. Mr. Surtees says that there are no Synods in England. It is very true that there is a Convocation, which occasionally meets, but, no sooner do any of the acts of that Convocation tend in the slightest degree to touch the supremacy of the Crown, than it is prorogued. It is very true, likewise, that lately, the Bishop of Exeter instituted a new order of things in his diocese. He appointed a meeting of his clergy (without the laity) and they met. It does not appear, however, that this mode of proceeding has found favour with the generality of

Churchmen in England, for I have not heard of a similar operation in other dioceses. It appears then, I think, pretty clear that there are no Synods in England at present;—at least no such Synods as are contemplated here. I am one of those who do not wish to go beyond England, for a reference to the general practice in matters ecclesiastical or civil. I am content to refer to a country which furnishes us with the history of a noble army of martyrs, who have died rather than sacrifice their religious principles. I am content to refer to men of God who have spent their lives in the study of the Bible,—who have lived and died in the faith of the Gospel of our Lord Jesus Christ; and have left on record lessons of wisdom for our instruction, and holiness of living for our imitation. I confess it does appear strange to be referred to Australia. She may, and no doubt will, become a great nation; but the lives of her worthies are not yet written. I recollect Australia following our example on a very important subject, but I never expected to be referred to Australia for the purity of her religious enactments. (Hear, hear.) Let those who wish to learn what Synods have done for the promotion of religion in Australia, read some of its late proceedings. I know that the opinion has been given by four of the most learned lawyers in England that the Act of Henry VIII does not prevent the holding of a Synod at Adelaide; but admitting that, I do not see why we are to prefer the judgment of the men of Australia to our own. The question remains—Is it expedient? The Bishop, for various reasons, considers it is so, and I may candidly admit that I do think a great deal of what he states is true, and that he deserves considerable sympathy from those of his views on religious subjects,—that is to say, of the Tractarian party. He is placed here in circumstances of great responsibility, unquestionably, and I do not wonder at his desire (not to shake off any portion of his influence,—for that is what I think no man can wish to do, but) to get others to bear a portion of his responsibility, which he has so readily assumed. The Bishop is of opinion, and I for one agree with him that by the establishment of Synods he would shake off a portion of his responsibility; but as to diminishing his influence, it would be increased nearly four-fold. I do not pretend to be either lawyer or logician, but, as a plain unlettered man, now somewhat advanced in life, I would put it to you as men of common sense, whether it is to be expected that the influence of the Bishop in this colony will be in the least degree diminished by the establishment of a Synod of her clergy and laity? I am one of the last persons who would attempt to wrest the meaning of any expression used by individuals, and give it a signification which it was never intended to bear; but I cannot close my eyes to the fact that the influence of the Bishop would not only not be diminished, but would be very considerably increased by such a measure. It is well known to us, though, perhaps, not so well

known in England and other places, that more than three-fourths of the clergy who have come to this colony have been brought out by the Bishop, or at his recommendation. They hold his views on religious subjects, and depend upon him for temporal provision; and it would be really absurd to think that individuals thus situated would vote against him,—would attempt to weaken his influence, or in the most remote degree oppose his will. Sir, I am astonished that he can imagine that he is resigning any portion of his influence in desiring to establish a Synod here. For my part I confess that the nature of the religious education given throughout the colony is a matter of the deepest interest and importance to my mind, and I have no wish to see it wholly given up to Tractarianism, in the full and now perfectly well understood meaning of that term. I have no wish to see the Evangelical Clergy of this colony either annoyed, or vexed, or aggrieved, or going about their work broken-hearted, by a harsh and severe mode of treatment. I appeal to the common sense of mankind, and ask, does any one think that he weakens his cause by referring it to the decision of his own selected committee? Does even the Bishop of Exeter pretend to have called a Synod in his diocese, as a kind of self-denying ordinance, to surrender to such a body a portion of his influence? Far otherwise; it enables, and is a temptation to a Bishop, to do by indirect means what he would not attempt, or perhaps even wish to do as an individual. I beg to move,—“That no delegates be sent by this parish, and that this meeting is opposed to the introduction of Synodical action in this diocese.”

Mr. Thomas Tennant said,—Mr. Chairman, I am very happy that I had sufficient strength to walk up here to give my support to this resolution. It speaks all we want to be done. I think I cannot at all improve on what my hon. friend has stated, by anything I have got to advance. I have read a good deal in the papers, and have had a good deal of conversation on this subject, as regards the legality or illegality of this measure. But I will just allow the legal or illegal part of it to fall to the ground. I will view it in this way: Is it beneficial, or likely to be beneficial, to the interests of the colony, in a religious point of view? I maintain that it is not. Whether it is legal or not, I have nothing to do with that; though I believe it is illegal, for the reasons given in the protest I signed, and by which I am ready to abide. As to establishing a Synod in this colony, in the present aspect of religious affairs, it would, I think, do a vast deal of damage. It will run like a two-edged sword across the country, carrying dissension into the midst of private families, and occasioning discord and ill-feeling in different parts. It has already done so in one or two families I know of; but, taking up a broader view of the thing, it will do incalculable damage to the principles of Chris-

tianity, and, as such, it ought to be opposed by every Churchman. I therefore warmly second the resolution. I could say a great deal more, but I think you have already heard enough in elucidation of the objects of this meeting. (Cheers.)

The Chairman then put the motion to the meeting, and it was agreed to unanimously.

The Rev. Mr Long said,—Mr. Chairman, I have received a letter from Mr. John Reid, one of the churchwardens of Mowbray Church, in which he states his reasons for not taking a more active part in this meeting, and in which he also gives expression to his opinions upon the legality or illegality of the Synod summoned by the Lord Bishop of Capetown. I will, with Mr. Reid's permission, proceed to read the letter.

Mr. Reid.—Just allow me to observe that my reason for not taking a part in this meeting is explained in the letter, otherwise it might appear presumptuous in me to allow it to be read. Holding the office of churchwarden, it might be thought I was in favour of Synods, from my not coming forward in support of the motion which has been passed. Now, I avow the opinions expressed in that letter, and as I fill the office of churchwarden, I think it my duty to allow it to be read. (Hear, hear.)

The Rev. Mr Long then proceeded to read the letter, as follows,—

Cape Town, Dec. 18, 1856.

The Rev. W. LONG, Mowbray.

REV. AND DEAR SIR,—The peculiarity of the position in which I am placed with regard to the Pastoral Letter of the Lord Bishop of Capetown, seems to require me to address you as to the course, which I feel called upon to adopt relative to the meeting which is to be held on Monday next.

I have, during the last eleven years, regularly attended the services of the Church of England, and I have officiated as a churchwarden of Mowbray Church ever since a place of worship was licensed for divine service there by His Lordship. At the same time, I am bound to consider myself as a member of the Church of Scotland. I have been and am ready to give my cordial assent and consent to the Articles of the Church of England, and I join without reserve, in her services; yet I cannot declare that I am a member of no other religious denomination. I am, therefore, not entitled, in terms of His Lordship's Pastoral Letter, to vote at the meeting. But being a regular attendant at that church, and also officiating as a churchwarden, I consider that you are entitled to the expression of my opinion as to the proposed formation of a Synod; and, in doing so, I beg it may be understood that I am merely explaining my conduct. I am bound to act according to the view which I have taken, after having given the matter the best consideration which I am able; but I am very far from



thinking that anything I can say on the subject is worthy the attention of others.

With this explanation, and with this object, I beg humbly to say, that I am of opinion that, without the leave of Her Majesty, in conformity with the Royal Declaration prefixed to the Articles, it is not competent for His Lordship to constitute a Synod. (Hear, hear.) When the bill, which is printed in the last number of the *South African Church Magazine*, was debated in the House of Commons, Her Majesty's Solicitor-General stated (I write from memory, not having access to the debates whilst I write) that the churches in the colonies are not churches in communion with the Church of England, but form a part of the Church of England. Now, no Bishop in England can call a Synod which has the power to bind any person, except those who voluntarily become bound thereby. I cannot conceive, therefore, assuming that the Solicitor-General's opinion is correct, that any colonial Bishop can, without such authority, constitute a Synod which shall have the power to bind the Church, as a body, within his diocese; and it appears to me that if any Synod, acting without such authority, should, by or through any resolution or decision, affect the civil rights of any member of the Church, he might sustain an action in any competent court of civil judicature within the colony.

Religious bodies, such as the Wesleyans or Independents, may make laws, through their constituted rulers, which may bind every person who becomes a member of their denominations. These are voluntary churches; but the Church of England differs widely from any voluntary church. It is recognised within the Queen's dominions as a Church by the State, and can only make rules and regulations, and pronounce decisions, I apprehend, in accordance with the order established by the State, which shall bind the Church as a body. Had the power of calling Synods been given by the Letters Patent granted to the Lord Bishop, then he might have had authority to do so; but no such power is granted by those Letters Patent.

I should be glad to see His Lordship relieved from that responsibility to which he refers in his Pastoral Letter, but I am at a loss to see how that can be done, otherwise than by the authority to which I have referred. But whilst I say this, I am not prepared to say that the interests of the Church of England, either at home or in the colonies, would, at present, be promoted by Convocation or by a Synod. Although opinions have been put forth in the pulpit, and through the press, which I may venture, without presumption, to say, are at variance with her articles and her services, and with what I believe to be sound doctrine; yet, it is generally admitted, that since the commencement of the present century, she has greatly prospered without Convocation; and there is every reason to hope that she will still continue to prosper under the like

circumstances. I am not satisfied that evils would not have resulted from the action of Convocation. Controversies have long existed within her body, and heats and animosities have arisen, which, had Convocation acted, might have increased more than they have done. A great spiritual and moral influence has been exerted through her articles and services, which has worked and is working silently, and most beneficially; for men have been obliged to look at what they have given their assent to, and by this study have come conscientiously to receive truths which otherwise they would have cast from them. I trust the time will come when, looking more and more from this point of view, her members will be more united; and should this time arrive, then I have no doubt but Convocation and Synods will work for much good; but, till it comes, I should say let us use those means well which are within our reach, and do not try to obtain objects otherwise than according to the appointed channel.

Of course, I am all along assuming that there is no competent authority for calling a Synod in this colony. I may be wrong, if so, and His Lordship has such authority, my observations will not apply.

I may be allowed to refer to the case of the Church of Scotland, by way of illustrating my position, that Convocation might work badly, or at least might not prevent mischief. That Church has, and has had, her Kirk Sessions, Presbyteries, Synods, and General Assembly. Meetings of all those courts have been regularly held, and have afforded ample means of bringing every evil, or imagined evil, for full investigation, and for applying a remedy. Religion slumbered in Scotland, as it did in England, and revived, as it has done in England, not, as I believe, because of her courts, but because of the truths which are exhibited in her standards. But, whilst Scotland suffered from her dissensions, until, in 1842, a very large number, including a great many of her most valued, able, and pious members separated and formed a Church altogether unconnected with her,—the Church of England, at a time when much more important divisions and differences existed within her, remains entire.—I am, rev. and dear sir, your obedient servant,

JOHN REID.

Mr. John Dyason said,—Mr. Chairman, I hold in my hand a parochial protest from the parishioners of St. Peter's, Mowbray, which has 47 signatures, and is as follows:

“We, the undersigned, members of the congregation of St. Peter's, Mowbray, having been called upon, by notice publicly given by the officiating minister of the said Church, to assemble for the purpose of electing a delegate to represent us at a meeting of the Bishop, clergy, and laity of this diocese, to be called a Synod, desire to record a protest, generally, against such Synod, and especially against the election of any delegate for St. Peter's Church, Mowbray, for the following and other reasons:

“ First,—Because the proposed Synod would be at variance with the letter and spirit of the twelfth Canon and the twenty-first Article of Religion, having been convened without the commandment or will of the Queen’s authority, and would consequently be illegal: a position virtually admitted by the promoters of the bill rejected by the Imperial Parliament, who acknowledge in the preamble that ‘ doubts are entertained.’

“ Secondly,—Because we do not think that there was, on a former occasion, an expression of the view of a considerable portion of the laity, in favour of the projected Synod. On the contrary, we believe that, comparatively, few approved of the measure.

“ Thirdly,—Because we believe that the tendency of the Synod will be to consolidate and increase the power of the Diocesan, while the responsibility and possible odium of his acts would be borne by the Synod.

“ Fourthly,—Because no analogy could possibly exist between the constitution of such a Synod as that proposed, and the meetings of other denominations of Christians; inasmuch as nothing could be resolved or decreed without the sanction of the Bishop, even though every other member of the Synod joined in voting for it; while, on the other hand, it is a fallacy to affirm that the Bishop could not act without the concurrence, and even in opposition to the sense of the Synod; for as there is no law whatever in the question, he would be as free to act as he is now.

“ Fifthly,—Because we do not believe that any of the subjects mentioned in the Pastoral Letter, discussed by a meeting composed virtually of the nominees of the Bishop, can be attended with any beneficial results to the Church.

“ For these and other reasons, we respectfully request that the officiating clergyman of St. Peter’s Church, Mowbray, will take no part in the proposed Synod, and that he, or the chairman of the meeting to be holden for the election of a delegate, will transmit this, our protest, to the Bishop of the Diocese.

“ Alexander McDonald, John Dyason, Churchwarden; H. E. Rutherford, Thomas Tennant, J. P., B. Grayson, P. George, H. Wilmot, M. Butler, G. Harcourt Cooke, W. Broadway, James Dyason, jun., A. Gough, John Sawyer, William Hubbard, P. A. Barchfield, H. Sawyer, G. Brown, Emanuel Ould, Thomas Butt, J. J. Venner, W. Hare, J. Starke, R. Hare, M. J. Langefield, W. Butler, S. Hunt, J. J. Wilkinson, William Wilson, Thomas W. Hudson, R. Clarence, H. Harrison, Charles Tanson, Henry Butler, sen., Henry Clapperton, John M. Brown, J. H. Van Reenen, Thomas Willett, James Bayley, Henry Butler, jun., James Buchanan, James H. Kirten, N. W. Meyer, Jas. Bruce, J. S. Hanbury, Thos. Terry, Johnson Brown, Robert H. Caffyn, G. W. Pilkington, Charles Cowan.”

I also hold in my hand a resolution which I shall have great pleasure in moving; but before I do so, I would like to say a few

words. Mr. Rutherford, in a very mild manner, has told you that the Bishop, not wishing to get rid of his power, wishes to get rid of his responsibility; and I perfectly agree with him in what he has said. I think the Bishop wants the Synod for no other purpose. I am of opinion that, should delegates be appointed by the different Churches for that Synod, after the first or second meeting none of them will appear, and the Bishop will then, with the clergy, have the power of doing exactly as he thinks proper. As Mr. Rutherford says, it is not likely that his clergy, who receive their money and their appointments from the Bishop, will vote against him. Therefore I think, as a member of this Church, I am bound to support our clergyman, in opposition to the views of the Bishop, wishing for a Synod. I beg to move that "This meeting desires to express its cordial thanks to Frederic R. Surtees, Esq. for the talent, courage, and fidelity displayed by him in the correspondence which has passed between him and the Lord Bishop of Cape Town, in maintaining the position and liberties of Protestant Churchmen in this diocese, and that these thanks be conveyed to him by the Chairman of the meeting." (Cheers.)

Mr. Broadway seconded the motion, which was carried *nem con.*

Mr. H. G. Wilmot proposed a vote of thanks to the Chairman, which was cordially awarded.

Mr. McDonald thanked the meeting for their kindness, and remarked that he had the "General Protest" in his pocket, and any gentleman present who had not signed it, would have an opportunity of doing so now. (Cheers.)

The following letter has since been addressed by the Chairman of the meeting, to Mr. Surtees, in accordance with the terms of the foregoing motion:—

Cape Town, 23rd December, 1856.

To FRED. R. SURTEES, Esq., Plumstead.

Sir,—I am directed to inform you, that at a numerously attended meeting of the members of St. Peter's Church, Mowbray, on the 22d instant, the following resolution was proposed, seconded, and unanimously adopted,—“That this meeting desires to express its cordial thanks to Frederic R. Surtees, Esq., for the talent, courage, and fidelity displayed in the correspondence which has passed between him and the Lord Bishop of Cape Town, in maintaining the position and liberties of Protestant Christians and Churchmen in this diocese, and that these thanks be conveyed to him through the Chairman of this meeting.”

To the above I have only to add my own personal thanks for the good service which has been rendered by your powerful pen; and assuring you of my cordial concurrence with the spirit of the resolution which it is my duty to convey to you, I have the honour to remain, sir, your obedient servant,

A. McDONALD,  
Chairman.

## ST. PAUL'S, RONDEBOSCH.

The meeting here was also held at 4 o'clock, about 50 persons being present.

Mr. W. G. Anderson proposed that the Hon. Mr. Ebden should take the chair.

Mr. Ebden said, he considered that the clergyman of the parish should preside, in accordance, as he understood, with a letter which had been received from the Bishop.

The Rev. Mr. Fry read the letter referred to (similar to that read by the Dean at the St. George's meeting)—and said, he considered this to be a matter that entirely concerned the laity, and as he intended to reserve the expression of his opinions until the Synod met, he desired to listen to what might be said by the parishioners on this subject. He had always had great pleasure in seeing the unanimity and good feeling which had prevailed in all their former meetings, and he would be exceedingly sorry to conceive that it would not be the same on the present occasion; but still, as he thought this was a matter for the laity alone to decide upon, and that it would therefore be more fitting for one of their number to preside, he declined doing so.

Mr. Anderson said, it was entirely in that view he had proposed Mr. Ebden.

Mr. Stein said,—Very far from objecting to Mr Ebden, I would suggest, for preliminary consideration, whether we ought to hold a meeting for this purpose at all. We are "invited" here to elect a delegate for a so-called Synod according to the Bishop's pastoral letter of last month. Now some people are very strongly impressed that the calling, sitting, and acts of such a Synod, would be altogether illegal without the Queen's previous sanction; and the question is, whether we ought to become parties to an illegal act. I think this point is worthy of serious consideration, and therefore I throw out the suggestion whether we should constitute a meeting to elect a delegate for a Synod to be illegally held in St. George's Church. As many persons acquainted with the law are very strongly impressed with the idea that the whole of this proceeding, from beginning to end, is illegal, and others, who are not lawyers, are equally impressed with the idea that it would be highly unadvisable to have such a Synod, and consequently that we ought not to be parties to the calling of it,—I, therefore, put it to the gentlemen present, whether we should constitute a meeting for such a purpose.

Mr. Maclear.—To bring it to a point, I move as an amendment—

Mr. Ebden.—There can be no amendment put without a chairman!

Mr. J. D. Thomson.—May I ask what Mr. Stein is here to-day for?

Mr. Stein.—I am here to-day that you should not be here without me! (Laughter).

Mr. Thomson.—There has been a notice on the Church door, that a meeting would be held “to elect a delegate.” Now, if Mr. Stein does not come here to elect a delegate, I object to his being here at all.

Mr. Stein.—Well, I differ with you there, and it is for the meeting to say which is right. For myself, I do not wish to be a party to anything illegal, and I think the meeting should not take place at all; but, if nobody supports me, the best course will be for Mr. Ebden to take the chair. (Hear, hear).

Mr. Ebden.—Is it your wish, gentlemen, that I should take the chair? (“Yes, decidedly.”)

Mr. Ebden accordingly took the chair.

Mr. Maclear moved that Mr. H. B. Christian be sent as a delegate for this parish to the Synod.

Mr. Mann seconded the motion.

Mr. Stein.—I move, as an amendment, “That no delegate be appointed to represent the parish of Rondebosch in the Synod proposed by the Lord Bishop in his Pastoral Letter of the 15th November, 1856.” In moving this, I think it incumbent on me to give some reasons for doing so. It is always painful to have any difference with the head of the Church, or with any one connected with the Church, and if it were not an imperative duty on those present to stand here and support the opinions they have formed, I hope on mature and grave consideration, I would say, let us agree to what is proposed by the Bishop,—but I feel convinced that the appointment of a Synod would be detrimental to that union between us and the Church of England and Ireland which we are all accustomed to support. For this opinion I would read the following reasons:—“Because it is illegal to meet in Synod without the Royal authority, and is opposed to the Constitution and standard of the Church of England. The 12th Canon declares it to be ‘unlawful for any sort of ministers and laymen, or either of them, to join together and make rules, orders, or constitutions, in cases ecclesiastical, without the Queen’s authority.’ The declaration prefixed to the 39 Articles of Religion states, ‘That we (*i. e.* the Sovereign) are the Supreme Governor of the Church of England, and that if any differences arise about its external policy, concerning the injunctions, canons, and other constitutions, whatsoever thereto belonging, the Clergy in convocation is to order and settle them, having first obtained leave under our broad seal so to do, and we approving the said ordinances and constitutions—provided none be made contrary to the laws and customs of the land. That out of our princely care that the Churchmen may do the work which is proper unto them, the Bishop and Clergy, from time to time in Convocation, upon their

humble desire, shall have licence under our broad seal to deliberate of and do all such things as, being made plain by them, and assented unto by us, shall concern the settled continuance of the doctrine and discipline of the Church of England, now established, from which we will not endure any varying or departing, in the least degree." Now, it is very clear, according to my reading of these clauses from the Prayer Book, that the Queen must first give permission before anything of the kind can be done. The next thing I would observe is, the observation of the Lord Bishop in his correspondence with Mr. Surtees, that what is done by the Synod will only be binding upon those who agree to it, in the same way as the resolutions of subscribers to a bank or assurance company,—that those only who have, as it were, signed the trust deed, will be bound. Now, that may be all very well as affects the present members of the Church; but how will it affect those who come after us? Here is what has to be signed by every body who is confirmed by the Bishop:—"I do declare that I am a member of the Church in the diocese of Cape Town, in communion with the United Church of England and Ireland; and that I will conform to the doctrine and discipline of the said Church." Now I understand the words "said Church" to mean the Church of England and Ireland. If my children, when they are old enough to be confirmed, sign that, I will tell them "You are quite safe in doing so; it means the Church of England and Ireland." But the Synod may come to a resolution that they are not members of the Church of England and Ireland, but of this diocese, and they must then either not be confirmed at all, or be so under circumstances at variance with the rules and discipline of the Church of England, and subject to any restriction that may be imposed by the Synod on their personal rights. I consider that the constitution of the proposed Synod is not such as to entitle it to the confidence of laymen. I think, as I have referred to this declaration, I may as well ask our clergyman how he reads it?

Mr. W. G. Anderson.—I do not think that is quite a fair question.

Mr. Stein.—Well, I will put my own interpretation upon it.

Rev. Mr. Fry.—I must confess I would rather see an addition to it.

Mr. Stein.—I would have no objection to sign this, because I look upon it as meaning the Church of England and Ireland.

Rev. Mr. Fry.—As you have asked me the question, I have no objection to tell you the words I would wish to see added:—"As there by law established."

Mr. Anderson.—It is said that nobody is to be bound by the acts of this Synod. For my own part, as Mr. Stein said, nobody can make me amenable to these rules.

Mr. Maclear.—I would say, in reply to what Mr. Stein has

stated,—not with allusion to the confirmation document, but with regard to the law,—that he has only referred to the first letter of the Bishop to Mr. Surtees, and made no reference to the others. Now I am exceedingly obliged to the Bishop for the manner in which he has cleared up this matter; and I am sure that every man who wishes to know the law of the Church will have read that correspondence with satisfaction. I consider it extremely fortunate that such a correspondence took place. I had a slight misgiving as to the supremacy of the Crown, but that correspondence has cleared up my mind, so that I can conscientiously say that the supremacy of the Crown is not at all invaded.

Mr. Nicholls.—Satisfy me that the holding of a Synod is not illegal, and I will vote for you, but until I am satisfied on this point I must vote against you.

Mr. Thomson.—I think the Attorney-General in England has stated that the holding of Diocesan Synods is not illegal.

Rev. Mr. Fry.—No one in the world ever doubted that Diocesan Synods are legal.

Mr. Christian.—I am sorry that some of those here were not present at the meeting at St. George's to-day, for Mr. Tennant gave instances where Diocesan Synods had met.

Mr. Nicholls.—For what purpose?

Mr. Christian.—To make regulations.

Mr. Anderson.—They cannot make regulations contrary to the law of the Church.

Mr. Stein.—If the majority of the clergy and the laity be of the same mind with the Bishop, anything may be made a law, but should they be of another mind he can put his veto upon it,—to make use of a vulgarism, it is “Heads I win, tails you lose.”

Rev. Mr. White.—I would remind my friend that he has left out one condition,—that when the Bishop and clergy pull together, should the laity differ from them, they have also a veto.

Mr. Anderson.—I should wish to ask whether Mr. White is entitled to speak here?

Mr. White.—I am aware I am not entitled to vote, but the letter of the Bishop allows members to be present.

The Chairman.—With that explanation I will be happy to hear Mr. White. Our object is to elicit all possible information on the subject.

Rev. Mr. White.—I feel that being a clergyman, I have not a right to vote, but, as a resident, I thought I might offer a single observation. Mr. Stein has left out of sight one thing,—that the laity have as full power of veto as the Bishop or the clergy, so that there is a balance.

Mr. Anderson.—We have got an ordinance for this Church, and I say that the electing of a delegate to represent us in a Synod will be in direct opposition to that ordinance. I believe that we



have now the full power of managing the parish business under that ordinance, without the interference of any person; and, therefore, I support the amendment, which I hope will be pretty unanimously carried.

Mr. Maclear.—I agree perfectly with what Mr. Anderson has stated about this ordinance, but I think nothing in this Pastoral interferes with it. I will read what it states: The Synod is to consider, “1, The steps to be taken to place the clergy of this diocese in the position of incumbents, instead of that of licensed curates.” I fancy the ordinance has nothing to do with that. “2, The appointment, support, and discipline of the clergy.” I fancy the ordinance has nothing to do with that. “3, The tenure and management of Church property.” I fancy the ordinance has nothing to do with that. “4, Questions relating to the formation and constitution of parishes.” I fancy the ordinance has nothing to do with that. “5, Difficulties which have presented themselves with regard to marriages, divorces, and sponsors.” I fancy the ordinance has nothing to do with that. “6, The mission work of the diocese.” I fancy the ordinance has nothing to do with that. “7, The subject of education.” I fancy the ordinance has nothing to do with that. “8, The desirableness or otherwise of sanctioning a set of hymns.” I fancy the ordinance has nothing to do with that. “9, The desirableness or otherwise of the Bishop, clergy, and laity meeting periodically together, and the frequency of such meetings.” I fancy the ordinance has nothing to do with that. “10, The desirableness or otherwise of seeking to obtain the assistance of the Legislature to carry out the objects of the Synod.” I fancy the ordinance has nothing to do with that. (Hear, hear.)

Mr. Stein.—I fancy it has a great deal to do with every head you have touched on. Do you say it has nothing to do with the support of the clergy?

Mr. Anderson.—I contend that we are not contrary to the ordinance. We have no business under that ordinance to meet for this purpose.

Mr. Stein.—As one of the vestry, I must say it struck me when the matter was brought before us by our clergyman, that the vestry has been entirely passed over, when the parishioners were “invited” to come here for the purpose of setting aside what is laid down in that ordinance. I think the ordinance has a great deal to do with the matter. It enables us to borrow money, and to get the means of supporting our clergyman; and when we had gone to great expense, the parish was reduced by a slice cut off here and another there, and thus our means were divided, and now our church is standing here half finished, a disgrace to the parish. We knew nothing of the parish being divided, nor are any boundaries yet fixed.

Rev. Mr. Fry.—There is nothing that can divide it.

Mr. Thomson.—If Mr. Anderson is in doubt about the legality of the measure, how would it be if this Synod was legalised by the Queen?

Mr. Anderson.—Our ordinance is already sanctioned by the Queen.

Mr. Stein.—I would merely say in answer to that, that if the rules of the Synod be brought before the local Parliament for confirmation, it would be for us, if they contained anything against our interests, to petition, and having petitioned and done what we could, we must submit to the legislature. I do not say that Parliament can take our rights away, because, having enabled us to borrow money, it would be unjust to deprive us of the means of paying it. If there were not a debt upon the church, I would say that it would be nothing but reasonable that the local Legislature should exercise the power; but that a Synod should come in and impose rules and regulations upon us, I will oppose to the last.

Chairman.—It has been remarked by Mr. Anderson that this Synodical action will be in conflict with the ordinance. It may be as well for me to read one of the passages of the document before me: "The colonial Legislature, with the consent of Her Majesty, in Ordinance No. 5, of 1845, has already provided for the temporal or secular concerns of the parish of St. Paul's, Rondebosch, holding communion with the United Church of England and Ireland, as there by law established." This is one of the reasons assigned by the mover of the amendment.

Mr. Maclear.—Is that document any part of the proceedings of this meeting?

Mr. Stein.—It is part of the remarks on the amendment.

Mr. Nicholls.—I can vote for the amendment; I cannot support the protest.

Mr. Stein.—The amendment is naked, but I read the reasons which had been drawn up for it. The amendment simply states that no layman will be sent in to the Synod from this parish.

Mr. Thomson.—But you are here only for electing a delegate. That is the notice on the Church doors,

Mr. Stein.—Therefore I objected, *in limine*, because I anticipated it would be said, "You are met only for sending a delegate;" but as my friends preferred to go on with the meeting, I gave way.

Mr. Maclear.—You have taken the proper course, and if I did not think you were so determined against it, you are the very person I would have proposed to send. We should have been safe. (A laugh.)

Mr. Stein.—No sir, no one would be safe if this measure be carried. It can hardly be necessary for me to observe that it is not against Bishop Gray that this opposition is offered, but against

creating a power which may be exercised, we cannot tell how, or by whom.

Chairman.—Before putting the amendment, I would make an observation. It may appear from what has fallen from Mr. Thomson, that we are here to elect a delegate, and for no other purpose. Now I submit, as your Chairman, that we are here for the purpose of hearing what may be said for and against such a proceeding. (Hear, hear.) Otherwise, this meeting would be perfectly nugatory. Under this view I have allowed gentlemen to go on making observations which otherwise would have been entirely out of order; but I assume that we are here to consider the expediency of electing a delegate or not.

Mr. Thomas Jones handed in a protest of certain parishioners, which he requested should be read.

Mr. Maclear said,—I object to that *in toto*. It ought not to be read. The business of the meeting is to elect a delegate or not. The motion has been put.

Mr. Nicholls.—I support Mr. Maclear in that view, certainly.

Mr. Stein.—I consider that on coming to the vote, the business of the meeting will be over. The chairman was about to proceed to the vote, when a protest is handed in. I should say let the preamble be read, and the meeting then consider whether it should be received. I think that as soon as you pass this motion, your meeting is at an end.

Mr. Mann —Will you read the Bishop's note?

The Chairman read the note.

Mr. Mann.—It is clear from that, that you have no right to consider anything else.

Chairman.—I think that it is competent for Mr. Jones to read it as his reason for supporting the amendment.

Mr. Maclear.—Is it the common practice of public bodies in England to receive protests?

Chairman.—I am not particularly versed in parliamentary practice, but I think a speaker may be allowed to read such a document in support of his views.

Mr. Stein.—When you get an invitation to a public dinner and you address a letter to the chairman regretting exceedingly that you cannot attend for such and such reasons, nothing is more common than to read it as an expression of your feeling. Now I think that this protest is nothing more than an answer to the "invitation" posted on that board, from certain persons, who, perhaps from illness, or business, or any other circumstance, might not come here to-day. Now I say that as you have gone out of your way to invite a meeting, any parishioner can send in his reasons for not attending.

Mr. Maclear.—Are any of the persons who have signed this protest present?

Mr. Stein —I am one.

Mr. Maclear.—Then it ought not to be read.

Mr. Thomson.—I do not consider that the amendment should be put; you must elect some one.

Mr. Stein.—In that case I would propose Mr. Jones —

Mr. Christian.—I second that. (Laughter).

Mr. Stein.—But the wish is to have no delegate. I would hold up my hand to oppose the appointing of any man.

Mr. Jones, with the sanction of the Chairman, read the protest as follows:—

“ We, the undersigned, members of the united Church of England and Ireland, forming the congregation of the parish Church of St. Paul’s, Rondebosch, Diocese of Cape Town, having been called upon by the officiating minister of the said Church, to assemble for the purpose of electing a delegate to represent us at a meeting of the Bishop, Clergy, and Lay Representatives of the Diocese, to be called a Synod (in accordance with the Lord Bishop’s Pastoral, under date 15th November, 1856), desire to record our Protest, generally, against such Synod, and especially against the election of any person as a lay delegate; for the following and other reasons:—

“ 1st. Because it is illegal to meet in Synod without the Royal authority, and is opposed to the Constitution and Standard of the Church of England; the 12th Canon declaring it to be ‘unlawful for any sort of Ministers and Laymen, or either of them, to join together, and make rules, orders, or constitutions, in cases ecclesiastical, without the Queen’s authority.’

“ The declaration prefixed to the 39 Articles of Religion states, ‘That we (*i. e.* the Sovereign) are the Supreme Governor of the Church of England, and that if any differences arise about its external policy, concerning the Injunctions, Canons, and other Constitutions, whatsoever thereto belonging, the Clergy in convocation is to order and settle them, having first obtained leave under our broad seal so to do, and we approving the said Ordinances and Constitutions—provided none be made contrary to the laws and customs of the land.’

“ That out of our princely care that the Churchmen may do the work which is proper unto them, the Bishop and Clergy, from time to time in convocation, *upon their humble desire, shall have licence under our broad seal* to deliberate of and do all such things as, being made plain by them, *and assented unto by us*, shall concern the settled continuance of the doctrine and discipline of the Church of England, *now established, from which we will not endure any varying or departing in the least degree.*’

“ Every Layman, therefore, attending this proposed Synod will be guilty of a violation of the law, and every Clergyman — not only of a violation of the law, but of his ordination oath.

"2nd. Because it is an innovation inimical to the supremacy of the Crown, and tends to remove the restrictions which the Imperial Legislature has imposed in the way of enacting Canons of discipline, and also to the separation of the Colonial Church from that of the mother country. The Supremacy is a component of the Church of England establishment, and the bulwark of the lay portion of it, against the enactments and corruptions that brought about the Reformation.

3rd. Because the Church of England does not recognize the principle of investing Synods with the powers of Ecclesiastical Courts, nor are they recognized as courts of appeal in matters of doctrine and discipline.

"4th. Because we believe that a Synod is unadapted to the present circumstances of the colony.

"5th. Because the Colonial Legislature, with the consent of Her Majesty, in Ordinance No. 5, 1845, has already provided for the temporal or secular concerns of the Parish of St. Paul's, Rondebosch,—*holding communion with the United Church of England and Ireland, as there by law established.*

"J. Cozens, Thos. Jones, Churchwardens; John Stein, J. P., J. B. Ebdon, M. L. C., W. G. Anderson, Nicol Stenhouse, R. J. Jones, H. F. Burton, Thos. Tinley, Thos. Rudd, Fred. Unna, F. Mathew, D. Horne, C. Horne, W. H. Russell, Samuel Randall, James Slow, Richard Byrne, Thomas Randall, Charles Upjohn, Matthew Haybittel, Alfred Low, Charles Findon, William Balne, James Low, William Evershed, A. Radclyffe, T. E. Jones, F. H. Jones, Geo. D. Brunette, Samuel Ingram, Joseph Pybus, John Stewart, H. Sherman.

"Rondebosch, 17th December, 1856."

Mr. Maclear asked,—Are all these persons communicants?

Mr. Jones—It is not necessary. They all declare themselves members of the Church of England according to the Bishop's note.

The amendment was then put to the vote and carried, twenty-six voting for and five against it.

The original motion being put, was negatived by the same majority.

Mr. Maclear observed that, having proposed Mr. Christian, he was bound to say that the proceedings had been as they ought to have been, with the exception of that protest, which he must still say was not a part of the business of the meeting. With that exception, he had much pleasure in proposing a vote of thanks to the Chairman. (Cheers.)

Seconded by Mr. Stein.

The Chairman expressed his gratification that the meeting had passed off so well, and stated that he would take upon himself to transmit the whole of the proceedings to the Bishop.

## ST. SAVIOUR'S, CLAREMONT.

At the meeting held on Monday, Dec. 22, Mr. Browning was elected a delegate.

## ST. JOHN'S CHURCH, WYNBERG.

The meeting of the members of St. John's Church at Wynberg was held in the school-room, at half-past five p.m. The Rev. Mr. Phillipson opened the meeting by reading the Bishop's circular.

Dr. Bailey proposed that the Hon'ble Wm. Hope take the chair.

Seconded by Mr. Smyth.

Major Hope, on taking the chair, asked whether the Bishop's instructions, requiring the names of those present to be written down, should be complied with or not? It was not the usual custom to do so in this parish.

Mr. Surtees proposed that the meeting proceed to business in the same manner as at any other ordinary meeting of parishioners.

Mr. Goodban wished to know whether there would be any chance of their proceedings being quashed should they omit this?

Mr. W. Hawkins could not see what right the Bishop had to lay down such rules as these. He had no right whatever to direct them on these matters.

Mr. Carey seconded the motion that they should proceed as at any ordinary meeting. He thought that when they came to the vote, it would be time enough to see whether any but Church members voted. It was then agreed that the meeting should proceed as usual.

Mr. Surtees rose to propose the following resolution:—"That this meeting is of opinion that to elect a lay delegate to act in a Synod, composed of members of the Church of England and Ireland in this colony, would be in contravention of law, dangerous in policy, and in many ways highly inexpedient." He had already written so much on the subject, that it would scarcely be necessary for him to say anything more on this occasion. As they were no doubt aware, he had shown that the law officers of the Crown had laid it down that it would be illegal for them to meet and frame rules for the government of the Church in this diocese. To prove this, he had quoted the words of the Solicitor-General. But in the Bishop's last letter to him, he says that the Solicitor-General "does not say anywhere in express terms that the common law of England prevents the holding of ecclesiastical assemblies in the colonies, but he does say that it did so previous to any statute in England and Ireland." Now, the best way he (Mr. Surtees) could answer that, would be to give once more the words of the Solicitor-General: he says, that "by the common law of England the clergy of the United Church of England and Ireland were prohibited from

holding meetings for the purpose of discussing ecclesiastical regulations. The common law was declared in the statute of Henry and Elizabeth, but the power originally resided in the common law, and that was the reason that though these statutes were limited to England, yet the prohibition equally extended to Ireland,—the common law anterior to all statutes, assigned to the Crown a right of supremacy in all matters of jurisdiction, whether spiritual or civil.” This is the Solicitor-General’s law in contradistinction to Bishop Gray’s opinion. But the Bishop of Capetown says that the Solicitor-General “is wrong in his facts.” In what facts? The Solicitor-General was speaking of a point of law. Then the Bishop proceeds to quote authorities on his side, but where does he take them from? He mentions certain canons which were made without the consent of the king,—these were in the worst Popish times. Let us see how these canons were made: “The Archbishops of Canterbury and York used . . . . *toties quoties*, as their own discretions adjudging necessary or convenient, to assemble the clergy of their respective provinces, at what place they pleased, continuing Convocations in them so long, or dissolving them as soon, as they pleased. And this they did, either as Metropolitans or Primates, or as *legati nati* to the Pope of Rome, without any leave from the King afore obtained; and such canons and constitutions then and there concluded on were, in that age, without any further ratification, obligatory to all subjected to their jurisdiction. Such were all the Synods from Lanfrank to Thomas Arundel, in whose time the statute of præmunire was enacted.” So then the Bishop of Capetown defends his measure on the ground that it was adopted by legates of the Pope of Rome, in the worst Popish times. There was no law, says he, because certain prelates as the legates of the Pope chose to break it,—that is literally all his argument. The statute of præmunire was enacted in the time of Richard II, because these men, as legates of the Pope, had chosen thus to act without the King’s permission. That statute of præmunire confirmed the old common law rights of the Crown in matters ecclesiastical, which unscrupulous clergy have for ever been kicking at, and that statute enacted that the Crown had been so free at all times that it had been in no earthly subjection, but immediately subject to God. Driven into a corner, the Bishop meets the Solicitor-General’s opinion of the law by a statement of facts, which are, that certain legates of the Pope acted contrary to the common law! Next, as to the Bishop of Exeter’s Synods. Really the Bishop of Capetown might have told us that the laity were not there at all. He might have told us that at those Synods the Bishop of Exeter only read a charge and entered into a sort of conversation on Church matters in general. The Bishop of Exeter was too good a lawyer to do anything so contrary to law as to invite the laity there. Those Synods could do nothing but talk and

express general opinions as in ordinary conversation. They had no real power. These are the only things the Bishop has adduced to upset the arguments of the Solicitor-General. The rest of his letter he (Mr. Surtees) would not answer then. He might say a few words as to how this Synod would be dangerous in policy. It is quite clear that if the Bishop invites the laity to exercise the power of legislation in matters ecclesiastical he would be pursuing a very dangerous course indeed, and was a very dangerous person to be intrusted with any synodical power at all. Again, as to the inexpediency of Synods, take the case as illustrated the other day,—how can the laity judge in the case of a clergyman who is accused of having preached the doctrine of transubstantiation, which our Church does not hold, supposing the clergyman declares he preached the Lutheran doctrine of consubstantiation to which the Church is not so strongly opposed? He asked whether it was not a mockery to fancy that the laity could solemnly and fairly decide on such points. The end will be just this,—the Bishop will do everything himself, and the Synod will have all the odium. We should beware of giving the Bishop this power,—the more dangerous, because concealed, even could we do so legally, which we cannot. I beg to propose the resolution I have read. (Cheers).

Mr. J. Steuart seconded the motion, which was put and carried unanimously.

Mr. W. Hawkins rose to propose another resolution, based upon the one that had just been unanimously carried. He could not but regret that the Bishop had thought proper to call this meeting together for the purpose of electing a lay member for his intended Synod. He believed that the Bishop was doing an illegal thing. If it was legal, why was the Colonial Church Bill ever framed or introduced into the Imperial Parliament? Was it not to legalize these Synods? And as that Bill was not passed, it follows that these Synods are unlawful assemblies. He protested against this parish having anything to do with the Synod. He knew of nothing more dangerous for the Church in this colony than a Synod composed of laymen and the clergy, to legislate on Church matters. They should take great care how they committed themselves in this matter. It was plain that the Synod would be merely a body which would bear all the responsibility of the Bishop's acts, while he acted as he pleased. He begged therefore to propose,—“That this meeting—while it abstains from expressing any opinion as to the best remedy for the many evils and anomalies that exist in the statutes of the Church of England and Ireland in the colonies of Her Majesty—a subject involving questions of deep importance—is unwilling to separate without recording its earnest hope, that the establishment of Synods—to provide for the regulation of the affairs of the said Church, or composed at all of the laity, may not again be introduced for its adoption, without the express sanction of the



Imperial Legislature first obtained thereto — nor would this meeting be willing to see an Act of the Imperial Parliament passed at all in the matter, unless ample provision and security were therein contained for a uniformity, as far as possible, of Synodal decision and procedure throughout Her Majesty's colonial possessions, and for the preservation of the unity of the Church."

Seconded by Mr. Smyth, and carried unanimously.

Mr. Carey moved,—“That this meeting—being of opinion that whilst it is illegal for the lay members of the Church of England and Ireland to meet in Synod, without the authority of the Crown, ‘it is no less unlawful,’ as set forth in the Canons, ‘for any sort of ministers so to meet together without the Queen’s authority,—cannot refrain from expressing their earnest hope, that the minister of this parish will not countenance by his presence a proceeding as impolitic as it is illegal, and one sure result of which will be to create dissension between the clergy and their flocks.”

Mr. Goodban thought that this motion followed well after the unanimous decision that this parish would take no part in the Bishop’s Synod. They should not be lukewarm or indifferent as to the course their minister ought to pursue. Every one present would agree with him, that the interests of every parish in this colony were intimately mixed up, and very dependent upon the good-will existing between the clergy and their flocks. Under these circumstances he could not refrain from expressing a hope that their minister would weigh well the interests of his parishioners on a question which is so important, and on which they feel so strongly. The position of their minister was a delicate and difficult one. He was placed between two fires: go which way he will, he will be hit. His Bishop tells him to go one way, his parishioners call upon him to go the opposite. His only safety is in following strictly the dictates of his own conscience. This resolution merely expresses a hope. It does not seek to bind or fetter his proceedings; but merely hopes that he will adopt a course which I believe the whole of his parish wishes him to pursue. We go no further, for we hold that liberty of conscience and freedom of action no man should resign. If our minister’s views coincide with ours, then he will have the satisfaction of knowing that we agree with him; if otherwise, then we have only done our duty in letting him know our wishes. (Cheers.)

The motion was put and carried unanimously.

The Rev. Mr. Phillipson — As to the line of conduct I am about to adopt, I have made up my mind long ago. If I am cited to appear, as I have taken my vows of canonical obedience to the Bishop, I shall obey. I shall go, but take no part in the proceedings. When at home I signed the protest against the Bill. I have not altered my opinion since then, and here I shall not support the measure. (Cheers.) This Synod is not, as the Bishop calls it, a

Diocesan Synod,—it is much more. A Diocesan Synod cannot legislate—it cannot create any new laws. Since the time of the Reformation there has been no instance where the Diocesan Synod has been held—except at Exeter, and that was not one similar to this now called for by the Bishop. The Exeter Synod gave an opinion against Gorham, but what effect had it? It was merely the opinion of the persons there assembled; they could do nothing. The Bishop says that this Synod will not be illegal, but when I see that by the 12th canon “the Bishop and clergy may meet, with the consent of the Queen,” I cannot help drawing the conclusion that they may not meet without that consent. Then some say those canons are not binding here. It may be so; but I was ordained in England and I shall abide by them. My intention is to attend the first day, being summoned by my Bishop, and then speak my mind and retire. When the Queen and the Archbishop of Canterbury approve of this Synod, then I may act otherwise. I have thought much upon the subject, and the more I think, the more am I convinced that we have no right to meet and legislate. Suppose, as the Bishop has it, that there is no law here as to Synods, then pray what is to check them? to what lengths will they not be able to go? Again if every diocese is to have its own Synod without some general law, the Church will be different in every diocese,—there will be one set of regulations here, another at Graham’s Town, and another at Natal. There may be new tests of communion, and so on; the effect of which will be to put an end to that latitude which our Church so very properly allows to the interpretation of her articles. I deeply regret that I should be thrown into direct opposition to the Bishop and many of the clergy, but I must act conscientiously. (Cheers.) The Bishop says that his measure is framed on that of the Archbishop of Canterbury’s, but he has omitted the best part of that bill. That bill confines the clergy within certain bounds, they are to take the book of Common Prayer, &c; then it says that everything must be referred home to the Archbishop of Canterbury and approved of by the Queen before it shall be considered binding—Bishop Gray has omitted this. Again, the other bill says there shall be a representative for every 50 members; now the Bishop’s plan is different, and I think it very unfair that a parish like this should send only the same number as Stellenbosch or Beaufort. We are more than six times as numerous. When this measure has been referred home to the Archbishop of Canterbury, and the Queen’s permission obtained, then I may feel myself justified in taking a part in the Synod. (Cheers.)

Mr. Hawkins said that before the meeting separated he wished to record their most cordial thanks to Mr. Surtees. (Cheers.) He could not allow this occasion to pass without expressing his thanks. Mr. Surtees had come forward in such a courageous

and manly way to meet all their difficulties, that it would be improper for them not to record their thanks to him. He therefore moved,—“That this meeting desires to record its very warmest thanks to F. Surtees, Esq., for the ability, courage, and Christian faithfulness with which he has asserted and maintained the position of the members of the united Church of England and Ireland in this diocese.”

Seconded by Mr. Carey and carried by acclamation.

Mr. Surtees was quite unprepared for such a flattering compliment as this. He had only done what he conceived to be his duty. Their's was the honour, for having come forward as staunch and loyal churchmen, to defend one of their Sovereign's dearest rights, namely, that the Crown is supreme in matters ecclesiastical. This right can be traced back to the days of Edward the Confessor, before the Popes had any power over the Anglican Church. After his reign, the Popes claimed authority over the Anglican clergy, and they resisted the encroachment upon the rights of their king. The speaker then gave instances of Bishops refusing to submit to an order of deprivation from the Pope, as they had received their appointment from the king. He warned the meeting against the efforts of the Tractarians. He had read their works, and would warn them of the dangerous tendency of these works. He could tell them that there is not a trick, not a dodge, that these Tractarians will not use to gain their point. Their doctrines he prayed no one would succeed in infusing among the Churchmen of South Africa. He warned them against Tractarianism in any shape, and urged them to resist it with all their energy. He must again commend the way the Churchmen acted in this Diocese. They suspected the intentions of the Bishop, but they remained quiet, and allowed him gradually to develop his plans and intentions, and when the moment had arrived, then they stood up bravely and fought the fight well, and had gained it too. Our Sovereign had come forward in late years and acted with the utmost liberality to this colony, and happy had he been to see the day when the Queen gave to the colony the right of legislating for itself—a right which they justly demanded, and which was most graciously granted. What has been the reply of the colony? They thank Her Majesty for their liberty, and they now declare that they will not see her proudest right, her supremacy in matters ecclesiastical, trampled under foot by any man or men, whoever they may be. (Cheers). Before, he sat down, he merely wished to say that as to the preliminaries mentioned in the Bishop's circular, the writing down the names of those present, &c., it was not their custom to do so at other meetings of the Parish, and he could see no reason why they should act otherwise on this occasion. (Cheers.)

Mr. A. Smyth proposed a vote of thanks to the Chairman, which was carried by acclamation.

Major Hope, in reply, thanked them for their kindness, but felt assured that he had only done what any other person present, would have done, and that was, to take any part in this meeting, to express his determination to protest against this new innovation. Their thanks were due to Mr. Surtees for the able manner in which he had exposed the illegality of the whole affair. He had been much pleased to hear from their minister what line of conduct he intended to pursue. Had it unfortunately so happened that Mr. Phillipson felt bound to adopt the opposite course, the parishioners would have regretted it, but would have respected him no less sincerely, for they wish him to be guided by his conscience alone. (Cheers). Were they to attempt to bind him to coincide with their views, it would be as bad as the Bishop's present attempt to bind them in the same matter. (Cheers.)

The meeting then separated.

#### ST. FRANCES', SIMON'S TOWN.

We understand that Mr. Frere was elected at the meeting of the parishioners.

#### STELLENBOSCH CHURCH.

Mr. R. Crozier has been elected here.

#### PAARL.

A meeting was held at the Paarl, on Monday, Dec. 22, for the election of a delegate for the Synod, but only three persons attended; they then postponed it until Saturday, when only five attended, although due notice was given. Those present unanimously agreed not to send a delegate.

#### SWELLENDAM.

The members of the English church at Swellendam have refused to take part in the synodical action proposed by the Bishop. At a meeting held on Monday, Dec. 22, the following resolution was moved by Joseph Barry, Esq., M. L. C., seconded by J. Trueman, Esq., and carried by a majority of 8 to 3:—

“That it is the opinion of the members of the English Episcopal Church now present at this meeting, which has been convened for the election of a lay delegate from this parish to a Synod, proposed by the Lord Bishop of the Diocese, to be held next month, that it is inexpedient to establish such a colonial Synod, feeling convinced that it is safer for the independence and best interest of the Church, in every respect, that the Bishop remain the responsible head of the colonial Church, subject to such control as the constitution of the Church of England has already provided for.

“That such a synod is further inexpedient, inasmuch as many of the members, from their peculiar position, could not be expected to act independently, and the resolutions of such synod could not be considered as really expressing the unbiassed sentiments of the church.

“That such a synod is further inexpedient, because they fear, from the knowledge they possess of the very opposite views cherished by the members of the Church of England on many of the subjects that would be brought before it, that the result of a public discussion of such matters would only be to engender strife, to lead to unseemly contention, and thus to widen the breach which unhappily already exists in the church.”

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### PROTEST.

We, the undersigned, members of the United Church of England and Ireland, in the Diocese of Capetown, desire, respectfully and deferentially, to record our solemn and deliberate protest against the introduction into this Diocese of Synodical action into the Church, as proposed by the Lord Bishop in his Pastoral Letter, dated 15th November, 1856, for the following reasons:—

1. Because we believe that the proposed Synod would be an infraction of the statute law of England, especially an act of King Henry the VIII, declaratory of the common-law supremacy of the Crown in matters ecclesiastical; as also the statute of Elizabeth respecting uniformity, which declares that the supremacy of the Crown shall have effect in all dominions of the Sovereign, as well in foreign as in home possession.

2. Because we deem such Synod to be in contravention of the canons and constitution of the Church, as also His Majesty's declaration, prefixed to the articles, which forbids any interference whatever with the “external policy, canons, or other constitution” of the Church, even by the Clergy in convocation, without the Royal sanction first had and obtained.

3. Because such consent of the Crown and of the Imperial Legislature having been refused, any such meeting as that contemplated, might, we apprehend, be justly interpreted as a violation of the law, and to use the words of one of Her Majesty's late Ministers “would impugn the supremacy of the Crown,” and therefore be open to the imputation of derogating from that respect and allegiance to Her Majesty, Her Crown, and dignity, which it is the duty of the subject to render abroad as well as at home.

4. Because we believe that any Synod without express legislation upon a broad, general, and comprehensive basis, so as to limit and define the power of the Diocesan, would have a tendency to create a

Colonial Hierarchy, which would sooner or later induce a separation of the Church in this Diocese from the United Church of England and Ireland, produce diversity of usages in the several Colonial Dioceses, and denude the establishment of its present degree of salutary uniformity.

5. Because we believe that such meetings are not desired by the mass of the members of the Church in this Diocese,—that they are dangerous in policy, calculated to engender strife and division, both between the clergy themselves, and between the clergy and their flocks, and thus conduce to fatal and pernicious results.

Cape of Good Hope, December, 1856.

John Barry, M.L.A., Churchwarden Trinity Church, W. Hawkins, Thomas Jones, Churchwarden St. Paul's, Rondebosch, A. McDonald, John Stein, J.P., W. G. Anderson, H. E. Rutherford, M.L.C., Thomas Tinley, Nicol Stenhouse, F. R. Surtees, S. Twycross, Alex. Hutchinson, W. Broadway, John Dyason, Churchwarden St. Peter's, Mowbray, Geo. H. Twentyman, J. Hutton, Wm. Long, Incumbent, St. Peter's Church, Mowbray, M. Butler, John Dyason, junr., Wm. Wilson, E. Ross, W. W. Ball, E. Moore, Lt.-Col, G. H. Cooke, J. S. Kimsley, H. J. Diedericke, Thomas Jas. Inglesby, Joseph Dixie, Geo. Twycross, G. R. H. Wilmott, J. Stow, G. C. Holden, Churchwarden Trinity Church, R. Blackall, Major-General, J. Carey, Henry Sherman, J. B. Ebdon, M.L.C., Robt. G. Lamb, Colonial Chaplain Trinity Church, E. Ths. Wylde, Thos. Inglesby, J. Cozens, Churchwarden St. Paul's, Rondebosch, B. Dixie, D. Dixie, G. Goodban, Churchwarden St. John's, Wynberg, J. R. Hovil, W. H. Russell, F. Mathew, Charles Bridges, T. E. Jones, J. B. Scrutton, R. Clarence, Thos. Tennant, J.P., J. Hanbury, Thos. Terry, Robert Kearns, W. Hare, R. Hare, J. Starke, H. Harrison, Chs. Jansone, Thos. W. Hudson, H. Butler, Jr., N. W. Meyer, A. Gough, John Sawyer, Eman. Ould, James Bruce, H. Hubbard, P. A. Barchfield, H. Sawyer, G. Brown, Thos. Butt, J. J. Venner, M. J. Langefeild, W. J. Butler, S. Hunt, J. J. Wilkinson, B. Grayson, Henry Clapperton, J. H. van Reenen, Thomas Willet, H. Butler, senr., James Bailey, James Buchanan, James. H. Kirten, Johnson Brown, H. Drew, W. Hope, A. Smith, Churchwarden St. John's, Wynberg, J. Stewart, R. Wolfe, R. H. Caffyn, G. B. Bennett, D.A.C.G., W. T. Hawthorne, Daniel Mills, G. Kilgour, S. S. Fisher, W. L. Higginson, Henry Wilmot, G. H. Keeler, F. Wylde, Jas. Holberry, Robt. Inglesby, Charles Banks, H. F. Corliss, G. Spiers, W. Hansen, J. Adams, C. Adams, A. Townsend, J. W. Rose, J. Bauman, Wm. Mackay, Wm Kirby, A. Bevern,

Henry Bevern, Thos. Parr, Philip Heeger, John Valentine, James Divine, John Gavin, Thomas Wilson, W. Hoath, Chr. Crole, W. Y. Eldridge, Louis W. Croll, H. F. Burton, W. Armstrong, R. C. Jones, T. Webster, J. Mills, D. McGill, Geo. Bainbridge, John Gunning, J. L. Phillips, Daniel Tomlinson, G. Litchfield, John Horne, W. Usher, T. Shannon, W. Brading, Thos. Parsons, W. M. Tubb, A. Hawthorne, J. A. Crew, W. G. Beatly, Robt. Ayres, junr., W. G. Henley, J. D. Smithson, Geo. D. Brunette, J. W. Glynn, H. B. Rutherford, John H. Faulkner, Charles Wolfe, H. M. Customs, A. Broadway, A. S. E. Smith, Richard Watts, B. G. Lennon, Robert Hare, W. B. Sampson, John Fraser Hudson, John B. Rose, J.P., Joseph Wilson.

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TRINITY CHURCH.

5th January, 1857.

TO THE EDITOR OF THE "S. A. C. ADVERTISER AND CAPE TOWN MAIL."

SIR,—I have the honour to request, that you will publish, at your earliest convenience, for the information of those interested in the meeting of the 22nd ult., of which I was chairman, the following letter from the Lord Bishop of Cape Town to the minister of this parish, in reply to the communication made to his Lordship by that gentleman, of the proceedings of the meeting. I have to add that a meeting of the parishioners will be shortly held for the consideration of his lordship's letter.—I am, Sir, your obedient servant,

JOHN BARRY.

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Bishop's Court, Dec. 30, 1856.

REV. R. G. LAMB.

REV. SIR,—I beg to acknowledge the receipt of your letter of the 27th inst., inclosing the resolutions passed at your meeting for the election of a delegate to represent the parish of the Holy Trinity at the approaching Synod,—and a protest signed by certain of your parishioners.

The protest I cannot receive, calling in question, as it does, my rights as Bishop of this Diocese. I therefore return it. From the resolution I regret to perceive the existence of many misapprehensions on the part of your people, which I can only trust to time to remove. I can only invite; I have neither the wish nor the power to require the attendance of my brethren of the laity, but I shall greatly regret the absence of a delegate from your parish, because

differing in views, as many of your people do, from other parishes, the expression of that difference in a calm and christian spirit, would do good to them and to us. They would have many of their own misapprehensions removed, and would at least put, with all the force of conviction, before others, points which appear to them of importance, and which perhaps may otherwise not be felt, or overlooked. I have only now to add that it is with very deep pain that I perceive that neither you nor they disclaim, while thanking Mr. Surtees for his letter, any participation in the gross insults which he has offered to your Bishop. Until I receive such disclaimer, you will not be surprised at my declining any further intercourse, private or official, with you or with them.

I will add that I returned home from my last visitation with every desire to renew a kindly intercourse with you, in consequence of having received letters from you, written in a Christian spirit. Having had my attention, however, after my return, drawn to the unceasing false and calumnious accusations brought against me in the Magazine with which you are connected (or at least understood to be), I have felt that respect for my character and office forbade the possibility of friendly or social intercourse with one who could be a party to so much that was unjust towards one who is over him in the Lord.—I am, Reverend Sir, yours, &c.,

R. CAPETOWN.

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Cape Town, 6th January, 1857.

TO THE EDITOR OF THE "S. A. C. ADVERTISER AND CAPE TOWN MAIL."

SIR,—As Mr. Barry, the chairman of Trinity Church meeting, has felt it his duty to publish the letter addressed to me by the Lord Bishop of Capetown in reference to the proceedings of that meeting, I have to request you will kindly insert in your next issue my reply, with which I should not trouble you, but for the aspersions which his Lordship has thought proper to cast upon my character in that communication.—I have, &c.,

ROBERT G. LAMB.

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Cape Town, January 3, 1857.

THE RIGHT REV. THE LORD BISHOP.

MY LORD,—I beg to acknowledge the receipt of your letter of the 30th ultimo, with its enclosure, both of which I have forwarded to Mr. Barry, the chairman of the meeting. I regret your Lordship has felt it necessary to animadvert upon the vote of thanks to Mr. Surtees, and I am very sorry to perceive the serious step you declare it to be your intention to take on that question,



involving as it must do, if followed up, disastrous consequences to the peace of the Church in this Diocese.

With respect to Mr. Surtees' letters to your Lordship, published previous to the meeting, for myself I would observe that, not having them now before me, I cannot accurately recall and weigh every expression. But with regard to their general import, I thought, when perusing them, and I still believe them to be, couched in courteous though necessarily controversial language, and in my opinion unblemished by any expression inconsistent with the nature and tone of the whole correspondence, including, of course, your Lordship's letters to that gentleman.

Taking as I do a widely different view of the whole subject from your Lordship, and believing that in the present state of the Church of England in the colonies (independently of the strong arguments which, in my opinion, may be urged as to their illegality, both as regards the letter and spirit of the laws and constitution of our Church), such synodical meetings as that now contemplated might be made instruments of great oppression, and would greatly tend "to hinder the Lord's work in this land," I can readily understand how you might be led to interpret our thanks to Mr. Surtees as a reflection upon your Lordship's proceedings, although no doubt conscientiously undertaken. These thanks, my Lord, and the letters which evoked them, are simply some of our means of self-defence, and if they have appeared to be more than this, surely it is not the assailed who are to blame.

While, therefore, with my views, I believe Mr. Surtees entitled to thanks for his exposition of the law, and his efforts on behalf of a large body of his brethren in the Church of England, who equally with your Lordship love that Church, and desire to see her integrity preserved, I beg most distinctly to disclaim and deny any intention of thus offering insult to your Lordship, and it is scarcely necessary for me to add, that it is out of my power to disclaim "gross insults," which I do not believe to have been offered in the letters to your Lordship alluded to.

Though but a presbyter in the Church of God, I dare not disavow my convictions on questions involving such serious consequences to the Church, its peace and progress, though these convictions are, unhappily, at variance with those of my diocesan. Your Lordship is pleased to intimate that on your return from your last visitation you had a desire to renew "kindly" and "friendly" intercourse with me. But it must naturally "pain" and perplex me to remember, that at the time that you had this desire, your Lordship was publishing in England, reflections upon what you term my "misconduct"—which subsequently appeared at the Cape; therefore, while respectfully acknowledging your assurances, allow me to say, I cannot but feel pained afresh at expressions of kindness, which it is impossible for me to appropriate. But what am I to think, my Lord, of the reasons adduced by your Lordship for

this deprivation? I have always been led to expect in intercourse with my equals, or even my superiors in official connection, in position or in rank, to be treated with customary delicacy and consideration; and assuredly it is not too much for a clergyman to expect as much at the hands of "one who is over him in the Lord." And now, my Lord, allow me respectfully to draw your attention to the facts. Your Lordship, without any real grounds, has assailed my character and conduct in a document which may become a public one, in a serious and, I submit with all deference, in a most extraordinary manner. You have (I would hope inadvertently) without any legitimate proof, charged me with publicly "bringing false and calumnious accusations" against yourself in a magazine with which you say I am "connected, or understood to be connected." Now, my Lord, there is, I assure you—I cannot help saying it—a painful conviction on my mind that this charge was calculated to accomplish an ulterior object, namely, my admission of the fact,—or what would almost amount to the same thing—my silence on the subject. Consider, my Lord, had I been connected with a periodical which advocated principles at as great variance with your Lordship's views, as are some of my own, it would be nothing wonderful. I myself have been slandered and my case misrepresented and twisted by a magazine, with which, of course, I do not imply your Lordship is connected, but which has been avowedly conducted by clergymen enjoying your Lordship's confidence. Had I then been in the same position as these clergymen, as regards conducting the periodical alluded to, your Lordship's letter would have placed me in a serious dilemma. Had I been unable to deny the fact of connection, it would have placed me in painful antagonism with my superiors, engaged me in an uncalled for and unequal conflict with my Diocesan, and also perhaps with the Government.

I trust, on consideration, your Lordship will see cause to regret that your letter might have placed me in that painful position.

However, although I do not admit the right of any one to require from me any information whatever on the subject, and while offering no opinion on the merits of the magazine, I will, on this occasion, take the opportunity of acquainting your Lordship, that *I have not nor ever had, directly or indirectly, any thing whatever to do with the publication in question,*—never having written a line in its pages, with the exception of the notice of the late Dr. Orpen.

Trusting your Lordship will pardon anything that may have escaped my pen, inconsistent with the respect I desire to accord to one in your lordship's position, my only object having been to act in furtherance of the truth, and in defence of my own character, I am your Lordship's obedient servant,

ROBERT G. LAMB.

## MOWBRAY CHURCH.

The Lord Bishop of Capetown has forwarded the following reply to the Chairman of the late Mowbray meeting :—

Bishop's Court, December 31, 1856.

A. McDONALD, Esq.

Sir,—I have the honour to acknowledge the receipt of your letter of yesterday's date, conveying to me the resolutions of the parishioners of Mowbray, and a protest signed by some of them. The latter document I am unable to receive, as it calls in question a right which is inherent in my office as Bishop of this Diocese. I therefore return it.

I greatly regret that, through misapprehension, my brethren of the laity residing in the parish of Mowbray have declined to send a delegate to our approaching Synod, as subjects of deep interest and importance to this Church cannot fail to be discussed there, and I should have been very thankful to have had the advice and co-operation of several of the parishioners upon whom the choice might have fallen. Before another Synod meets, I have but little doubt that their difficulties will have vanished.

Amongst the resolutions which you have forwarded is one thanking Mr. Surtees for the letters which he has addressed to me. In that correspondence you are aware that he offered the grossest insults to your Bishop, assailing not his character as a Christian only, but even his moral integrity. I am aware that the most offensive of his letters was published after your meeting; but you have since corresponded both with him and with me, and have not disclaimed, for yourself and for the parishioners, any sympathy with the language which he has used. Under these circumstances, I feel that it is due to myself to say that I must withdraw from all intercourse, private and public, with those who were present at that meeting, unless they see fit to clear themselves from all participation in the insult which has been offered to me.—I have the honour to be, sir, your obedient servant,

R. CAPETOWN.

To which Mr. McDonald has sent this answer :—

Cape Town, 31st December, 1856.

TO THE RIGHT REV. THE  
LORD BISHOP OF CAPETOWN.

MY LORD,—I have the honour to acknowledge the receipt of your Lordship's letter of this day's date, returning the Protest signed by forty-seven parishioners of Mowbray, which was enclosed to your Lordship in my letter of yesterday.

Having no other mode of communicating the contents of your Lordship's letter to the parishioners of Mowbray than through the public newspapers, I will cause the same to be published as soon as may be.—I have the honour to remain your Lordship's obedient servant,

A. McDONALD.

## REV. MR. PHILLIPSON'S LETTERS.

[The following lucid letters on Synods by the Revd. W. W. B. Phillipson, Incumbent of St. John's, Wynberg, are here printed by permission]

Wynberg Parsonage, Dec. 26, 1856.

TO THE EDITOR OF THE "S. A. C. ADVERTISER AND CAPE TOWN MAIL."

SIR,—With reference to my remarks at the late meeting of the parish of St. John's, Wynberg, I wish to observe that what I intended to say was as follows:—"As to the line of conduct I am about to adopt, I have made up my mind long since. As I am cited to appear, and have taken a vow of canonical obedience to the Bishop of Capetown, I shall obey. I shall go, but take no part in the proceedings. When at home, I signed a petition against Convocation being allowed to proceed to business, thinking with the great majority of the clergy of our Church, that in the then state of religious feeling, Convocation would do more harm than good. I have not altered my opinion since then, and am not likely to be in favour of the introduction of synodical action here, in the present uncertain state of the law."

In your paper of yesterday's date, I see it said by the Dean, that "to suppose that there is anything illegal in holding such a Synod is the merest moonshine. There is not a shadow of a doubt about it." I, for one, cannot coincide in that opinion. Whether the statute of Henry VIII, or the common law of England, do or do not prohibit such meetings of the clergy and laity in the colonies, I leave lawyers to decide, and shall confine myself to the law of the Church of England, as written in her canons, &c., and also to her practice, and endeavour to show that such Synods are opposed to both.

To do this it will be necessary to go into the subject of Councils or Synods generally. They are of various kinds—General or Œcumenical, Provincial, National, and Diocesan.

With respect to General Councils, the first we read of is recorded in the 15th chapter of the Acts of the Apostles, but this of course cannot be taken as a precedent for summoning general Councils without the consent of the temporal power. We must therefore look to the practice of the Church after Christianity became the religion of the state. The Church of England acknowledges four of the General Councils. That of Nice, A.D. 325, that of Constantinople, A.D. 381, that of Ephesus, A.D. 431, and that of Chalcedon, A.D. 451. To these some add a second Council of Constantinople, A.D. 553, and a third, held in the same city, A.D. 680; but these two last may be regarded as supplementary to the third and fourth. They were all convened not by the spiritual, but the temporal power. The first by Constantine—the second by Theodosius the Great—the third by Theodosius the Younger—the fourth by the

Emperor Marcian—the fifth by Justinian—and the sixth by Constantine Pogonatus.

At length, however, the Popes of Rome, amongst other usurpations, assumed to themselves the right of summoning General Councils. Against this usurpation the Church of England protested at the Reformation, and declares in her 21st article that “General Councils may not be gathered together without the commandment and will of princes.”

We come now to National and Provincial Synods. It is admitted that by the law of England no National Synod could be held without first obtaining the consent of the Crown. Nor can the Provincial Synod of Canterbury or of York sit without that consent. I presume the same law would apply to Provincial Synods in the colonies. With respect to Diocesan Synods, Burn says, “A Diocesan Synod is the Assembly of the Bishop and his Presbyters;” and adds, these were frequently held while the Bishops and Presbyters lived together in community, and were not wholly laid aside till by the Act of Submission (25 Henry VIII) it was *made unlawful for any Synod to meet but by royal authority*. Dr. Hook, in his Church Dictionary, says, “These Diocesan Synods were continued in England till the reign of Henry VIII, that is, till the commencement of the Reformation.”

The only precedent, then, that we have for Diocesan Synods in England since the Reformation, was that held at Exeter, and that was very unlike the one to be held in Capetown. It was composed, like Diocesan Synods before the Reformation, not of the Bishop, Clergy, and Laity of the Diocese, but of the Bishop and Clergy. Neither did they attempt to legislate. They knew well that Diocesan Synods, at the best, could but enforce and put in execution, canons, made by General Councils, or National and Provincial Synods. We see, then, that this Synod is utterly opposed to the practice of the Church of England since the Reformation. For holding a Diocesan Synod at all there is one precedent in England,—for summoning laity to attend, there is none; for a Diocesan Synod to claim the right and power of legislating or passing canons to bind the clergy and laity of the Church in that Diocese, there is no precedent until it was attempted by some of the Colonial Dioceses.

It may be said, however, the laity ought to have a voice in Church matters. I think so too. I agree with Hooker that it is “a thing most consonant with equity and reason, that no ecclesiastical law be made in a Christian commonwealth without consent, as well of laity as of the clergy, *but least of all without the consent of the highest power*” (the king). That the laity ought to be admitted I agree, but while the law and practice of the Church, by which, as members, we ought to be bound, remains as it is, I do not see how they can be legally admitted. When I find that no Diocesan Synod has been held in England to which laymen were summoned since the Reformation,—when I find that the preface to

the Articles says,—“That if any difference arise about the external policy concerning the injunctions, canons, and other constitutions whatsoever thereto belonging, the clergy in their convocation is to order and settle them, *having first obtained leave under our broad seal so to do, and we approving their said ordinances and constitutions,*”—I must regard the introduction of the laity as an innovation for which no authority can be found, either in the written law or practice of the Church.

Had this Synod been merely a meeting of the Bishop and his Clergy for mutual consultation, like that at Exeter, there is little doubt that it would be perfectly legal. But it is more than a meeting of Bishop and Clergy. It also claims for itself the power of legislating for the Church in this Diocese. It is a meeting of Bishop, Clergy, and Laity, not merely to consult together, but claiming to “be competent to deal with all matters except those of faith and doctrine.”

What says the 12th canon to such a claim?—“Whosoever shall hereafter affirm, that it is lawful for any sort of ministers and lay persons, or either of them, to join together and make rules, orders, or constitutions, in causes ecclesiastical, without the King’s authority, and shall submit themselves to be ruled and governed by them; let them be excommunicated *ipso facto*, and not restored until they repent, and publicly revoke those their wicked and Anabaptistical errors.”

I have been met several times lately with the assertion that this canon only applied to the Anabaptists. If so, it did not apply to the Presbyterians, the Independents, or the Puritans generally, yet Neal (vol. i., pp. 238-9) speaks of it as one of the canons relating to Puritans, which “deserve a particular mention because (however illegally) they suffered severely under them.” It indeed speaks of Anabaptistical errors, but as the tenets of the Anabaptists were then believed to be subversive of government, I regard the words as meaning that such errors are dangerous to the state, because they encroach upon the royal prerogative.

There is another reason why this Synod should not legislate if the practice of the Church of England is to have any weight. The clergy here are said to be in the position of licensed curates. Now the Church never has permitted curates to legislate. They cannot sit in Convocation, and have no voice in making ecclesiastical laws. I believe that they were summoned to the Synod at Exeter; but that, as I before remarked, was not a meeting for the purpose of legislating. Whether they had a vote or not I forget. Before, then, any Synod could be held in this diocese, in accordance with the practice of the Church of England, the consent of the Queen must be obtained, the laity excluded, and the clergy placed in the position of incumbents, which I presume the law of the land alone can do.

A strong argument against the legality of such meetings is the fact that for some three hundred years not one was held. No doubt in troublous times many a Bishop would have gladly called the clergy and the laity of his diocese together if the law had permitted it.

Before, then, I can admit that all doubts about the legality of this Synod are the merest moonshine, I should be glad to be informed what statute or acts of Parliament—what canon of the Church permits the meetings of Bishop, Clergy, and Laity for the purpose of legislating for the Church in their diocese. If none can be brought forward, then I say in the words of a Bishop of the Church,—“What the Church of England does not expressly allow that she intentionally forbids.” I may ask also when and where has any Bishop in England summoned such a Synod?—When and where have stipendiary curates ever been permitted in England to pass acts and laws to bind the clergy and laity of the Church? Hoping that you may find room for this, long as it is, I am, sir, your obedient servant,

W. W. BURTON PHILLIPSON.

P. S.—The bill prepared by the Archbishop begins with stating that there are doubts about whether such meetings can be held. I am not aware that those doubts have been removed.

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Wynberg Parsonage, Monday, Dec. 29, 1856

TO THE EDITOR OF THE “S. A. C. ADVERTISER AND CAPE TOWN MAIL.”

SIR,—In my letter of the 26th I stated several reasons why many Churchmen in this diocese, myself included, entertain grave doubts as to the legality of a Synod of the Bishop, clergy, and laity, summoned without the consent of the Queen, as chief ruler of our Church, in all causes, temporal and ecclesiastical, supreme. Those reasons were drawn from the law of the Church, as written in her canons, &c., and also from her practice since the Reformation.

I wish to state one further reason, based upon the teaching of the Church in her 34th Article.

Before, however, I pass on to this point, I would quote a few words from Wordsworth’s *Theophilus Anglicanus*, chapter vi. page 316 :—

“*On the Royal Supremacy in the Church of England.—In Ecclesiastical Synods.*”

“Q. In what manner is the supreme power exercised by the Sovereign in the Church of England?”

“ A. In four ways, viz.—

“ 1. *Citatio* ; or the convoking and dissolving Ecclesiastical Councils and Synods, and in presiding in the same.

“ 2. *Assensio* ; or the right of assenting to the decrees of those Synods (provided they be not contrary to the laws and customs of the land) before they become law.

“ 3. *Promotio* ; or the advancement of principal Church Governors to their places of prelacy.

“ 4. *Judicatio* ; or the higher judicial authority than others are capable of.”

That the right of *promotio* is exercised by the Queen with respect to the Church of England in the colonies, is evident from the fact that all the Bishops, and in this colony all the colonial chaplains also, receive their appointment from the Crown. The right of appeal to England shows that the *judicatio* is also exercised. Are we then to believe that the *citatio* of, and the *assensio* to, the decrees of Ecclesiastical Synods, are given up so far as colonial dioceses are concerned ?

I pass on to the 34th Article. It runs as follows :—

“ It is not necessary that traditions and ceremonies be, in all places, one and utterly like ; for at all times they have been divers, and may be changed according to the diversities of countries, times, and men’s manners, so that nothing be ordained against God’s word. Whosoever through his private judgment, willingly and purposely, doth openly break the traditions and ceremonies of the Church, which be not repugnant to the Word of God, and be ordained and approved by common authority, ought to be rebuked openly (that others may fear to do the like), as he that offendeth against the common order of the Church, and hurteth the authority of the magistrate, and woundeth the conscience, of the weak brethren.

“ Every particular or National Church hath authority to ordain, change, and abolish ceremonies or rites of the Church, ordained only by man’s authority, so that all things be done to edifying.”

It appears to me that this Article has been lost sight of in the late discussions. It is, however, most important, for if it can be proved that we are not a *particular Church*, nor yet a *National Church*, but only a *diocese* of the United Church of England and Ireland, the National Church of England, Ireland, and the colonies, then it follows, from this Article, that we cannot change or abolish those ceremonies and traditions which the *National Church* has decreed, nor yet ordain fresh ones.

It is further important, because if it be affirmed that the Canons are not binding in the colonies, and the practice of the Church in England no rule for us to follow here, there can be no doubt whatever about the Articles, since no person can be received into



the ministry of our Church, who does not declare that he does "willingly and *ex animo* subscribe" to the three Articles mentioned in the 36th Canon. The third being "that he alloweth the Book of Articles of Religion," "and that he acknowledgeth all and every the Articles therein contained, being in number nine and thirty, besides the Ratification, to be agreeable to the Word of God."

The first thing to be considered is, what is meant by the word *traditions* in this Article? Does it mean those unwritten articles of faith and practice, for which the Church of Rome claims an equal authority with the written Word of God? Clearly not. The word, as Bishop Tomline (Ex. Art. p. 453) remarks, here "means customs or practices, relative to the external worship of God," "traditional practices acknowledged to be of human institution." The traditions and ceremonies, then, are the "rites and ceremonies," which, the 20th Article says, "the Church hath power to decree," with this limitation, that it does not ordain anything that is contrary to God's Word written.

Does the Synod claim the power to change, abolish, or to ordain fresh rites and ceremonies? I quote from the Pastoral—"The Synod will be competent to deal with all matters except those of faith and doctrine." Rites and ceremonies are not matters "of faith and doctrine," therefore the Synod will be competent to deal "with" them.

Now, if I can prove, as I said before, that the Church of England in this colony is not a *particular Church*, nor yet a *National Church*, but only a single diocese of the *National Church*, then it follows from this Article that the traditions and ceremonies of the whole Church of England being, like her doctrines, "already fixed and determined," are not "within the province of such an Assembly." "They are" (Wordsworth Th. Ang. p. 334) "laws made by the community, both as a Church and a State, approved by the two Houses of Parliament, and ratified by Royal authority." If ratified by Royal authority, I conceive nothing less than Royal authority, with the consent of the Church, can change or abolish them.

Let us consider what is a particular and what a National Church.

By a particular Church I understand an independent Church in a city or land, not being a part of the National or Established Church of the country. Thus the Churches of Corinth, Philippi, Thessalonica, the seven Churches of Asia, &c., were particular Churches. Protestant Episcopal Churches in America and Scotland may be regarded as particular Churches, because, though in communion with the United Church of England and Ireland, they are independent of her or any National Church. These Churches, of course, have the power to change and abolish the present, or ordain new rights and ceremonies, at their discretion.

Are we a *particular Church* in this sense? I answer most decidedly not. We are *not independent* of the National Church of England. It is easily proved. The clergy take the oath of the Queen's supremacy. The Bishop, in addition to that, an oath of Canonical obedience to the Archbishop of Canterbury, who has the power of hearing appeals. That we are not a particular Church, merely *in communion with* the Church of England, is evident from the fact that a clergyman from a colonial diocese can hold a living in England without a special act of Parliament, whereas for a clergyman from a Church *in communion only*, like that in America or Scotland, a special act is required. That we are not a particular Church, independent of the Church of England, is proved by the title of the Archbishop's Bill,—“An Act to enable the *Bishops, Clergy, and Laity of the United Church of England and Ireland*, in Her Majesty's Foreign and Colonial possessions,” and also from the declaration which the Bishop requires of those who are not communicants, that they “declare themselves *members of the Church of England*, and of no other religious denomination.”

We are not therefore in the position of a particular Church, so as to be able to change and abolish the ceremonies and traditions handed down to us, at our discretion.

National Churches, as their name betokens, are the Churches of a nation or empire. Thus the Kirk of Scotland is the national Church of Scotland by law established. The Church of Rome, of Italy, Austria, Spain, Portugal, France, &c. The Lutheran Church, of Sweden—The Greek Church, of Russia—The Reformed Church, of Holland—The United Church of England and Ireland, of England and Ireland and the colonies—established by law in England and Ireland, not established in the colonies, but not ceasing to be the National Church of Churchmen there.

To say that we in this colony are the *whole* national Church of England would of course be the same absurdity as to say that a small fraction was the whole. We are but a *part* of her—one of her seventy dioceses. It follows, then, that if we are *not a particular Church, nor yet a national Church, but only a single diocese of a national Church*, we have no right to claim or exercise the power which this Synod claims of being competent to deal with the rites and ceremonies of the Church as not being matters of faith and doctrine. We cannot change them any more than we can change the doctrines of the Church. The same authority which ratified, fixed, and determined the doctrines, also ratified, fixed and determined the rites and ceremonies of the Church. They are not the rites and ceremonies of a *single diocese*, but of the *whole national Church* both at home and abroad.

As I intend only to give some *reasons* for our doubts as to the legality of the Synod, and to show that the claims which are put forth for it are inconsistent with the canons, articles, &c., and the

practice of the national Church of England, I shall not enter into our reasons for thinking the Synod inexpedient, further than to remark that we believe that unless the consent of the Queen is first obtained, and some provision made (as in the Archbishop's bill) for all the acts and "regulations to be sent to the Archbishop of Canterbury, and to be submitted for allowance to Her Majesty in Council," the natural effect will be to sever the intimate connexion and *oneness* now existing between the Church of England here and at home as parts of the one national Church.

And secondly, that unless some general act is passed at home, defining the limits to which such Synods may go—or unless the Colonial Dioceses *all* act upon one rule, the necessary consequence would be to make the Church, not as at present, one in her simple rites and ceremonies, but different probably in each separate diocese where a Synod was held—there would be an end of uniformity in the public prayers. One set of rules would obtain here, another there, and so forth, so that a member of our Church leaving one diocese and entering another, might find himself at once subject to completely different rites and ceremonies. I have only further to observe that I had not the slightest intention of writing, or of taking any part whatever in the present discussion, beyond stating my opinion at the meeting of my parish, and that not until the proceedings with reference to the election of a delegate were over; but when I saw that the conscientious doubts of a large body of Churchmen in this diocese were spoken of as "the merest moonshine," I felt the time for silence was over. As I had expressed those doubts at the meeting of my parishioners, I felt that I ought, *if only for their satisfaction*, to come forward and show some reasons for our doubts. These may arise from ignorance and misapprehension. We may be weak brethren, causelessly alarmed. Our doubts may be "the merest moonshine," but we believe that they will stand the sun and light of inquiry. We are not afraid of, we court investigation. We are not afraid to come openly, honestly, and boldly forward, and state our reasons before the public. We believe that we are guilty of no disobedience to our Queen in upholding her sacred prerogative. We believe that we are guilty of no disobedience to our beloved Church in asking to be proved to be in the wrong, not by what this or that individual may say, but by her written law, her articles and her practice. We can scarcely be accused of being dishonest Churchmen when we say we abide by the law and practice of our Church since the Reformation. We will stand in the old paths.

For myself, I can truly say, I blame not those who differ from me in this matter. We can scarcely be expected to be unanimous. I can safely say I feel no animosity against any. I would keep the unity of the faith in the bond of peace towards all; and if any bitter feelings have been excited by the present discussions,

I hope and pray that they may soon pass away for ever, and peace and harmony succeed,—and that the Great Head of the Church will overrule all and everything (as I know He will) to the good of His Church and people.

I have only to add that I wish some abler pen than mine had done what I have endeavoured to do,—stated some reasons for our doubts. I wish that some one with more leisure than myself had entered into the matter more fully than time would allow me to do. Where I have written feebly, many would have written strongly and forcibly. But, be that as it may, according to my ability I have endeavoured (with what success members of our Church must decide) to roll off the reproach of holding and expressing doubts, which are no doubts at all, but “the merest moonshine.”—I am, sir, your obedient servant,

W. W. BURTON PHILLIPSON.

