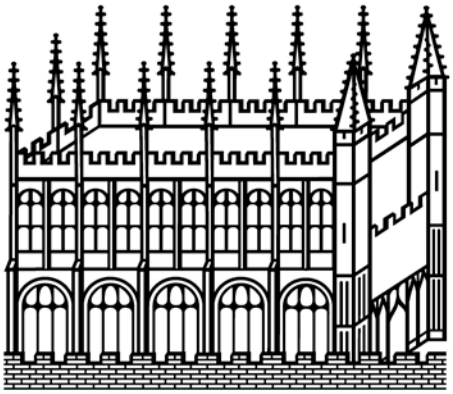

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ULTRAMONTANISM
VERSUS
CIVIL AND RELIGIOUS LIBERTY

FATHER O'KEEFFE.

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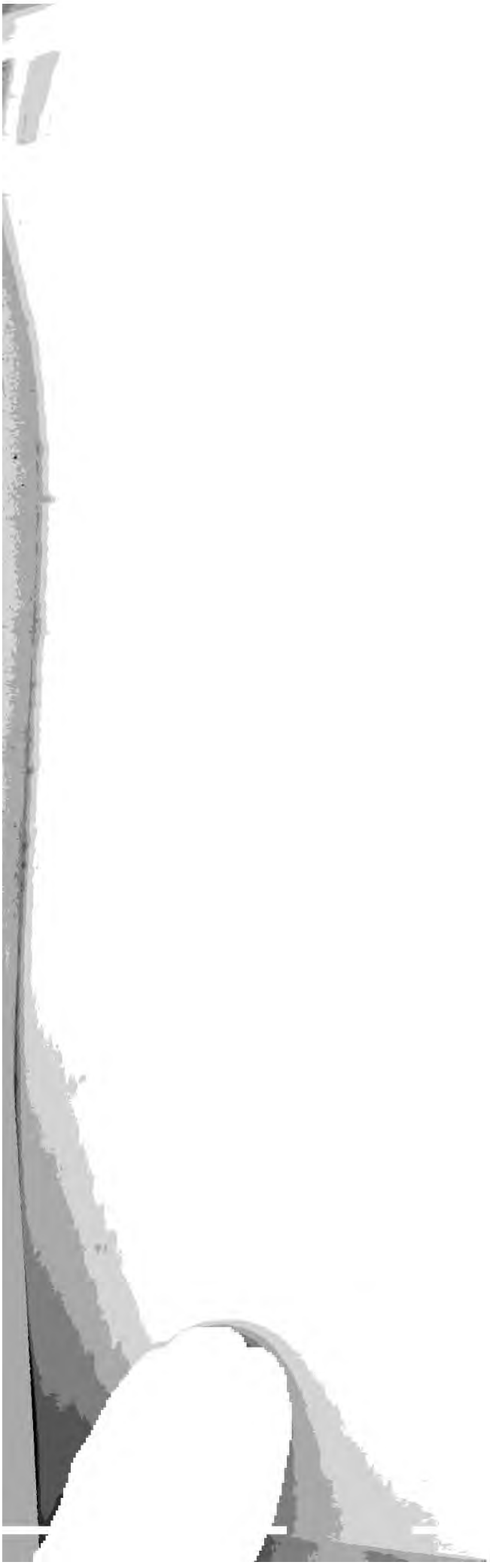

ULTRAMONTANISM

VERSUS

CIVIL AND RELIGIOUS LIBERTY.

ULTRAMONTANISM

VERSUS

CIVIL AND RELIGIOUS LIBERTY.

BY

FATHER O'KEEFFE, P.P.,

CALLAN, IRELAND.

Being a loyal answer to Mr. Gladstone's "Expostulation."

"We reproach M. Fleury with being too zealous for the liberties of the Gallican Church, and the French will accuse you, my Reverend Father, [R. P. Orsi, a Dominican, afterwards a Cardinal,] of supporting the ultramontane opinions too warmly.

"See, then, how difficult it is to write to please every government; but sensible men give up to the French and Romans their different pretensions, so that the faith be not affected. Every country has its opinion, as every individual his whim.

"Yours, &c.,

"GANGANELLI [CLEMENT XIV. in 1769.]

"ROME, *11th June*, 1750."

DUBLIN:

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STATIONERS' HALL COURT.

1875.

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MY LORDS AND GENTLEMEN,—

I am indebted to you for my life. If you had not come to my assistance in the struggle in which I have contended with an all-powerful opponent, I was brought down—I was driven to a union workhouse where discomfort and grief would speedily reduce to total darkness the evening of my life. By the generosity of you and others who can feel for one that mourns from "man's inhumanity to man," my grief is assuaged, my days are prolonged, and a new vigour is infused into my advanced years, which restores the elasticity of my youth, and refreshes my brain and my nerves for the intellectual fight in which my pen is now engaged, and in which my voice will do battle in pleading my own cause, before the Irish Lord Chief Justice and a special jury, against modern ultramontanism, in December next.

I have laboured in the composition of my book for eight hours a day during the past five weeks, finding all the materials, with the exception of the two reports of the inquiries by Royal Commissioners into Maynooth College, in my own library, which comprises about 2,000 volumes. My copy of the Corpus Juris Canonici belonged to my valued friend, Bishop Kinsella, of Ossory, and since his death in 1845, I never had occasion to look into it till I heard the ultramontanes swearing at the trial of the case O'Keeffe *v.* Cullen, in May, 1873, that every canon of it was in full force everywhere. It is a book that no one reads, except by way of reference, and I had absolutely forgotten that it was to be found anywhere on the shelves of my library. My book I dedicate to you as an expression of my gratitude; and I know you will cheerfully accept it in full liquidation of the debt.

You assisted me in my struggle, because you saw that I was fighting the battle of civil and religious liberty at an immense disadvantage; and it will always be a source of consolation and joy to you that you have saved an honest and guiltless man from oppression, and enabled him to prove to the world his innocence of crime, and his persecution for justice' sake.

May God reward a hundredfold your truly Christian charity. May the God of Love have your souls in His holy keeping, and when He detaches them from their "mortal coil," may He take them to the place of His everlasting bliss.

I have the distinguished honour to remain,

My Lords and Gentlemen,

Your most grateful and devoted servant,

ROBERT O'KEEFFE, P.P.

CALLAN, IRELAND, *Oct.* 5, 1874.

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ULTRAMONTANISM

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SECTION I.

Introduction—Ultramontanism described—Two of its tenets chiefly combated in this book—Cardinal Cullen on the binding force of papal bulls and the canon law—Dr. Doyle on divided allegiance—Whether the obedience due from Catholics to the pope is consistent with allegiance to the Queen.

INTRODUCTION.—I propose to trace Ultramontanism to its source, to relate its rise, progress, decline, and modern revival; and to show that it is a system of opinions which truly "confines the intellect and enslaves the soul." These opinions claiming for popes a supreme authority *in temporalia regum*, and a submission from all the members of the Church to whatever legislation may be enacted in Rome, and there alone promulgated, had the effect of keeping the Catholics of these countries in slavery for centuries. Catholic Emancipation was only granted in 1829, after the Crown and Parliament of England became satisfied that our prelates and our theological professors disclaimed these teachings as disloyal and unpatriotic. I will show clearly that these opinions were never countenanced by our Irish divines; but, on the contrary, were looked upon by them as the cause of all our sufferings and sorrows; and that the pope's legate in Ireland, at this present time, by labouring to propagate Ultramontanism, is really doing his utmost to repeal the Emancipation Act—the only effect that could follow from the success of his labours.

The best idea I can give of Ultramontanism is by quoting an

answer given by Dr. Neville of Maynooth, to a question by Lord Harrowby's commission, put January 10th, 1854, in these terms :—

"Perhaps you will state what you understand to be the leading distinction between the ultramontane party in the Roman Catholic Church and those who differ from them, and who have often been called the Gallican party?—The general characteristics of these two classes of opinions are, that, in matters of free discussion relating to papal power and privileges, the ultramontane supports the part of the pope, the gallican is against him. I have said matters of free discussion; for, in matters of doctrine or necessary discipline, there is no diversity: the gallican is a sound Roman Catholic, in every respect as sound as the ultramontane. This is certain; no theologian can be ignorant of it; and the person who proposes the opinion in a different light, misunderstands, or misrepresents them both. Yet seldom, if ever, are they presented to the public in this light. Journalists are every day introducing Ultramontanism and Gallicanism into their articles, and, in most instances, they might as truly and as aptly introduce the Salic law. Some of them put forward doctrines plainly at variance with Catholic faith, and call them Gallicanism, simply because they are opposed to some papal prerogative, forgetting that the gallican is a most steadfast supporter of the pope. Others, again, parade ultramontane opinions as Catholic faith; and, lest this should not sufficiently tax the belief and the obedience of the faithful, they make Ultramontanism include pretensions that no educated supporter of the opinion, even the most extreme, ever dreamed of asserting. The real points at issue between ultramontane and gallican theologians are, the pope's infallibility; the relative superiority of the pope or a general council; the immediate source of episcopal jurisdiction; the power of the pope to interfere in the temporals of kings or states; and the question whether pontifical laws bind without being accepted in the particular countries, by the very fact of their having been promulgated at Rome. All these points are not, however, insisted on by either party with the same tenacity with which they were originally defended. More mature and cool discussion, and even changes in circumstances, have brought about a partial compromise in some of

them. We find Perrone, a living author, a decided ultramontane, stating that the pope's infallibility is scarcely a practical question, since the condition required by the gallican, namely, that the consent of the Church be obtained to the papal announcement before it becomes infallible, is always obtained before the ultimate decision of the Holy See is issued. The same writer omits entirely the question of the pope's temporal power, and even those who do assert this claim, have become in modern times less confident of their position. Again, let the ultramontane teach, as decretorially as he can, the speculative truth of the proposition, that papal laws bind everywhere without acceptance *de jure*, he cannot deny that particular countries are not affected by certain pontifical laws *de facto*. On the other hand, the extremeness of the gallican opinions also has been moderated. Most theologians will now admit that the question of superior power between the pope and a general council for a normal state of the Church involves an impossible hypothesis; as *ordinarily* no council could be general without the pope; and makes an unnatural opposition, namely, between the members and their head. Nor finally could the question, whether bishops derive their jurisdiction from Christ, or have it from the pope, as the channel of all jurisdiction, be looked upon, at present, as anything more than a speculative doubt, though the gallican view was at one time made practical in one of its consectaries. Carriere (*de Matrimonio*) states that the opinion that the bishops had *jure divino* power to dispense in the impediments of matrimony was at one time more common, and was freely acted upon by bishops. No one, I imagine, would now assert that for such a question it mattered anything whether the jurisdiction was from the pope or not; since this much must be admitted, that whatever jurisdiction bishops possess, or however they acquire it, it is subjected to the jurisdiction of the pope."

The two ultramontane tenets which I mean to combat in this book are the temporal power of the pope, and the binding force of his laws of discipline throughout the world when they are promulgated at Rome. These tenets are unpatriotic and disloyal, and abundant proof of it will be found in this work.

At the hearing of the case O'Keeffe *v.* Cullen, in the Queen's Bench, in May 1873, Cardinal Cullen swore that—"The laws of

the Catholic Church, when they are published in Rome, bind all over the earth, just as the laws published in London bind in every part of Ireland, England, and Scotland, as I am informed." Again he said—"The canon law was made for the whole world, and of its own force it extends all over the world;" and all the other canonists who were witnesses for the defence gave the very same evidence. The Chief Justice said to His Eminence—"If whoever draws up the laws presents a bull to the pope, and he approves of it, and it is then received there, does that take general effect?" The answer was—"It must be published in Rome—if published in Rome it is binding." He had previously said—"According to the doctrine on laws which I learned, the legislator can determine how and when the law, which he makes, is to begin to bind. When a pope or general council makes a law in Rome, and declares that that law is to bind the whole Church after a certain number of days or months, it begins at that time to bind the whole Church. It may happen that a great many will not know the law, will not know anything about it, and consequently, if they transgress it, they do not commit any sin; but as soon as the law comes to their knowledge, they are obliged to accept it without promulgation." This open and bold assertion of the purest Ultramontanism will be fully refuted chiefly in the latter part of this volume, while the first part will be chiefly devoted to the refutation of the assertion of the temporal power of the pope or the Church. I will content myself in this place with putting before the reader the sentiments on these subjects of the great Bishop of Kildare and Leighlin, Dr. James Doyle, from whose writings and those of the English historian, Dr. John Lingard, very many quotations will be found in this book. They are the two most eminent scholars and divines that have shed a lustre on the Catholic Church of these countries in our days. In his Letters to Lord Liverpool, Dr. Doyle writes—"There is another ground upon which the charge of divided allegiance is sustained, and it is this—that as we obey the pope in spiritual matters, we cannot pay to the government the duty which, as subjects, we owe to it. We, Catholics, think otherwise. Let our reasons for thinking so be dispassionately considered. It is, in the first place, quite clear that to pay obedience to some person, who is not the sovereign,

does not *of itself* imply any division of allegiance, for we are all obliged to obey Almighty God, to obey His law, to obey the dictates of our conscience, to obey our parents, to obey our civil, military, or ecclesiastical superiors; this truth is not disputed. We may therefore assume that it is consistent with our allegiance, or the duty we owe the government, to pay obedience to whomsoever it may be lawfully due. The difficulty then arises on the part of the persons to whom the obedience is paid, or from the extent or qualities of it; but not from the nature of the obedience itself. We are all bound to obey Christ, as our Redeemer and Mediator, as the Head over all the Church. This obedience does not interfere with our allegiance. Well then: we, who esteem the pope as His vicar on earth, appointed to execute His laws, are, on that account, bound to obey him, according to the terms of the commission given to him by Christ. We have this commission before us—it is as well known to us as to the pope—we know that his power was given not to destroy, but to build up; and hence, should he exceed its limits, or abuse it, we are not only permitted, but obliged, to resist him, as well for our own safety as for his correction. Thus our obedience to him is not blind but reasonable, such as St. Paul desires it should be; and unless the obedience due by us to Christ, as Head of the Church, can divide the allegiance which we owe to our sovereign, that which we owe to the pope cannot divide it. The circumstance of the pope being or not being a subject of his Majesty, does not affect this principle in the slightest degree; for whether he resided at Whitehall or on the Vatican hill, his power and authority would be confined to the same objects, and bounded by the same limits. The paying obedience, then, to the pope, as to a person commissioned to administer the laws of Christ, if considered in itself, and unconnected with abuse of any kind, has nothing in it which divides our allegiance, unless, as has been already observed, our obedience to Christ Himself should be supposed to divide it—a supposition not to be admitted by a Christian."

"The question then resolves itself into this: whether the obedience due by Catholics to the Pope be so defined at present and so well understood by us, that it cannot interfere with the duties which, as subjects, we owe to the government. If in its operation

it be connected with uncontrollable abuse; if the power of the pope, as recognised by us, acting upon our minds can induce us to withhold from the government any duty which is required of us by law; if it can excite or induce us to do, or to refrain from doing, any act which the law required of us, as good subjects to perform, then do I freely admit that the charge of divided allegiance is well-founded; but if not, if the case be otherwise, then allow me to implore your Lordship, in the name of truth and justice, to remove the imputation which has been cast upon us."

"As far, my Lord, as I have been able to collect the opinions of those who consider our spiritual obedience as detracting from our duty to the State, they rest them on this supposition, namely, that we recognise in the pope a power to interfere directly or indirectly, with the rights of our Sovereign, whether this power be, in the opinion of Catholics, derived to him from the Word of God, or from certain decrees, or canons of councils, admitted by them as obligatory, or which may be rendered so by the will or authority of the pope himself. I think this a fair statement of the opinion of our adversaries. This opinion, however, *we* reject as unfounded. We consider it unjust and untrue, and we unequivocally declare, that so far from admitting it, we maintain the contrary, to wit:—That the pope has no power to interfere, directly or indirectly, with the rights of our sovereign, whether from the Word of God, or from any decrees or canons of councils, which either are, or can be rendered, obligatory upon us."

I shall give the history of my personal quarrel with the ultramontanes, and a full examination and refutation of the evidence they gave at the trial of the action, O'Keeffe *v.* Cullen, before Chief Justice Whiteside, in May, 1873, at the end of the volume. The numerous letters read at the trial are all found in my pamphlet, which I shall be happy to send to anyone who will give me his address on a post-card.

SECTION II.

Jurisdiction essential to the Church—Arbitration of Bishops—Councils—Ecclesiastical courts—Episcopal laws—Collections of Isidore and Burchard—Gratian's decree.

THE jurisdiction essential to the Church is that which Jesus Christ gave His apostles, when He said to them after His resurrection (Matth. xxviii. 18) :—"All power is given to Me in heaven and on earth. Going, therefore, teach ye all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Ghost, teaching them to observe all things whatsoever I have commanded you." A twofold power is conferred by these words —authority to preach the word by instructing the faithful in faith and morals, and power to administer the sacraments instituted by Christ. Subsequently, and before His ascension, the Redeemer again said to His Apostles (Jno xx. 21.) :—"As the Father hath sent me, I also send you. When He had said this, He breathed on them, and He said to them: Receive ye the Holy Ghost, whose sins you shall forgive, they are forgiven them; and whose sins you shall retain, they are retained." He thus gave them the power to bind and loose as He had promised to do before His death. (Matth. xviii. 18.) :—"Amen, I say to you ; Whatsoever you shall bind upon earth, shall be bound also in heaven ; and whatsoever you shall loose upon earth, shall be loosed also in heaven." These powers were evidently given the Apostles, as the first teachers, rulers, and ministers of the Church, and were meant to be continued while the Church itself shall last. Now, these powers are exclusively of a spiritual nature, and regard only spiritual things—grace, sanctification of souls, eternal life—and while the Redeemer was on earth, He exercised no other power. So far from exercising any temporal power or authority, we find that He even declined to become an arbitrator in the matter of a disputed inheritance between two brothers, saying (Luc. xii. 14) :—"Man, who hath appointed Me judge or divider over you?" And in answer to Pilate he says (Jno. xviii. 36) :—"My kingdom

is not of this world." His kingdom was of a higher order: He ruled over hearts; He sought the tribute of praise and thanksgiving—adoration in spirit and truth.

To establish His spiritual reign over men, the Redeemer made use of the means that were best suited to His purpose; never, as St. Augustine says, doing anything by force, but all by persuasion. It was chiefly by miracles which he performed, and gave power to His disciples to perform, that He established the authority of His Church. Now, this authority is the foundation of all ecclesiastical jurisdiction, which has for its object to preserve the faith in its truth, and morals in their purity. The faith is preserved by establishing teachers to perpetuate it, and protect it from the assaults of innovators. And the Church has always exercised this right, teaching the doctrine which it has received from its Founder, and ordaining bishops as its authorized expounders; these bishops ordaining as helpers priests, deacons, and other ministers. All this was done in the first ages in spite of the opposition of unbelievers, and in the time of cruel persecution. St. Paul, in his chains, ceased not to teach; and the word of God, as he says himself (2 Tim. ii. 9.) is not bound. He reprimands and chastizes the false teachers as Hymeneus and Alexander, whom he says (1 Tim. 1. 20):—"I have delivered up to Satan, that they may learn not to blaspheme;" and the Apostle John deposed the priest who fabricated a history of the travels of St. Paul and St. Thecla.

As in temporal government, the first act of jurisdiction is the appointment of magistrates, judges, and ministers of justice; so the ordination of bishops and clerks is the first and most important act of ecclesiastical government. In the earlier ages great care and circumspection were exercised in the ordination of bishops, the faithful believing, according to the expression of St. Cyprian, that a bishop canonically ordained, was established by the judgment of God. The bishop, when established, ordained priests and other clerks, with the consent of the clergy and people, and always on the title of service in a particular church.

The other branch of jurisdiction, which has for its object the preservation of the purity of morals, is exercised principally by the administration of penance, where the priest takes cognisance of sins, as a judge, to see whether he should remit or retain—

bind or loose. The Church can properly impose penances only on those who accept them freely; and must be content with praying for the rebellious and the hardened, whom, however, she sometimes finds it necessary to expel from her communion, as incorrigible and contagious. The Church, too, as a society, has the right to make laws and rules for the government of the members. The Apostles, when founding churches, gave them rules of discipline, which were a long time preserved by tradition, and afterwards written under the name of Canons of the Apostles and Apostolic Constitutions. Councils, also, were held frequently, and they made from time to time many enactments which were called canons—the Greek word for rules.

As one of the duties of the bishops was to preserve union and charity among the faithful, they took great care to appease quarrels, and reconcile contending members of their congregations. They exhorted those who had differences to an amicable settlement, and not to make their complaints before the pagan tribunals. St. Paul (1 Cor. vi. 1-6) reproaches the Corinthians with bringing their differences before the unjust, and not before the saints. He says the most despised in the Church might be set to judge:—'Know you not that the saints shall judge this world? And if the world shall be judged by you, are you unworthy to judge the smallest matters?" It was the bishop, however, after St. Paul's time, that was commouly chosen to judge the faithful, as the common father of the disputants. The bishop was seated in the midst of the priests, like a magistrate attended by advisers; and the deacons stood around as ministers of justice. The disputants appeared personally, and each pleaded his own cause. The matter was then examined in a simple informal way, and decided by the bishop, to the best of his judgment, in accordance with natural justice and the Holy Scriptures. After declaring his judgment, the judge exhorted the parties to acquiesce in it, and to become fully reconciled. Monday was the day on which these cases were heard; and it was expected that all passion would be calmed down, and all animosity extinguished before the following Sunday, when in union and brotherly love all were to lift up their pure hands to God in prayer.

Affairs of great importance, such as complaints against bishops

themselves, were settled in provincial councils, which were held regularly twice a year, unless when the bishops were prevented from assembling by the rage of persecution. The Council of Nice in the fifth canon directs, that provincial synods should be held twice each year, the first before Lent, and the second in Autumn; and the enactment of that general council in 325, shortly after peace was restored to the Church, would show that it was customary to hold these councils frequently; and another general council, held at Chalcedon, in 451, complaining that the sacred canons in this matter were not observed, renews the enactment of Nice.

For the first three hundred years of her existence, the Church possessed and exercised only this purely spiritual and essential jurisdiction, such as she received it from her Founder, without any aid or assistance whatever from any secular power, without putting forward any claim to such aid, or making any encroachment whatever on the domain of temporal jurisdiction; and never was the Church more flourishing, or more abounding in virtue—the only good promised her in this life. This jurisdiction was maintained by the authority of the pastors and the faith of the flocks. The rulers drew upon themselves respect by their teaching and their edifying lives, and the faithful knew no greater evil than to be cut off from the Church and deprived of the communion of saints.

It was by her purely spiritual authority that the Church combated and repressed the heresies which sprung up in the first ages. She made use of instruction and admonition; but, with an unyielding firmness, she held to the precept of St. Paul (Tit. iii. 10), "A man that is a heretic, after the first and second admonition, avoid: knowing that he that is such a one is subverted and sinneth, being condemned by his own judgment;" and separated the incorrigible from her communion. It is true that the Church did sometimes accept aid from the temporal arm even in pagan times, as in the case of Paul of Samosata who, after his deposition from the See of Antioch, had succeeded in again possessing himself of it, under the protection of Queen Zenobia, until the Emperor Aurelian, at the prayer of the Christians, had him driven from the episcopal house; but it was only after the emperors had

become Christians that the Church was taken under their protection, and that her judgments were enforced by the secular power. After Arius had been condemned in the Council of Nice, the Emperor Constantine sent him into exile, and condemned his writings to the flames, forbidding them to be concealed by anyone under pain of death. And Nestorius was treated in the same way by Theodosius. This is the second state of ecclesiastical jurisdiction when it began to be supported and enforced by temporal rulers.

Constantine and his successors appointed the bishops the general arbitrators within their respective dioceses, and the officers of justice were compelled to execute their decisions without either delay or appeal. At first, to authorize the interference of the spiritual judge, the previous consent of both the plaintiff and defendant was requisite; but Theodosius left it to the option of the parties, either of whom was indulged with the liberty of carrying the cause in the first instance into the bishop's court, or even of removing it thither in any stage of the pleadings before the civil magistrate. Charlemagne inserted this constitution of Theodosius in his code, and ordered it to be invariably observed among all the nations which acknowledged his authority.

By the imperial law the laity were permitted, but by the canon law the clergy were compelled, to accept of the bishop as the judge of civil controversies. It did not become them to quit the spiritual duties of their profession, and entangle themselves in the intricacies of law proceedings. The principle was fully admitted by the Emperor Justinian, who decided that, in cases in which only one of the parties was a clergyman, the cause must be submitted to the decision of the bishop, from whose sentence, however, he gave the liberty of appeal within ten days. This exemption from the jurisdiction of civil courts was soon confirmed to the clergy by the civil power in every Christian country.

Constantine had thought that the irregularities of an order of men devoted to the offices of religion, should be veiled from the scrutinizing eye of the people. With this view he granted to each bishop, if he were accused of violating the law, the liberty of being tried by his colleagues, and, moreover, invested him with a criminal jurisdiction over his own clergy. Whether his authority was

confined to lesser offences, or extended to capital crimes, is a subject of controversy. There are many edicts which without any limitation, reserve the correction of the clergy to the discretion of the bishop; but, in the novels of Justinian, a distinction is drawn between ecclesiastical and civil transgressions. With the former, the emperor acknowledges that the civil power has no concern; the latter are cognisable by the civil judge. Yet, before his sentence can be executed, the convict must be degraded by his ecclesiastical superior; or, if the superior refuse, the whole affair must be referred to the consideration of the sovereign. That this regulation prevailed among the western nations after their separation from the empire, is proved by the canons of several councils, but the distinction laid down by Justinian was insensibly abolished; and whatever might be the nature of the offence with which a clergyman was charged, he was, in the first instance at least, amenable to none but an ecclesiastical tribunal.

It was thus that on the Continent the spiritual courts were first established, and their authority was afterwards enlarged; but among the Anglo-Saxons, the limits of the two judicatures were intermixed and undefined. When the Imperial Government ceased in other countries, the natives preserved many of its institutions, which the conquerors incorporated with their own laws; but the barbarian ancestors of the English people eradicated every prior establishment, and transplanted the manners of the wilds of Germany into the new solitude which they had made. After their conversion, they associated the heads of the clergy with their nobles, and both equally exercised the functions of civil magistrates. It is plain that the bishop was the sole judge of the clergy in criminal cases; that he alone decided their differences; and that to him appertained the cognisance of certain offences against the rights of the Church, and the sanctions of religion: but as it was his duty to sit with the sheriff in the court of the county, his ecclesiastical became blended with his secular jurisdiction; and many causes which in other countries had been reserved to the spiritual judge, were decided in England before a mixed tribunal. This disposition continued in force till the Norman Conquest, when the two judicatures were completely separated by the new sovereign, and in every diocese "Courts

Christian," that is, of the bishop and his archdeacons, were established after the model, and with the authority of similar courts, in all other parts of the Western Church.

The tribunals created by this arrangement were bound in the terms of the original charter to be guided in their proceedings by the "episcopal laws," a system of ecclesiastical jurisprudence composed of the canons of councils, the decrees of popes, and the maxims of the more ancient fathers. This, like all other codes of law, had, in the course of centuries, received numerous additions. New cases perpetually occurred; new decisions were given; and new compilations were made and published. The two which, at the time of the Conquest, prevailed in the spiritual courts in France, and which were sanctioned by the charter of William in England, were the collection under the name of Isidore, and that of Burchard, Bishop of Worms. It is evident from the Anglo-Saxon councils that they followed a collection of canons which was termed *codex canonum vetus ecclesiæ Romanæ*. Very probably it was that of Martin, Bishop of Braga, sent by Pope Adrian to Charlemagne: as, at the same time, the legates of that pontiff came to England, and held two councils for the reformation of ecclesiastical discipline. In the beginning of the ninth century, Riculf, Bishop of Mentz, brought into Gaul a new compilation, by a writer who called himself Isidore; but this compilation contained decrees which had hitherto been unknown. Former collections began with the decisions of Pope Siricius. Isidore added many, said to have been given by his predecessors. It is now acknowledged that they are forgeries; and from their tendency they seem to have been framed for the particular purpose of withdrawing prelates accused of crime from the immediate jurisdiction of the archbishop and the provincial synod, and placing them, in the first instance, under the protection of the pontiff. In an age unacquainted with the art of criticism, no one doubted the authenticity of these spurious decrees; the enemies of the innovation only contended that, whatever might have been decided by the first pontiffs, the contrary had afterwards been established by their successors. But the interest of the bishops coincided in this case with that of the pontiffs; by their united influence the opposition of the metropolitans was borne down;

and the decrees in the compilation of Isidore were admitted as laws of the Church. About 1010, Burchard made a new collection, into which they were also introduced. Whether they had been followed in England, we have not the means to ascertain; but in France their authority was no longer doubted, and by the *leges episcopales* the Norman bishops would certainly understand the laws contained in the two compilations of Isidore and Burchard.

About the end of the eleventh century appeared a new code from the pen of Ivo, Bishop of Chartres, whose acquaintance with the civil law of Rome enabled him to give to his work a superiority over the compilations of his predecessors. Yet, the knowledge of Ivo must have been confined to the Theodosian code, the Institutes, and mutilated extracts from the Pandects of Justinian. But when Amalphi was taken by the Pisans, in 1137, an entire copy of the last work was discovered; and its publication immediately attracted, and almost monopolized, the attention of the learned. Among the students and admirers of the Pandects was Gratian, a monk of Bologna, who conceived the idea of compiling a digest of the canon law on the model of that favourite work, and soon afterwards, having incorporated with his own labours the collections of former writers, he gave his "Decretum" to the public in 1151.

SECTION III.

Effects of the false decretals—Bulla Cœnæ—Apostolicæ Sedis—Dr Crolly on the temporal power—Gallican liberties—Dr Anglade—Dr Crotty—Third canon of Council of Lateran.

THE false decretals of Isidore effected a great change in ecclesiastical jurisdiction in three particulars, namely, in councils, the trial of bishops, and in appeals. Councils were rarely held after people were taught to believe that the permission of the pope was required for holding them. Bishops were seldom brought to trial, when it was supposed that such cases were reserved to the pope, and the ordinary courts for the punishment of crime became powerless from the

multiplication of appeals which it was thought could be made, even at any stage in the hearing of a cause. The "decree" of Gratian confirmed the changes that had been introduced into ecclesiastical jurisdiction, and even enlarged upon them in two particulars. The pope he placed above the canons of the Church, and he withdrew the clergy in all cases from the jurisdiction of civil tribunals. In the other parts of the Corpus Juris Canonici, incorporated with Gratian's Decretum, are found several canons of councils and constitutions of popes who lived after Gratian's time, confirming this immunity of the clergy from the jurisdiction of lay judges, and exempting ecclesiastical property from liability to taxation. The Council of Trent goes so far as to say that these immunities belong to the clergy, and to their property by Divine right. Among the offences which were considered deserving of excommunication from the Church were found the crime of citing ecclesiastics before a lay tribunal, and the imposition of tribute on Church property. For many centuries it was the practice at Rome for a cardinal to read publicly in presence of the pope every Maunday-Thursday a list of the crimes to which excommunication was annexed; and in that list are found the offences named. The document was named the Bulla Cœnæ Domini from the day on which it was annually published, and in the year 1536 Paul III. said that this publication was an ancient custom. It is uncertain by what pope the list was first extracted from the canon law; but several popes made alterations in it from time to time. The pope, whose name is on the title-page of this book, suspended the annual publication in 1773, the same year that he suppressed the order of the Jesuits; but it still continued in full force in Rome till 1869. The whole list was revised in that year preparatory to the assembling of the general council, and many changes were made in it. The new constitution named Apostolicæ Sedis, from the two first words of it, was published the 12th October, 1869. This new bull claims, like the old one, immunity for the clergy from the jurisdiction of lay courts; but it makes no claim for their exemption from taxation.

The pope's claim to jurisdiction *in temporalia regum* was never formally put forward in any bull—that is to say, it was never announced in any bull or constitution addressed to the faithful

generally, that the pope, by divine right, possessed any civil or temporal jurisdiction outside his own territories; although every body knows that for many centuries popes assumed this power and exercised it, as if it were an undoubted prerogative of the Holy See. Kings and emperors themselves in the middle ages, in many instances, acknowledged the temporal supremacy of the pope, although in many other cases they successfully resisted its exercise. On this subject Dr. Crolly, of Maynooth College, stated before Lord Harrowby's Commission, in 1854, that—"Some persons taught many centuries ago, but no person since the days of Bellarmine, that the pope possessed *jure divino* sovereign and direct power over the whole world, not only in ecclesiastical and spiritual, but also in temporal and political affairs. That opinion has been disowned for three centuries, and has been refuted by Bellarmine himself. Another opinion was devised during the middle ages, by which it was thought that the pope and the Church could be invested with temporal power in a manner less offensive to civil rulers. According to this opinion the pope, as pope, possessed not directly and immediately any temporal power, but spiritual alone. Nevertheless, on account of the spiritual power, he did possess, indirectly, supreme power in temporal affairs; that is, that if the spiritual could not be freely exercised, nor its end certainly attained by spiritual means, he could have recourse to temporal means. Hence the pope, as the supreme spiritual prince, could change dynasties, take away an empire from one and confer it on another, when such a course would be necessary for the salvation of souls. I teach that this doctrine of the indirect temporal power is untrue; that it is as palpable an invasion of the domain of the civil power, and as hostile to its independent exercise as the direct temporal power could be. I have sworn that the pope has no such power, and I teach the same thing most unhesitatingly and most strenuously. I teach that it is our duty, as Catholics, to be as loyal subjects of the Queen in temporal as of the pope in spiritual affairs. I firmly believe that nothing could be more pernicious to the Church herself than any attempt to revive the obsolete, the false, and, as I had fondly imagined, the universally abandoned pretensions that the pope, as head of the Church, possessed any direct or indirect temporal power."

The system of scholastic opinions which supports these and such like extravagant pretensions on the part of the pope, is known by the name Ultramontanism, and the tenets, which contradict them simply, are called Cisalpine. The system of opinions known as Gallicanism goes farther than a contradiction, and in some respects lays down propositions that are the contrary of Ultramontanism. These opinions are embodied in the four resolutions of the French clergy in 1682, and which are expressed in these words :—

"I. That kings and sovereigns are not subject to any ecclesiastical power in temporal concerns : that they cannot be deposed, directly or indirectly, by the authority of the keys of the Church : and that their subjects cannot be freed from the submission and obedience which they owe to them, or absolved from their oath of allegiance."

"II. That the decrees of the Council of Constance on the authority of general councils should continue in force, and that the Gallican Church does not approve of the opinion of those who say that their authority is not well established, or that they regard only the time of schism."

"III. That the exercise of the Apostolical Power must be regulated according to the canons given by the Spirit of God, and consecrated by the universal reverence of all the world ; and that the rules, customs, and laws, received in the Gallican Church, ought to be maintained in full force."

"IV. That although the pope has the principal share in questions of faith, and although his decrees regard all churches, his judgment is still not above being reformed, unless it has the assent of the Church."

Several of the Maynooth professors were examined on these articles in 1826, by the Royal Commissioners on Education, in order to ascertain how far the teaching at the college was in accordance with the resolutions of the French clergy, and from their evidence it appears that, though they were all Cisalpines, no one went so far against Ultramontanism, as to accept fully all the resolutions.

When questioned on the first article, Dr. Anglade said :—"Its principles were maintained by him in his theses at the University

of Paris, and at the Sorbonne; and that he subscribed to the article in heart and spirit." He also said:—"That since 1802, when he became a professor at Maynooth, he always knew that the other professors maintained the same principles in public and in private."

He explained the reference to the Council of Constance to mean:—"That the council was superior to the pope; and that every person belonging to the Catholic Church was obliged to submit to the decrees of the council, as well the head of the Church, as the members." He also stated:—"That the Council of Constance was assembled to reform the Church both in its members and in its head." With regard to the principle of this article, he said:—"I do not think that question was ever discussed at Maynooth. It is of no moment; because all parties admit that, in the time of schism, the council has authority; and as the Council of Constance was assembled for the purpose of putting an end to the schism that took place in the Latin Church, and it was solicited by all the temporal powers there to put an end to it, of course the council had in that case the authority: and even the ultramontanes allow that for the time of schism, the power resided in the council; and that it can even act against the head, or the pretended head of the Church. In France we maintain the doctrine that the council is superior to the pope; but, however, the clergy of France did not by that article wish to say that the doctrine was of faith, to be held by all, but that it was the doctrine of France: they thought that the Church had a power above the pope, and whether she has or not, was sometimes agitated in the class of theology as one of the articles of the Gallican Church, pro and contra."

With reference to the third article, Dr. Anglade said:—"There is a part of it which is applicable to all churches, that the use of the spiritual power of the pope is not to be exercised in an arbitrary manner, but regulated by the laws of the Church, which laws were enacted in the general councils: the other part is confined to the Gallican Church, that the popes could not do anything against the usages and customs of that Church. The general principle, I suppose, is maintained at Maynooth. I think it seems to be the opinion of all persons who hold that the pope

has not an arbitrary power, but that he ought to exercise his power according to the laws of the Church."

He explained the fourth article to mean :—"That although the pope has the principal share in questions of faith, and although, as head of the Church, he has, in the definition of a doctrinal point, the power by his supremacy to send out a bull, speaking *ex cathedra*, in which he defines and decides such a thing; still in order that the bull should have the authority of infallibility, it is required by the French theologians that it should be directed to every bishop of the Catholic Church, and if the bishops after that publish that doctrine, it becomes then an article of faith, on account of that general assent of the Church which sanctioned that doctrinal bull of the pope. On the other side, the ultramontanes are of opinion that, as soon as the bull has been emitted by the pope, speaking *ex cathedra*, what he has defined is infallible, and that his judgment is irrefragable, which we do not admit."

He further said :—"I think the principle of the fourth article is held generally at Maynooth; but one may be for one side, and another for the other; for it is not an article of faith either one way or the other. We disclaim it entirely as an article of faith in our oath of allegiance." This is no longer a free scholastic opinion. It was made a dogma of faith by the Vatican Council.

This witness stated that :—"The Roman Catholic Church throughout Europe, now and for centuries, has positively rejected the doctrine that the pope has civil or temporal power outside the states of the Church." And of the deposing power he says :—"My opinion about those bulls of deposition is, that they contain nothing doctrinal, but only that the popes acted from a right which they supposed they had acquired through circumstances and times on different kingdoms and different places. In the time that that power was assumed, I think Europe was very much in ignorance, and the princes made use very often of the pope as a tool to serve their ambition; and, of course, there is no doubt that the pope availed himself of an authority which was so flattering to him: and he might, acting on those presumptions, after that have pretended to a real right to depose kings. Those depo-

sitions were chiefly concerning those kingdoms which were feudal of the empire, and he thought that the emperor was likewise under a feudal law with regard to him, Charlemagne having been in some manner appointed emperor by him. After that he pretended always to have a kind of authority in all those kingdoms; and if the emperor did not behave well, that he could act in consequence. There were some of the popes, certainly, who expressed themselves in a very extraordinary manner; but we are not at all to form our religious opinions on those transactions of the popes."

With reference to the canons of the third and fourth General Councils of Lateran, enacting that sovereigns who protected the persons who maintained the heresies mentioned in these councils, should be deposed, Dr. Crotty, the president at the time, said that:—"Assuming the authenticity of the third canon of the Fourth General Council of Lateran, Catholic divines generally held that no point of doctrine was proposed by said canon as a matter of belief; but that it was a practical measure adopted by the concurrent approbation of Church and State, and intended to effect purposes connected with the peace and tranquillity of both."

When asked whether he was aware that any pope ever expressly renounced the deposing power, or declared that he considered himself not to possess it, he said:—"Popes, like other sovereigns, are generally unwilling to forego any prerogative which they have once got possession of by just or unjust means. I am not aware that any express declaration has ever been issued by any pope on the subject with the exception just mentioned; but I think it matters little whether the pope considers himself still as possessing the temporal power alluded to, as long as the Catholic Church refuses to acknowledge such power in him."

SECTION IV.

Bull *unam sanctam*—Dr. Doyle on bull—Papal infallibility—Dr. Slevin—Gregory VII.—His exercise of temporal power—William the Conqueror resists his claims.

THE papal constitution which is supposed to come nearest to a doctrinal decision of the pope's temporal power, is the famous bull *Unam sanctam* of Boniface VIII., dated 18th November, 1302. In this bull the pope says substantially—We believe and confess that the Church is one, holy, Catholic, and Apostolic; and that outside it there is no salvation: we acknowledge that it is a body with one head, and not two, like a monster: this supreme head is Jesus Christ, with for vicars St. Peter and his successors: we teach that in this Church, and under its power, are two swords, the spiritual and the temporal: the one ought to be employed by the Church and by the hand of the pontiff; the other for the Church, and by the hands of kings and warriors, by the order or permission of the pontiff. It is necessary that one sword be subject to the other: that is to say, the temporal power to the spiritual. The spiritual power ought to establish and judge the temporal, and thus the prophecy of Jeremias is verified in regard to the Church, (Jer. i. 10,) "I have set thee this day over the nations, and over kingdoms, to root up, and to pull down, and to waste, and to destroy, and to build, and to plant." If the temporal power then wander, it will be judged by the spiritual; but it is God alone who judges the sovereign spiritual power, since the Apostle says the spiritual man judgeth everything, and he himself is judged of no man. Whoever, then, resists this power, resists the order of God, since he establishes two principles like Manes, which we judge to be false and heretical. In fine, we declare and define that it is of necessity for salvation that every human being be subject to the pope.

Dr. Doyle, in his letters to Lord Liverpool, writes of this bull:—"If the bull *Unam sanctam*, in which Boniface declares that every creature is subject to the Roman pope, without at all specifying

whether it be in spiritual or temporal matters—if this bull be objected to us, is it not reasonable to attend to us whilst we say, that no bull of any pope can decide our judgment if it be not received and assented to by the pastors of the Church; an assent which this bull *Unam sanctam* never has received? Should we not be allowed to add, that so far from being received by the Church, it was violently opposed, and by an opposition so successful, that it was recalled by Clement V., between whom and the author of that bull only one pope, Benedict XI., intervened? If the one which was rejected by the world be of such mighty moment, is not the other, which was admitted by all, entitled to some respect? There is no justice, my Lord, in thus condemning us; such conduct on the part of our opponents creates in our bosoms a sense of wrong being done to us. It exhausts our patience; it provokes our indignation; and prevents us from reiterating our efforts to obtain a more impartial hearing. We are tempted in such cases as these, to attribute unfair motives to those who differ from us, as we cannot conceive how men, gifted with intelligence, can fail to discover truth so plainly demonstrated, as that our faith or our allegiance is not regulated by any such doctrines as those imputed to us; that our duties to the government of our country are not influenced nor affected by any bulls or practices of popes; that these duties are to be learned by us, as by every other class of his Majesty's subjects, from the Gospel; from the reason given to us by God; from that love of country which nature has implanted in our hearts; and from those constitutional maxims which are as well understood, and as highly appreciated, by Catholics of the present day, as by their ancestors who founded them with Alfred, or secured them at Runymede." If Dr. Doyle had survived the Vatican Council, he would scarcely have spoken so lightly of a doctrinal papal bull; but he would still be able to show that, even in the supposition that the pope was infallible, the bull created no dogma of faith, and to add, as he does:—"I have just noticed the only bull of a pope ever issued in which, as far as I am able to ascertain, any attempt was made to couple the temporal pretensions of the popes with their spiritual supremacy. This bull was of a most odious kind, and should, therefore, according to a maxim admitted by all jurists—

'*odiosa sunt restringenda*'—be restricted as much as possible in its sense. If this be allowed, and no person versed in law will dispute it, the clause of this bull, which has excited so much scandal, might be admitted by every Catholic, without at all affecting his allegiance. When rightly understood it has no reference whatever to any other obedience, as due to the pope, than that obedience in spiritual matters which we all profess to owe him. But we deny, my Lord, most explicitly, that any doctrine is there proposed to the belief of the faithful. In place of assenting to the doctrine supposed to be taught by Boniface, we protest against it; we show that the only kingdom which was affected by his bull, opposed it like one man; and that the successor of this pope, either through necessity or of his own free-will, withdrew it, cancelling all its effects."

When the Vatican Council defined the infallibility of the pope, it included Boniface VIII., and every other pope, past and future, in its decree. The fathers must therefore have believed with Dr. Doyle, that Boniface never proposed *ex cathedra* to the faithful to believe in the pope's temporal power, since such a belief is now almost universally rejected. Dr. Slevin was asked by the Commissioners on Education in 1826:—"Suppose a Roman Catholic were now to hold, as some may and probably do, that the pope is infallible, or has the gift of infallibility in propounding articles of faith, *ex cathedra* to the Church, must not that Roman Catholic hold it to be morally impossible and utterly imcompatible with the divine law, that the pope could teach as an an article of faith, that the pope had that civil and temporal power which the Roman Catholic churches and prelates declare he has not?" He answered—"Every Roman Catholic that holds the opinion, that the pope speaking *ex cathedra* is infallible, must consider it impossible that he ever could dictate to the universal Church a false doctrine; and therefore he must also hold it to be impossible that he ever could propose to the Church the doctrine of the temporal power which he holds to be false." He again says—"We abjure as false the doctrine asserting the pope's power to depose princes, and absolve their subjects from their oath of allegiance; and therefore must hold it impossible that the infallible judge of controversy appointed by Christ could sanction

it." Popes, therefore, when not *in cathedra sedentes*, must be considered as fallible in their opinions and as peccable in their actions as other men. Whenever, therefore, they asserted a right to depose a sovereign, or transfer a kingdom—and they often based their claims on divine right as a perogative of their office—their assertion was false; and when in the exercise of this supposed right, they went through the form of deposing a sovereign, and transferring a kingdom, their action was bad and disedifying to the Church.

The popes, after all, gained nothing but discredit from the assertion of their right to temporal sway, or their occasional quarrels with sovereigns in enforcing these claims: as the sovereign and people commonly resisted with boldness the papal interference, as an invasion of their civil rights, and were generally successful in their resistance. If our country was transferred to the dominion of England, the subjugation was effected, not by the bull of Adrian, but the sword of Henry; and the conquest of Mexico was accomplished by the warriors of Spain, and not by the bull of Alexander VI. making over the new world to Ferdinand and Isabella.

The most aggressive pope we have ever had was the celebrated Hildebrand (Gregory VII.), who was elected in 1072. Dr. Russell, now President of Maynooth College, was asked before the Commission of Inquiry in 1854—"In your lectures you sometimes come to periods when there have been conflicts between the temporal and spiritual powers?" His answer was—"A most prominent example occurs at the time of Pope Gregory VII. The whole history of his pontificate turns upon the question of the conflict between the temporal and spiritual authority."

Du Pin writes of this pope—"No sooner was Hildebrand made pope but he formed a design of becoming lord spiritual and temporal over the whole earth, the supreme judge and determiner of all affairs, both ecclesiastical and civil, the distributor of all manner of graces, of what kind soever, the disposer not only of archbishoprics, bishoprics, and other ecclesiastical benefices, but also of kingdoms, states, and the revenues of particular persons. He made use of the spiritual sword to deprive kings of their kingdoms, princes and lords of their estates and revenues, to

render them his tributaries, to dispose, at his pleasure, of all that belongs to them, and to force them to do whatever he desired; to engage archbishops and bishops to pay him a blind obedience, and to do nothing in their dioceses without his order."

"This pope," (Gregory) says Dr. Doyle, "excited by an extraordinary desire to extinguish simony, and to render all mankind as fervent Christians as he was himself, conceived it necessary for his purpose to subject all the nations of the earth to his sway. He assembled his counsellors, and delivered to them, and to the holy apostles, whom he frequently addressed, the most impassioned harangues. He resisted the Emperor Henry IV., not with the prudent caution used by his predecessors, but with violence. Not accustomed to meet with opposition, he waxed angry—he took the empire into his own hands, as the successor of SS. Peter and Paul, to whom he said all the kingdoms of the world were granted; and, without more ceremony, attempted to depose one emperor, and place another on the vacant throne." Again, he says—"Up to the time of Gregory, the papal power to which he gave a certain form and consistency, though gradually gaining strength, was not such as could create alarm. Its progress was silent, and it was much more occupied in advancing the interests of religion amongst the nations newly converted than in making encroachments upon princes."

In discussing the arguments by which the popes supported their claims to temporal sway, Dr. Doyle says—"As to the arguments from scripture or tradition, adduced by Gregory or by any of his successors in support of their temporal claims, they are such as will amuse, or rather excite the pity, of a serious mind. One wisely observes, that because an apostle said to our Lord, 'Behold, there are two swords here,' the popes have a right to depose kings. Such an inference might appear plausible to him who was already resolved on an usurpation of right, but a Christian is forced to blush at such a profanation of the Word of God. Gregory (from whose virtues I do not wish to detract by censuring his conduct in the matter about which I treat) quoted from St. Paul to the Corinthians (1 Cor. vi. 3)—'Know you not that we shall judge angels themselves: how much more worldly things?' and from this passage he claims to be invested with a

power of invading the rights of kings and emperors, nay, of new-modelling the state of society throughout the world. If his reasoning were good, the last prebendary at Westminster might remove your Lordship from the head of the Treasury; but to offer arguments against such theories is too humiliating to the common sense of men. I feel compelled, while referring to them, to blush for the weakness of some good and great men, but I thank God to have lived myself in more enlightened times. This pope, who would be an universal monarch, passed, naturally enough, from the epistles of the Apostles to the writings of one of their earliest followers. In a letter of Clement, quoted by Cotelius, he found it expressed that 'those who were not in peace and communion with Clement, were to be numbered with those who wished to destroy the Church of God.' From which passage, with his usual logical accuracy, he inferred that he might, with all imaginable propriety, depose the Emperor Henry. Who could refute such reasoning? I confess I am unable to reply to such arguments. If I were living then, and had been consulted, I should read, as my only reply, a chapter from St. Paul to Timothy, in which he recommends, above all, prayers to be offered up for those who are in high station, whether they were acquainted with Clement, or even with Christ Himself, or not, that all might be enabled to lead quiet and holy lives; or I should have submitted to him who had consulted me, the declaration of our Lord before Pilate; who, instead of asking His Father for legions of angels to depose him who was about to condemn to death the Author of life, declared that the power of this judge, though grossly abused, was given him from above; and that, though He Himself was a King, His kingdom was not of this world. Such reflections, it is true, might have little or no weight with men blindfolded by habitual prejudices, and urged on, as some men still are, in their course of ruin by pride, interest, or ambition; but I should at least have washed my hands amongst the innocent, and been clean of the blood which flowed in such torrents, in consequence of the decisions which they were about to pronounce. These texts—for who can call them proofs?—were adduced by Gregory, in his own justification, in a letter, to Herman of Metz. I have cited them here, because they were his only arguments, if I

except some facts to which he refers, not as precedents, but as affording some colouring to his proceedings; but which, unfortunately for him, were either opposed to his conduct, or perfectly irrelevant to his purpose. To dwell upon them here would be to imitate, in some degree, the impiety of Noe's son, who scoffed at the parent, whose nakedness he should have concealed."

Lingard, in his history of England at the time of William the Conqueror, writes that :—" During this reign the Christian world was afflicted and scandalized by the rupture between Gregory VII. and the Emperor Henry IV., who, in opposition to his adversary, created an anti-pope, Guibert, bishop of Ravenna. The conflicting claims of these prelates, and the temporal pretensions of Gregory, afforded a pretext to William to introduce a new regulation. He would not permit the authority of any particular pontiff to be acknowledged in his dominions without his previous approbation : and he directed that all letters issued from the court of Rome should, on their arrival, be submitted to the royal inspection. Though he zealously concurred with Archbishop Lanfranc in his endeavours to reform the manners of both the clergy and the laity, yet so jealous was he of any encroachment on his authority, that, without the royal licence, he would not permit the decisions of national or provincial synods to be carried into effect. After the separation of the ecclesiastical courts from those of the hundred, he enacted such laws as were necessary to support the jurisdiction of the former; but at the same time forbade them either to implead, or to excommunicate any individual holding in chief of the crown till the nature of the offence had been certified to himself."

In another place he writes :—" A friendly intercourse by letters and presents subsisted between William and Pope Alexander II. Alexander was succeeded by the celebrated Hildebrand, who assumed the name of Gregory VII. The king congratulated the new pontiff on his advancement to the papacy; and, in return, was commended by him for his attachment to the Holy See, for the zeal with which he enforced the celibacy of the clergy, and for his piety in not exposing to sale, like other kings, the vacant abbeys and bishoprics. The Peter-pence had been annually paid during the pontificate of Alexander; but after his death it had,

for some unknown reason, been suspended during a few years. Gregory, who considered it as a feudal prestation, had commissioned his legate, Hubert, to require not only the payment of the money, but, as a consequence of that payment, the performance of homage. Such a requisition to a prince of William's imperious temper must have been highly irritating. But his answer, though firm, was respectful. He acknowledged the omission of the payment, and promised that it should be rectified; but to the demand of homage he returned an absolute refusal. He had never promised it himself: his predecessors had never performed it, nor did he know of any other ground on which it could he claimed with justice. Though Gregory was disappointed, yet beset as he was with enemies, he had the prudence to suppress his feelings, and, till his death in 1085, continued to correspond with the king, who acknowledged him as the legitimate successor of St. Peter, and refused to admit a legate from the anti-pope Guibert.

SECTION V.

Dr Doyle—Claims of Gregory to France—To Spain– To Hungary—To Dalmatia—To Denmark—Reflections.

WITH reference to Gregory's claims to France and other countries, Dr. Doyle writes:—"After Gregory had, as he imagined, secured his power over the empire, he next turned his attention to France. He accordingly writes to his legates:—'You are to inform all the Franks, and command them upon their true obedience, that they pay, each house agreeably to ancient custom, a penny each year to St. Peter, if they acknowledge him to be their pastor and father. The reason is, that the Emperor Charles, as is to be seen in his book, which is in the archives of the Church of St. Peter, collected every year at three different places (that is to say, at Aix la Chapelle, at Puy, and at St Gilles) twelve hundred livres for the service of the Holy See.' The legates, more prudent than their master, did not even publish this letter. The chief object, however, of Gregory, if we can judge from his other proceedings, was not so much to collect

pence as to obtain something in the form of a tribute; which would, in his mind, be an acknowledgment of his right to the kingdom, as a fief or dependency of the Holy See. He says in this very letter which I am quoting, that Charlemagne offered to St. Peter (and of course to himself) the kingdom of Saxony, which he had conquered by the help of that saint, and that he built a Church as a monument of his piety and of the gift that he had bestowed on the Holy See. The truth is, as may be seen in the capitularies of Charlemagne, that this emperor offered to Jesus Christ and to St. Peter the first Church which he erected in Saxony; but this was quite sufficient to warrant Gregory in considering that country as one of the domains of the Church, and to entitle him to set up or depose kings within it as might suit his convenience or inclination. The French, however, were not to be duped by him."

"To Sweine, King of Denmark, he offered as a present, in return for the allegiance which he claimed as a right, a province in Italy, to which he probably had an equally valid claim as to Denmark itself. From the shores of the Baltic he proceeded to those of the Mediterranean. At this time the greater part of Spain was oppressed by the Saracens; and, as a stimulus to the struggling Spaniards to extricate themselves from one yoke, Gregory, out of the plenitude of his generosity, presented them with another. Addressing them, he says:—'Doubtless you are aware that the kingdom of Spain was, a long time past, a portion of St. Peter's patrimony; and, that, at present also, though it hath long been occupied by pagans, it cannot of right belong to any other than the Holy See.' He then proceeds to allow Count Eblis to hold from St. Peter, on certain conditions, such lands as he might rescue from the infidels! An act, as all must perceive, of singular munificence and generosity; and for which the Spaniard must have felt himself oppressed with gratitude."

"The pope supposing that the Goths, busied in the field, had not much leisure to examine records, wished to spare them all trouble as to the verification of his claim; hence he informs them: 'We wish to furnish you with a piece of intelligence, and which it is not permitted us to withhold from you, but which will secure to you great glory in this world and the next. Know ye then that

the kingdom of Spain *was given in property* to St. Peter and to the Holy Roman Church by ancient grants, which on account of the revolutions which since occurred, and the negligence of some of my predecessors, have been lost sight of. For, after the invasion of that country by Mahometans and Pagans, the yearly services which were paid to St. Peter, have been interrupted, for many years, by these infidels and brutes; and people have gradually forgotten that the country was one of the domains belonging to the Roman Church.' We need not be surprised that this good man was imposed on by some evil-minded persons, who, doubtless, forged some instruments to satisfy him of his right to Spain; but what would, in other times and circumstances, appear passing strange, is that the Spaniards did, in a great degree, submit to the imaginary claim. Baronius endeavours to justify it by an antiquated grant of Berenger, Count of Barcelona, to Pope Urban; a grant which D. Marca proves to have been entirely different from what it was represented to be, and such as could give no title to a single inch of land in the Peninsula. The counsellors of the pope acted much more prudently in saying that the documents were lost, than in producing those which their apologist afterwards exhibited to the ridicule of the world. It is not, however, my province or object to show the futility of such claims, but only to point out the origin of those assumptions of power which have caused to all the nations of Europe, and which are still causing to the unfortunate Catholics of these countries [Dr. Doyle published these letters in the year 1826, and the Catholic Emancipation Act was passed in 1829] sufferings and misfortunes without number or parallel. Gregory advanced similar claims to Sardinia, to Hungary, to Dalmatia; and lest the occupation of these several kingdoms, when taken in a bulk, might not be sufficiently secure, he set up, from time to time, distinct and separate titles to several cities and provinces of them. He did so in order that, should the whole kingdom struggle to escape from him, as was the case in England, he might retain, at least, a portion of it, whereby, at some future period, he might gain access to the entire. He acted like a skilful general who, no longer able to defend an open country, shuts himself up in a fortress to wait for succours, or to watch and take advantage of any new and favour-

able circumstances which might arise. Gregory withdrew to a better world, abashed and broken-hearted, at the slow and but partial success which attended his enterprise; but he did not retire without leaving to his successors a plan of operations which, with signal address, with the most consummate skill and perseverance, they laboured for centuries to execute. They were frequently successful, and not less frequently defeated; but they never desisted until their efforts became fruitless, and their labours utterly unavailing. They constantly employed their spiritual prerogatives to enforce their temporal pretensions. By wielding the holy names of the Apostles, and exalting the privileges of their See, they established generally throughout the world a persuasion that to question their right to the kingdoms of the earth, as the patrimony of St. Peter, was to oppose the jurisdiction with which that Apostle had been vested by Christ. He had been commissioned to administer the law of God in a kingdom which was not of this world, and to do so not by violence but freely; not by lording it over God's inheritance, but by being made a pattern to the flock from the heart; but they seemed to reverse that rule, and to appropriate all the kingdoms of this world, and to govern them, at least occasionally, with an iron rod."

SECTION VI.

Papal encroachments on England resisted—King John does homage to Innocent III.—Innocent at the prayer of John annuls *Magna Charta*—The bishops and barons successfully resist—Dr. Lingard on transactions with popes—Tallages—Provisions—Papal concessions—Grosseteste.

In no country were the encroachments of popes more stoutly resisted, and their efforts to usurp the rights of the king or the people more completely baffled than in England, and this as well before as since the Reformation. It is true that King John, with great meanness of spirit, in order to purchase the support of Innocent III. in his war with Philip Augustus of France, took the oath of a vassal to the pope, in presence of the legate Pandolph, and of the bishops and barons of the kingdom; and swore:—"To

preserve and defend, against all men, the patrimony of St. Peter, and especially the two kingdoms of England and Ireland." These bishops and barons, however, shortly afterwards, when Innocent annulled *Magna Charta*, on the ground that John had no power to give away the rights of the crown without the consent of his feudal superior, informed the pope that he had no right to interfere in temporal concerns; the control of ecclesiastical matters only had been entrusted by Christ to Peter and Peter's successors.

To explain how the exorbitant claims of popes in the middle ages practically affected the clergy, I will give some passages from Lingard's History of the Reign of Henry III.—"The history of Henry's transactions with the court of Rome discloses to us a system of oppression under which the English clergy, by the united influence of the crown and the tiara, were compelled to submit to the most grievous exactions. The Christian hierarchy had, from the earliest ages, been distinguished by a regular gradation of office and authority from the lowest clerk to the Bishop of Rome, who was considered as the chief of the episcopal body, and the vicegerent of Christ upon earth. As the northern nations extended their conquests, they diffused their peculiar notions of jurisprudence through the provinces of Europe: these were insensibly incorporated with the external economy of religion: and the constitution of the Church became in a great measure assimilated in the ideas of the western Christians, to the institutions of a feudal kingdom. The pope held the place of the sovereign; the bishops were considered nearly in the light of his barons; and subordinate to the bishops, stood the inferior clergy in the quality of sub-vassals. These feudal notions were followed by feudal ceremonies and claims. The bishop, before he entered on the administration of his diocese, swore fealty to the pope; and the priest, at his ordination, beside the ancient promise of canonical obedience, did homage to his bishop. Then, as the civil sovereign in his necessities required aid from his barons, and through them, from their vassals; so the popes, in similar circumstances, demanded pecuniary assistance from the bishops, and through them, from the rest of the clergy. At first these claims were brought forward with modesty and reserve; nor did the

ecclesiastics refuse to relieve the wants, or support the splendour of him whom they revered as their spiritual father, and beneath whose protection they reposed in the peaceful possession of their property. But gradually the necessities, and with the necessities the demands of the pontiffs were multiplied, till they at length excited the remonstrances and opposition both of the clergy and laity. By accepting the donation of Pepin, and by subsequent acquisitions, the bishops of Rome had joined the concerns of temporal princes to the duties of Christian prelates; and the wars in which they were compelled to engage, sometimes with their own subjects, sometimes with foreign states, entailed on them expenses far beyond the annual amount of their income. This was generally the situation of the popes who governed the Church during Henry's reign. Involved in a long and ruinous contest with the Emperor Frederic and his partisans in Italy, overwhelmed with an immense load of debt, and forced occasionally to abandon their own dominions for an asylum on this side of the Alps, they looked to the aid of the clergy as the surest expedient for satisfying the claims of their creditors, recruiting their forces, and recovering their former ascendancy. Year after year the English, like every other national Church, was called upon to contribute towards the support of the Roman See; and though the generosity or patience of the clergy was soon exhausted, their resistance was seldom successful against the authority of the pontiff, supported as it generally was by the authority of the monarch: for the fate of John had proved an awful warning to Henry, who, unwilling to provoke the enmity of the pope, concurred in every scheme of exaction, unless he were occasionally deterred by the united clamour of the barons and the clergy."

"The principal grievances which sprung out of this system may be reduced to two heads.—I. The popes, in imitation of the temporal princes, often required a tallage of the clergy, amounting generally to a twentieth, sometimes to a tenth, and on one or two occasions, to a larger share of their annual income. These impositions had been originally introduced in the time of the crusades; and had been justified on the ground that the recovery of Palestine was an object equally interesting to every Christian: and that while the laity cheerfully shed their blood in the sacred

cause, the clergy could not refuse to contribute a small portion of their revenues towards its success. But it was soon discovered that every war in which the pontiffs engaged, was somehow or other connected with the welfare of religion. When the contest commenced between Gregory IX. and the Emperor Frederic, that pope demanded an aid of the clergy; as his affairs grew desperate, his demands were repeated; and under his successor, Innocent IV., the frequency and amount of these tallages became an intolerable burden. Innocent, indeed, alleged in justification of his conduct, that he was an exile from his dominions: that at Lyons, where he kept his court for ten years, he had no resource but in the contributions of the clergy; and that whatever they gave, was expended in supporting the cause of the Church and religion. These reasons, however, did not always convince those who suffered from the annual diminution of their incomes. In many nations they were answered with complaints; in England, they experienced the most decided opposition. The clergy replied, that they deemed it unjust to furnish money, with the conviction that it would be employed against the emperor, who, though the pope had condemned him, was still to be considered as a Catholic prince, since he had offered to submit his quarrel to the decision of a general council—that each church had its own patrimony; nor could the pope, with any more justice, claim a share in the revenue of their churches than they could claim a share of the revenue of the Church of Rome—that, as the law, when it described everything as belonging to the prince, spoke of his right of superintendence, not of property; so the pre-eminence enjoyed by the pope, imposed on him the duty of watching over all, but gave him no right to dispose of all; and that, if the income of the clergy were more than sufficient for their support, they were obliged to employ the remainder in relieving the wants of the poor, not in furnishing the means of protracting a bloody and destructive war."

"For some time the king and the barons appeared indifferent spectators of this struggle. At length they were induced to interfere, by the consideration that, in proportion as the clergy were impoverished, the national burdens would press with additional weight on the laity. Ambassadors were despatched to the general

council at Lyons, who, in firm but respectful language, remonstrated against the frequency of the papal exactions. Perhaps the promises which Innocent gave in his reply, were meant only to allay discontent. But, if he was sincere, the necessities of his situation soon compelled him to break them; and a new demand of a twentieth from the poorer, and of a larger portion from the more opulent benefices, awakened an unusual spirit of opposition. The clergy drew up a list of their grievances, sent it to the pontiff, and appealed from him to the next general council: the barons, in bolder terms, warned him of the evils which might probably ensue; and clearly insinuated their readiness to draw the sword if it should be necessary, in support of the clergy. Even the king appeared to make common cause with his vassals, and forbade the tallage to be paid, under the penalty of his high displeasure. Yet this strong opposition gradually melted away. Henry withdrew his prohibition; the barons relapsed into their former apathy; and the clergy were reduced to compound with the pontiff for eleven thousand marks."

"The second grievance consisted in what were termed papal provisions, by which the pope, suspending for the time the right of the patron, nominated of his own authority to the vacant benefice. The consequence was, that many Italians possessed livings which should have been conferred on English clergymen: and if some of these resided in the island, the others, after defraying the charge of a substitute to perform the duty, received and spent the remainder of the income in foreign countries. This abuse excited loud complaints on the part of both the patrons and the clergy: and the public discontent displayed itself in acts of illegal violence. An association was formed under the title of the Commonalty of England; and was clandestinely encouraged by the principal of the barons and clergy. At its head was Sir Robert Thwinge, a knight of Yorkshire, who by a papal provision had been deprived of his nomination to a living in the gift of his family. His commands were implicitly obeyed by his associates who, though they were never more than eighty individuals, contrived by the secrecy and celerity of their motions, to impress the public with an idea that they amounted to a much greater number. They murdered the pope's couriers; wrote menacing letters to the

foreign ecclesiastics and their stewards; sometimes seized their persons, threw them privately into dungeons, and compelled them to pay considerable ransoms: and at others, carried off the produce of their farms, sold it by public auction, or distributed it among the poor of the neighbourhood. For eight months these excesses continued without any interruption from the legal authorities; the national discontent was gratified with the sufferings of the foreigners; and the members of the association, to satisfy the officers of justice, pretended that they acted in virtue of a royal commission. Henry at length interposed his authority; and Thwinge proceeded to Rome to plead his cause before the pontiff. He was successful, and returned with a bull, by which Gregory authorized him to nominate to the living which he claimed; declared that, if ever the rights of the lay patrons had been invaded, it was without his knowledge, and contrary to his intentions; and promised that all future provisions should be confined to those benefices which were known to be in the gift of the prelates, abbots, and ecclesiastical bodies: a politic answer which, while it wore the semblance of truth, separated the interests of the laity from those of the clergy, and was calculated to render the former unconcerned spectators of the oppression of the latter."

"The clergy felt the probable consequences of this distinction, and loudly expressed their indignation. After many ineffectual attempts, they obtained the co-operation of the king and barons; and in all their remonstrances, the provisions were coupled with the tallages as an abuse which could be no longer endured. To silence their complaints, Innocent reminded them of his wants, and declared that, without provisions, he could neither reward the services of his most faithful adherents, nor support the necessary officers of his court. The controversy lasted during the whole of his residence at Lyons. By the death of the emperor, he was at last enabled to return to Rome, and was soon followed by the remonstrances of the English clergy, who stated that the incomes of the foreign ecclesiastics beneficed in England, amounted to 50,000 marks. The pontiff, without admitting the accuracy of the statement, acknowledged and lamented the existence of the grievance, and assured them that, if he had ever granted a provision

himself, it had been wrung from him by necessity: and proposed, as a temporary remedy, to set aside, for certain non-residents, 8,000 marks, a sum which might be annually reduced; to compel all other foreign clergymen to reside or resign; and to enable the patrons to present to all benefices, as soon as they became vacant. Whether the offer was accepted we know not: but the next year, in consequence of a provision to a living in the diocese of Lincoln, Grosseteste, the celebrated bishop of that See, wrote a spirited letter to the pontiff, in which, after professing obedience to the lawful commands of the Apostolic See, he refused to admit the provision, because it emanated from an authority which had never been granted by Christ to St. Peter, or his successors This remonstrance appears to have made impression on the mind of Innocent. He answered by a bull, in which he again professed his dislike of the practice, empowered all the patrons of benefices in the possession of foreigners to present to them immediately; and declared that the individuals so presented should and might take possession immediately after the death or resignation of the present incumbents, and in despite of any provision that might hereafter be made by him or his successors. In this state the controversy remained during the sequel of Henry's reign."

Of Grosseteste, Lingard writes:—"The third prelate whom I shall mention is one to whose history considerable interest has been attached by the partiality of modern writers. Robert Grosseteste was indebted for his education to the charity of the mayor of Lincoln: and by his proficiency he amply repaid the discernment of his benefactor. He taught at Oxford with unbounded applause: in the catalogue of his works we discover treatises on almost every branch of science: and he was pronounced by Friar Bacon (a competent judge for the age) perfect in divine and human knowledge. From a prebendal stall he was promoted to the episcopal throne in the Church of Lincoln, and an extensive diocese offered him a fair field for the display of his abilities and the exertions of his zeal. With the same views as his metropolitan, he brought to the contest a very different character: a resolution of mind which no difficulty could daunt, no defeat could subdue. When that amiable prelate advised him to desist from an impracticable attempt, and wait in patience for more favour-

able times, he replied that he should do his duty and leave the consequences to heaven. He had persuaded himself that every disorder in the flock might be ultimately traced to the negligence or incapacity of the pastor: and, grounding his conduct on this principle, invariably refused institution to every pluralist: to clergymen employed in courts of judicature, or the collection of the revenue: to all who, from disposition or circumstances, were unwilling or unable to reside on their benefices. The presentees complained; the patrons stormed; the ministers of the crown threatened; but no complaints, nor reproaches, nor threats could move the resolution of Grosseteste. In the visitation of his diocese, he experienced more formidable difficulties. The laity sheltered themselves from his inquiries under the protection of the civil courts; the clerical and monastic bodies pleaded ancient custom or papal exemptions: and all parties appealed to the protection of the king and the equity of the pontiff. To break or surmount the opposition which had been formed against him, cost the bishop much anxiety and expense; several harassing lawsuits, and two journeys to the papal court. By Innocent IV. he was not only treated with respect, but the principal of his demands were granted; and those powers were delegated to him which appeared necessary for the reformation of his diocese. His chapter was brought to acknowledge not only a nominal but an effective jurisdiction in their bishop. He visited the convents and monasteries, deposed negligent or inefficient superiors, and enforced the observance of the monastic rules with an exactitude which earned for him the honour of being reviled by the historian of St. Alban's."

"In his transactions with the court of Rome, Grosseteste exhibited an equal inflexibility of character. No man, indeed, ever professed a more profound veneration for the successors of St. Peter, or entertained more exalted notions of their prerogatives. From his works, it appears that he gave to their decretals the force of law in all Christian nations: that he maintained, as the cause of God, every immunity which they had conferred on the clergy; and that he inculcated with unusual vehemence the doctrine of what has since been termed the *indirect* superiority of the spiritual over the temporal power. Yet, with these senti-

ments as to the nature, he would often dispute the exercise of their authority. Neither pope nor legate could prevail on him to give institution to foreign clergymen presented to benefices in his diocese. When the nuncio sent him a provision, by which Frederic of Louvain, the nephew of Innocent IV., was promoted to a prebend in the Church of Lincoln, Grosseteste replied, in language singularly energetic, that the provision was contrary to the good of the Church and the welfare of souls : that he would not consider it as emanating from the pontiff : and that he should never deem it his duty to carry it into execution. This answer, bold as it may appear, was only a repetition of the doctrine which he had formerly maintained in presence of Innocent himself ; and so far was it from exciting passion or resentment in the breast of that pontiff, that as soon as he received it from his agent, he wrote a letter in exculpation of his conduct, and proposed that remedy for the abuse of provisions which has been already described in these pages."

Lingard adds, in a foot note :—" At his second visit to Lyons, Grosseteste presented a memorial on the evils of the Church, which proves how little he was disposed to flatter, even when he solicited a favour. It may be divided into three parts. In the first he describes the evil of bad pastors, which he refers ultimately to the papal court, because it might prevent it, if it chose, and because it encouraged it by provisions and impropriations : in the second, he enumerates the obstacles opposed to the zeal of the bishops by exemptions, appeals, secular judges, the ingenuity of lawyers, and the hostility of ministers : in the third, he paints the abuses to be remedied in the papal court itself, the irregular conduct of the lower class of servants, the venality of the judges, and the immoderate use of the clause *non obstante.* To the honour of Innocent, he ordered this memorial to be read in the consistory of the cardinals, and gave the bishop repeated proofs of his esteem."

SECTION VII.

Popes exempting the clergy from taxation—Bull *Clericis laicos* of Boniface VIII.—Resisted by Philip the Fair—The controversy between Philip and Boniface—Prohibition of the king to carry money out of the kingdom—Pope's bull against it—The king's manifesto against the bull—Letter of the French prelates—An embassy from the pope for the continuance of the truce—Letter of Boniface to Edward of England.

On the other hand, popes frequently interfered in kingdoms, on the side of the clergy, to exempt Church property from tribute towards the support of the State. The celebrated bull of Boniface VIII., *Clericis laicos*, which forbids imposts of any sort on Church property or the income of churchmen, without the leave of the pope, is found in the *Sextus Decretalium* of the canon law. It was adopted into the canon law by Boniface himself. An excommunication reserved to the pope is fulminated against all emperors, kings, princes, dukes, counts, barons, captains, officials, and rulers of every sort and name whatsoever, who impose tribute or tax of any sort on ecclesiastics or their property; and against the ecclesiastics who submit to the imposition by making, or even promising to make, the required payments. This, too, is one of the numerous excommunications of the *Bulla Cœnæ*; but it has been omitted from the new and revised list of censures made out in 1869. According to the ultramontanes, the crime has no longer an excommunication annexed to it; but it remains still the same crime that it always was, and includes still in its most comprehensive extension, every man, woman, or child, on the face of the earth, that ever aided or abetted lay people, in any way whatever, to lift as much as a crown piece from the person or the property of the pope's clergy without the pope's leave. Cardinal Cullen and Archbishop Leahy swore, at the hearing of the case O'Keeffe *v.* Cullen, in May, 1873, that the *Bulla Cœnæ*, and the entire canon law, were in full force everywhere. They even swore that every papal bull came into full force everywhere as soon as it became known there that it

was promulgated in Rome. I was simple enough to think, before I heard this swearing, that, as a matter of fact, outside the States of the Church, this bull of Boniface was never anything but a dead letter in the canon law. It was resisted by the French clergy as stoutly as it was by Philip the Fair, against whom, though by no means restricted to France, it was aimed in the year 1296.

The disputes between Boniface and Philip are a matter of so much interest in ecclesiastical history, that I will give a few passages from Du Pin on this subject. This historian writes:— "Benedictus Cajetanus, a native of the city of Anagni (in the Campaign di Roma), was chosen pope December 24th, 1294, after the voluntary resignation of Celestin V., and assumed the name of Boniface VIII. He, immediately after his elevation to the papal dignity, entertained a design of rooting entirely the Gibeline party out of Italy, and so make himself absolutely supreme, as well in temporal as in spiritual affairs, over all the kingdoms of Christendom. And of this he gave plain intimation, not only in the accommodation which he purposed to make between Philip the Fair, King of France, and Edward II., King of England, by his own authority, but also in receiving the appeal of Guy, Earl of Flanders, made to him against the said King of France: and to that end sending his legate, the Bishop of Meaux, to that king to require him to give satisfaction to the Earl of Flanders, and in case he refused, to summon him to appear before the pope, that the difference between them might be decided before his tribunal. Philip the Fair, being highly offended at these proceedings, told the legate, that it belonged not to the pope to concern himself with the temporal affairs of princes and sovereign lords; that he had a court of his own to administer justice to his subjects and homagers, and that he would acknowledge none his superior but God only. The legate departed without effecting anything; but the Pope, in the year 1296, published a bull, wherein, having complained that kings exacted from the clergy subsidies, tithes, and other imposts, which the clergy paid them without leave from the Holy See, he forbids all the clergy to pay anything out of their estates to the laity, or to give their consent to any imposition, without permission from the pope.

And all emperors, kings, princes, or other lords and judges, are commanded to exact nothing of them upon pain of excommunication and interdict. This bull concerned the King of France more than any other; because he had levied money upon the clergy to defray the charge of the war: whereupon this prince put out a declaration on the 17th August the same year, whereby he prohibited the carrying of any silver, coined or uncoined, out of the kingdom; or any strangers to remain there. The pope thereupon sent him a very sharp bull, in which he sets forth that this general prohibition is prejudicial to his subjects; and if he had a design to extend it to ecclesiastical persons, it is a rashness, which he styles folly, and that deserves excommunication; and, if he had been induced to set out this edict upon occasion of the ordinance made lately in favour of the liberty of the clergy, it was an ill pretence; because his decree contained no new constitution, but only confirmed what had been formerly ordained by canonical decrees, under new penalties; and that he did not therein absolutely forbid the clergy to grant any aid to the king for the defence and necessity of the State, but to do it without special leave from the Holy See; and that upon consideration of the intolerable exactions which the king's officers had made upon the clergy in his kingdom. Moreover, that the Holy See had always been, and, likewise for the time to come, should be ready, in the pressing necessities of the State, to oblige the clergy of the kingdom of France to afford succour to their king, without sparing even the chalices, the crosses, and other sacred utensils, if need were, rather than suffer so great a kingdom, and so dear to the Holy See, to want necessary succour for its defence; but that, at this juncture, all kings and princes, neighbours of France, complained of his invasions, and among others, that the King of the Romans alleges that the King of France has seized on divers imperial towns, especially on the county of Burgundy; and the King of England says that he likewise keeps from him a country in Gascony; that these princes would, very willingly, refer themselves to the Holy See, to whom the judgment belongs, in regard it is a sin to detain that which is another's, and to make an unjust war. In fine, the pope declares that he would not be understood, in his decrees, to speak of the impositions and

aids, which the prelates, and other ecclesiastical persons, owe the king, on account of the fiefs which they hold dependent on the crown. He conjures the king to follow his advice, and to revoke his ordinance, being desirous to use all gentle means with him, before he would make use of ecclesiastical censures. He sent the bishop of Viviers to him, at the same time, that he might represent the things to him *viva voce*, and gave him a letter of particular credence, bearing date the 22nd of the same month."

"The king set forth a manifesto in answer to the pope's bull, wherein he observes that before there were any clergy in France, the king had the protection of his kingdom, and power to make laws which he judged necessary for its defence: so that he could forbid the carrying money and arms out of his kingdom, for fear his enemies should get some advantage by them; that he had not absolutely forbid the doing of it, but only without his permission, with a design to grant it to the clergy in case that it brought no prejudice to the kingdom; that were it true, that the king detained by violence, the persons and goods of the clergy, it would be surprising enough that the pope should not pronounce him excommunicate; that the Church is not only composed of the clergy, but likewise the laity, whom Jesus Christ has delivered from the slavery of sin, and set at liberty; that the clergy have in truth particular privileges, which have been granted to them by the decrees of popes, by the bounty, or, at least, by the permission of secular princes; but that they ought not to deprive princes of the government and defence of their kingdoms, nor of the things necessary to that end. That we must give to Cæsar that which is Cæsar's, and that every one, whether churchman or laic, who is not willing to contribute to the necessities of the State is an unprofitable member, which must be cut off: that, if the enemy prevailed, the clergy would be they who would suffer most, and their goods be most liable to the spoil: that it overthrows the ancient and natural right to hinder one from succouring one's self; that it is a shame for the vicar of Jesus Christ to forbid the payment of tribute to Cæsar, and to thunder out his censures against the clergy who lend their assistance to the king and kingdom, or rather to themselves, while they are permitted to bestow their riches on players and their friends, and to waste them in superfluous expenses: that

it is unjust that the churchmen, enriched by the bounty of princes, should refuse them necessary aids for the defence of the State: that this is to assist the enemy, to commit treason, and to betray the State to maintain such a prohibition. As to what concerns the king of England, the war, which he hath with him, arises from this, because that prince would not make his appearance, when summoned to do homage for the lands he held in France, his majesty was obliged to seize them until he had done his duty; but, instead of doing it, he had declared war against him, and had renounced the fealty and homage which he owed him for those lands. And as to the king of the Romans, that he had offered that prince to refer himself as to the differences between them to four umpires: that he had not taken the county of Burgundy, till after that king had declared war, and bid him public defiance. In fine, the kings, his predecessors, had been very liberal to the clergy, who could not, without ingratitude, refuse to grant him such aids, to the end he might be in a condition to oppose his enemies."

"The king was not the only one that opposed this undertaking of the pope. The Archbishop of Rheims, and the other bishops of his province, sent him a letter, wherein they humbly represented to him that the king, the princes, barons, and other lords of the kingdom, finding his decree burdensome and prejudicial to their rights, had resolved to summon all the French, chiefly such as owed fealty to the king, of whom almost all the prelates of the kingdom had taken the oath of fidelity to preserve and defend the rights and honour of his majesty and his kingdom: that they could not live in quiet, if they were not protected by the king: that if the clergy did not grant the king what he demanded, the Church of France, which hitherto had enjoyed peace and liberty, would be in danger of falling into trouble, and be tossed with a tempest which might occasion its ruin. Wherefore they beseech his holiness to find out a way to appease this disturbance, and to maintain peace between Church and State: that they therewith had sent to him two bishops to set forth, more particularly by word of mouth, the danger to which the Gallican Church is like to be exposed."

"In the meantime, the pope sent two nuncios to France,

namely, Berardus, bishop of Albania, and Simon, bishop of Praeneste, to whom he gave order to levy the money in that kingdom for the Holy See, to transmit it to Italy, and declare the king and his officers excommunicated if they opposed them in it. He likewise sent by them a bull, by which he continued the truce between the king of France, the king of England, and the king of the Romans, for the space of two years longer, under the pain of excommunication to him that should break it. These two nuncios being desirous to present this bull to the king, he, before he had read it, protested that the temporal government of his kingdom belonged to him only, that he owned no person above him in it, neither would he submit himself therein to any man whatever, and that his resolution was to maintain all his rights and defend them against all men : that he meant not to be bound by the bull which mentioned the continuance of the truce, but as to what related to his soul and spiritual matters, he was ready to submit to the advice and command of the Holy See, as far as he ought and was obliged."

Boniface wrote a letter, dated June 27th, 1299, to Edward I. of England, asserting that Scotland had belonged, from ancient times, and did still belong, in full right, to the Roman See ; and assigned various reasons to prove his assertion. Edward, who was unwilling to give offence to Boniface, whose friendship at the time was very necessary for him, replied that, in a matter which concerned the rights of his crown, it was his duty to consult his other counsellors ; that in a short time he would assemble his parliament, and, with its advice, would return a satisfactory answer to the pontiff.

Lingard, in his history of Edward's reign, writes :—" To answer the letter of Boniface, a parliament was summoned to meet at Lincoln. The universities were ordered to depute, six civilians, the monasteries to furnish every document in their possession, which could bear upon the question. After some debate, a reply was framed, which was signed and sealed by a hundred and four earls and barons in the name of the commonalty of England, and which deserves to be transcribed, as it shows how accurately our ancestors could distinguish between the spiritual and temporal authority of the pontiff. After expressing their astonishment

at the tenor of the papal rescript, and asserting that Scotland never belonged in temporals to the See of Rome, they thus notice the authority which the pope had arrogated to himself of deciding the controversy by judicial process: 'By a custom at all times inviolably observed, a privilege arising from the pre-eminence of the regal dignity, the Kings of England have never pleaded or been bound to plead, respecting their rights in the kingdom of Scotland, or any other their temporal rights, before any judge, ecclesiastical or secular. It is, therefore, and by the grace of God shall always be our common and unanimous resolve, that with respect to the rights of his kingdom of Scotland, or other his temporal rights, our aforesaid lord the king shall not plead before you, nor submit in any manner to your judgment, nor suffer his right to be brought into question by any inquiry, nor send agents or procurators for that purpose to your court. For such proceedings would be to the manifest disherison of the rights of the Crown of England and the royal dignity, the evident subversion of the state of the kingdom, and the prejudice of the liberties, customs, and laws, which we have inherited from our fathers, to the observance and defence of which we are bound by our oaths, and which we will maintain to the best of our power, and by the assistance of God will defend with all our might. Neither do we nor will we permit, as we neither can nor ought, our aforesaid lord the king to do, or attempt to do, even if he wished it, any of the things aforesaid, things which were never heard of or claimed before, and which are so prejudicial to this realm.'"

SECTION VIII.

Archbishop Carew—Pope's temporal power never acknowledged by the Irish—Letter of Irish chieftains to John XXII.—Bull of Adrian IV.—Dr. Lanigan on this bull—Pope John interferes for the Irish.

WITH reference to the temporal power of the popes over Ireland, Archbishop Carew says, in his ecclesiastical history of this country:—"Remote as the clergy and people of Ireland were from the contests which in those times had so often occurred between popes and kings on the limits of their respective autho-

rity, they notwithstanding appear to have been always deeply impressed with the conviction that to the Roman pontiff obedience in spiritual matters only was due. The pretensions put forward by some of the popes to temporal dominion over them, the Irish people sometimes indeed passed by with becoming silence. But no document can be adduced to show that they ever recognised in the Roman pontiff the right to exercise any temporal dominion over them. During the pontificate of Gregory VII., that pope, in a letter which he addressed to Turlogh, who then swayed the Irish sceptre, advanced the same pretensions to temporal power which in his intercourse with other sovereigns he so frequently insisted upon. Yet neither on this occasion, nor on any other, do we find any tribute remitted to Rome, or any act performed which would imply that the sovereign of Ireland regarded his temporal authority as dependent on that of the Roman pontiff. On the contrary, even after many years had elapsed since the invaders had first landed in Ireland, the Irish people addressed a letter to a successor of Pope Gregory, in which they openly asserted the entire temporal independence of their sovereign, and denounced the proceedings of Adrian with regard to Ireland as a flagrant violation of order and justice."

The letter referred to was addressed to John XXII., who, on the complaint of the English Government, that the Irish clergy, after Robert Bruce landed with a numerous army in Ulster, had exhorted the natives to support his cause, commissioned the archbishops of Dublin and Cashel to admonish those who fomented the rebellion, and to excommunicate all who should persist in their disobedience. This commission created a deep sensation among the septs. A justification of their conduct was signed by O'Nial and the majority of the chieftains, and the memorial was transmitted to the cardinals Joscelin and Fieschi, legates in Scotland, to be forwarded through them to the pontiff. This important instrument, which is found at full length in the original Latin in Mac-Geoghan's history, begins by stating that during forty centuries Ireland had been governed by its own monarchs of the race of Milesius, till the year 1170, when Adrian IV., an Englishman, conferred, against all manner of right, the sovereignty of the island on Henry II., the murderer of St. Thomas, whom, for

that very crime, he ought rather to have deprived of his own crown; that, since that period, perpetual war had raged between the Irish and English, to the destruction of at least 50,000 individuals on each side; and that the latter had gradually established their dominion over the fairest portion of the island, while the former were still compelled to fight for the bogs and mountains, the only possessions which remained to them in their native land. After this introduction, it argues that the original grant is become void, because none of the conditions on which it was made have been fulfilled. Henry had promised for himself and his successors to protect the Church, and yet they had despoiled it of one-half of its possessions to establish good laws, and they had enacted others repugnant to every notion of justice, to extirpate the vices of the natives, and they had introduced among them a race of men more wicked than existed in any other country upon earth: men whose rapacity was insatiable, who employed indifferently force or treachery to effect their purposes, and who publicly taught that the murder of an Irishman was not a crime. It was to free themselves from the oppression of these tyrants that they had taken up arms. They were not rebels to the King of England, for they had never sworn fealty to him; they were freemen, waging mortal war against their foes; and for their own protection they had chosen Edward de Bruce, Earl of Carrick, for their sovereign. They concluded with expressing a hope that the pontiff would approve of their conduct, and would forbid the King of England and his subjects to molest them for the future. The laws of which they chiefly complained in this memorial are:—I. That though the king's courts were open to every man who brought an action against an Irishman, yet, if a native were the plaintiff, the very fact of his birth was allowed to be an effectual bar to his claim. II. That if an Irishman were murdered, whatever was his rank in the Church or State, no court would undertake to punish the murderer. III. That no widow, if she were a native, was admitted to the claim of dower. And IV. That the last wills of the natives were declared void, and their property disposed of according to the will of their lords.

With reference to the occurrences of their own time, and with which they must have been fully acquainted, we have no reason

to suppose the Irish chieftains misstated their case; but, if we excuse the 4,000 years attributed to the succession of their kings, we must think it at least singular that they were not aware of the anachronism in making Adrian live after the murder of the archbishop, though he died twelve years before it, and sent his famous bull to Henry by John of Salisbury, three years before his death.

Of this bull, the learned Dr. Lanigan writes:—"Adrian's bull is of so unwarrantable and unjustifiable a nature, that some writers could not bring themselves to believe that he issued it, and have endeavoured to prove it a forgery; but their efforts were of no avail, and never did there exist a more real or authentic document." Lanigan's account of how this bull was obtained from Adrian agrees with that given by historians generally, whether of England or Ireland. He writes:—"Henry II., who became King of England about the same time that Adrian was placed in the chair of St. Peter, on being informed of his promotion, wrote to him a complimentary letter of congratulation, and having thus opened the way for obtaining favours, applied to him in the year 1155, by means of John of Salisbury, then chaplain to Theobald, Archbishop of Canterbury, for a really important one. John, addressing the pope in the king's name, asked him for permission for his master to take possession of Ireland, for the purpose of extending the boundaries of the Church, of announcing to unlearned and rude people the truth of the Christian faith, and extirpating the weeds of vices from the field of the Lord; and the condescending pope, with great cheerfulness and alacrity, took upon himself to make over to Henry all Ireland, and got a letter or bull drawn up to that effect. He founds his right for making this grant on the notable principle that Ireland and all the islands which have received the Christian faith, undoubtedly belong to St. Peter and the holy Roman Church. He requires of Henry to preserve the rights of the churches inviolate, and that, as he had promised to do, he would take care that a *denarius* should be annually paid from every house to St. Peter. He sent to him, by John of Salisbury, a gold ring, adorned with a valuable emerald, as a token of investiture of his right to govern Ireland, which ring, it was ordered, should be kept in the public archives. Adrian, when putting forward his right to make the grant, meant

probably to give Henry a hint that, also his Kingdom of England, as being in an island, belonged to the Holy See; and we find that in the year 1173, Henry declared himself a vassal of Pope Alexander III. This nonsense of the pope's being the head owner of all Christian islands, had been partially announced to the world in a bull of Urban II., in the year 1091, in which, on disposing of the Island of Corsica, he said that the Emperor Constantine had given the islands to St. Peter and his vicars. But Constantine could not give what did not belong to him, and accordingly, as Keating argues, could not have transferred the sovereignty of Ireland to any pope. Adrian, without mentioning Constantine, laid down a much larger plea, comprising all islands, whether they had formed parts of the Roman Empire or not. From his not appealing to any other right of his over Ireland, we see how unfounded is the story which some writers relate of the Irish nobility having conferred the sovereignty of all their country on Urban II., in the year 1092. Neither in any of the Irish annals, nor in the ecclesiastical documents of those times, whether Roman or Irish, is there a trace to be found of a transfer of Ireland to Urban II., or to any pope of that or a preceding period, by either Irish kings or Irish nobility, although the sly Italian, Polydore Virgil, who has been followed by two Englishmen, Campion and Sanders, and also by some Irish writers, has told some big lies on this subject. But what ought to set the matter at rest is, that if the popes enjoyed the paramount dominion of Ireland, Adrian would undoubtedly have alleged it as the foundation of his title to the granting of Ireland to Henry, an argument which, if it could be adduced, would have been infinitely preferable to that of the ownership of islands in general."

The memorial of the Irish chieftains made a deep impression on the mind of Pope John, who both wrote to the king, and commissioned his legates to speak to him in favour of the Irish. Edward attempted to justify himself by declaring that, if they had been oppressed, it was without his knowledge, and contrary to his intention; and promised that he would take them under his protection, and make it his care that they should be treated with lenity and justice.

SECTION IX.

Dr. Lingard—Spiritual and temporal courts—Demands of the popes—Peter-pence—Grant of King John—First fruits—Provision of bishoprics—Of inferior benefices—Papal officers in England.

THE disputes regarding papal provisions which had remained unsettled in the reign of Henry III. of England, were finally adjusted by Act of Parliament in the reign of Edward III. In his history of that reign, Lingard writes :—"In this place I may direct the attention of the reader to the state of the English Church during the fourteenth century.

"I. The rivalry which has already been mentioned, still existed between the civil and ecclesiastical judicatures, and each continued to accuse the encroachments of the other. That their mutual complaints and recriminations were not unfounded, will appear probable, if we reflect that the limits of their authority had not been accurately defined, and that many causes had different bearings, under one of which it might belong to the cognisance of the spiritual, and under another, to that of the civil judge. The latter, however, possessed an advantage which was refused to his rival, in the power of issuing prohibitions, by which he stayed the proceedings in the spiritual court, and called the parties to plead before himself. If we may believe the celebrated Grosseteste, these prohibitions, by the ingenuity of the lawyers, and the presumption of the judges, had been multiplied beyond all reasonable bounds: the cognisance of all kinds of causes was gradually withdrawn from the ecclesiastical tribunals, and the bishops and their officers were perpetually interrupted and harassed in the exercise of their undoubted jurisdiction. It was natural that the sovereign should uphold the pretensions of his own courts; but his necessities often forced him to lend an unwilling ear to the complaints of the clergy who, as often as they voted him an aid, were careful, like the commons, to make the grant depend on the redress of their grievances. By this expedient, they extorted a few occasional indulgences. Edward II. allowed the spiritual courts to

determine certain causes in defiance of lay prohibitions, and Edward III. granted that clerks convicted of any other capital crime than treason, should be delivered to their ordinaries to be condemned by them to perpetual imprisonment and penance: that civil courts should be forbidden to inquire into the proceedings of the spiritual courts in causes notoriously within their jurisdiction, and that no prelate should be impleaded before the lay judges without the special command of the sovereign."

II. The popes, as supreme pastors, continued to require pecuniary aids to enable them to conduct the government of the Universal Church, and the people, in proportion as they were oppressed with taxes for the wars against Scotland and France, complained of the moneys which were also raised towards the support of the court of Rome. The papal revenues in England arose from four principal sources:—1. The Peter-pence had been established under the Anglo-Saxon princes, a tax of one penny on every householder whose chattels were valued at thirty pence; and it had been settled on the popes as a voluntary donation towards the relief of the English pilgrims. It appears to have been fixed by custom at a certain, instead of an uncertain, sum, which still remained the same after the lapse of five centuries, notwithstanding the great increase of the nation in wealth, and the number of inhabitants. The pontiffs now wished it to be collected in the manner of the original grant; but the demand was strenuously and effectually resisted, and the aggregate sum paid by the prelates to the papal collector amounted to no more than two hundred pounds."

"2. The reader will recollect the grant of the census, as it was called, of one thousand marks, which had been made by King John as an ackowledgment that he held the crown in fee of the soverign pontiff. The amount was not very considerable in itself, but the payment conveyed with it the idea of vassalage, and the pontiffs were annually compelled to remind the successors of John of the obligation. If their friendship chanced to be necessary to the king, the admonition was received with respect and obedience; if it were not, some excuse was invented, and the payment was deferred. At the death of Edward I., no less than seventeen thousand marks had become due; by his son every

demand was faithfully discharged, and the third Edward imitated the conduct of his father till he engaged in the chimerical project of wresting the crown of France from its possessor. The popes waited with impatience for the return of peace, and in 1366, Urban V. demanded the arrears of the last thirty-three years, with a hint that if the claim were resisted, he should enter a suit in his own court for the recovery of the penalties contained in the original grant. When the parliament met, the king assembled the lords spiritual and temporal in the White Chamber at Westminister, communicated to them the papal demand, and solicited their advice. The prelates requested a day to consult in private, and returning the next morning, answered that neither John nor any other person could subject the kingdom to another power without the consent of the nation. The temporal peers concurred in their opinion; it was communicated to the commons, who willingly expressed their assent, and a public instrument was drawn up in the name of the king, lords, and commons, repeating the answer of the bishops, and adding that the act of John was done without the consent of the realm, and against the tenor of the oath which he had taken at his coronation. It was then resolved by the lords and commons (the king and prelates had withdrawn) that if the pope attempted to enforce his claim by process of law, or by any other means, they would resist and stand against him to the utmost of their power. This solemn determination set the question of the census at rest for ever.

"3. The origin of the payment of *first fruits* has been referred to the presents which in the more early ages every bishop, when he was consecrated, and every priest at his ordination, was expected to make to the officiating prelates and their attendants. By Gregory the Great it was abolished; after his death it sprang up again, and as the amount of the gift was regulated by the value of the benefice, it insensibly grew to be rated at one year's income. In many dioceses it was exacted from all the inferior clergy; in the court of Rome at every promotion, whence as many prelates obtained their sees by papal 'provisions,' the first fruits of most bishoprics were gradually absorbed by the papal treasury. In England, Pandulf, Bishop of Norwich, is said to have been the first who exacted this tax from his clergy, on the

plea of the incumbrances with which he found himself burdened. In 1246, Boniface, Archbishop of Canterbury, obtained from Innocent IV. the first year's income of all benefices in his province, which might become vacant during the six following years; and other prelates repeatedly applied for similar grants to succeeding pontiffs. At length Clement V., alleging in excuse the urgent necessities of the Roman Church, reserved for his own use all the first fruits that might arise in the course of two years, and some time after his successor, John XXII., imitated his example, but extended the term to three years."

"4. In this place it may be proper to notice the manner in which the provisions to bishoprics devolved upon the Holy See. After the concession of *Magna Charta*, it became the custom that, on the vacancy of any see, the chapter should solicit *a congé d'elire* to choose by the majority of suffrages, or by way of compromise, the future bishop, and to present him to the king for the royal approbation. That approbation was signified to the metropolitan, if the church were subject to him, or to the pope if it were a metropolitical see. When the election had been confirmed by the pope or metropolitan, the confirmation was notified to the king, who received the homage of the new bishop, and gave him the temporalities of his bishopric. In the course of this complex proceeding, difficulties frequently occurred. To secure proper persons for the episcopal office, and to prevent undue influence in the choice, so many minute and rigorous regulations had been introduced by the canons, that it was easy for the pope, or the metropolitan, if he were so inclined, to discover sufficient cause for the rejection of almost any individual. The metropolitan indeed, as from him there lay an appeal to the pope, was careful to exercise his authority with moderation; but the judgment of the pope was definitive, and it was usual for our monarchs to exert all their influence at the court of Rome to free themselves from an obnoxious, and to exalt a favourite prelate. By degrees the popes drew to themselves the right of institution, which had formerly belonged to the metropolitans, and by means of 'provisions' appointed to almost every bishopric. Nor did the monarch view the alteration with displeasure. He generally found the pontiff more tractable than the chapters,

and if he occasionally acquiesced in the papal choice, might in return expect that equal attention would be paid to his own recommendation. He was probably a gainer by the change."

"On such occasions it had been customary for the pope to send a copy of the 'provision' to the king, with a request that he would grant the temporalities of the see to the new bishop. It happened that in the first year of Edward I., while the king was on his way from the Holy Land, the pope appointed Robert de Kilwardby to the archiepiscopal see of Canterbury. The council admitted the new primate, but with a protestation that the provision was contrary to the rights of the crown, and a declaration that for the future the king would not hold himself obliged to grant the temporalities to prelates so provided. Six years later Robert accepted the dignity of cardinal, and resigned his archbishopric. As the resignation was made in the papal court, the pontiff, according to custom, appointed his successor; but, probably on account of the protestation of the council, omitted in his letter to the king the usual request concerning the temporalities. The omission created a demur, but at length, on the supposition that it had been an error of the clerk, it was overlooked. Twenty-three years elapsed when William de Gainsborough was preferred to the bishopric of Worcester, and in the bull of provision, the pope was made to intrust to his care the temporalities, as well as the spiritualities of that see. The addition did not escape the observation of the royal officers; it was declared to be an invasion of the right of the king, to whom alone, and not to the pope, belonged the power of granting the temporalities, and the bishop, for having received the bull, was condemned to pay a fine of one thousand marks. To evade, however, the difficulty without having recourse to negotiation with the pontiff, the following expedient was adopted. Gainsborough, by a formal instrument, renounced every clause in the bull, which might be prejudicial to the rights of the crown, and acknowledged that he could receive the temporalities of the bishopric from no one but the king; and Edward, satisfied with this renunciation, delivered the temporalities to him, and allowed him to do homage. Still, however, as the court of Rome persisted in the use of the same form, the crown continued to require from each bishop a similar renuncia-

tion, which was regularly made from that time till 'provisions' were finally abolished in the reign of Henry VIII."

"But the 'provisions' to bishoprics did not create such general dissatisfaction as those to inferior benefices. All the complaints which had been made in the reign of Henry III. were repeated; that the rights of the patrons had been invaded; that livings were given to clergymen who did not reside within the kingdom, and were even ignorant of the language; and that the wealth of the English Church was occasionally employed in supporting those who advocated the cause of the enemies of England. The popes condescended to reply, that they had used their right with moderation; that, in general, they appointed none to benefices who were not the king's subjects, and that if they ever broke that rule, it was in favour of the cardinals, who were employed to support his interests in the Roman court. The real fact was, that the popes, particularly after they had fixed their residence on this side of the Alps, were reduced to such indigence, that they could not maintain their ministers without external resources; and our monarchs, though they might be occasionally offended, were not sincere in their hostility to a practice, the utility of which they experienced themselves. By soliciting 'provisions' for their servants, they exonerated themselves from the obligation of remunerating them out of the revenues of the crown, and scarcely a year was suffered to pass in which they did not obtain several grants of this description in favour of their own chaplains."

"On these different accounts the popes had generally several officers in England, employed more in a temporal than spiritual capacity. It was their duty to collect and transmit the moneys belonging to the apostolic chamber, to execute the letters of provision, to serve citations, and to notify the judgments given in the papal courts in cases of appeal, or on beneficiary matters. To the crown they were always objects of jealousy. They were most strictly forbidden to attempt anything derogatory from the rights of the king; their persons were occasionally searched every suspicious instrument was seized and laid before the council, and on the slightest provocation they were prosecuted, imprisoned, or banished. The papal procurator, before he could enter on the execution of his office, found it necessary to swear

that he would be loyal to the king and keep his counsel; that he would execute no orders which might be prejudicial to the rights of the crown, or of the subject; that he would publish no letters which he might receive from the pope, or any other person, till he had shown them to the council; and that he would not send money out of the kingdom without the royal licence. But no prince seems to have carried this jealousy farther than Edward II. When John XXII. had sent the Bishops of Vienne and Orange to negotiate are conciliation between him and his consort Isabella, though they had previously informed him that they brought with them no letters of any description which could affect his interests or those of any of his subjects, the constable of Dover received orders to address them on their landing in the following terms:— 'My lords, it is my duty to charge every stranger who enters this land, to inform our lord the king of the cause of his coming, but this is unnecessary, as I am assured you have already done so. It is, however, my duty also to forbid you, in the name of our lord the king, to bring with you, or to do, anything which may be prejudicial to the king, his land, or any of his subjects, under the penalties which thereto belong, or to receive or execute hereafter any order that may arrive and prove to be prejudicial to him, his land, or his subjects, under the same penalties.' After this uncourteous speech, he was to treat them with every attention, and inform the king of their arrival."

SECTION X.

Statutes against provisions—Dr. Lingard's remarks on the controversy—Urban VI. elected pope—Great schism in the papacy—Termination of the dispute about provisions—Richard II. writes to the pope—The controversy ends to the advantage of the crown.

"In the last year of Edward I. the different claims of the pontiffs became the subject of parliamentary investigation. An unanimous resolution was taken by the king, lords, and commons to put an end to all causes of complaint; and Testa, the papal procurator, was severely reprimanded before the two Houses of

Parliament, forbidden to repeat his former exactions, and strictly enjoined to keep for the king's use the moneys which he had levied. At the same time, writs were directed to the sheriffs to arrest all persons who had been employed by him, and to bring them before the king on a certain day, to answer the complaints of the aggrieved. It is impossible to acquit Edward of duplicity on this occasion. The Cardinal Bishop of Sabina visited him during the sitting of parliament; as soon as it was dissolved, the king took Testa and his associates under the royal protection, and granted them permission to levy the first fruits, to perform all acts done by their predecessors, and to transmit the moneys which they had collected, to the pontiff in bills of exchange. The cardinal soon afterwards departed, and the papal officers were immediately opposed by the officers of the crown. They exhibited the king's letters, but were told that these letters included the words 'as far as is in our power:' now, it was not in the king's power to surrender the rights of the crown; and of consequence, the protection which they had obtained was of no force. From this decision they appealed to Edward himself, who replied by an order for the observance of the parliamentary prohibitions. His death, which happened a few days later, left the question in this unsettled state."

"So it remained during the reign of Edward II., and the first part of that of his successor. But in the year 1343, the Act of Edward I. was read in parliament, and an additional Act was passed, forbidding, under the pain of forfeiture, any person to bring into the realm, or receive, or execute provisions, reservations, or letters of any other description, which should be contrary to the rights of the king, or of his subjects, ordering all such letters to be seized wherever they might be found; and commanding all provisors or others, who, in consequence of such letters, should bring actions against the patrons of benefices, or their presentees, to be brought before the king to receive that judgment which he should award. In the next parliament, it was determined that the penalty to be incurred by offenders against the last Act should be outlawry, perpetual imprisonment, or abjuration of the realm. In 1351, it was provided by a new statute, that ecclesiastical elections should be free, and the rights of patrons

should be preserved: that if the pope by provision or reservation disturbed such rights and elections, the collation should fall to the king in all cases where he or an ecclesiastical person was the patron, or the lay patron neglected to exercise his right; and that if the king's presentee were afterwards molested by the provisor, then the said provisor, his procurators, executors, and notaries should be imprisoned, and fined at the mercy of the king, and make full compensation to the person aggrieved. With this statute the clergy were not content. In the place of one invasion of right, it substituted another. Instead of protecting the freedom of canonical election against the interference of the pope, it abolished such freedom in favour of the king, on the groundless plea that the nomination had originally belonged to the crown; and that when the conditions on which free elections had been conceded were no longer observed, the crown ought to be replaced in its original situation."

"Two years later, an addition was made to the provisions of this statute. It always happened that the presentee applied for protection to the royal, the provisor to the papal courts; and that the latter, by spiritual censures, endeavoured to prevent the execution of the judgments given in the former. It was therefore enacted that, whosoever should draw any of the king's subjects to plead in a foreign court on matters the cognisance of which belonged to the king's courts, or should, by such means, seek to defeat the judgments given in the king's courts, should be allowed two months to answer for his contempt; and, at the expiration of that term, should, with his procurators, attorneys, executors, notaries and maintainers, be put out of the king's protection; his lands, goods, and chattels, forfeited to the king, and his body, if found, imprisoned, till it were ransomed at the king's will."

"In 1364, all the former statutes on this subject were confirmed, and the penalties of the last were extended to all persons who had procured, or should procure, personal citations to plead in a foreign court; or had obtained, or should obtain, in the said court, any ecclesiastical benefices within the realm: and in the same punishment were involved all their maintainers, concealers, abettors, aiders, fautors, and sureties. To this new statute, the dukes, earls, barons, and commons agreed, 'if it should so please the

king;' but the prelates added to their consent a protest, 'that they did not mean to assent to anything which might be, or which might turn to the prejudice of their dignity or estate.'"

"In 1373, the commons again addressed the king, complaining of the papal provisions, and of the demand of the first fruits; but Edward replied, that his envoys were treating on these subjects with the pontiff, and that he could not consent to any innovation till he should know the result. It was agreed by the two powers to suspend all proceedings in their respective courts, and to send ambassadors to Bruges, where the matters in dispute might be amicably adjusted, and at the same time a peace be negotiated with France, under the papal mediation. The consequence was, that Edward remitted all the penalties incurred by the statutes against provisors, and Gregory IX. revoked every reservation which had been made by himself or his predecessors, but had not yet taken effect; confirmed all the king's presentees in the actual possession of their benefices, without requiring from them the payment of the first fruits; imposed silence on all the provisors (they were six in number) who had causes pending in his court; and empowered the bishops to visit the livings which had been given to cardinals, and to reserve, in defiance of prohibition or appeal, so much of the income as they thought necessary, for the repairs of the church and buildings. The king seems to have been satisfied; but the commons, the next year, presented to him two more petitions, repeating and exaggerating their former complaints. They were coldly received. He had, he returned, already applied a sufficient remedy, and was still in treaty with the pontiff respecting the matters contained in their long and tedious addresses."

"From the preceding detail, the reader will have collected an accurate notion of this controversy. Of the primacy of the pontiff, or of his spiritual jurisdiction, there was no question; both these were repeatedly acknowledged by the commons in their petitions, and by the king in his letters. But it was contended that the pope was surrounded by subtle and rapacious counsellors, who abused for their own emolument, the confidence of their master: that by their advice he had 'accroached' to himself a temporal authority to which, as it invaded the rights of

others, he could have no claim; and that when repeated remonstrances had failed, it was lawful to employ the resources of the civil power in the just defence of civil rights. It was in vain that the pontiff, on account of his pre-eminent dignity in the Church, claimed a right to dispose of its revenues for its advantage: the new statutes were put in execution, and the same legislators who received with deference the doctrinal decisions, and disciplinary regulations of their chief pastor, visited with the severest penalties of the law, the clergymen who procured from him the provision to a benefice in opposition to the rights of the patron. This is an important occurrence in our history, as it proves beyond contradiction that the distinction between the spiritual and temporal power of the pope, which is maintained by the Catholics of the present day, was a principle fully recognised and asserted by their Catholic ancestors many centuries ago."

"In the obstinacy with which the court of Rome urged the exercise of these obnoxious claims, it is difficult to discover any traces of that political wisdom for which it has been celebrated. Its conduct tended to loosen the ties which bound the people to the head of their Church, to nourish a spirit of opposition to his authority, and to create a willingness to listen to the declamations and adopt the opinions of religious innovators. To disputes respecting the questionable limits of the spiritual and temporal jurisdictions, succeeded a more important controversy on points of doctrine, and before the close of Edward's reign a new teacher appeared, who boldly rejected many of the tenets which his countrymen had hitherto revered as sacred; whose disciples for more than a century maintained a doubtful contest with the civil and ecclesiastical authorities, and whose principles, though apparently eradicated, continued to vegetate in secret, till the important era of the Reformation."

Notwithstanding the numerous Acts and declarations of parliament against papal provisions and reservations in the reign of Edward III. and his predecessors, the disputes with the court of Rome only terminated at the end of the century under the reign of Richard II., by a negotiation of the papal with the English court, and during the time of the great schism which broke out in the year 1378, and only terminated with the Council of Con-

stance which assembled in 1414, and after having deposed the three antipopes, elected Martin V. to fill the chair of St. Peter. Gregory XI., about seventy years after his predecessors had fixed their residence in France, returned against the unanimous advice of the cardinals to Rome. At his death, three-fourths of the Sacred College consisted of Frenchmen, and the Romans, jealous of their preponderance, surrounded the conclave, and with the most alarming menances, demanded an Italian pope. To appease them the Archbishop of Barri was chosen, and he assumed the name of Urban VI. For some months he exercised the pontifical authority without opposition, but his severity alienated his friends and irritated his enemies. The French cardinals seceded to Anagni, and under pretence that the former election had been made through the influence of terror, another pontiff was chosen, the Cardinal of Geneva, who called himself Clement VII. Clement was immediately acknowledged by France, and the allies of France, the kings of Scotland, Spain, Sicily, and Cyprus. England, and the rest of Europe, continued in their obedience to Urban. From Rome and Avignon, their respective residences, the two pontiffs launched their anathemas, and preached up crusades against each other, and this state of things continued, as I have said, till the meeting of the Council of Constance—the council referred to by Dr. Anglade and other witnesses whose evidence is quoted in this book. My purpose requires no more than this passing allusion to this great scandal, and I therefore pass to the subject of the provisions to benefices.

Lingard, in his reign of Richard II., writes :—" As soon as the King of France had espoused the cause of the cardinal of Geneva against Urban, the claims of the two competitors were canvassed in parliament, and at the suggestion of the primate and the other prelates, it was determined to acknowledge Urban, and to obey him as the rightful head of the Church. The legislature even went further, and by statute confiscated the revenues of the cardinals who rejected Urban, and put out of the king's protection every English subject, who should apply to his adversary as the real pontiff. In return, Urban issued, in favour of the king, a bull, by which the two next vacant prebends in each collegiate church were reserved, and the nomination was transferred from

the bishops and chapters to the crown. But the harmony between the two courts was disturbed by the ambition of Edward Bromfield, the agent at Rome for the Abbey of St. Edmund's, who, on the decease of his abbot, procured by false suggestions that appointment from the pontiff, and returning to England took possession of the abbey in virtue of the papal provision. He was instantly apprehended under the statute of provisors passed in the late reign, and committed to the Tower. This event attracted the notice of the public; complaints were made in parliament of new provisions granted to several cardinals, and by an additional enactment it was ordained, that if any of the king's subjects should, without his licence, given with the advice of the council, farm or administer the benefice of any alien within the realm, or in virtue of such administration should convey money out of the kingdom, he should for the same offence incur all the penalties comprised in the statute of provisors of the 27th of Edward III."

"Bromfield's affair was compromised by his translation to a different benefice. The king granted the necessary licences to the attorneys of the cardinals enjoying preferment in England, and the pope confirmed the concordat of Bruges between Edward III. and Gregory XI.; but though Urban was willing to concede other points, he still refused to surrender the claim which had for centuries been exercised by his predecessors, of presenting to such benefices as became vacant in the court of Rome by the death or the promotion of the incumbents, and the parliament three years afterwards confirmed the former statutes, and as an additional safeguard, extended the penalties of the late Act to all foreigners residing on benefices obtained by provision, whether they held them for themselves or for the profit of others. The king, however, was permitted to dispense with this Act in favour of the cardinal of Naples, and such persons as might render particular services to the crown, an exemption which tended in a great measure to render the statute nugatory, for as the cardinals in possession of English benefices generally died at Rome, the pope instantly conferred their livings on the surviving cardinals, who found no difficulty in obtaining the royal licence; and the other preferments which became vacant in that court, were

frequently at the king's request bestowed on his own chaplains, as the cheapest means by which he could remunerate their services."

"These evasions of the spirit of the law did not escape the observation of those who were enemies to the system of provisions, and in consequenee of their reiterated complaints, it was enacted in the parliament holden in 1390, that all provisions granted before the 29th of January in that year, should be valid; that all granted afterwards should be of no effect; that every person who should accept of a benefice contrary to this statute, should forfeit his lands and chattels, and be banished for life; that whoever should bring or send into England, any papal sentence or excommunication against any person for the execution of this statute, should, besides forfeiture, incur the penalty of life and limb; and that whoever should publish such sentence or excommunication, should, if he were a prelate, lose his temporalities, if of inferior rank, suffer imprisonment and make fine at the king's pleasure."

"But the last clause appeared to bear so hard on the clergy, that the spiritual peers, though they had concurred in all the other statutes against provisions, unanimously protested against this, 'inasmuch as it might tend to restrain the authority of the apostolic see, or to subvert the liberties of the Church.' By the king's order the protestation was read in Parliament, and entered on the rolls."

"Shortly afterwards Richard held a great council, and in his own name, and the names of the principal barons and knights, wrote to the pontiff explaining their grievances, and requesting his holiness to devise some prompt and efficacious remedy for the evil. What answer was returned does not appear. Urban died, and was succeeded by Boniface IX., who declared the statutes enacted by the parliament of no effect; and, among other provisions, granted a prebend in the church of Wells to Cardinal Brancacio, who immediately began a suit in the papal court against William Langbroke, the king's presentee. The controversy was immediately revived: the king's courts decided in favour of Langbroke; but rumours were circulated that if the prelates executed the decrees of such courts, they would be exposed to ecclesiastical penalties. In the next parliament, the commons petitioned the

king to inquire of all estates in what manner they would behave in the two following cases :—1°. If the pope were to issue sentences of excommunication against the bishops for instituting the king's presentees in consequence of the judgment of the king's courts. 2°. If, for the same reason, he should attempt to translate the bishops from their present sees to other sees out of the kingdom. The answer returned by the Commons was, that such proceedings would be subversive of the rights of the Crown, and that they would therefore stand by the king against them to live and die. The reply of the temporal lords was nearly to the same effect. The prelates declared that it was not their intention to deny that the pope could issue sentences of excommunication, and translate bishops, according to the law of the holy Church; but to do so in the cases proposed would be to invade the rights of the Crown, which they were determined to support with all their power. In consequence of these answers, was drawn up the last and most comprehensive of the statutes of provisors or præmunire, by which it is provided that if any man pursue or obtain in the court of Rome, or elsewhere, such translations, excommunications, bulls, instruments, or other things against the king's crown and regality, or kingdom, as is aforesaid, or bring them into the realm, or receive, notify, or execute them either within the realm or without, such person or persons, their notaries, procurators, maintainers, abettors, fautors, and counsellors, shall be out of the king's protection; their goods and chattels, lands and tenements shall be forfeited to the king, and their persons attached, wherever they may be found."

"There is reason to believe, that when this bill was discussed in the House of Lords, it met with considerable opposition. It was at least withdrawn by the Commons, who agreed that the king should refer the whole matter to his council, and have full power to make such alterations and ordinances as he might think fit, and to carry them, when made, into execution. Though they expressed a hope that, when it was thus amended, they should assent to it at the next parliament, it does not appear to have been ever laid before them again; but to have been occasionally acted upon and occasionally modified, as suited the royal convenience. The pope was still careful to bestow the English

benefices of the deceased cardinals on their survivors; but frequently the king was also careful to present to them himself. On each of these occasions the old contest was fought over again: and in every case the provisor was compelled to relinquish his pretensions; and the pope, that he might save his own claim, conferred the benefice on the king's presentee. Convinced by experience of their inability to continue the contest with honour to themselves, the pontiffs negotiated with the court, and assented to such modifications of the statute as the king thought it prudent to make. Provisions in favour of aliens, unless they were cardinals, were entirely abolished, and those in favour of natives were generally granted to persons who had previously obtained the royal licence. Thus ended this long and angry controversy entirely to the advantage of the Crown. For though the right of election remained to the clergy, it was merely nominal, as they dared not reject the person recommended by the king: and though the pope still pretended to confer the great dignities of the Church by provision, the provisor was invariably the person who had been nominated by the Crown."

SECTION XI.

Grounds of the deposing power—Letter of Herman of Metz to Gregory VII.—Gregory's reply—Council of Lateran—Punishment of heresy—Inquisition—Dr. Doyle on councils in the middle ages—Bull *unam sanctam*.

THE deposing power claimed by popes and first actually exercised by Gregory VII. at the close of the eleventh century, when he set aside the Emperor Henry IV., and declared him to have forfeited the Kingdoms of Germany and Italy, and his subjects absolved from their oath of allegiance, was based by Gregory on several grounds. Herman, Bishop of Metz, who kept neuter in the affair, wrote to Gregory to ask him whether the bishops who communicated with Henry were excommunicated, and at the same time informed him that there were some persons who maintained that a king could not be excommunicated. Gregory answered by letter, dated Tivoli, August 25th, 1076, that there was no question

to be made but that all those who communicated with King Henry (if it be lawful to call him king), were excommunicated. And that with respect to those who say that a king ought not to be excommunicated, there was no need to return them an answer since their opinion was so ridiculous. However, he did not stick to prove that kings might be excommunicated, from the example of Pope Zachary, by whom he says the King of France had been deposed, and his subjects absolved from their oath of allegiance to him, and from several privileges which are among the letters of St. Gregory, wherein he declares the kings and princes excommunicated and deposed of their dignity, who shall infringe them. He subjoins the instance of Theodosius, and lastly, he alleges as a convincing argument, that when Jesus Christ gave St. Peter the power of feeding his sheep, and the power of binding and loosing, he excepted no person from it. In later times, and particularly since the time of Innocent III. and the Fourth General Council of Lateran, in the year 1215, the deposing power was supposed to rest chiefly on the principle of the third canon of that council which enacted as penalty for heresy the forfeiture of lands to the liege lord, and if the lords did not extirpate heretics, the absolution of their vassals from their oath of fealty. I set forth the whole canon as found in Du Pin's history. "In the third canon they excommunicated and anathematized all the heretics who oppose the Catholic and orthodox faith as before explained. And it is therein ordered that the heretics shall be delivered up after their condemnation to the secular powers, or to their officers, to be punished according to their demerits, the clerks being first degraded: that their goods shall be confiscated, if they be laics, and if clerics, then they shall be applied to the use of the Church: that those who lie under violent suspicions of heresy, shall be likewise anathematized, if they do not give proofs of their innocence; and they shall be avoided till they have given satisfaction, and if they be in a state of excommunication during a year, they shall be condemned as heretics. That the lords shall be admonished and obliged by ecclesiastical censures to take an oath that they will extirpate heretics and excommunicated persons who shall be within their territories: that if they neglect to do it after admonition, they shall be excommunicated by the metropolitan

and bishops of the province; and that in case they persist a year without making satisfaction, the sovereign pontiff shall be advertised thereof, that so he may declare their vassals absolved from their oath of fealty, and bestow their lands upon such Catholics as will seize upon them, who shall be the lawful possessors of them, by extirpating heretics, and preserving the purity of the faith in them, but without prejudice to the right of the superior lord, provided he offer no obstruction or hindrance to the putting this ordinance in execution. The same indulgences are granted to those Catholics as shall undertake to extirpate heretics by force of arms as are granted to those who go to the holy land. They excommunicated those who entertained, protected, or supported heretics, and declare that those who shall be excommunicated on that account, if they do not make satisfaction within a year, shall be declared infamous, and divested of all offices as well as of votes in the elections; that they shall not be admitted as evidences; that they shall be deprived of the faculty of making a will, or succeeding to an estate; and lastly, that they may not perform the functions of any office. It is likewise further ordained that those who will not avoid the company of such persons as are by the Church denounced excommunicate, shall be excommunicated themselves till they have given satisfaction. But, above all, ecclesiastics are forbidden to administer the sacraments to them, to give them Christian burial, to receive their alms or oblations, upon pain of being suspended from the functions of their orders, wherein they may not be re-established without a special indult from the pope. The same punishment is likewise inflicted on the regulars; and besides this, that they be not any longer tolerated in the diocese wherein they shall have committed such a deed. All those are excommunicated who shall dare to preach without having received a licence from the Holy See or a Catholic bishop. Lastly, the archbishops and bishops are obliged to visit in person or by their archdeacons, or by other persons, once or twice a-year, the dioceses where it is reported that there are any heretics, and to put a certain number of inhabitants upon their oath to discover to the bishop such heretics as may be detected. They are likewise enjoined to cause the accused to appear, and to punish them if they do not clear themselves, or if they relapse after they have

been cleared. Finally, the bishops are threatened to be deposed if they neglect to purge their dioceses from heretics.

In the Sextus Decretalium of Boniface VIII., who lived at the end of this century, many other enactments like this are found; and for several centuries the Inquisition, first established in the South of France by Innocent III. in the beginning of this thirteenth century, enforced these enactments in various parts of Europe with more or less severity and cruelty, as the inquisitors and the officers employed in carrying their sentences into execution were more or less inhuman. Every one believed that heresy was a crime that ought to be punished by pains and penalties; and that if heretics could not be made to renounce their errors, and desist from publishing and propagating them, they were justly punished with the loss of their property, and even their lives. Every one, again, believed that it was the duty of the secular power to aid the Church in carrying out its judgments. In fact, the great Council of Lateran, in its laws against heresy, considered it was legislating for the temporal as well as the spiritual power, as the temporal rulers of Christendom at the time were almost all represented in it. On this point Dr. Doyle writes:—"The general councils, with scarcely an exception, have been assembled for the adjudication of some disputes about doctrine, for the purification of the morals of the faithful, and for the reformation or improvement of discipline. They have had not only to define whether certain doctrines were or were not agreeable to the Word of God, which class of decisions alone constitutes articles of faith; but they had a variety of other matters to dispose of, the regulation of discipline, on which the state of public morality mainly depended, always constituting a great portion of their business. During those centuries when the Church and State were almost identified throughout Europe, or, as St. Peter Damian expresses it, when the State was in the Church and the Church in the State, the councils consisted almost as much of lay members as of bishops; and when the latter had disposed of religious controversy, they formed one body with the princes and barons in enacting laws which related as much to civil policy as to ecclesiastical discipline."

Now there was never a general council in which the secular

power was so fully represented as in the Fourth General Council of Lateran, held in Rome in 1215. There were present the ambassadors of the Emperor of Constantinople, of the King of Sicily, Emperor-elect, of the Kings of France, England, Hungary, Jerusalem, Cyprus, Arragon, and other princes. Dr. Doyle's observations, then, upon the third canon of this council are most just. He writes:—"From what I have said at the commencement of this chapter, from the definition of an ecclesiastical law as given from Gratian, it is quite clear that the law of Lateran, which by no means included a definition of faith, if it ever had force in these countries (and it is nearly certain that it had not), has ceased, not by the failure of one or two essential conditions, but by the failure of them all; not by one mode whereby a law ceases, but by almost every mode in which a law is annulled. Such a law in the present age (for we will not judge others, lest we ourselves might be judged) would be immoral, unjust, impossible; it would be opposed to the natural dispositions of the people of this empire; it would be contrary to all the laws, usages, and customs of our country; it would not be suited to the times and circumstances in which we live; in place of being necessary or useful, it would upturn the very foundations of society; and, instead of benefiting the entire community, it would drench our streets and our fields in blood. It has not one condition of those many, without combining all which it could not, even if it ever were a law of our Church, continue to be so. It ceased as to its particular end or object when the Albigenses were subdued; it ceased universally when the remote end for which it was enacted —namely, the support of the feudal system and the maintenance of uniformity in religious faith—became impossible. And yet this is that decree of Lateran upon which we are charged with a divided allegiance, and indirectly with perjury and disaffection!"

It was in the spirit of this unfortunate canon that Boniface VIII. about a century later, in the bull *unam sanctam*, spoke of the two swords—one the spiritual sword, to be employed by the Church, and by the hand of the pontiff; and the other for the Church, and by the hands of kings. He evidently means that when heretics or schismatics were cut off from the Church by the spiritual, it was the duty of the temporal power to use the

material sword of punishment and extermination for the good of the Church. I have already explained how this bull of Boniface can in no way affect us, even though we believe him to have been infallible in his doctrinal utterances *ex-cathedra*, and know that he claimed, as a matter of right, universal temporal dominion; and there is nothing still to prevent us from saying again with the patriot Bishop of Kildare snd Leighlin:—"We have struggled and fought with our fellow-subjects to rescue our country from the secular dominion of the popes, and we love and cherish as dearly as your Lordship the independence we have achieved: we would take the field to-morrow, if necessary, and spill our blood rather than suffer any foreign pope, or prince, or prelate to infringe upon that independence; and yet we are branded as traitors to the laws and liberty which we so much love."

SECTION XII.

Papal depositions in England—Henry VIII. by Paul III.—Elizabeth by Pius V.—Gregory VII. and Pius V., good men, but badly advised—Dr. Doyle's apology for them—Observations on the definition of the pope's infallibility.

ONLY two English monarchs were ever formally deposed by papal bulls—Henry VIII. and his daughter Elizabeth. By a bull dated August 30th, 1535, Paul III., having first enumerated the offences of Henry against the apostolic see, allows him ninety, his fautors and abettors sixty, days to repent, and appear at Rome in person or by attorney; and then, in case of default, pronounces him and them excommunicated, deprives him of his crown, declares *his* children by Anne, and *their* children by their legitimate wives, incapable of inheriting for several generations, interdicts his and their lands and possessions, requires all clerical and monastic bodies to retire out of Henry's territories, absolves his subjects and their tenants from the oaths of allegiance and fidelity, commands them to take up arms against their former sovereign and lords, dissolves all treaties and alliances between Henry and other powers, as far as they may be contradictory to this sentence,

forbids all foreign nations to trade with his dominions, and exhorts them to capture the goods and make prisoners of the persons of all such as still adhere to him in his schism and rebellion. "But," adds Dr. Lingard, "when Paul cast his eyes on the state of Europe, when he reflected that Charles and Francis, the only princes who could attempt to carry the bull into execution, were, from their rivalry of each other, more eager to court the friendship than to risk the enmity of the King of England, he repented of his precipitancy. To publish the bull could only iritate Henry, and bring the papal authority into contempt and derision. It was therefore resolved to suppress it for a time; and this weapon, destined to punish the apostacy of the king, was silently deposited in the papal armoury, to be brought forth on some future opportunity, when it might be wielded with less danger and with greater probability of success."

The circumstances of Elizabeth's deposition are detailed in Lingard's history of her reign in these words :—"When Pius IV. ascended the papal throne, he had sought by letters and messengers to recall Elizabeth to the communion of the Roman Church, and afterwards invited her, like other princes, to send ambassadors to the Council of Trent. The attempt was fruitless, but though her obstinacy might provoke, his prudence taught him to suppress his resentment. To the more fervid zeal of his successor, Pius V., such caution appeared a dereliction of duty. Elizabeth had by her conduct proclaimed herself the determined adversary of the Catholic cause in every part of Europe; she had supported rebels against the Catholic sovereigns in the neighbouring kingdoms; and had, in defiance of justice and decency, thrown into prison the fugitive queen of Scots, the last hope of the British Catholics. The pontiff considered himself bound to seek the deliverance of the captive princess; he represented to the kings of France and Spain that honour, and interest, and religion called on them to rescue Mary from imprisonment and death, and the moment he knew that Elizabeth had committed the cognizance of her cause to the Commissioners of York and Westminster, he ordered the auditor Riario to commence proceedings against the English queen in the papal court. In the act of accusation it was asserted that Elizabeth had assumed

the title of head of the Church, deposed and imprisoned the canonical bishops, and instituted schismatical prelates in their sees; that rejecting the ancient worship, she had supported a new worship, and received the sacrament after the manner of heretics; and that she had chosen known heretics for the lords of her council, and had imposed an oath derogatory from the rights of the Holy See. In proof of these charges were taken the depositions of twelve Englishmen, exiles for their religion; and after several months the judges pronounced their opinion that she had incurred the canonical penalties of heresy. A bull was prepared, in which the pope, after an enumeration of her offences, was made to pronounce her guilty of heresy, to deprive her of her pretended right to the crown of England, and to absolve her English subjects from their allegiance. Still forcible objections were urged against the proceeding, and Pius himself hesitated to confirm it with his signature. At length the intelligence arrived of the failure of the insurrection; it was followed by an account of the severe punishment inflicted on the northern Catholics, of whom no fewer than eight hundred were said to have perished by the hands of the executioners, and the pontiff, on the 25th February, 1570, signed the bull and ordered its publication. Several copies were sent to the Duke of Alva, with a request that he would make them known in the sea-ports of the Netherlands, and by the duke some of these were forwarded to the Spanish ambassador in England. Early in the morning of the 15th of May, one was seen affixed to the gates of the Bishop of London's residence in the capital. The council was surprised and irritated, a vigorous search was made through the inns of law, and another copy of the bull was found in the chamber of a student of Lincoln's Inn, who acknowledged, on the rack, that he had received it from a person of the name Felton. Felton resided near Southwark, a gentleman of large property and considerable acquirements, but his temper was ungovernable, and his attachment to the creed of his fathers approached to enthusiasm. On his apprehension he boldly confessed that he had set up the bull, refused, even under torture, to disclose the names of his accomplices and abettors, and suffered the death of a traitor, glorying in the deed and proclaiming himself a martyr to the papal supre-

macy. But though he gave the queen on the scaffold no other title than that of the pretender, he asked her pardon, if he had injured her, and in token that he bore her no malice, sent her as a present, by the Earl of Sussex, a diamond ring which he drew from his finger, of the value of four hundred pounds." Lingard, in a foot-note, refers to Camden, Bridgewater, and Dodd, and says:—"The government account of his execution makes him repent of the fact. It is in 'Howell's State Trials,' p. 1085. His wife, who had been maid of honour to Mary, and a friend of Elizabeth, had till her death a licence to keep a priest for her own family. Felton had obtained the copies of the bull from the chaplain of the Spanish ambassador, who immediately left the kingdom."

"If the pontiff promised himself any particular benefit from this measure, the result must have disappointed his expectations. The time was gone by when the thunders of the Vatican could shake the thrones of princes. By foreign powers the bull was suffered to sleep in silence; among the English Catholics it served only to breed doubts, dissension, and dismay. Many contended that it had been issued by incompetent authority, others that it would not bind the natives till it should be carried into actual execution by some foreign power; all agreed that it was in their regard an imprudent and cruel expedient which rendered them liable to the suspicion of disloyalty, and offered their enemies a pretence to brand them with the name of traitors. To Elizabeth, however, though she affected to ridicule the sentence, it proved a source of considerable uneasiness and alarm. She persuaded herself that it was connected with some plan of foreign invasion and domestic treason. She complained of it by her ambassadors as an insult to the majesty of sovereigns, and she requested the emperor Maximilian to procure its revocation. To the solicitations of that prince, Pius answered by asking whether Elizabeth deemed the sentence valid or invalid. If valid, why did she not seek a reconciliation with the Holy See? If invalid, why did she wish it to be revoked? As for the threat of personal revenge which she held out, he despised it. He had done his duty, and was ready to shed his blood in the cause."

No doubt Pius spoke the sentiments of his mind with sin-

cerity when he expressed himself, conscious of having only done his duty. He was a holy man during his life, and since his death he has been canonized as a saint. All we can say of him in this whole matter, is that he was zealous for the faith, but that his zeal was not, as St. Paul (Rom. x. 2) would have it to be, *secundum scientiam.* The same must be said of his remote predecessor, Gregory VII., whose name also is found on the calendar of saints, and who was remarkably active and successful in extirpating the vice of simony, and reforming the manners of the clergy in a very corrupt age.

"When contending with emperors and kings," again writes Dr. Doyle, "some of whom were monsters in the human form, the popes might have been sometimes led away, by a mistaken zeal, from the path of duty; sometimes by an inordinate ambition (a passion to which all men in power are subject), oftentimes by passions still less excusable, but they were more frequently influenced by an anxious desire to resist oppression, to promote justice, to vindicate innocence, or to preserve the Church from simony, from scandal, from heresy, or ruin. Whatever were the motives, however, which might have prompted them, whatever judgment we may *now* pass on them, however we may estimate their proceedings, removed as we are from their times by centuries of years, enlightened as we now are by science and experience, we should not withhold from them the credit which their good actions deserve, nor condemn *en masse* those acts which their judgment or the force of habit and circumstances induced them to sanction or perform."

I think I have now given at sufficient length the history of Ultramontanism in its most objectionable and unjustifiable form, as an organized system of papal invasion of the rights of kings and princes, and shown that if, for a time, the pope succeeded in asserting and exercising temporal rights in this kingdom, in the end, and while his claims to spiritual allegiance as head of the Church were fully acknowledged and respected, his temporal jurisdiction was entirely extinguished; and that for more than four centuries it has been utterly ignored. By all the Catholic theologians examined before parliament or royal commissions, this temporal power has been spoken of as a thing of the past

which can never be revived. Attempts, however, have been made to revive it in our days, and we shall see with what success.

Before the Vatican Council, the question of the infallibility of the pope was always a matter of free scholastic disputation—quite as free as any other. It is now, however, a dogma of faith to be professed by all the members of the Church as any other article of Catholic belief; and the ultramontanes hope for great things from the definition of this article: but rightly understood, the decision of the scholastic controversy is of very little practical consequence. At all times, the pope's decision of a controverted matter was entitled to the greatest respect. Even the Gallicans, who are supposed to be the most opposed to the ultramontanes, claimed for the pope the principal share in questions of faith, and the greatest respect for his doctrinal decisions, only holding that his judgment might be reviewed and reformed by the Church; but when the Church assented, even only by its silence, to the doctrinal decisions of the pope, these decisions became for all articles of faith. The decision, for instance, of the Immaculate Conception of the Blessed Virgin, before the pope was declared infallible by the Church, was received universally as of faith, since it was known to be published with the general assent of the bishops of the Church; and at any time past the pope could have done what he did in this case. He could have added a new dogma to the creed by deciding a doctrinal controversy, and publishing his judgment to the Church for the belief of the faithful, who were bound to receive it as of Catholic faith as soon as they learned that the other bishops of the Church gave assent in some way to the judgment of their chief. The only thing, then, defined by the Vatican Council is that the doctrine in such cases proposed for belief to the faithful is to be received as of Catholic faith, even before any assent is expressed by the Church. I cannot see that any real change of the slightest practical consequence has been made by the definition of the infallibility. From the time that I was first taught from my catechism the faith of my fathers I feel that this faith has undergone no change. I was then taught to believe that the foundation of my faith was the revelation of God as proposed to me by the Church, and that the concurrent teaching of the pastors of the Church, either dispersed

throughout the world, or congregated in a general council, was the standard of faith for all the members of the Church. My reading and my experience have confirmed me in this belief; but nothing has occurred which makes it necessary for me to make any change in it. If a general council has added a new dogma, it has only done what other councils did before it, and what future councils may do again. I have always acknowledged their right to do such a thing, and my obligation to approve of it when done. I deny, however, the right of the ultramontanes to make either an article for my belief or a canon for my practice. They have attempted to do the one and the other, and I shall show how they have laboured in vain. Before, however, I examine the articles of their creed, and show that not one of them can affect me in any way whatever as a member of the Roman Catholic Church, and examine the new canons whose weight has fallen heavily on me through the influence of the pope's legate, over the two greatest public Boards of this country, I will show that these canons were disentombed, after the sleep of many centuries, from the Corpus Vetus Juris Canonici, and that these Boards have exposed themselves to the ridicule of the world by their worship of the papal legate's political and state influence, which is paramount in this portion of her Majesty's dominions at the present moment.

SECTION XIII.

Dr. Slevin on the temporal power—On the bull *unam sanctam*—on the canon law—On decretals of popes—How far binding in Ireland—His evidence entirely cisalpine.

Dr. Slevin was asked in October, 1826, by the Royal Commissioners on Education—" You do not consider that either the example of pontiffs or the decrees of councils are incompatible with the principles which you maintain as to the pope having either civil or temporal power, or the right to interfere in matters of a civil or temporal nature, or to depose kings, or absolve subjects from their allegiance?—I hold that no general council ever proposed such a doctrine to the church to be received as

a doctrine of faith or morals, in which case alone we consider general councils to be infallible; it is a question whether some popes may not have assumed this power; but I am satisfied that no pope ever proposed this doctrine to the Church to be believed as revealed, and held as an article of faith; whether any of them ever really assumed to themselves a temporal power *de jure divino*, even by an act of private judgment, is a question. Some have been of opinion that some of the popes did so, particularly Gregory VII. and Boniface VIII.; but others think that they did not assume it *de jure divino*, but only *de jure humano*, in consequence of civil rights which they acquired, or supposed themselves to have acquired, to certain states in Europe; but all our divines and canonists agree, that neither of these popes, nor any other pope, ever proposed the doctrine of the disposing power to the church to be believed as revealed."

He was asked:—"What is your own opinion upon that point?" He answered:—I confess that I have never formed a decisive opinion on that subject—that is, whether any pope ever seriously asserted the deposing power *jure divino*. There are arguments, *pro* and *contra;* and the arguments that tend to prove that Gregory VII. did assume to himself such a power *de jure divino*, as well as Boniface VIII., are very urgent; but whatever their private opinions may have been on this subject, I feel convinced that neither ever declared *ex-cathedra* the doctrine of the deposing power." Again—"Have you not the popes' own word for it in many of their bulls?" His answer is:—"The words of Gregory VII. and Boniface VIII. would seem to suppose rather than to assert such a power, or to declare that they did possess it. I do not remember to have seen in any bull words declaratory of this power. It would seem from the tenor of their bulls that they proceeded on the assumed principle, and wished the world to think that they did possess temporal power *de jure divino;* but Catholics make a wide distinction between the private opinions of a pope on the rights and prerogatives which he may by private judgment assume to himself, and a doctrine which the pope, as head of the Church, proposes to all the faithful as revealed, and to be believed by them as such."

It was said to this witness:—"It is stated in a work on the

Roman Catholic claims, addressed by Dr. Doyle to Lord Liverpool, in speaking of the bull of Boniface VIII., 'That when BonifaceVIII. and Philip the Fair were employed in fighting or anathematizing each other, the French Church rejected and condemned the right claimed by the pope to depose their sovereign. When Julius II. proceeded in a similar manner against Louis XII., and endeavoured to enforce his proceedings by a formidable coalition of the English, Spaniards, Germans, and Swiss, the bishops of France assembled at Tours decreed that the papal sentence was null and void; and Duchesne in his life of Julius II. observes, that they gave to the king an immense subsidy to support the war against his Holiness. At a later period, all the orders of the French Church, cardinals, bishops, abbots, canons, and other clergy, met in general assembly, resolved that, consistently with the authority of the sacred Scriptures, the authority of councils, and of the Gallican Church, they could not sanction the proceedings of Gregory XIV. against their sovereign, Henry IV. The University of Paris imitated their example. In the declaration of the catholic clergy of France in 1682, it is said :—'Kings, therefore, and princes, in temporals, are not subject by the ordinance of God to any ecclesiastical power, nor can they be deposed directly or indirectly by the authority of the keys of the Church, or can their subjects be exempted or freed from their faith and obedience, and from their oath of allegiance : and this declaration, necessary for public tranquillity, nor less useful to the Church than to the State, is by all means to be maintained as agreeable to the Word of God, the tradition of the fathers, and the examples of the saints.' Do you concur in that principle?" He answered—"I do perfectly concur in it."

He was asked—"Does not the passage in the bull *unam sanctam* of Boniface VIII. :—'Certainly, he who denies that the temporal sword is in the power of Peter, but ill attends to the word of our Lord, when he said, 'Put up thy sword into the sheath:' therefore both (to wit, the spiritual and the material sword) are in the power of the Church, but the latter is to be used for the Church, the former by the Church, the former by the instrumentality of the priest, the latter by that of kings and soldiers; but according to the order and sufferance of the priest, but one sword should be subjected to another, and the temporal authority to the spiritual

power,' express at least the opinion of the pope who promulgated that bull, that he had both the temporal and spiritual power generally; and that the temporal power of kings and soldiers was to be exercised according to his order and sufferance?'" He answered:—"My meaning in a former answer was, that no pope, as far as my knowledge extended, had ever declared *ex-cathedra* that St. Peter and his successors possessed temporal power *jure divino*. I did not deny that popes acted on the supposition, and on the apparent assumption that they possessed such power, though I am inclined to think that no pope ever thought *bonâ fide* that he enjoyed it *jure divino*. I positively assert, and do now repeat that assertion, that no pope ever proposed the doctrine of temporal power to the universal church to be received and to be believed."

He is further asked:—"Does not that bull propound the principle as plainly as language can do it?" He answers:—"That bull does not propound the general principle to the universal church. It is a bull regarding a particular case, pending between Boniface and the king of France; and I have already mentioned that no decrees of the pope regarding particular cases extend to the church in general unless they be universally adopted. Boniface VIII., in issuing that bull, did not mean to propose a general doctrine to the church, though he employed general expressions in some places. This bull was understood to apply to France alone by Clement V., who in his celebrated decree, '*Meruit*,' annuls all the effects of it, with regard to the king, the kingdom, and the inhabitants of France, without speaking of other countries. If this pope had considered Boniface's bull to have been general in its tendency, this act of repeal would have been couched in general terms. It has been already remarked that in the part of that bull which alone bears the semblance of a definition or decree of doctrine, Boniface abstains from using the word 'temporal,' and merely declares that all men are subjected to the pope's power, Porro subesse Romano pontifici omnem humanam creaturam declaramus dicimus, definimus et pronunciamus esse de necessitate salutis: which words may be understood to mean spiritual power only."

I have dwelt upon the subject of this bull longer than the

reader may think necessary, more especially when I add that all the cisalpine divines that have at any time referred to it, invariably explain it as the two distinguished theologians, Dr. Doyle and Dr. Slevin do, from whom I have quoted so largely; yet I have not said one word too much. The bull *unam sanctam* is revived after a sleep of six centuries, and is actually found in the creed of the modern ultramontanes, which was published in the Dublin organ of the Catholic Union of Ireland on the 29th July, 1874, as an official document.

Dr. Slevin was the Prefect of the Dunboyne establishment at Maynooth in 1826, and the professor of canon law. He was examined at great length on the binding force of the canons and papal decrees, and his evidence on this whole subject was entirely cisalpine.

It was said to him :—"We observe that in the oath that is taken by a Roman Catholic bishop on his consecration are the following words—'I will observe with all my might, and cause to be observed by others, the rules of the holy fathers, the decrees, the ordinances, or dispositions, the reservations, provisions, and apostolical mandates.' Will you be so good as to explain your views of the nature and extent of the obligation that is incurred by the bishop in subscribing to that sentence which has been read to you?—The extent of the obligation which a bishop incurs by this oath relates merely to decrees, ordinances, dispositions, reservations, &c., of the Holy See in spiritual matters, and not in temporals. The obedience a bishop is considered to promise to the pope is canonical obedience only, and therefore is limited by common understanding to these decrees, &c., that are canonically issued, and acquire the force of obligation according to the canons. Hence a bishop is not understood to be bound by any decree that conflicts with the laws and usages of the country in which he resides."

"Pray describe what is meant by the word '*decreta*' in that sentence?"—By '*decreta*' I understand principally all decrees issuing from the pope in matters of faith or morals, and addressed to the universal Church. In the canon law, '*decretum*' means an ordinance emanating spontaneously from the pope; '*rescriptum*,' one issued on an application."

"Do you include discipline in it?—I would include only such decrees of discipline as are received by the universal Church. Bishops are not considered bound to receive all the decrees of discipline that may be issued by popes. The present practice of the Church is that decrees of discipline do not bind in any particular country till they are received or promulgated there, and therefore bishops do not bind themselves to receive indiscriminately all decrees of discipline issuing from the Holy See; in a word, bishops are considered to promise obedience to all ordinances of the pope issued according to the canons, and not inconsistent with their acknowledged prerogatives; hence the clause in the oath, '*salvo meo ordine.*'"

"Pray be so good as to state what books you consider as containing the text of the canon law?—The canon law, or common law of our Church, is contained in a work known by the title of *Corpus Juris Canonici.* It was published by Pope Gregory XIII., and is composed of several parts, or collections of canon law, made at different times. The body of canon law is composed of texts of Scripture, decrees of councils, decretals of popes, extracts from the holy fathers, and even some from the civil law. The different collections making up the body of the canon law are the *Decretum Gratiani;* secondly, the *Decretalia Gregorii IX*[1]*;* thirdly, the *Sextus Decretalium;* fourthly, the *Clementinæ Constitutiones;* fifthly, the *Extravagantes Johannis;* and sixthly, the *Extravagantes Communes;* and the sources from which the different laws contained in these collections are taken are those that I mentioned. To have a complete body of canon law we must add the decrees of the Council of Trent, the different bulls that have been issued by popes since the time of Pope Sixtus IV., as none of a more recent date are included in the collection of Gregory XIII., which was published towards the end of the sixteenth century. The bulls that were issued after Sixtus IV. down to Clement XII. have been included in the *Bullarium Romanum.* There is also a collection of the bulls of Benedict XIV."

"Are we to understand that all the bulls that are contained in the *Bullarium Romanum,* constitute a portion of the canon law?—They constitute a portion of the canon law in the same sense as the decretals of popes contained in the collections already men-

tioned, are said to constitute a part of the canon law; with this difference, however, that the *Bullarium Romanum* was compiled by private authority, and is not authenticated by any pope; but the collections before specified have been authenticated by the respective popes under whose inspection they were made. The *Decretum Gratiani* was a private compilation, and has never been authenticated by any pope, but the decretals of Gregory, the *Sextus Decretalium* of Boniface, the *Clementinæ*, and *Extravagantes*, have the sanction of popes, as appears from the briefs prefixed to them."

"In truth, have not almost all the parts of the six works that have been mentioned, been in their times the bulls of the existing popes?—The parts of those works that are properly called decretals, were of that nature; but they also contain, as I have already stated, decrees of councils, and also extracts from the works of the holy fathers. The collection of canons made by St. Raymond de Pennafort, by order of Gregory IX., was compiled from all the different sources of the canon law already specified, though it is called by the name *Decretalia*. The *Sextus Decretalium* was a collection made by Boniface VIII., and it contains all the bulls issued after Gregory IX., together with the canons of the two councils of Lyons. The Clementines consist solely of the constitutions issued by Clement V., in the Council of Vienne. The *Extravagantes Johannis*, and the *Extravagantes Communes*, were chiefly papal bulls, with the addition of some matters from the general councils and from the opinions of the fathers."

"Do you consider the bishop's oath at consecration binds him to observe all the decrees of the canon law?—By no means; bishops are considered by the Church and the pope, to promise only canonical obedience. We do not consider that the different decrees that compose the body of the canon law, are all binding in every country. We must consider the nature of the different decrees, or mandates, and each document binds according to the nature of the authority from which it emanates, and the acceptation it receives. The decree of a general council, for example, relating to faith or morals, is binding all over the Church; a decree of a general council relating to discipline, if it has been published or received and acted upon universally, is binding in

like manner; otherwise it is binding in the countries wherein it has been received. With regard to the decretals of popes, I think I have already mentioned the general principle we act upon, which is, that those decretals are binding in the countries in which they have been published or adopted as the canon law of the country; so that decretals which bind in one country, may not bind in another, because they have not been adopted there, and are not acted upon in the ecclesiastical courts of that country; hence we find that the canon law in the different Catholic countries is different, because in different countries they have received different decretals, according as they were found useful or agreeable to the laws and usages of each country. Bishops promise to maintain the pope's decrees according to the meaning of the canons, and not otherwise. In the same manner as a subject swears allegiance to his king according to the meaning of the constitution and laws."

"Is there any way of ascertaining what decretals have been received in Ireland, and what have not?—The decretals of Gregory IX. have been adopted as the *common law* throughout the Church. They are considered in the canon what the Justinian code was in the civil; that is, a supplement to the particular laws and usages of each church, and are considered binding in all cases in which they do not conflict with either, or with the municipal law of each country; say the same of the other parts of the *Corpus Juris*. Here then we have a principle by which we can at once know whether a decretal binds in a country. Our church government has been in such a state of confusion for two centuries past, that we can scarcely say we have any canon law; for positive laws do not bind when they cannot be observed without great inconvenience."

"For instance, do you consider that the decretals of Gregory have been received in Ireland or not?—I cannot say that they have ever been received in a formal manner, but I have no doubt that they were acted upon in Ireland before the Reformation, according to the principle mentioned; that is, so far as they were consistent with the laws and usages of Ireland."

"Do you consider the decretals of Gregory IX. to be a part of the canon law in Ireland, of which you are a professor?—I con-

sider they are, in the sense already explained; they constitute the canon law of the Church of Ireland. If there was question of any particular decretal, and I were asked whether it was binding in Ireland, I would examine whether it was opposed to any of the particular laws or usages of our Church, or to the municipal law of the land; and if I found it was not, I would consider it binding; if, on the contrary, I found that it conflicted with any of them, I would infer the law was not received nor binding in our Church."

"If it were a decretal relating either to a matter of faith or to a matter of morals, would you then consider it binding in Ireland?—Certainly; if it was the decree of a pope I would consider it binding, not so as to constitute an article of faith, but that it should be adopted till the Church would decide ultimately on that point, whatever it might be; however, I must observe, that decrees of faith are only indirectly introduced into the canon law, which is meant principally to deliver the positive laws of the Church."

"In what manner does a bull, when propounded by the pope, pass into the body of the canon law, and become of authority as a canon of the Church?—I had occasion to mention already that decretals are commonly decisions on particutar questions proposed to popes; for instance, a difficulty occurs to a bishop, he refers the case to the pope and receives an answer; that decision is a rescript or decretal epistle. As it refers to a particular case, it does not at once become a general rule, according to which the different ecclesiastical tribunals are bound to decide; the decision being very just in itself, may be adopted afterwards in different countries, and thus become a general law. In the same manner as a civil judge on the bench who decides in a particular case, his decision is not binding on the other judges; however, they may take it as a precedent, and act upon it. When the pope addresses a bull to the whole Church on matters of discipline, (which he scarcely ever does, because the general laws of discipline have been made by general councils), when the bull has been universally accepted, it obliges and becomes a law of discipline all over the Church, otherwise it would bind only in the countries in which it was published or acted upon; and

hence we find that decrees issued by popes are obligatory in one country, and do not oblige in another. What I have stated is the practice of the Church; but I must observe that the See of Rome, in theory, claims the right of enacting laws that bind without acceptation."

"The object of the preceding question was to ascertain the distinction between such particular bulls as you have been speaking of, that prevail only in particular countries, and the general canon law of the Church of Rome, which, it is presumed, prevails in all Catholic countries?—I laid down, as a general principle, that the different laws that compose the body of the canon law bind, according to the source from which they have originated and the acceptation of the different churches. A decree of a general council binds as such—of a national, provincial, or diocesan synod, respectively; and, wherever it has been adopted as a law, a decree of the pope, according to the nature and acceptation of it, will bind more or less extensively. If it be a decision on a particular question, it will not bind, unless where it has been adopted as a law; if it be a bull addressed to the whole Church, it will bind in the countries where it has been published, or received in practice; and where it has not been published, it will not be considered binding. Hence, as I mentioned, we find that the canon law in different countries is different, because the decretals specified are received and acted upon in one country, and are rejected in another, as incompatible with the laws and usages thereof."

The witness subsequently added:—"As to the matter of fact whether any particular decree contained in the *Corpus Juris* be actually received in a country or not, we have the following principle; it is received if it be not opposed to any law or usage, civil or ecclesiastical, of the country. Hence the canon law of the Church of Rome can be called general and common to all Catholic countries, only in the sense that it constitutes the common ecclesiastical law of all those countries as explained. However strange it may appear, our canon law is received on the same principle in the different Protestant States of Europe, as appears from the testimony of an eminent Protestant writer, which I beg may be inserted on the minutes:—'It redounds

exceedingly to the credit of the canon law, that the Protestant States of Germany, and others, after they had separated from the Church of Rome, and embraced the doctrines of Luther and Calvin, and had shaken off all the authority of the Roman Pontiff, did not, however, shake off the canon law, but use it to this day in deciding their causes, in the same manner precisely as the European princes, after they had renounced the jurisdiction of the Cæsars, yet continued to observe the laws of the Cæsars; and though Martin Luther, through a rash and preposterous zeal, caused the books of the canon law to be publicly burnt at Wirtemberg, in opposition to the remonstrances of the juris-consults, yet the Saxons, Brunswickers, and other Protestants, have since that time preserved the use of the canon law without any change, as they agreed in the confession of Augsburgh, and the canon law is still publicly taught at Wirtemberg, and in other Protestant universities.' "—*A Duck de auct Juris civilis.*

SECTION XIV.

Canon Law of Ireland—Council of Trent; how far received in Ireland—In other countries—Bulla Cœnæ—Rev. R. J. M'Ghee—Archbishop M'Hale.

DR. SLEVIN was asked—"Are there any provincial constitutions or canons peculiar to Ireland, and not received at large throughout the Catholic Church?—I mentioned that our Church government in Ireland has been and is still very irregular on account of the unhappy circumstances of our Church; it is not governed in the systematical manner, as observable in Catholic countries, so that our canon law is reducible to a very small compass. However, diocesan and provincial statutes have been adopted in different parts and at different times which will, no doubt, be now improved and enlarged. It may even be hoped that the time is not remote when our bishops, assembled in synod, will, under the paternal protection of a benign sovereign, draw up a code of national regulations adapted to the circumstances of our Church."

The witness's anticipations have been since realized. An

admirable code of laws was prepared in 1831 by the bishops of Leinster, and published in their respective diocesan synods, to come into force on the sixth day of January, 1832. The whole book was compiled by a very learned and able man, Dr. Kinsella, Bishop of Ossory, in concert with Archbishop Murray of Dublin, Dr. Doyle of Kildare and Leighlin, and Dr. Keating, Bishop of Ferns. No disciplinary regulations whatever which are not contained in these statutes, whether they be found in the proceedings of general councils, in the bulls or constitutions of popes, or in any part of the canon law, have any force or obligation in the province of Leinster; and if they ever had any, they were abrogated and annulled by the publication of these statutes. And when a national synod assembled at Thurles in 1850, almost nothing was changed in the discipline of this province except to require all the sacraments to be administered for the future in the church and not in private houses, unless in the case of the sick.

Again same witness—"In what manner is it determined in Ireland whether any particular bull that may come into the country is received or not received in the country, so as to form a portion of its canon law?—By the same rule, as in all other countries, by its publication, or general adoption in practice."

"Its publication in what manner?—If it be published in the country, we then consider that it is binding. The bull, for instance, would be addressed to our bishops; they would receive it in a body, or perhaps individually, and order it to be published. The publication would be made in the parish chapels, or at least in the episcopal chapel of each diocese. However, the general adoption of a bull in practice, without a formal promulgation, would give it the force of law, on the ground that custom becomes law."

"Will you describe the courts in which the Roman Catholic canon law in Ireland is administered?—We have no ecclesiastical courts established in Ireland; each bishop is in his diocese judge in ecclesiastical matters; he exercises his power by himself, or by his vicar-general, or by any person to whom he may delegate it."

"Have the decrees of the Council of Trent been received in

Ireland?—The decrees of the Council of Trent, I conceive, have in general (except the one relating to the impediment of clandestinity) been received in Ireland. I speak of the decrees relating to ecclesiastical discipline; those of faith have been universally received. There are some decrees of the Council of Trent that would seem to infringe on the rights of princes. With these we have nothing to do in this country: it was on account of those decrees that the council was never published in France. There are also many regulations of the council that would not apply to all countries, which we would not consider binding, because not applicable to the circumstances of our Church."

"Are you aware that in those Catholic States in which the council has been published, an express reservation has been made as to those decrees which respect matters of a civil or of a temporal nature?—I am aware that the decrees of that council regarding discipline have been received in all countries outside Italy, with some limitation arising from their particular laws and customs. In Spain and Belgium it was published by the order of Philip II., but with the understanding, as expressed in the royal edict, that it should be considered binding only so far as it was consistent with the laws and customs of those countries. It was received by the bishops and Catholic princes of Germany with the same salvo; and also with that of the *concordatum* between Nicholas V. and Frederic III. Thus in the reception of the Council of Trent, in Catholic countries, the royal prerogative and the laws of the country have been secured."

"Are not some of the canons so mixed together that it is difficult to distinguish whether they are canons of faith or canons of discipline; and in the latter, whether they are canons of ecclesiastical discipline merely, or connected with temporal matters?—The Council of Trent has distinguished very clearly between the canons of faith and the decrees of discipline: the matter of discipline is treated separately from that of faith, and is not expressed in the form of canons, but in the form of decrees. There are some decrees of the Council of Trent, as I mentioned, that would seem to interfere with temporal matters; and on account of those decrees the French Government declined publishing that council. Now those decrees cannot interfere in any way with

Ireland, because our Church possesses no temporal property, and the municipal law does not protect the canon law in this country. In Catholic countries the decrees might have a pernicious tendency to support the principle of the Church interfering with temporalities. One of the decrees alluded to relates to duels, and declares that the lords who permit duelling shall forfeit their lands to the Church, if they derive from her; otherwise to the supreme lord from whom they derive. Another relates to the protection of church property, and an excommunication is issued against all those who should attempt to seize on the goods of the Church or of charitable institutions."

"We beg to draw your attention to the 15th section of a bull issued by Benedict XIV. in 1741, which excommunicates all those who have procured, directly or indirectly, under any pretext, as also such as have passed, enacted, or published statutes, ordinances, legal enactments, or any other decrees generally or particularly, from any cause or under any pretext whatever, whereby ecclesiastical liberty is destroyed, or our rights and those of the aforementioned see are prejudiced in any manner—is not this an exercise of spiritual power for temporal purposes?—This is the celebrated bull called Cœna Domini: it was for many centuries published in Rome each year on Holy Thursday; and its publication was suspended by Clement XIV. in 1773."

"Do you think it will ever again be published?—I think not, as the publication has been interrupted during the reign of the last two popes, and has not been renewed by the present."

"What should prevent the present pope or his successor publishing it next year?—It depends entirely on his option; but I think it likely he may be influenced by the same motive as his predecessors, and not renew the publication of it. The See of Rome knows well that it has always been odious to the greater part of the Catholic countries of Europe; and the publication of it has been therein constantly resisted. In its origin the publication of it would appear to have been confined to the pope's states alone, or perhaps to the states of Italy. Pius V., towards the close of the sixteenth century, endeavoured to make it general, and ordered the publication of it in all Catholic countries; but he was not obeyed. On the contrary; he was resisted in the greater part of

those countries, and chiefly in France, the republic of Venice, Spain, and Germany : in all which countries that bull never has been published nor considered obligatory. It has never been received in Ireland, and consequently has no authority in this country."

This is the bull which has been enforced against me by two public Boards at the instigation of Cardinal Cullen. The bull forbids, under pain of excommunication, any person to resort to a lay court in order to impede a prelate in the exercise of his jurisdiction. It also forbids, under the same penalty, any one to charge an ecclesiastic with a criminal offence before a lay tribunal ; and it excommunicates the lay judge who sits to try the case, unless he either gets leave from the pope to do so, or gets the ecclesiastic degraded by the Church before he passes a sentence of guilt upon him. By the tenor of this bull, Chief Justice Whiteside, Mr. Justice Keogh, Chief Baron Palles, and the crown lawyers who aided and assisted the Attorney-General (Palles) to prosecute the Galway clergy, would all incur an excommunication reserved to the pope ; but it so happens that my case does not come under any of the clauses of this formidable instrument. My proceeding against ecclesiastics was of a civil kind, whereas it is the proceeding in the criminal form against which the bull aims its thunders. The Galway clergy were charged with crime ; and, if convicted, they would have been visited with punishment. But in my actions against ecclesiastics, I sought only a money compensation for the injury to character caused by the publication of their language, and in no sense could my action against the late Bishop Walsh, or any other prelate, be said to have been brought for the purpose of impeding him in the exercise of his jurisdiction. To say so would be to assert that a prelate is only exercising the jurisdiction of his office when he is publicly calumniating his neighbour. Supposing this bull, therefore, to have been in full force at the time of my civil actions against ecclesiastics, I never contravened any of its clauses, although I have been over and over again publicly denounced as having contracted canonical censure for having violated it ; and my offence was said to be so notorious that I was disentitled to a trial, and condemned, without my presence or knowledge, to suspension for life and the deprivation of my parish. It was the same pope who suppressed

the order of the Jesuits in 1773 that suspended the same year the annual publication of the Bulla Cœnæ ; but Pius IX., in October, 1869, shortly before the meeting of the Vatican Council, again published this bull in a much altered shape. In a letter to me, dated July 22nd, 1871, Cardinal Cullen says of the new constitution :—" I will now merely add that the present pope, whilst limiting and abrogating other censures, confirmed all penalties of the canon law against those who drag ecclesiastics, and especially bishops, before lay tribunals, and there charge them with criminal offences. The pope's bull regarding censures was handed to every bishop in the Vatican Œcumenical Council last December twelve months, and is now known over the whole world."

Dr. Slevin was further asked—" Does not this bull distinctly avow the principle on the part of every pope who has issued it annually, as you stated it, for some centuries, that any person exercising the power of legislation in any manner that may be detrimental to the Roman Catholic Church, thereby is a proper object of spiritual censure, and incurs excommunication ?—I have repeatedly alluded to the co-operation that existed in Catholic countries between the civil and ecclesiastical authorities. The civil law supported the canon ; and the ecclesiastical authorities enforced the observance of the civil law by censures. The censures pronounced by the pope in that bull, or in any bull whatsoever enforcing the observance of a civil obligation, can only affect those countries where the civil laws impose such obligation, on the principle that the pope has no authority to interfere in civil matters : the pope pronounces censures against those who should in any way injure the rights or immunities of the Church ; but these rights and immunities were established by the civil law in Catholic countries ; and the censure of the pope merely corroborated that law, and enforced the observance of it ; it added a spiritual obligation to the civil that already existed ; and in any country where the civil law did not impose that obligation, the pope's censure could not affect the subjects."

" You observe it is particularly directed against those who co-operate in enacting laws or statutes that may prejudice the authority of the See of Rome : now admitting fully that the expression of such a sentiment can have no civil power in those countries to which you have referred, do you conceive it impossible that it

might operate in the shape of a principle in the mind of any Roman Catholic legislator, seeing that such a sentiment has been annually for centuries, as you have stated, promulgated by the successive pontiffs who have filled the chair of the Roman See?—I have often had occasion to state that in the middle ages popes did claim a right of interfering in temporal matters, from a confusion of ideas that arose from the mixture of temporal and spiritual powers, but that for a length of time the boundaries of these two powers have been ascertained and clearly distinguished; so that no Catholic at present acknowledges that the pope has any right to control the civil legislature in issuing laws. With regard to the bull before us, I do not consider myself at all bound to vindicate the principles it may set forth, for the reasons already assigned, that this bull was originally intended for the pope's temporal dominions, and has never been received in many Catholic countries. It may be well to observe, however, that in all Catholic countries the immunities of the Catholic Church were established by civil and municipal laws; and therefore the legislature, without just cause, could not repeal those laws. I conceive that the popes who sanctioned this bull meant merely to prevent the arbitrary interference of the civil legislature with the immunities of the Church."

"Does not the history of England before the Reformation, particularly with regard to the statutes of *Provisors* and *Præmunire;* does not the history of France; does not the history of Spain; does not the history of Portugal; does not the history of Germany; and the history of the practice of the different Catholic States in Europe, distinctly prove that the Catholic legislatures have not only not recognised the principle laid down in that bull, but firmly and steadily resisted it; and that the repetition of it by the pope, so far from inducing them to obey it, has induced them more firmly to resist it?—Such is the case; and I conceive it is on those grounds that the late popes have desisted altogether from the publication of it."

The Rev. R. J. M'Ghee, Rector of Holywell-cum-Needingworth, was examined in May, 1868, before a select committee of the House of Lords, on ecclesiastical titles, and in answer to Lord Stanhope he stated:—"Your lordships perhaps recollect that a committee of the House of Commons was appointed to appeal to

all foreign ambassadors and all foreign governments, to know the laws which they held in their several countries respecting the Roman Catholics. One of these laws was the *Bulla Cœnæ Domini.* It was excluded in Naples, and the return from Naples stated that it was abhorred and execrated in that kingdom, and that it was rejected and expelled from the dominions of all Catholic princes. In Sicily it was stated that the *Bulla Cœnæ Domini* had no other object than that of entirely overruling the legitimate power of sovereigns: that it declared all those to be excommunicated who in any manner should favour heretics. In France the *Bulla Cœnæ Domini* was declared to be a direct in fractionof the temporal and civil rights of all sovereigns. This bull has been equally resisted in Venice, Germany, and Spain, and other countries. Its chief purport is to keep up the extravagant immunities claimed by the pope and the Catholic clergy. Committees of your lordships' House and the House of Commons were appointed, in the years 1825 and 1826, to examine the Roman Catholic bishops on various topics, and among the rest on these several bulls. It was then their interest to deny those bulls, and to state that they could not and ought not to be published in Ireland. Dr. Doyle said that 'if that bull were in force scarcely anything would be at rest among all the Catholic States in Europe.' Dr. M'Hale said 'that the collision which would be supposed to result from the reception of that bull with the established authorities of the country was an insurmountable objection to its publication.'" The same witness again stated, "That the *Bulla Cœnæ* excommunicates the sovereign and all the powers of the Protestant government, and establishes the temporal power of the pope directly over every Roman Catholic." The late Dr. O'Hanlon of Maynooth stated before Lord Harrowby's commission in 1854—"That if the *Bulla Cœnæ* were in force in Ireland, any person printing, reading, or possessing books written by a heretic on the subject of religion, or any other subject, if they should contain heresy, would incur excommunication reserved to the pope. A similar excommunication would be incurred by all secular magistrates and judges for trying and punishing ecclesiastics for criminal offences, except in the cases allowed by the canon law." The cases to which Dr. O'Hanlon alludes are, first, when the ecclesiastic is handed over to the judge for punishment, after being degraded from his order by the Church;

and, second, where a concordat exists between the pope and the State.

Archbishop M'Hale was examined on several clauses of the *Bulla Cœnæ* at the Maynooth inquiry in 1826, and I subjoin a portion of his evidence :—

"The 15th section excommunicates all those who bring ecclesiastical persons before lay tribunals; will you explain whether you think that has any and what bearing upon the Roman Catholic subject of this country who might be advised to bring an action in a civil court against his ecclesiastical superior for having subjected him to the consequences of a sentence of excommunication? —None at all; he is not affected by the excommunication. Every layman in the country may bring an action, civil or criminal, against a clergyman, without the infliction or the fear of excommunication."

"The question is this—Suppose that a Roman Catholic clergyman has excommunicated a layman, and that thereby very grievous civil consequences have ensued to the layman; and suppose that layman, being a Catholic, brings his action against his ecclesiastical superior to recover satisfaction for the injury sustained, does not such a case directly fall within the case that is here put by the bull, and made the subject-matter of excommunication?—No, because on the principles I have already laid down, those bulls are not to be attended to if they interfere with the obligations which we owe to one another. Now it is a principle with us that the civil laws of every country bind in conscience; according to the constitution of this country, every clergyman is certainly amenable for his conduct to the laws. If, then, the apparent meaning of any bull should be to annul that obligation of obedience, it is not to be attended to."

"The question is, whether the plaintiff in such an action as is supposed, and an example of which has actually taken place, has incurred any spiritual censure upon the part of Rome; he has the civil right of bringing the action, if he pleases; but the question is, whether in so doing he incurs the spiritual censure?—No, he does not: the bull refers to the ancient jurisprudence prevailing in Catholic countries through Europe generally, and I think it is the common law of England. The clergy were a privileged class; they had their own tribunals; and if any person should cite them

before lay tribunals, he was supposed to violate not only the obedience he owed to the pope, but the civil jurisprudence of the country. So far, then, from violating the obligations by which we are bound to the civil laws, in my mind that bull would confirm the authority of the legislature of any country."

"You will observe that so late as the year 1741, there is a bull excommunicating all persons, without exception, or without any limitation of time or place, who bring Roman Catholic ecclesiastics before lay tribunals; can you explain how it is that that does not apply to the case that is put?--With regard to bulls of this sort, they are never binding upon us unless we receive and publish them: that bull was probably never published in this country, and therefore we have nothing to do with its contents."

"Has not a Roman Catholic priest, within a few days past, prosecuted another Roman Catholic priest before the quarter sessions in the King's County for an invasion of his civil rights? —Yes, at Birr, without any excommunication."

"Though no particular sentence of excommunication has ensued upon that act, the question remains whether this general excommunication, which has been read to you, does not apply itself to that particular case?—It does not in the sense of the bull. It does not on the principles of Catholics."

"Is this an exercise of spiritual or temporal authority on the part of the pope?—As far as his spiritual authority extends, it is a legitimate exercise of it; if it exceeds that, it is not."

"Would you consider it an illegitimate exercise of his spiritual authority, as applied to Ireland?—I would, and all the bishops of Ireland would."

"Pray state, for the sake of illustration, any case to which you conceive that excommunication would apply?—In a country where the clergy are still privileged, as they were formerly—where they are to be tried by their own peers—if any person were to cite them before the lay tribunals of the country, in defiance of such law, he would incur the excommunication, provided the bull were previously published in that country."

"You observe there is not the least question that the plaintiff has a civil right to bring such an action; the only question is whether, in the exercise of that civil right, he thereby incurs any spiritual censure under the terms of this bull?—I have answered not."

"In the nineteenth section of this bull there is an universal excommunication against all magistrates who interpose themselves in any capital or criminal cases against ecclesiastical persons. Let us now suppose the case of a Roman Catholic justice of the peace in this country taking examinations against a Roman Catholic clergyman; does he not appear to you to come within the terms of this excommunication?—No."

"Will you explain in what manner you conceive that he is exempt from it?—He does not come under it on the very same principles I have explained before. Every subsequent clause of that bull may be resolved by the very same principles. The reason that I do not mention them is, that I do not like to be tiring the patience of the Commissioners by unnecessary repetitions."

"In the first section of this bull there is an universal excommunication of all Lutherans, Calvinists, Hugonots, and all and singular other heretics by whatsoever name they are called; is that excommunication confined to any particular country, or does it extend to those heretics wherever they are found?—It extends to those heretics wherever they are found in the sense in which I have explained the bull, provided the bull is received and published in those countries where they think it necessary to receive and publish a bull in order that it should have force. In Italy, for example, it is considered sufficient that it be published at Rome, in order that it should have its effect; it is not so in other countries. In the sense in which I have explained the bull, and in those countries in which the bull would be received and published, it would affect them, but in no other sense."

"Although the bull might not have validity in a country in which it had not been published, is it not sufficient to show what is the doctrine, and what are the principles of the court of Rome upon those points?—Not at all; the doctrine and principles of the court of Rome are not sufficient to establish the doctrine of the Catholic Church. We distinguish between the court of Rome and the see of Rome, for the court of Rome may be a scene of much intrigue and cabal, without affecting at the same time the authority of the Holy See, or decrees of the Catholic Church."

"By the court of Rome is meant the pope?—The court is a political expression."

"Is not that bull sufficient to show the principles of Benedict XIV. upon those subjects?—His bull is sufficient to show his principles, because his bull I consider an expression of his mind."

"Is there anything to prevent this bull being now received in Ireland, or at any future time, supposing it has not been received here already?—There is the collision that would be supposed to result from the reception of that bull, with the established authorities of the country. This is an insurmountable objection."

"How could it be known by a Roman Catholic clergyman in this country, whether a particular bull of the pope was or was not received in Ireland?—Either from his bishop or the metropolitan."

"Supposing it was thought desirable to know whether a particular bull had been published in this country or not, how could that be ascertained?—From the bishops."

"Is there any official or other means by which it would be possible to ascertain what bulls have been received in Ireland during the last century?—I cannot say; I should think Dr. Murray or Dr. Kelly, or those bishops who are old in the ministry, would be able to furnish information upon that subject; but as far as my information extends, none have been received."

SECTION XV.

Bulla Cœnæ and *Index* not in force in Ireland—Dr. M'Hale on Gallicanism and Ultramontanism—Council of Constance—The teaching at Maynooth still Cisalpine—Dr. O'Hanlon on spiritual and temporal power.

WE have most distinct and positive evidence that the *Bulla Cœnæ* was never received or published in this country. Dr. John O'Hanlon, who at the time was the professor of canon law at Maynooth, was examined in Oct., 1853, before Lord Harrowby's Commission, and was asked:—'Would it be considered as a matter of course that any book put on the *Index* was not to be

used in any Roman Catholic college?—The *Index* is not received, and therefore imposes no obligation in this country. Dr. Murray, the late Archbishop of Dublin, Dr. Doyle, and, as well as I can recollect, Dr. Curtis, the Archbishop of Armagh, and Dr. Kelly, the Archbishop of Tuam, declared upon their oaths in the House of Lords, in the year 1825, that neither the *Bulla Cœnæ* nor the *Index* was received in Ireland, and I am sure they have not been received since that period. The *Index* therefore induces no obligation; but as clergymen belonging to an ecclesiastical institution, we feel ourselves constrained to defer to the expressed wishes of the pope." [Dr. O'Hanlon refers to the case of a class book at Maynooth, written by Bailly, a Gallican, which had been lately put on the *Index*, and was discontinued at the college as a class-book.]

"You stated that the bull *Cœna Domini* was not in force in Ireland?—I have the best possible authority for that statement. If it were in force in Ireland, it would have been a most serious mistake for our prelates to state in the House of Lords that it had never been received."

"The bull *Cœna Domini* has never been received in Ireland?—So far as I know it never has; and I ground my opinion, first, on the authority of the prelates who affirmed, on their oaths, in 1825, that it never had been received; and secondly, on the fact that if it were received, every person printing, reading, or possessing books written by a heretic on the subject of religion, or on any other subject, if they should contain heresy, would incur an excommunication reserved to the pope. A similar excommunication would be incurred by all secular magistrates and judges for trying or punishing ecclesiastics for criminal offences except in the cases allowed by the canon law. Now no man in Ireland ever dreams that by such acts any description of excommunication is incurred. The universal impression therefore is, that the bull *Cœna Domini* is not received nor of force in Ireland."

Archbishop M'Hale was a professor of theology at Maynooth before he became Bishop of Maronia and coadjutor Bishop of Killala in 1825, and in November, 1826, he gave evidence as to the cisalpine character of the teaching at Maynooth in his time. He said: "With reference to the authority of the popes to depose

kings, I wish distinctly to state my conviction that the authority of kings, or whatever name the supreme civil magistrate may be called, is supreme and totally independent of any spiritual authority, so that subjects cannot be released by any power from their sworn duties of allegiance. I can, therefore, state that the ultramontane opinions were not taught in the College of Maynooth. I wish distinctly to declare that we did not adopt what are generally called the opinions of the Gallican Church, contained in the four propositions of 1682, which are connected with the Gallican liberties. The opinions of the ultramontanes would seem to us to be destructive of the authority of kings; and the other opinions, if pressed to the consequences of which they seem to be susceptible, would appear also to be subversive of the due independence of the Church. Between these dangerous extremes, as I think them—the ultramontane and Gallican doctrines—there is a very wide interval of sound theology where the most scrupulous may rest, and where the most excursive mind can find ample scope for the exercise of its energies. It is no wonder that in the College of Maynooth, we should not have been addicted to any of those opinions that divided Catholic schools on the continent. We know very well that other theologians must have been influenced by the place of their education, and that the same motive which influenced the French divines to abridge, might have induced the Italian theologians to extend, the pope's authority. There he was a temporal sovereign as well as spiritual pontiff, and the theologians in the Italian schools might, naturally enough, have mixed up his temporal with his spiritual character. Here, we were quite remote from the operation of any of those causes that might have influenced the Italian or the Gallican schools, and therefore we were not bound to embrace any theological opinion, but so far as it seemed to incline towards the defined principles of theology."

"Can you point out in what particular principles the Gallican Church appears to you to go too far?—In saying that the opinions of the Gallican Church appear to go too far, I refer principally to a proposition in which they say that they will defend the decree of the Council of Constance regarding the superiority of councils over popes. The discussion of the relative superiority of councils

over popes, or of popes over councils, seems to me to be exceedingly inconvenient, nor does the Council of Constance seem to me to be one of those cases from which a principle of ordinary operation ought to be deduced. The Council of Constance was convened in very troublesome times, when the peace of the Church was distracted by the contending claims of three rival pontiffs; and therefore it was necessary to restore peace to the Church by an exertion of power beyond any former example. The fathers of the Council of Constance resolved that they should depose those different claimants to the pontifical throne, and establish another. That seems to me to be a case of exception, rather than a case of general rule or application; it may have an analogy with a case of extraordinary revolution in the State, and those who would deduce from it superiority in councils over pontiffs, would appear to reason as erroneously as those who familiarized the ears of the English people to what Burke calls the king cashiering doctrine from the the case of the revolution. Now the case that occurred in the Council of Constance is solitary in the history of the Church, and it seems to me to be the operation of that conservative principle by which vigorous bodies always are enabled to throw off the disease by which they are oppressed, and recover their constitution. To extend the principle of that extraordinary case to ordinary occurrences in the Church, seems to be a principle pregnant with danger; and the observation is justified by a reference to the Council of Bazil, which, before the lapse of fifty years since the Council of Constance, had by an abuse of its decrees attempted to depose the legitimate pontiff. However, in France the dangerous tendency of this decree was happily corrected by the piety of that Church, and their strong attachment to the Holy See. This justifies me in saying that I would think it dangerous to embrace the Gallican liberties to their entire extent. I may further state, as a fact, that in the full sense of the term, they never were taught in the College of Maynooth; nay, Dr. Delahogue himself, a native of France, showed one of those minds that are superior to prejudices of country or of education, and, content to follow the defined line of Catholic doctrine, he did not obtrude particular opinions on the college. Having no motive to be attached either to one

or the other opinion, we have neither taught the ultramontane doctrine nor the liberties of the Gallican Church."

To show that the teaching at Maynooth has retained its cisalpine character since Dr. M'Hale left the College, I will adduce some of the evidence that was given before Lord Harrowby's Commission. In October, 1853, Dr. O'Hanlon was asked :—"What is the doctrine taught in Maynooth College on the subject of the authority of the pope or the Church in matters of a civil or temporal nature?—We teach in Maynooth that the pope has no temporal power whatever, direct or indirect. We have affirmed that doctrine upon our solemn oaths, and we firmly maintain it in the College of Maynooth. We hold the same doctrine in regard to the Church."

"The distinction between temporal and spiritual affairs is sometimes a very nice one—is it not?—It is no doubt a troublesome question. I think, however, that I can throw some light upon it. The rule, which is ordinarily given, for distinguishing between temporal and spiritual matters is this—'Those matters are of a spiritual nature, which have for their immediate end or object the prevention of sin, the good order, piety, and sanctification of the Christian people; and those matters are to be regarded as temporal, which have for their immediate end or object the peace, well-being, and worldly happiness of human society.' I lay emphasis on the word 'immediate' end or object, because it is obvious that the remote or indirect end of any matter will not determine its character. If the remote end were capable of determining the order to which the matter belonged, it would necessarily follow that things which are essentially and confessedly spiritual would appertain to the temporal order, such, for instance, as the administration and reception of the sacraments, the preaching of the word, &c., because as the direct and immediate end of both is to make men good and pious Christians, so the indirect and remote result must be to make them faithful and obedient subjects of the Queen. In their remote influence, therefore, they contribute to promote the interests and welfare of civil society. The distinction, therefore, between spirituals and temporals cannot be founded on the mediate or remote bearing of things. To assist us in drawing the line of demarcation between temporals and

spirituals, some writers have furnished us with two other rules which appear to me to serve their purpose admirably well. Those subsidiary rules will indicate a vast variety, if not the entire aggregate, of spiritual matters. The first of those rules is—'Those matters are spiritual which have been instituted, commanded, or recommended by Christ.' This rule is founded on the principle that as Christ exercised no temporal power—as His kingdom was not of this world—all His institutions, ordinances, and councils, must be regarded as bearing an immediate relation solely to the sanctification and eternal welfare of man. The second subsidiary rule is—'All those matters must be deemed spiritual which were regulated by the apostles and their successors in the ministry from the death of Christ to the conversion of the Emperor Constantine.' During the three first centuries of the Christian era the Church possessed no temporal power. She did not possess it in virtue of any concession from Christ; for we are agreed that Christ communicated no temporal authority to his Church. She did not derive it from the concession of secular princes; for during this period they were all enemies of the Christian religion and persecutors of the Christian people. To maintain that the Church acquired temporal power by usurpation would be to maintain the rankest absurdity. Any attempt at usurpation would have been at once defeated, and have had no other effect than that of increasing the fury and vengeance of her persecutors. Besides, the supposition is inconsistent with our ideas of the Church during those times, which, according to Protestants themselves, were the golden ages of Christianity. The power, therefore, which the Church exercised during the three first centuries must have been spiritual power, and as power takes its denomination and character chiefly from the nature and quality of the objects about which it is conversant, the objects in reference to which the authority of the Church was at that period exercised must have been spiritual. I have a right, therefore, to conclude that all the matters which I find regulated by the Church during the interval between the death of Christ and the conversion of Constantine the Great are of a spiritual nature. Those are the chief principles which I have discovered in my reading as tending to throw light on a subject which has embarrassed considerably

not only Catholic but Protestant writers. It cannot be necessary to observe that besides matters of a purely spiritual or temporal nature, there are others of a mixed character. By mixed matters we mean such as involve a twofold primary and direct relation, one to the worldly and the other to the eternal happiness of man."

"With regard to the first doctrine of the Gallican liberties, is it not a question in dispute among Roman Catholics?—It is, though we may regard the opinion which attributes either direct or indirect temporal power to the pope or to the Church as being almost obsolete. The only writers who have attempted to revive it in modern times are Dr. Brownson, a recent convert to Catholicity, and editor of an American review, and the famous La Mennais, who has been condemned by the Holy See for the extravagance and eccentricity of certain doctrines which he held."

SECTION XVI.

Dr. Crolly on Promulgation of Papal Decrees—Queen's Colleges; how far interdicted—Difference between Counsels and Precepts—Power of the State and of the Church.

DR. CROLLY was asked, in October, 1853:—"In what way is it publicly known to all parties whether a certain decree of the pope's is published or not in a certain district; or how would the State be aware what decrees of the pope have force in Ireland and what have not?—By inquiring from the bishops—that would be one way. With regard to new publications, the usual course is that a copy of them is sent to each of the archbishops, or to one for all the rest; and they get a copy for each of their suffragans; and those bishops then, if it be a law which regards the clergy or the laity, publish it in their churches, and make it known in that way."

"Is there any place to which the State or an independent person could refer for the purpose of knowing what is actually in force in Ireland and what is not?—To the bishops, of course."

"Is there any book or register that could be referred to?—Nothing of the sort; but you would get it in the newspapers. If there was anything that concerned the State very much, of course the attention of the newspapers would be called to it, and it would

be published in them in such a way, and with such comments, that the attention of the State would be certainly called to it; and if the State should consider it of importance, it would inquire into it."

"If a bull had been promulgated in Ireland, would every parish priest be aware of the fact?—If it concerned all the parishes, undoubtedly every parish priest should be made acquainted with it; and if a parish priest were not aware of its existence he would not be bound by it."

"If he was not aware of the fact, what would be the state of things?—He would not be bound by it till he knew it."

"Supposing I went to a parish priest and said, 'Is such a bull promulgated or not?' and he were to say, 'No, I have no knowledge of it,' would it be fair to presume that it had not been promulgated?—If a law has been published generally, in a country, for the whole country, it is binding upon every one; that is, it really has the force of law; but those who do not know it cannot observe it. Supposing a parish priest is asked about a certain law, and he says, 'I know nothing about it,' all that follows is this, whether the law be in force in the country generally or not, this man is ignorant of it. Supposing you go to a great many parish priests, and they all declare they know nothing of such a law, I would at once conclude that no such law was in force: because if it had been published, they could not all be ignorant of it; but one individual may be ignorant of a law as well as of other things."

"There is no official mode of making everything known to every parish priest?—Decidedly, if the matter concerns his parish, his bishop gets it and sends it to the parish priest, who publishes it in his church on Sunday, in presence of the congregation; but if it be a thing concerning the State, or of any public interest, it will undoubtedly very soon find its way to the newspapers."

"Is the question of publication so well defined that it cannot be a matter of opinion within a particular church whether such and such a decree has force in it or not?—It may be a matter of opinion whether such a law has force or not; and the result is this, if there is a well-grounded doubt as to whether a certain decree is binding or not, I would say to the legislator, you have not pub-

lished your law; you should not only make a law, but make me certain that you wish to bind me by it; if I am doubtful about it, I do not feel myself called upon to observe it, because I think it ought to be promulgated not only doubtfully but certainly."

"In regard to the education of the laity, supposing the pope issues any instruction upon that point, would it be considered as binding?—I should say so."

"Of course he may be wrong, as it is not a matter of faith; but, as a matter of discipline, would it be considered as binding?—You are referring to the Queen's Colleges?—(CHAIRMAN—I confess I had them in my mind when putting these questions)—If the pope issue an instruction to the laity in regard to education, telling them that he, as their spiritual superior, commands them not to frequent certain places of education, he might be deceived as to the nature of these establishments, and every legitimate effort may, and should, in that case be made to undeceive him; but in the meantime he has a perfect right to be obeyed, because it is not, at all events, a sin to obey, and when obedience is not a sin it is certainly due to the head of the church, especially in the matter of education, on the nature of which every thing that regards spiritual welfare chiefly depends. In the religious training of his child, a Roman Catholic parent must implicitly follow the teaching of the Church, that is, he must teach him to embrace all that doctrine regarding faith and morals which she has defined, and to reject all that is opposed to or inconsistent with what she has defined. The parent who keeps these two principles safe and intact, violates no law of the Church by imparting to his child whatever secular education he pleases. No person holds that the Church has any right to dictate to a parent the secular pursuit which he shall select for his child, whether he shall make him a barrister, a solicitor, a physician, a surgeon, a painter, a sculptor, a legislator, or a diplomatist; and as each of these professions requires a special education and training, it follows that if the Church had a right to appoint the particular kind of secular education, she would also necessarily select the profession. As far as secular education is concerned, what the Church has a right to do, is to prevent any teaching inconsistent with or subversive of faith or morals. A system of education may either be of

its own nature subversive of faith and morals, or it may be dangerous to faith and morals. In the first case, the Church not only may proscribe such an education, but she is bound to proscribe it, and she can exclude from her communion those who refuse to obey her. But it is not always a sufficient reason for proscribing anything because it is dangerous to faith and morals; for there is scarcely anything in the world that is not dangerous to faith and morals. If we were obliged to avoid everything that is dangerous to faith or morals, we should leave the world altogether. 'I wrote to you in an epistle,' says St. Paul, 'Not to keep company with fornicators; I mean not with the fornicators of this world, or with the covetous, or the extortioners, or the servers of idols, otherwise we must needs go out of this world.' Nay, we are not obliged to avoid every thing that may be of its own nature grievously dangerous to faith and morals; otherwise we could not, without offending God, apply ourselves to the study of botany, surgery, anatomy, painting, or even of theology, nor could any one engage in the duties for which these studies are necessary without sin. We can never do anything subversive of faith or morality, because that would be a sin, and we should rather sacrifice all things than offend God, nor can we ever place ourselves in grievously dangerous circumstances without a sufficient cause, and without using the means, such as prayer and the sacraments, which God has given us to preserve us unpolluted in this world. If we do not rashly rush into danger, thus foolishly tempting Him, but are forced into it for the attainment of some lawful object, we may be sure that He will not desert us, especially in the hour of danger. I am quite sure that the pope will never issue any instructions inconsistent with these principles, and I am certain, moreover, that the pope would be opposed to any other ecclesiastical superior exercising a control inconsistent with these principles. But I repeat, if the pope issue any commands on the subject of education, it is the duty of the subject to obey. If the pope had not the control of education, he might as well give up ruling the church altogether."

"The laity may remonstrate, as thinking he has been misinformed and misadvised, but meanwhile the laity, as well as the ecclesiastics, would be considered to be bound?—They would be

obliged to obey if the pope commanded it; but they would have a perfect right to remonstrate and to prove, if they could, that the pope had been misinformed. Pope Benedict XIV. in his famous work, *De Synodo Diœcesana*, says that not only in particular rescripts, in which nothing is more easy than that the pope may be deceived, but also that in general laws of discipline, with the exception of those regarding faith, religious rites, ceremonies, sacraments, and the manner of life of the clergy, it is by all means the duty of a bishop to remonstrate with the Holy See against a law which he may think even inopportune for his diocese: because he says the legislator does not know all the circumstances of the country; and he gives instances in which popes either did not press the law in those places in which it was objected to, or greatly moderated its rigour, and the punishment inflicted on its transgressors.

"Will you take the case of the Queen's Colleges; has not the pope decided that they are dangerous to faith and morals, and is there not an order of suspension against any priest having official connection with them?—The decision as regards the laity is, that those colleges are grievously and intrinsically dangerous to faith and morals, and the laity are exhorted not to frequent them; but there is no law, as far as they are concerned. The pope has sanctioned a law preventing priests from having official connexion with them. But a priest is more immediately under the pope than the laity—he is one of his officers; and the pope probably thought that it would be in vain to exhort the laity not to frequent the colleges, if priests were allowed to hold office in them. He has consequently sanctioned a law prohibiting all priests, under pain of suspension, from having any connexion officially with the Queen's Colleges. This command every priest is bound to obey. The Church has always exercised a special control over the conduct of ecclesiastics, and has thought herself justified in preventing them from intermeddling too much, even in ordinary temporal affairs. With regard to the laity, the pope says that these colleges are dangerous to faith and morals, and he advises and exhorts them not to frequent them; but he does not say to every individual layman, 'You cannot go to these colleges without committing sin.' There is no law of the Church to prevent him from attending them. He is simply to be guided by the

principles I have laid down regarding dangerous things. Now, in the case of an individual layman, the danger to faith and morals, in his regard, may be less in these colleges than in any other place in these countries to which he can go for a university education. Take the instance of a student whose parents are living in Cork, who may be devout Catholics, and who would, therefore, watch over the religious education of their child with more anxious and affectionate solicitude than any other persons in the world; they would also be able to exercise a more wholesome control and a more abiding influence in guiding his reason and in impressing religion on his tender mind than could be done by any stranger to his heart and home. It may be that he is destined for one of the liberal professions, for which a university education is necessary, and his only choice will be between the Queen's College at home and a distant university, the intrinsic dangers of which are as great or greater, and where he is no longer guarded by a parent's love. It will scarcely be affirmed that Roman Catholics cannot embrace a liberal profession without sin; and I am quite certain that, in the case I have mentioned, the Catholic student will act more in accordance with the law of God and with the wishes of the Church by remaining with his parents and obtaining education at home than by seeking it in a distant and perhaps more dangerous university. There is no law of the Church or of the pope forbidding a young man to act in this manner, or declaring such action to be sinful; and I am quite sure that if any inferior authority made such a law, it would not be approved of by the court of Rome, which has taken care to admonish the bishops to observe the rules of equity and benignity in carrying out the rescripts of the Holy See regarding the Queen's Colleges."

"The pope might, if he had pleased to have given a different form to his opinions, have inhibited the laity?—There might be a system of education which the pope could and would absolutely prohibit—that is quite clear; and if such a system were inaugurated, I have no doubt he would command all Catholics to avoid it, under pain of sin. But as to the present system, the pope has not thought it his duty to make a law preventing Roman Catholics from availing themselves of it under pain of sin. The acts of the Holy See

have been in perfect conformity with the principles I have laid down. It is one thing to exhort, another to legislate. God Himself has exhorted us to observe the evangelical counsels; but he has not commanded us to do so. The Church earnestly exhorts her children to receive the sacraments frequently during the year; but she has not made this a precept. Suarez teaches, in his famous treatise on laws, that a human precept, in order to be binding, must not only be just, but also that it must not be too onerous—that the legislator must not only consider the perfection of his law, but that he must also look to human frailty, and neither impose too great or unnecessary burdens. Benedict XIV., in the work already quoted, lays down the same principle in many places, and especially where he says that a law binding seculars to hear mass and the word of God in their parish church on Sundays and holidays was rescinded on account of its too great severity. This wise and equitable course has been followed by the Holy See in the case of education in Ireland. It has pointed out the danger, it has exhorted the faithful to avoid it; but it has not burdened the conscience by any new precepts."

This witness at great length, for the purpose of explaining the distinction between spiritual and temporal things, establishes most satisfactorily three principles. For his reasoning in support of them, I must refer the reader to the "Minutes of Evidence." The propositions are :—

"I. The State possesses supreme independent power in all civil affairs—as supreme and independent as when the gospel was first promulgated."

"II. The Church, by virtue of her divine institution, has neither more nor less power now than she had during the first three centuries."

"III. The sanction by which the Church enforces her commands is purely spiritual, whilst the penalties inflicted by the State are of a purely temporal nature."

SECTION XVII.

Dr. Neville on punishment of heresy—On promulgation of papal laws—*Bulla Cœnæ* not in force—Dr. Murray on arguments of Peter Dens for burning heretics—Dr. Neville on the temporal power—Author's views on laws of discipline—None binding unless distinctly enjoined and constantly enforced.

Dr. NEVILLE was asked, in January, 1854 :—" Passages have been referred to in Menochius's and Maldonatus's commentaries, spoken of as authorities at Maynooth, which apparently justify the putting to death of heretics. Have you any observation to make in regard to such quotations?—It cannot be denied that several of the old theologians justified the conduct of the civil government in putting heretics to death. We must, however, remember that this was never the act of the Church, that the Church had no part in it, except in so far as theologians tolerated by her justified the conduct; and of those theologians we find the most respectable defending themselves by saying that generally the heretics of whom they spoke were not only persons who endeavoured to introduce corrupt doctrine, but whose principles were subversive of social order; and that, if not on account of their doctrine, at least on account of the seditious principles which they inculcated, they were justly subjected to capital punishment."

"It has been stated to the Commissioners that Liguori, which has been said to be a book of reference in Maynooth, contains this passage—'The pontifical laws oblige the faithful, though only promulgated at Rome,' and this was cited for the purpose of showing that the decrees of popes are binding on the faithful?—This is a question on which theologians are divided. The ultramontane school hold that the papal laws, by the fact of being published at Rome, bind the whole Catholic world. The Gallican theologians, on the contrary, assert that in order that the papal laws should bind in any particular country, they require express promulgation in that country. The latter is the opinion held in our class-books. One of them (Bailly) says—'Ecclesias-

tical laws, even those made by the pontiff, in matters that regard discipline, do not bind before they have been published in each province.' He then subjoins his reasons, which it is not necessary to enter into. The doctrine expressed in Bailly is the one held and taught by the theological professors at Maynooth, and generally adopted by the bishops in this country. Dr. Doyle and Dr. Murray, in their evidence before the House of Commons, in accordance with this opinion, stated that the bull *Cœnæ Domini* was never received in these countries."

"Would the mere publication in a book, either by the permissive or express sanction of the bishop of a bull, amount to a promulgation or acceptance of that bull in that diocese?—It might be accepted as the private opinion and wish of the bishop, but it could not be taken as a binding law."

"You hold that the *Bulla Cœnæ* derives no force whatever from the mention of it in the published edition of Dens, though that publication received the sanction of the bishops?—It derives no force from its introduction into the published edition of Dens. The censures or inhabilities enacted by it have never been observed with us before or since 1832. Indeed, it is hard to see how a bull, whose yearly publication was suspended in 1773 by Clement XIV. as a concession to princes, and never resumed since, can be asserted to be binding universally at this day. Nor do I think that Dens was sanctioned positively by the bishops at all. It was accepted as a conference book in some dioceses for convenience sake, because it was very well arranged, and the subjects were treated in catechetical form."

Of this writer's arguments that heresy deserved the punishment of death Dr. Patrick Murray, in answer to written questions by the Commissioners, writes:—"As the name and authority of Dens have been for the last twenty years so incessantly and pertinaciously obtruded upon us as if he were a pope addressing the whole church *ex-cathedra*, or a second Council of Trent, the Commissioners will be good enough to allow me space for a very brief reply to his arguments."

The proposition laid down by him is that *heretics are justly punishable with death.*

First argument:—Because forgers of money or other disturbers

of the republic are justly punished with death; therefore, also heretics, who are forgers of the faith, and, as experience testifies, grievously disturb the republic.

"*Answer*:—1° Forgery is not justly punishable with death, if a lesser punishment be sufficient to prevent the crime. Neither is every disturbance of the State punishable with death. This answer does not prove that *no* punishment should be inflicted for heresy; but it proves the inexactness of Dens' reasoning."

"2° Forgery and disturbance of the State are civil crimes, not so heresy. Otherwise the civil magistrate could punish unbaptized persons for holding heretical doctrine."

"3° 'Heretics are forgers of the faith.' But faith is not money. One belongs to things that are not of this world; the other is essentially of this world. One belongs to the supernatural order, to the order of grace; the other to the natural order—two orders so totally different, that an argument from the operations, laws, &c. of one is utterly inconclusive as to those of the other."

"4° 'Heretics, as experience testifies, grievously disturb the republic.' Whoever disturbs the State deserves punishment, whether he be a heretic or a Catholic. But that heretics, whenever they can be so, are seditious and rebellious, is an assertion of *fact* quite in keeping with the logic that accompanies it, and with the proposition it is brought to sustain."

"*Second argument*:—Because God, in the Old Testament, ordered false prophets to be put to death; and it is ordained that 'He who is proud and unwilling to obey the command of the priest shall die.' (Deut. xvii. 12)."

"*Answer*:—These and numerous other sins were, under the old law, not only sins against God, but civil crimes. Without going to higher works, I take the following from Archbishop Dixon's recently published 'Introduction to the Sacred Scriptures':—This was the fundamental principle of the Government established by God through the ministry of Moses, viz., that God was not only to be, in a special manner, the God of the Hebrews, but was to be, moreover, their King. That is to say, he was to exercise immediately in regard to the Hebrew nation that authority which vested in ordinary kings elsewhere. This government is properly called a *Theocracy*. Amongst the Hebrews, then, idolatary was

not only a crime against God, but also high treason against their king. The tabernacle was to be at the same time the place of Divine worship and the royal palace."

"*Third argument:*—From the condemnation of the 14th article of John Huss in the Council of Constance."

"*Answer:*—To quote and explain this article, and to go through a formal refutation of the inference drawn from it by Dens, would occupy too much space. Suffice it to say, that there is no mention whatever in the article of heresy, or of any religious error; that the proposition is very vague and general, and the sin liable to temporal punishment might be, at the same time, a civil crime; that several of the doctrines condemned in both Wickliff and Huss are of the most rebellious and anarchical tendency, such as that civil and ecclesiastical magistrates lose their authority by the commission of a mortal sin, &c.; and, finally, that the heresies of the middle ages were directly and formally of the most anti-social character. With the idea of heretic in those times, was always associated the idea of rebel, incendiary, and the like."

"These are all the arguments advanced by Dens, and they are an epitome of the main arguments put forward by other theologians of the same way of thinking."

Dr. Neville was asked:—"Supposing an order were issued by the pope that Roman Catholic ecclesiastics should not act in the Queen's Colleges, and that the laity should not send their children thither, the ecclesiastics would be bound to obey; but the laity would not?—Ecclesiastics would be bound to abstain from any communication with those colleges; because their interests not being involved in them, the matter enjoined would be, in their respect, indifferent. The laity, on the contrary, finding the thing commanded not only injurious to their own interests, but morally impossible to observe in the circumstances of the country, would not be obliged to abstain. They might, moreover, most reasonably presume that, if his Holiness understood their condition aright, he would be very far from imposing on them so inconvenient an obligation."

"Has it not been stated that the ultramontane canonists have abandoned even the indirect temporal power of the pope?—What

has been stated I believe to be this, that very few now vindicate temporal power to the pope ; and that no one at present defends it on the title on which it was vindicated to him formerly, and which appeared to be the only defensible title on which it could be supported, namely, the clause at one time inserted in the oath taken by monarchs at their installation, which seemed to make the allegiance of their subjects to them conditional on their own loyalty to the Holy See."

"If this indirect power is not rested upon the same titles as before, upon what title is it rested?—The only title on which any person at present could claim for the pope temporal power would be this, that temporal and spiritual interests may clash, and in such an event, the temporal interests being inferior, should give way before the spiritual ones opposed to them. And thus the pope, as spiritual head of the Church, though possessing no direct temporal power, may, by virtue of his right to enforce spiritual considerations, acquire a control over temporal concerns."

"Is that doctrine entertained and taught at Maynooth?—There is no such doctrine as that entertained or taught at Maynooth."

"Of that you speak confidently?—Yes, confidently ; nor do I think it is taught in any theological school at the present day ; it is mainly sustained by some writers who are not theologians, the most distinguished of whom is Le Maistre."

It was sworn expressly by some of the witnesses against me at the trial, O'Keeffe *v.* Cullen, and appeared to be assumed by all of them, that the entire discipline of the canon law, of all the general councils, and of all the papal bulls that were ever promulgated at Rome, was in full force at the present time in Ireland ; and the men that swore this most extravagant and palpable absurdity, were all said to be conversant with the laws of the Church, and gave their evidence as "experts ;" the real fact of the matter being simply this, that no disciple whatever, whenever, wherever, by whomsoever enacted, is entitled to the slightest respect or notice from me except it be found in the *Statuta Diœcesana* of the diocese in which I am minister. When the new statutes of this diocese (Ossory) were published in 1832, every previously existing rule of discipline not embodied in them was utterly and expressly abrogated and abolished ; so that if

at any time before that date, it were an offence against the discipline of this diocese for either a priest or layman to implead an ecclesiastic before a lay court, certainly it has not been one since. It is of the very nature of all discipline to change with times and places, and to refer to the Council of Chalcedon, in 451, as was done in my case, to prove that, in the diocese of Ossory in 1870, it was a forbidden thing for one priest to sue another for damages in a lay court, is about as great an absurdity as to seek in the acts of this council for the fast days I should keep or the dress I should wear. The very canon of this council which the "experts" quoted against me, of itself alone shows the absurdity of their proceeding, and exposes their shameful ignorance to the ridicule of the world. The canon is found in the Notitia Ecclesiastica of Cabassutius in these words :—"Si quis clericus habet cum clerico litem, aut negotium, proprium Episcopum non relinquat, et ad sæcularia judicia ne excurrat; sed causam prius apud proprium Episcopum agat, vel de Episcopi sententia apud eos, quos utraque pars elegerit judicium agitetur. Si quis autem præter hæc fecerit, canonicis pænis subjiciatur. Si clericus autem cum proprio vel etiam alio Episcopo negotium aut litem habeat a provinciæ synodo judicetur. Si autem cum ipsius provinciæ Metropolitano, Episcopus aut clericus controversiam habeat Diœcesis Exarchum adeat, vel imperialis urbis Constantinopolis thronum et apud eum litiget." Now it so happens, that without knowing anything about this canon, I actually conformed to it in my dealing with both bishop and priests. When I was publicly denounced as a liar from the altar of my own church, I appealed to the bishop, and asked him to remove the curates to another parish; but I could not even get an answer to my letter, and before I impleaded the bishop, I appealed to Propaganda in Rome for leave to go to Rome in order to make there my complaint agninst the bishop, and through the interference of Cardinal Cullen I was refused this leave. Whether it was a forbidden thing or not, I knew that it was not becoming in a clergyman to sue another clergyman in a public court without dire necessity, and I left nothing undone to avoid a public contention, but I laboured in vain. In place of removing the curates to another parish, they were encouraged to persevere for more than two years

by the acting authority in the diocese, in denouncing me as a minister of Satan, and not a priest of God. I did not, it is true, make my appeal at Constantinople, as the canon directs; but does not this direction of itself alone show the absurdity of applying in this age and nation, a rule made more than fourteen centuries ago for a country situated even beyond the continent of Europe.

SECTION XVIII.

Bull promulgating the Council of Trent—How far considered binding in France—Dr. Doyle on bulls of discipline—On the conditions required for their force—On the discipline of the Council of Trent—On the temporal power—Professor Tyndall's retort on Cardinal Cullen– Dr. Doyle's scriptural proofs against the temporal power.

If there were ever a papal bull which was obligatory everywhere after it was promulgated in Rome, it was the bull of Pius IV., published January 26th, 1564, in which he confirms all the acts and decrees of the Council of Trent, and enjoins all prelates, under holy obedience, and pain of canonical censures, to observe them diligently, and cause them to be observed inviolably everywhere; yet this bull, published again on the 20th July, same year, and declaring that the discipline enacted in the council began to be binding on all from the previous May, was never considered binding anywhere. The dicipline of the Council of Trent was never adopted in its integrity anywhere up to the present time. There are many things in the Council of Trent which clash with the municipal laws of every country, and could not therefore be adopted anywhere, L'Abbé Filsjean, in his *Dictionnaire des Conciles*, explains to what extent this council was received in France, and the reasons, for rejecting a good part of its discipline. "A l'egard de la France, le concile de Trente y est reçu généralement quant à la doctrine : le dogme qu'il contient y est enseigné comme dans toutes les autres parties de l'Eglise : on y a une profonde vénération pour cette auguste assemblée et on la regarde comme un concile vraiment œcuménique. L'Eglise de France a même adopté plusieurs réglements

très-utiles faits par le concile, comme étant conformes à l'esprit des anciens canons : mais il n'y est pas reçu pour toute la discipline pour plusieurs raisons : voici les plus essentielles. 1°. Parce qu'il déroge en plusieurs endroits aux usages reçus dans le royaume. Les décrets renfermés dans les deux dernières sessions déplurent à bien des gens : on ne put se résoudre de convenir que les évêques eussent pouvoir de procéder contre les séculiers par amende et par emprisonnement, tandis que Jésus Christ, n'avoit donné à ses ministres qu'une autorité spirituelle. 2°. On ne put passer non plus que le concile prive l'empereur, les rois, et les autres princes, de la propriété du domaine des lieux dans lesquels ils permettoient le duel, parce que la puissance des princes vient de Dieu, et que personne ne peut la leur ôter ni la restreindre. 3°. On ne put approuver ce que le concile definit sur le patronage laïque se fondant sur cette supposition, que tous les bénéfices sont libres, si le patronage n'est pas fondé, et on soutenoit au contraire que les églises n'ont point de biens temporels, qui ne viennent de la libéralité des séculiers. 4°. On se plaignit encore du renvoi des causes criminelles des évêques au pape, tandis que les conciles provinciaux et nationaux en doivent être les juges. On dit que cela dérogeoit non-seulement à l'usage de France et au concordat, qui ne veut pas que les sujets du roi soient obligés d'aller en personne plaider à Rome, mais encore aux canons des conciles qui veulent que les causes soint jugées sur les lieux. On n'approuva pas non plus que le concile permît aux mendiants de posséder des biens-fonds. 5°. On trouvoit qu'il avoit entrepris sur la juridiction des rois et des magistrats, et qu'il s'étoit attribué une autorité qu'il n'avoit point. 6°. De ce que, bien loin que le concile de Trente ait reconnu la supériorité des conciles généraux au-dessus du pape, comme les conciles de Constance et de Bâle l'ont enseigné, il paroissoit avoir favorisé l'opinion contraire, en soumettant ses décrets par la derniere session au jugement du pape, et en déclarant qu'ils devoient être entendus, sauf l'autorité du saint Siège. Enfin sur ce que le concile permet au pape d'évoquer à Rome les causes des ecclésiastiques pendantes devant l'ordinaire ; et autres raisons qui sont plus amplement déduites dans les ouvrages cités ci-aprés."

When Dr. Doyle was asked before a parliamentary committee

on the 16th of April, 1825, "Whether the Catholic clergy insisted that all bulls are entitled to obedience," his answer was :— "By no means. The pope we consider as the executive authority in the Catholic Church, and when he issues a bull enforcing a discipline already settled by a general council, such bull is entitled to respect; but he may issue bulls which would regard local discipline, and other matters not already defined, and in those cases the bull would be treated by us in such manner as might seem good to us. Did we find that it was unreasonable, we would refuse to accept it." In his letters to Lord Liverpool the great bishop writes :—"A principal duty then, of all the general and national councils, especially during the middle ages, was the enacting of laws partly civil and partly ecclesiastical for the regulation of the interest of both Church and State; some of these laws still continue, others have force only in particular Churches or States, whilst hundreds upon hundreds of them have been abrogated or gone into disuse. This should be the case from the very nature of human law (such as these canons were), and which is very properly defined by Gratian as having the following conditions essentially annexed to it. 'Lex erit honesta, justa, possibilis, secundum naturam, secundum patriæ consuetudinem, loco, temporique conveniens, necessaria, utilis, manifesta quoque—nullo privato commodo, sed pro civium utilitate conscripta.' When the laws of the Church have not these conditions, when they prescribe what is immoral, unjust, or impossible, they are void from the beginning. When they are not suited to the natural dispositions of a people, or to the just usages of a country, when they are not adapted to the times and places for which thay are intended, when they are not necessary or useful, or if they be enacted for the advantage of individuals, and not of the community at large, they should not be received; and, if admitted, they cease to have force when the conditions which sanctioned their introduction discontinue. They cease to bind when the final cause or chief object for which they were enacted is no more found to exist. They cease when they are repealed by a contrary usage, or when they go into disuse, as well as in various other modes, all of which are familiar to those who, like your lordship, are conversant with the knowlege of the law. Had

these first principles, these preliminaries of legal science, been attended to by those whose profession should have made them acquainted with them, I should not be under the painful necessity of alluding to any individuals whilst I vindicate my own Church and creed."

With reference to the binding force of the discipline enacted in the Council of Trent, Dr. Doyle writes:—"In the Council of Trent even, and at a period when the Church was in a great degree severed from the State, we find that every Catholic prince in Europe assisted either in person or by his ambassadors; and though they did not, so much as in former councils, share in the proceedings, yet every person who has read the history of that assembly must know what an influence they exercised in it, especially with regard to matters of discipline. The Archbishop of Dublin himself, limited as his knowledge of these matters is, can scarcely fail to know that whilst whatever was 'delivered, defined, and declared' in that council respecting the faith is admitted by every Catholic in the universe, a great portion of the laws relating to discipline which were enacted in it are not even generally received; and that whilst Spain, for instance, admitted them entire, France rejected them altogether, and rejects them, as we ourselves do a part of them, to this day. That council, for instance, decrees that the field wherein a duel is fought shall be forfeited by the owner. This decree was, of course, proposed for the adoption of all the Catholic States, but not even in Spain and Belgium, where the council was published, did that portion of it ever take effect. The proceedings in Trent which regarded discipline are as distinct in their titles, forms, and sanctions from those which relate to faith as the concerns of this world are from those of the other."

This learned divine says of the temporal power that:—"It has disappeared with the state of society, which gave birth to it, and could as easily be revived as the earth could be made to retrograde or the art of printing be lost in oblivion." If any one individual more than another has given the stroke of everlasting death to the temporal power of the pope, it is this great man whom another great man, Chief Justice Whiteside, when referring to his evidence before the House of Lords, named a learned and patriot prelate.

I end my quotations from this distinguished writer by placing before the modern ultramontanes his scriptural proofs against the existence of this power, and challenging them to meet these proofs in the fair field of argument and reason.

Dr. Doyle stated before parliament that a parish priest could not be suspended or deprived of his parish unless after a trial on a defined charge and proof of guilt; and nothing is better established in the whole body of canon law—nothing so emphatically asserted in it as that, unnoticed and undefended, no one is to be condemned. Yet the ultramontanes who talk so much about canon law, and know it so little, pronounce sentence upon sentence on me without either my presence or my knowledge, and then publicly denounce me as a reprobate and an outcast, alleging that my crime was so notorious as to make any trial unnecessary. If the great and good Bishop Doyle were still alive, these things could not have happened, and the unhappy legate of the pope in Ireland would have been saved the reproach which Professor Tyndall has lately thrown in his face, when, in reply to an impeachment of his faith as a Christian by the Cardinal, he retorted on his Eminence, "The mediæval proceedings which, to the scandal and amazement of our nineteenth century intelligence, have been revived among us during the last two years."

Dr. Doyle writes:— "We consider the constituted authority in every State, whatever form it may assume, as derived from God, and totally independent of the pope or of any other authority whatsoever, except only such authority as the constitution itself of any State may recognize as the immediate basis or source of its own power. We are warranted in this opinion by the Word of God Himself, who, speaking in the book of proverbs, says:—'By me kings reign, and the makers of laws decree just things; by me princes rule, and the powerful decree justice.' The prophet Daniel also, speaking of Nabuchodonoser, though a heathen, declares:—'The God of Heaven gave to thee a kingdom, and strength, and empire, and glory.' So, St. Paul in his letter to the Romans:—"Let every soul be subject to the higher powers, for there is no power but from God;' and speaking of the chief magistrate, he observes that:—'It is not without cause he carries the sword, for he is the minister of God and avenger against him that

doeth evil.' And St. Peter, in like manner, in his first epistle, addressing the faithful, says:—'Be subject to every human creature for God's sake, whether to the king, as most excellent, or to the rulers as sent by him.' These passages from the Word of God point out the source and prove the absolute independence of the civil power; nor have they to my knowledge been ever called in question. It is next to be ascertained whether our Redeemer has Himself assumed, or exercised, or assigned to any other a right to interfere with the authority of princes and governments, thus expressly recognised as derived from the Almighty Himself."

"It would appear to be in some degree injurious to our Lord to inquire whether his kingdom was of this world; because he has himself so expressly stated that it was not, and that, if it were, his subjects would strive that he might not be delivered up to the Jews. He who complained that the foxes had their holes and the birds of the air their nests, but that the Son of Man had not a place to lay His head; he who disclaimed all right to divide a contested inheritance between two brothers, on the ground of his not being appointed a judge between them; he who obeyed the edict of Cæsar; he who fled the persecution of Herod; he who paid tribute, and commanded it to be paid; he who fled from those who would proclaim him king; he who recognised in Pilate the divine origin of that power over himself which that judge impiously abused; he undoubtedly did not come to interfere with the rights of kings or States, but to bear testimony to the truth, and to establish a kingdom not of this world, a kingdom which would embrace the citizens and sovereigns of all States, leaving their forms of government, as well as their rights and privileges, undisturbed."

"The Lord who thus depicts the power which he was pleased to assume and exercise, when he commissioned others to extend his kingdom, only authorized them to imitate his own example—to preach the doctrine, and administer the sacraments which he revealed or instituted—to bind or loose the sinner, or eject him from their society. And when he appointed Peter to be after him, the rock on which his Church should stand; to hold the keys of his kingdom, and to feed his entire flock; he was pleased also

to inspire him to teach his brethren and successors that they should not domineer over the faithful, but be made a pattern to the flocks from the heart. Showing, as St. Bernard observes, that it was not an arbitrary sway, but a parental solicitude, which Christ gave to his vicar, clearly forbidding to him all worldly domination. Hence it is that St. Augustine exclaims—'Hear ye, all the kingdoms of the earth, I hinder not your rule, I interfere not with your government in this world, my kingdom is not of this world; what more do ye desire? Come to the kingdom which is not of this world—come to it by believing, and cease to assail it by your cruelty.'"

"There is, my Lord, no trace that we can discover in the words or conduct of our Lord, or in the commission given by him to St. Peter or to the apostles, which would warrant us in attributing to the pope any authority whatever to interfere with our duties to the State; nay, we find the contrary clearly and solidly established. But it may be said, that we have no right to exercise our judgment as to the meaning of those texts of Scripture which I have quoted, and that we are obliged to reject them altogether if it should please the pope to disapprove of the meaning which we attribute to them, or assign some meaning entirely different from that which they express. This, my Lord, is a gross and unwarrantable misstatement of our doctrine, practice, and duty. The pope has no arbitrary power over us, still less has he the right to pervert the meaning of the Word of God, or compel any person to go along with him in error. Did he abuse his power, or swerve from those rules which are established in the Church alike for him and us, our duty would be not to imitate his fault or participate in his error, but to correct or amend him, as our fathers have done his predecessors. The right which we possess of judging as to the meaning of the holy scripture is limited, but not annulled. We who are bishops are authorized by the very words of the commission given to us at our consecration, to judge, but according to the canons; to teach and to interpret the sacred scriptures, but not contrary to the unanimous sense of the holy Fathers; nay, this latter is the only restriction imposed by the Council of Trent, and by the creed (so called) of Pope Pius, upon all those who read the Word of God."

"Whatever is expressly *defined*, *declared*, and *proposed* to all the

faithful, with and by the consent of the pope and bishops throughout the Church, whether assembled in council or otherwise, this to us is a decree, or definition, which we cannot reject or impugn; nor can we interpret the scriptures in a way which would clash with such definition, any more than we could assign to them a meaning contrary to that in which they have been understood unanimously by those great lights of antiquity, who lived near the times of the apostles; men who seem to have imbibed the spirit of those apostles themselves, in the elucidation of divine truth and the practice of the most heroic virtue; but except the salutary restraint thus imposed on our wayward judgment we know of no other. There is nothing else to restrain or limit our judgment. If we only exercise it within the boundaries fixed by the wisdom of our fathers, we are responsible for our opinions only to the Searcher of our hearts. If these opinions be promulgated and found contrary to what is defined from the Word of God, as it has been taught and believed in the Church from the beginning, we shall be made to account for them before a competent tribunal; they will be examined dispassionately, and approved or condemned as they may be found to agree with or differ from that standard to which I have referred. Whether it be a pope or council who presides at this trial, there are rules and precedents to which they must strictly adhere. With us there is nothing despotic, nothing arbitrary, nothing dependent on the will or caprice of individuals."

"I have submitted these observations in order to show the full force of that rule—'In necessariis unitas, in dubiis libertas in omnibus charitas'—which, first promulgated by St. Augustine, is adopted, in its fullest sense, by every Catholic in the universe; a rule by which nations and individuals in our communion are governed, when they adduce proofs of any opinions which they may think it their duty to maintain."

SECTION XIX.

The author says nothing disrespectful of popes—Lord Macaulay on Pius V.—Dr. Russell's apology for papal usurpations—Temporal power based on divine right by Innocent III.—New ultramontane creed—Examination of the articles.

I HAVE put forward nothing in my whole book except in the spirit of the grand rule of St. Augustine, quoted by Dr. Doyle. I have made accusations against no one. I have spoken of popes in the language of men who respected and reverenced their spiritual rule as the heads of our Church, while they disowned and disproved their pretensions to temporal sway. I have carefully avoided the use of language of a personal nature, or anything that could be considered offensive or disrespectful. I know that the exercise of this usurped authority over States and kingdoms was not inconsistent with holiness of life, and I revere as saints in the Church of God some of the boldest assertors of these unfounded claims, such as Gregory VII. and Pius V.; and I will conclude this whole subject by giving, from the pen of the accomplished scholar and divine, who at present presides over Maynooth College, and who was the very first person in that house whose acquaintance I made on the day of my entrance, in 1834, through the medium of the bosom friend of his life, the late Bishop of Madras, the best apology I can find anywhere for the popes who for many centuries assumed temporal rule, as a matter of course, and acted upon the assumption as a matter of duty. One sentence first from Lord Macaulay :—" Pius V.," says this distinguished writer in his essays, " under his gorgeous vestments wore, day and night, the hair shirt of a simple friar; walked barefoot in the streets at the head of processions; found even in the midst of his most pressing avocations time for private prayer; often regretted that the public duties of his station were unfavourable to growth in holiness; and edified his flock by innumerable instances of humility, charity, and forgiveness of personal injuries, while at the same time he upheld the authority of his See and the unadulterated

doctrines of his Church with all the stubbornness and vehemence of Hildebrand."

On the 7th October, 1853, before the Maynooth Commission, Dr. Russell was asked :—"And do you take occasion in the course of lecturing upon these periods to point out the excesses to which occasionally the administrator of the Church personally has been led?—I have always explained the history of those periods in strict accordance with the principle which I have now laid down. For example, in all allusion to the history of Pope Gregory VII. I uniformly explain that the temporal power which he exercised in reference to the Emperor Henry IV. was not held by him in virtue of any divine right of his office, direct or indirect, but was vested in the popes by the consent of the princes and peoples of mediæval Christendom, and by the expressed or understood principles of the common constitutional law of the period. I show that by the common rules of mediæval legislation (which were maintained even in the post-Reformation law of England) the sentence of excommunication, though a spiritual one, was made to involve a forfeiture of civil rights; that the laws of Spain, as laid down by the sixth council of Toledo (in 638); the law of France, as admitted by Charles le Chauve (in 859); the laws of England under Edward the Confessor; and the laws of Germany, called the Saxon and Swabian codes, applied these principles to the case of kings themselves; that the German law expressly recognized in the pope (to whom it reserves it) the right to excommunicate the Emperor in certain specified cases; that it even directed the deposition of the Emperor in case he remain twelve months unabsolved from a papal excommunication; that this law was expressly alleged by the Saxon nobles in their appeal to the pope against Henry IV.; that it is formally described as the ground of Henry the Fourth's deposition by his own contemporaries, Lambert of Aschaffenburg, Paul of Bernried, Nicholas Roselli, and others; and that the force of the law was admitted not only by St. Louis of France and the council of his nobles, but even by Henry IV. himself, provided he had been proved guilty of heresy. I show further, that the coronation oath which was taken by the Emperor, and still more, that taken by the kings feudatory of the Holy See (and there were many who became so

in the Middle Ages, as Roger of Sicily, Peter III. of Arragon, Guiscard of Naples, Godfrey of Jerusalem, and even John of England) contained an express promise to be the protector and defender of the sovereign pontiff and the holy Roman Church in all their necessities and utilities, and to guard and maintain their possessions, honours, and rights, this promise being understood, within certain limits, to be the condition of their tenure of authority. From these and a great variety of similar indications of the nature and principles of the constitution of the mediæval monarchies, I infer that orthodoxy, obedience to the pope in matters of faith and essential discipline, and communion with the Holy See, were, by the express or tacit consent of the kings and subjects in those ages, made a condition necessary for the tenure of supreme civil authority—just as by the 1st William and Mary the profession of the Protestant religion is made a condition of the succession to the throne of England; and, therefore, that it was, by this consent of the Christian world, and not by any divine right of their office, that the popes occupied the position of arbiters between kings and their subjects, and especially that of judges as to the observance of the compact, in reference to religion, which was part and parcel of all the mediæval constitutions. Lastly, I show that this view is admitted even by those who are most opposed to ultramontane doctrines, by French writers such as Fenelon and Gosselin, and even by Protestant antiquarians, jurists, and historians, as, for example, Leibnitz, Pfaffel, Eichhorn (in the 'Deutsche, Staats-und-Rechts-geschichte'), Voigt, Hurter, and others. It is plain that this explanation of the temporal claims of the mediæval pontiffs removes every difficulty as to our present teaching on the temporal power of the pope. While it does not suppose that this exercise of temporal authority was an excess at the time when it was universally recognized, it completely excludes all idea of the applicability of such principles to the modern constitution of European kingdoms. In order to revive the papal claims as thus explained, it would plainly be necessary to restore the condition of society and of constitutional law, both national and international, in which they originated, and (as is actually proposed by Leibnitz in one of his letters to M. Grimarest, opp. v., p. 66) to procure a new international consent to the establish-

ment of the papacy as a common tribunal of arbitration among the Christian kingdoms."

In candour I must add, that Dr. Russell's theory is, in my mind, no apology at all for those popes who claimed temporal power, *jure divino*, as a prerogative of their office, and it is on this divine right the popes themselves most commonly based it. Perhaps there is no pope who ever put forward the claim on this title more distinctly or with a better show of argument than Innocent III., to whom King John swore fealty, and promised to pay a thousand marks yearly for the crown of England. In the quarrel which John had with Philip of France, he appealed to Innocent, and the pope entered warmly into the cause, appointing the Archbishop of Bourges and the Abbot of Casamaggiore his legates to *decide* the controversy between the two kings. But what right had he to interfere in this authoritative manner? The reader shall learn from one of his letters, which shows, according to Dr. Lingard, more plainly than any speculations of modern writers, the real ground on which the popes assumed their pretended authority in temporal matters. Innocent was a learned canonist and theologian, and wrote an immense number of letters, which were collected into nineteen volumes, corresponding with the nineteen years of his pontificate. Many of these letters are found in the decretals of Gregory IX., and the one here inserted is taken from that part of the canon law. The pope first transcribes the following passage from the Gospel :—" If thy brother trespass against thee, go and tell him his fault, between him and thee alone . . . . and if he will not hear thee, then take with thee one or two more . . . . and if he shall neglect to hear them, tell it unto the Church : but if he neglect to hear the Church, let him be unto thee as an heathen man, and a publican" (Matt. xviii. 15-17). " Now," he proceeds, " the King of England maintains that the King of France, by enforcing the execution of an unjust sentence, has trespassed against him. He has therefore admonished him of his fault in the manner prescribed by the Gospel, and meeting with no redress, has, accord ing to the direction of the same Gospel, appealed to the Church. How then can we, whom Divine Providence has placed at the head of the Church, refuse to obey the divine command? How

can we hesitate to proceed according to the form pointed out by Christ himself? . . . . We do not arrogate to ourselves the right of judgment as to the fee; that belongs to the King of France. But we have a right to judge respecting the sin, and that right it is our duty to exercise against the offender, be he who he may. . . . . By the imperial law it has been provided, that if one of two litigant parties prefer the judgment of the Apostolic See to that of the civil magistrate (apud Grat. caus. ii. 9, 1 can. 35), the other shall be bound to submit to such judgment. But if we mention this, it is not that we found our jurisdiction on any civil authority. God has made it our duty to reprehend the man who falls into mortal sin, and if he neglect our reprehension, to compel him to amend by ecclesiastical censures. Moreover, both kings have sworn to observe the late treaty of peace, and yet Philip has broken that treaty. The cognisance of perjury is universally allowed to belong to the ecclesiastical courts. On this account, therefore, we have also a right to call the parties before our tribunal." This letter is the thirteenth chapter of the second book of the Decretals of Gregory IX. Title, *De Judiciis*.

Benedict XIV. is admitted to be the most learned canonist and theologian that ever sat in St. Peter's chair; and, perhaps, in the long line of its occupants, Innocent comes next to him in these two branches of ecclesiastical learning. Gibbon speaks largely of his zeal and talents, and he is quite in accord with Catholic historians when he writes: "Under that young and ambitious priest, the successors of St. Peter attained the full meridian of their greatness; and in a reign of eighteen years, he exercised a despotic command over the emperors and kings, whom he raised and deposed; over the nations, whom an interdict of months or years deprived, for the offence of their rulers, of the exercise of Christian worship. In the Council of Lateran he acted as the ecclesiastical, almost as the temporal, sovereign of the East and West." He was only in deacon's orders, and thirty-seven years of age, when he was elected pope; but his learning and merits were so conspicuous, that he was unanimously chosen by the cardinals on the very day of Celestine III.'s death, which happened on the eighth of January, 1198; and he died on the sixteenth of July, 1216.

I now proceed to an examination of the new ultramontane creed, which I copy from the columns of the Dublin *Freeman's Journal* of July 29th, 1874, with the introduction which heads it, and shows its official authenticity :—

CATHOLIC UNION OF IRELAND.

The Catholic Union of Ireland proposes to supply, under the above heading, trustworthy intelligence on Catholic subjects, domestic and foreign, likely to be of interest to Irish Catholic readers.

Our Catholic Creed.

The *Observatore Romano* has just reproduced from *La Croix*, a Catholic journal published in Brussels, the following admirable summary of the Catholic creed. In the course of the remarks by which the *Observatore* introduces it, the editor says that the readers of the paper will do well to preserve it carefully and to consult it frequently, since in those mournful days of persecution and of defection many truths are unknown or formally denied ; and it is of the utmost importance that Catholic principles should be widely understood, as they are expressly declared in bulls, constitutions, and other pontifical documents. The *Observatore* supplies from another source the authorities whence each article is drawn ; and the whole constitutes an able and an instructive document which we are sure Irish Catholic readers will be glad to possess. We therefore give the full translation of the exposition as it appears in the *Observatore* :—

"I. We firmly believe and profess that the Church is a true and a complete society ; that, not being circumscribed by the limits of any country upon earth, it is not subject to any civil power ; that, therefore, it ought to exercise its authority and its rights without restraint in all places in the world (Alloc. '*Multis gravibusque*," Dec., 19th, 1860). It has its own full power of making laws, of deciding on, and exercising a salutary action in all those things that belong to the kingdom of God upon earth ; and that being totally distinct from, and independent of, the secular rules, it rules and governs by its own laws—by its own right, and through its own superiors, who, in their spiritual sphere,

are not subject to any secular government (Ency. to Austrian bishops, March, 7th, 1874)."

I subscribe fully to this article, and so I think would every secular government on the present face of the earth.

"II. We firmly believe and profess that the Church is one and one only, having only one invisible head, who is Jesus Christ, and one visible head, who is the pope, successor of St. Peter; that this head, in the exercise of his authority wields two swords, the one spiritual and the other temporal; the first directed by the Church, the second by the State, but for the well-being of the Church, and in accordance with the wish of the Church; that it belongs to the spiritual power to establish the earthly power, and to judge it, if it be not good; that the temporal authority ought to be subject to the spiritual, and that this subjection is absolutely necessary for the public safety. (*Bull unam sanctam* of Boniface VIII.)"

This article, no doubt, is very much to the taste of the Board of Education and the Board of Poor Law that made themselves the willing instruments of the pope's legate in Ireland, to level with the dust a subject of the Queen who abjured this bull on his solemn oath full forty years ago; but to present it for belief to the unhappy victim of the two swords in his mortal agony is certainly something very like adding insult to injury.

"III. We firmly believe and profess that it in no degree belongs to the State to define what are the rights of the Church, or the limits within which it may exercise them (Syl. prop. 19). That bishops have the right of publishing apostolic letters without the permission or the good-will of the State; that the publication of their ordinances and pastorals does not depend on the State; and that the State has no authority to put any obstacles to such publication (Alloc. *Nunquam Fore*, Dec. 15, 1856). Hence, the *exequatur*, the *placet*, &c., are usurpations on the part of the civil powers (Letter Apost. ad Apos., August 22nd, 1851). Hence, also, the 'Organic Articles' in France, the 'Confessional Laws' in Austria, the laws of May in Germany, and such other unjust laws, have no force as laws."

The ultramontanes must think us very simple people when they ask us to believe all this. *Placets* and *exequaturs* are as old

a "usurpation" by kings as the temporal power is by popes. When Hildebrand was wielding the temporal sword over the head of Henry of Germany, William the Conqueror wished to exhibit to his Holiness the superior manufacture of the English blade. Before drawing it from the scabbard, however, he adopted a measure of precaution which sufficiently showed the pontiff how his temporal interference in England would be met by the monarch, who directed that all letters issued from the court of Rome should, on their arrival, be submitted to the royal inspection. The pope had sense enough to take the hint as it was intended; and he and William went to sleep with their fathers in peace, and even in friendship with each other.

"IV. We firmly believe and profess that the civil power has not the right to prevent free communication between the pope, the bishops, and the laity (Syl. prop. 49); that it has not the right of hindering bishops in the exercise of their pastoral functions (Syl. prop. 51); that it cannot compel clerics into military service without violating the authority of the Church (Syl. prop. 32); and that it cannot mix itself up in matters which concern religion and the direction of souls (Syl. prop. 44). Further, that it cannot cancel and nullify *concordats* entered into with the Holy See with reference to the use of rights which bear upon ecclesiastical immunities, without the consent of the Holy See, and least of all, in spite of the Holy See (Syl. prop. 43)."

No one knows better than I do what all this means, and no one has ever suffered so much in a struggle for freedom against the mediæval claims to immunity for the clergy from the laws and tribunals of the State. For years I have been contending against the most powerful opposition in Church and State, for the principle that Archbishop M'Hale stated before the Maynooth Commission forty-eight years ago was admitted at that time by every bishop in Ireland, namely, that Catholic clergymen in this country were amenable for their conduct to the laws of the land. The pope's legate and a host of other ultramontanes, swore the contrary two years ago; and that to cite an ecclesiastic for any cause before a lay tribunal was a crime in this age and nation, for the commission of which I was rightly sentenced without any notice whatever, to a life of poverty and degradation. To this article then,

I say, may no other State on the face of this earth ever believe more of it than the confessor who has lost all but his life, in battling against its iniquity, on the soil of Great Britain and Ireland.

"V. We firmly believe and profess that it is an error to maintain that the Church ought to be separated from the State, and the State from the Church; and that such is the ideal of perfect civil order (Syl. prop. 55). It is another most pernicious error to maintain that the celebrated formula, a free Church in a free State, expresses a state of things to be desired, or such as would be for the advantage of either, and that the mutual union and harmony of the priesthood and the State would not be as salutary and as profitable to the Church as to the State. (Ency. *Mirari vos* and *Quanta cura*). In case of conflict between the two powers, it is not right to give the preference to the State; but every Catholic, it matters not what his national sentiments, ought always take the side of his Church, and stand up for its laws against the oppression of the State. True patriotism does not consist in taking the side of the State, but in labouring, as far as one can, to reform it when it crushes down conscience."

Pius IX. seems to think that he understands the art of government better than the statesmen of Europe; but I doubt very much whether the sober and solemn gravity with which he inculcates his principles of State rule will make his utterances acceptable to the governments for whose special instruction they appear to be expressed. The Subalpine and the German are very likely to reply to him—"We have enlarged our rule with the good-will of our peoples; and we shall transmit to our posterity a more ample domain than we have received from our ancestors; while your rule over your temporal subjects has been from the beginning a domination to which they submitted more through fear than love; and which they shook off with alacrity when the withdrawal of foreign forces left them the choice of a ruler. You leave to your successors nothing temporal that you have inherited from your predecessors except your house and your garden." Theoretically the pope may be right, but practically his dynasty is a thing of the past. He is undoubtedly right in saying that true patriotism ought to reform the State when it crushes conscience: but the same patriotism ought to speak out quite as

loudly to the Church when it practises itself what it condemns in the State.

"VI. We firmly believe and profess that liberty of conscience and of worship, understood in the sense of theological equality and indifference in matters of religion, is in itself a principle contrary to the good of souls and to the rights of the Church. And if the Church supports it in certain countries, it is through necessity and through fear of greater evils; but where this equality of worship does not exist, there is no need to introduce it; and where it does exist, every effort ought to be made to bring all to the unity of the faith."

To this I say, that everyone who has faith in his own religion ought to wish and pray that every one else would embrace that religion, more especially, if that religion teach the doctrine of exclusive salvation; but, if it were ever allowable for one man to force his religion on another, it would certainly be wrong to do it in the present state of society, when mankind have all agreed, and almost all nations enforce that agreement by law, that force must not be used, even to make the inward man more holy. Indifferentism and heresy are crimes before God; but human tribunals for their punishment are, like some other things that flourished in darker ages, in the nineteenth century to be numbered among the past.

"VII. We firmly believe and profess, that the right of believing as one likes in matters of religion, and of speaking in that way, is not a natural right; but the violation of the duty of obeying God and the Church, and of the no less strict duty of parents in the teaching of their children, and of children in receiving that teaching."

No one that has any religion at all could question the truth of this article. We can have no natural rights in opposition to the law of God; and therefore every one is bound to believe and profess the true faith in the Church of Christ. But St. Paul says "there must be also heresies," and the pope is bound to war against them with the sword of the Spirit. No temporal ruler, however, in our days, will give him the slightest assistance in the extirpation of false teachers and their adherents by the sword of the flesh. Heretics may and ought to fear God; but whether in Rome or Madrid the fear of man has lost for them all its terrors.

SECTION XX.

Examination of the Creed, continued.

"VIII. We firmly believe and profess that the full liberty of proclaiming in the press and on the platform one's own ideas is a principle contrary to natural rights; and that the civil as well as the ecclesiastical authority has the right, each in its own sphere, of watching over and keeping this matter in order. Hence the decrees of the Congregation of the *Index* are obligatory throughout all the Church; and consequently every Catholic ought to refrain from reading those books which the Church condemns. (These last three propositions are contained in the bulls *Mirari vos* and *Quanta cura.*)"

I subscribe to the article, and I have constantly warned the people, with whose souls I have been charged, against the reading of any books that might be dangerous to faith or morals; but as for the inference drawn, that the *Index Expurgatorius* is binding as a law in this country, the people in this country I think know better than the ultramontanes whether it is or not. The best judges of facts are the witnesses present. Some people in Rome think, or at least thought thirty years ago, that every bishop in Ireland has a reformatory for the correction of disorderly priests, but every man in the country knows they have not. A bishop is bound to make every ten years a report to Rome on the state of religion in his diocese; and Dr. Kinsella, former bishop of Ossory, made such a report in the year 1840. At that time there was a Dominican friar of intemperate habits in possession of the Black Abbey at Kilkenny, where he lived in defiance of an order from his superior removing him to another convent, and Dr. Kinsella, thought it his duty to notice the scandal in his report. The Roman official, when acknowledging the receipt of the bishop's report, coolly asked his lordship why he did not shut up the scandalous priest in his reformatory (*in tuo ergastulo.*) The good bishop remarked, when telling us the story at his own

dinner-table, "They think at Rome that every Irish bishop has a prison for the correction of the clergy who are refractory."

"IX. We firmly believe that the Church ought not to make compromise, nor hold itself in common with what is falsely called 'Progress,' 'Liberalism,' and 'Modern Civilization;' that on the contrary, these three things ought to be subject to the authority of the Church, and that these three names, so long as they are not understood in a Catholic sense, designate the opposite of that which they express. (Alloc. *Jamjudum cernimus*, March 18th, 1861)."

I have no concern in this article, and say nothing about it.

"X. We firmly believe and profess that the direction of episcopal seminaries and of all religious teaching belongs exclusively to the Church (Syl., prop. 33); and that the entire direction of schools, primary, secondary, and superior, as well public as private, does not appertain to the State (Alloc. in consis, Nov. 1st, 1850). That the Church ought at least to have the supervision of the literature and sciences taught in them, but a supervision so efficacious that the State should afford the Church its aid in having its will respected as often as it shall judge it needful to interfere. That the Church has the right of interfering in the government of the schools, in the direction of their studies, in the conferring of degrees, in the choice or approval of the teachers (Syl., prop. 45). That in the popular schools, religious instruction should have the first place in all that concerns education, and ought to hold such pre-eminence as that all other knowledge imparted should be considered as merely accessory (Brief to Bishop of Friburg, July 14th, 1864). That Jesus Christ has said to the Church alone, 'Go teach all nations;' that by these words he has confided to the apostles, and to them alone, the mission of teaching, and not to the philosophers of the day, or to the professors of any university (Address of the Holy Father at Rome, March 19th, 1874). Hence, no school, public or private, can be exempt from the guiding influence, and the salutary action of the Church. (Brief to Bishop of Friburg)."

Again, no concern in all this matter.

"XI. We firmly believe and profess that Catholics cannot

approve of any system of education conceived outside the Catholic faith and authority of the Church, and which has for its scope, or at least its principal scope, the knowledge of things merely natural, and the ends of earthly society. (Syl., prop. 48)."

The same is true of this.

"XII. We firmly believe and profess that the aggregate of numbers and mere material forces, is not a principle of authority (Alloc., June 9th, 1862). That no sentiment of patriotism can ever justify the violation of a lawful oath, so long as that oath has not been annulled (Alloc., April 20th, 1849); and that secret societies cannot be tolerated, much less protected by governments."

To this I say ditto.

"XIII. We firmly believe and profess that in the present state of this world, the temporal sovereignty of the Holy See is absolutely necessary for giving and securing to the Roman Pontiff, in his mission of feeding the whole Catholic flock, that full liberty which is so closely bound up with the liberty of the Church. (Alloc., October 29th, 1863)."

I very much fear his Holiness will have to wait a long time for the restitution of his temporal sovereignty; but, we say in logic, "Ab actu ad posse valet consecutio," and therefore it must be admitted that another Charlemagne is among the possible future beings that may one day be crowned emperor by another pope.

"XIV. We firmly believe and profess that the laws of repose from servile work on Sundays and feast days are obligatory on governments as well as on individuals, and that they cannot dispense from them without the gravest reasons."

To this I say that whatever the pope thinks may be the duty of governments, these governments will assume the right of thinking and acting for themselves.

"XV. We firmly believe and profess that the principle of non-intervention is not admissible, particularly when charity or justice makes intervention a duty (Alloc. Sept. 28th, 1860)."

The same may be said of this article.

"XVI. We firmly believe and profess that the excommunication issued by the Council of Trent and the Roman Pontiff against

the usurpers and invaders of the States of the Church is valid in these times as it was always; and that Catholics ought to act in conformity with it, so far as the temporal consequences which the censures and anathemas of the Church bring with them are concerned."

I wish the pope's legate in Ireland, who publishes this creed, would show the same respect for the rights of a parish priest in Ireland which he claims for a pope in Rome, and not deprive him of his parish without being able to show that he had authority to judge him, and that he only condemned him after a trial of his case resulting in his conviction of guilt.

"XVII. We firmly believe and profess that the canon law is not an alien code, or inferior to the civil; that it does not stand in need of being put into harmony with modern progress; that the Church can modify it at its own discretion, if need be; and that its enactments are in full force until the Church shall have otherwise decreed (Letter Apos., August 22nd 1851)."

Nothing is more just than the canon law, and of all its justice the greatest and grandest is its oft repeated declaration that a sentence passed on an absent man without notice or citation, is absolutely null and of no effect whatever, as being a gross violation of natural justice. The dictum of St. Augustine is adopted into the canon law:—"Nos in quemquam sententiam ferre non possumus nisi aut convictum aut sponte confessum," under the heading:—"Quod autem nullus sine judiciario ordine damnari valeat, auctoritatibus multis probatur." And under the same heading is found the same rule as laid down by the Emperor Constantine:—"Judex criminosum discutiens, non ante sententiam proferat capitalem, quàm aut reum se ipse confiteatur, aut per innocentes testes convincatur." The same thing is again expressed in the words of Bishop Eleutherius, ad Episcopos Galliæ:—"Nihil contra quemlibet accusatum absque legitimo et idoneo accusatore fiat: Nam et Dominus Noster Jesus Christus Judam furem esse sciebat; sed quia non est accusatus, ideo non est ejectus;" and Pope Felix is cited as declaring:—"Primates accusatum discutientes episcopum, non antè sententiam proferant damnationis, quàm apostolica freti auctoritate, aut reum se ipse confiteatur, aut per innocentes et canonicè examinatos regulariter

testes convincatur. Aliter irritam esse censemus et injustam damnationem." I could cite several other passages from the canon law to the same effect, and a declaration in many places that any judicial proceeding which does not commence with a citation to the accused, labours under an incurable defect. I could also show from several places in the canon law that an invalid sentence is entitled to no respect or notice whatever. According to the canon law, if a sentence be valid, and alleged to be unjust, there is room for an appeal; but from an invalid sentence no appeal need be made, and no appeal even could be made; for this simple reason, that an appeal is made for the purpose of correcting the injustice of a valid sentence; but where the sentence is null there is nothing to be corrected. Hence when Queen Elizabeth solicited, through the Emperor Maximilian, the revocation of the sentence of excommunication passed on her by Pius V., the pope, quite in accordance with canon law, asked whether the Queen considered the sentence valid or invalid. "If valid," said he, "why did she not seek a reconciliation with the Holy See? if invalid, why did she wish it to be revoked?" One of the best writers on canon law says (Devoti lib. iii., tit. xv., sect. 6):—"Nihil autem attinet appellare cum sententia nulla est, quoniam appellatio pertinet ad sententiam quæ iniqua quidem est, sed tamen valet, ideoque infirmanda, ut iniquitas corrigatur: verùm sententiam per se nullam infirmare supervacaneum est: ergo inutilis est appellatio si ab incompetente judice, aut a competente quidem, sed neglecto juris ordine, aut contra expressam legem, bonosve mores, sententia lata sit."

Again, it is laid down in canon law with the greatest distinctness and emphasis, that when a man, who is not the ordinary but a delegated judge, undertakes to sit in judgment on another, he should satisfy the other that he had received this delegated jurisdiction, and should even set forth the particulars of his commission in the citation to the accused, in order that the accused might be satisfied that he had really received the power which he claims to exercise, and might object to the delegation, and appeal from his jurisdiction, if there were grounds for so doing. According to the canon law, the judge must be above the suspicion of partiality or favour; and, if he be even only "suspectus," an

objection can be made to his jurisdiction, which will have the effect of suspending its exercise until the question is decided. As soon as I learned that Cardinal Cullen assumed the right to sit in judgment on me, I objected to his competency; yet the very man that was my accuser in Rome, and had leave refused me to go thither with a complaint of my grievance, disregarded my appeal, and in utter contempt of all law, without any witness or any accuser but himself, pronounced an iniquitous sentence of condemnation upon me without either my presence or my knowledge, and then publicly proclaimed me a degraded man and a suspended priest.

There are very many disciplinary regulations of the canon law which for centuries past could have had no binding force or application anywhere; but its principles are all sound, and its rnles of law and of morals are just and equitable. All the ancient privileges and immunities of the clergy are set out in many parts of the canon law; and numerous bulls and other constitutions of popes are found in its pages, protecting the clergy in the enjoyment of these privileges by papal excommunications, reserved even to the holy father himself, and levelled at all and singular, emperors, kings, princes, rulers, judges, officers of justice, and people of every kind and name whatsoever, who dare to violate them. The celebrated bull of Boniface VIII., *Clericis laicos*, published in 1296, forbidding all the clergy to pay anything out of their estates to the laity, or to give their consent to any imposition without permission from the pope, is found unaltered in the canon law with its thunders in the shape of excommunication and interdict against all who exact anything from them. These documents are of interest to readers of history, as illustrating the manners and customs of our middle-aged Christians; but to the ultramontanes, they are the wisdom of the ages of faith, and a model of legislation for the nineteenth century. They are the "sacred canons," which it would be a profanation to touch, and with which "Progress," "Liberalism," and "Modern civilization," should be made to harmonize.

"XVIII. We firmly believe and profess that the Church has the right of visiting with even temporal penalties the violation of its laws: that it has the right of employing force and a temporal

power, direct or indirect (Syl. prop. 24) : the Roman pontiffs have the privilege of admonishing, correcting, and punishing rulers, or of even absolving subjects from their oath of allegiance ; and that when they did so in the middle ages, it was not simply by virtue of the public law of that time, but by virtue of their pontifical authority, which extends over kings as kings, as well as their subjects (Syl. props. 23 and 24)."

We may be all wrong in thinking and swearing that the pope has no such temporal rights as he claims in this article ; but whether he has them or not, must be a matter of perfect indifference to kings and their subjects while his Holiness remains a "prisoner in the Vatican," deprived of the use of all offensive armour except his tongue and his pen.

"XIX. We firmly believe, not by coercion of the will, but with the complete assent and submission of our intelligence, and profess with joyful hearts, that the Roman pontiff is infallible when he exercises his office of pastor and teacher of all Christians ; and that he has full and supreme plenitude of ordinary and immediate jurisdiction over all the dioceses of the world, and over each one of them—over all the faithful and over each one of them. (Acts of the Vatican Council)."

This article of faith I receive with no more joy or sorrow than I do any other revealed truth. Before it was defined I had formed no opinion as to its truth ; but like a great many others I considered its definition inopportune. Now that it is defined, I receive it as true, and I have ceased to entertain any opinion at all as to whether the interests of faith required its definition.

"XX. We firmly believe and profess that the well-being, the prosperity, and the peace of States, and the very safety of society, demand that the Roman pontiff should be recognised and accepted as supreme arbitrator between emperors and kings—as sovereign judge of disputes between princes and peoples—and only in this way can be effected, based on the submission of the temporal to the spiritual authority, the happy and salutary union between the priesthood and the State."

This state of things, no doubt, would be a heaven upon earth ; but do not the ultramontanes know that "through many tribulations we must enter into the kingdom of God" ?

SECTION XXI.

Professor Murray on toleration—Sentiments of Peter Dens—Mr. Palmer—Archbishop Whately—Mr. Lewis—Lord Campbell—Dr. Murray's own doctrine.

I WILL conclude this whole subject by adding some passages from the written evidence of Professor Murray, delivered to the Commissioners, in March, 1854, on religious persecution and toleration :—

"'Persecution for religious heterodoxy, in all its degrees, was,' says Mr. Hallam, 'in the sixteenth century, the principle as well as the practice of every church. . . . . No State powerful enough to restrain its sectaries from the exercise of their separate worship had any scruples about the right and obligation to do so.' The *practice* has certainly changed very decidedly on all sides; else I, instead of expounding theology, so calmly and good-humouredly, to Her Majesty's Commissioners, from the cloisters of a royal college in Ireland, might be at this moment employed in 'pouring the full tide' of an embittered heart, and barbing the tale of present and past oppression against the government of England from some narrow cell in a continental seminary. The *principle* too has become at least disreputable. They who still hold it are, in general, not willing to avow it boldly and in its naked form. It is let out in mutterings and whisperings; like lovers' vows and base coin, it is uttered only in darkness and in the shade. But there are some among both Protestants and Roman Catholics who still maintain the 'pure, unmixed, dephlegmated, defecated' doctrine of persecution. The fires that have long ceased to burn in Smithfield and Madrid, still glow with suppressed but undiminished fury in the bosoms of a few whom the devouring element would seem to serve as substitute for a human heart. If we have the far-famed Peter Dens, in Belgium, a hundred years ago, maintaining the right to persecute, we have the late Mr. Palmer maintaining the same right, not twelve years ago, in England; and in a book, which has, I believe, received a wider

circulation than has, in the same length of time, fallen to the lot of any other Protestant work written in a similar dry, argumentative form, and on the same subject. 'In accordance,' he writes, 'with the principle involved in these laws (the penal laws enacted in the reigns of Elizabeth and Charles II.), and in the articles and canons of the Church of England, I maintain firmly that the State has a right, when necessary, to oblige the members of the Church, by temporal penalties, to submit to her ordinances, and neither to establish a different worship nor teach different doctrines from hers.'"

"The sentiments of Archbishop Whately are directly opposite to those of Mr. Palmer. I had prepared an analysis of them; but to treat them fairly, they should be given fully, and this would extend the present paper to an inconvenient length. He appears to be in the main for full toleration of all '*argumentative* maintainers even of the most erroneous opinions.' Mr. Macaulay is clearly of the same opinion."

"Mr. George Cornwall Lewis—a writer who to varied and extensive learning unites a degree of philosophic calmness and fair-mindedness rarely equalled and never surpassed—maintains the general proposition (in which I fully agree with him) that it is the right and duty of the State to promote religious truth. There are many ways of doing this, one of which is the repression of religious error by temporal punishments. Viewing the matter in the *abstract*, Mr. Lewis is clearly of opinion that it is the right and duty of the State to use this means; but viewing it in the concrete, he is as clearly against religious persecution on the ground of its inherent and universal inexpediency."

The writer adds in a foot-note:—"There is a twofold inexpediency. First, there is the inherent or intrinsic inexpediency, which results from the sanction of the doctrine *in any case*, even when considering the particular case by itself, no inconvenience arises from its application in *that case*. In other words, allow the doctrine to be acted on in any one case, and it is sure to be abused in other cases. Here the doctrine is intrinsically inexpedient. We have an example in the matter of theft. Theologians are agreed that in a case of extreme distress (in *extrema necessitate*) where there is imminent danger of death from starvation, I can

take so much of my neighbour's property as will enable me to save my life. But in a case of merely severe distress (*in gravi necessitate*) the same liberty is not allowed; because as such distress or want is so common in many or most places, as it can be so easily feigned, &c., &c., the licence would be sure to be abused, would tend to the general encouragement of theft, and the general insecurity of property. Secondly, there is the extrinsic or accidental inexpediency, words which require no definition to make them clearer. Suppose a law in itself excellent, and in its general operation highly beneficial; but a particular case occurs where great evil, without any compensating good, will ensue from pressing the law. Here is a case of accidental inexpediency. Now (abstracting from or supposing the soundness of the doctrine of religious persecution) it might be fairly held, that at the present day, considering the mixture and balance of religious parties—considering the force of opinion—the constitution, the habits, the ideas of modern European society, the doctrine is inherently inexpedient, though at a former period it was only accidentally, if all, inexpedient."

Lord Campbell, in the introduction to a speech delivered by him when he was attorney-general, at a prosecution for blasphemy, says :—" I entertain no doubt that there are occasions when the civil magistrate not only may, but is bound to interfere to check the circulation of publications which assail the foundations of morality, or vilify the national religion." Again, in the speech itself, he says :—" As the law now stands, there can be no doubt that to assail with obloquy, and to insult the Holy Scriptures of the Old and New Testament, which we believe to contain the revealed will of God, is a crime for which punishment may and ought to be inflicted. There are two grounds on which it seems to me that such an act may properly be made the subject of penal visitation. In the first place it wounds and shocks the feelings of those who are entitled to the protection of the law, not only for their persons and property, but for everything belonging to them which contributes to their comfort and enjoyment. However, the great mischief of this act arises from its tendency to dissolve the foundations of moral obligation on which society rests. The vast bulk of the population in this

country believe that morality depends entirely on revelation, and if a doubt could be raised among them that the ten commandments were given by God from Mount Sinai, men would think they were at liberty to steal, and women would consider themselves absolved from the restraints of chastity. A publication openly exciting to theft or licentiousness would surely be a fit subject for prosecution, and so must be any other publication of a similar tendency. The civil magistrate is not to interfere with private opinion, or with philosophical speculation; but he is called upon to repress what directly leads to crime, as much as to punish crime when actually committed.' There are other passages to the same effect in the reply."

"The preceding may, I think, be taken as a fair representation of the different shades of contemporaneous English Protestant opinion amongst those who address themselves to the subject in a theological or philosophical spirit. What I conceive to be the doctrine of *our* modern theologians will appear hereafter. Mr. Hallam, in the extract given above, has pretty fairly represented the opinion of former times on all sides. Now as to my own doctrine."

"First: Doctrines levelled against the stability of government, the reverence and obedience due to the sovereign authority and to the laws, the rights of property, and the like, are not only sins against God, but civil crimes. The State has a right to put down the publication of them, whether through speech or writing, by the infliction of temporal punishments, and on the same principle on which it is justified in using the sword against foreign aggression—the right of self-defence. Nay, the right is, *per se*, stronger; at least the duty may be more imperative in the former than in the latter case. For foreign conquest, as such, only destroys national independence, and the internal and substantial prosperity of the people may continue as before, or even advance, though this is not commonly the case, at least for a time, and until after the amalgamation of races, whereas communist and other anarchical doctrines, if allowed to take wide and deep root, poison the very life-blood of society, and work its utter dissolution with all the unspeakable evils that are included therein."

"But two things are to be noted here. 1°. The doctrines

should really have the character and tendency mentioned above. 2°. The question of expediency should be well weighed. Will more good than evil follow from punishing? Were it not better to let this brawler wear out his worthless lungs, or cry himself into solitude, or to let this scribbler write himself into ridicule or contempt? Will not persecution lift him to the very notoriety he is looking after, crown his brow with the wreath of a bastard martyrdom, and fill his pockets with the contributions of sympathizing dupes? &c., &c."

"Secondly: I extend the same rule, and for the same reason, to all doctrines leading to gross violations of the moral virtues, or attacking the great truths of natural religion. As to the former, I do not understand how there can be any difference among reasonable men, except as to the question of degree or the question of expediency. As to the latter, I am decidedly of opinion that the State has a right to put down, *e.g.* open Atheism by temporal penalties."

"To the latter part of the preceding doctrine it has been objected that it leads, logically, to the sanction of persecution for all religious errors."

"I answer—*first*, inculpable ignorance cannot be pleaded in favour of the Atheist, as it may in favour of him who rejects doctrines known only from revelation, and received only on authority. *Secondly*, Atheism is not punished as a sin against God, but as a crime against society; and such, of its own nature, it really is. To preach up Atheism tends as directly to loosen the foundations from which the social fabric derives its security, as to preach up the doctrine that law is tyranny and property robbery—the only difference being in the deeper horror with which the human mind instinctively recoils from Atheism. It is true that an Atheist may be a very good citizen; but just as a communist may respect his neighbour's property, the advocate for a community of wives may adhere faithfully to one, or the advocate for the 'sacred right of insurrection' may live all his days a peaceable and loyal subject. Nevertheless, expediency is to be consulted here as in the preceding case."

"*Thirdly:* All sane men admit that the supreme power may be, on grounds of expediency, not only justified, but even bound

to tolerate and invest with civil privileges, like the rest of the community, a sect which it believes to be false. Not only is it the right, but the duty of the State, to protect the religious worship, as well as the members of such sect, from insult, oppression, or annoyance of any kind. I do not mean that the State is bound to act in every case. Here again comes in the consideration of expediency—the great rule of governments, whether ecclesiastical or civil, in all matters that are not fixed by higher and immutable laws. Suppose a number of Protestant fanatics to get placards carried about the streets of Dublin, pasted on the walls, and thrust into the hands of passers by, containing virulent abuse of our religion, ringing changes on idolatry, Antichrist, &c. Suppose, on the other hand, a number of Roman Catholic fanatics to foul the thoroughfares of London with placards equally scurrilous, and offensive to the other side. To me it appears clearly within the province of the civil power to punish both parties with equal rigour—and this altogether irrespective of the religion of the government, or its belief as to the truth or falsehood of either religion thus assailed. I hold that a Catholic government having Protestant subjects should protect them from such aggression, just as strongly as I hold that a Protestant government should protect its Catholic subjects."

"*Fourthly:* When heresy does not involve opposition to government and law; when it does not, either of its own nature, or from the lawless and seditious manner in which it is propounded, lead to the invasion of individual or general rights, or to any real disturbance of social order; when, in short, the principles of the heretical party do not prevent them from being loyal subjects and good citizens, like the rest of the community—then I hold that the civil power has no right to inflict temporal penalties of any kind on the professors of the heretical doctrine. In other words, the punishment of heresy, *as heresy*, does not fall within the province of the civil magistrate."

I pass over a great deal more written on this subject by this learned man, who was a fellow-student of mine in my early years at Maynooth, and who now enjoys the distinction of occupying the highest theological chair in the College. He concludes the subject in these words :—

"And now in concluding this long answer, waiving all question of abstract right or duty to punish or to tolerate, from my heart I wish that all parties, Catholics and Protestants, would agree together that heretics should be coerced only by the force of argument, burned only in the fire of charity, cut off only with the sword of prayer and all good works; that not only temporal punishments and civil disabilities, except for civil crimes, should be abandoned, but all angry revilings and recriminations—unchristian passions under the mask of Christian zeal. We can hardly hope for the full accomplishment of this—the devil and the world and the flesh are too strong on the other side; but we may strive for it and approach, though we cannot reach it. For my own part, 'I have faith in my faith!' and I believe that, if we tried only the weapons which the Divine Founder of Christianity has put into our hands, we would come nearer to a united decision on that great controversy, which can never be decided by the arms of worldly warfare."

With this liberal, enlightened, and charitable prayer of my old friend, I conclude this part of my book, having amply refuted the two ultramontane tenets, I had proposed to combat. We were brought up in the same school, where we received no lessons of ultramontane hate, but true Christian instruction in brotherly love for all mankind, without distinction of either creed or clime.

SECTION XXII.

Origin of the author's contention with the Education Board—The order removing him from his schools illegal and most improper—Contention with the Poor Law Board—Their dismissal of him from his chaplaincy most unjustifiable.

I SHALL now give a short history of my contention with ecclesiastics and public Boards, and pass in review the evidence of the witnesses on the side of the Cardinal at the hearing of my case.

Bishop Moran is a nephew of Cardinal Cullen's, and through the influence of his uncle he was appointed Bishop of Ossory, and came to live at Kilkenny in March, 1872—about four months

after the Cardinal had me proclaimed a suspended priest. Dr. Moran wrote on the 22nd same March to the paid Education Commissioner that I was a suspended priest, and on the 25th April following I was informed by the secretaries that I was removed by the Board, acting on the certificate of Bishop Moran, from the management of the five National schools of my parish, and that a nominee of the bishop's, Rev. William Martin, was recognized as manager in my place. Now, this act of the Board was a most audacious invasion of my rights as a man in peaceful possession of five schoolhouses in my parish. The Commissioners had exactly the same right to make an order removing me from my parochial residence and transferring its possession to this Mr. Martin, who, they informed me, was my successor in the parish. This was the origin of my contention with the Education Board, and I think everyone who reads the letter I subjoin will at once see how unjustifiable the conduct of the Board has been in the matter :—

THE SECRETARIES EDUCATION OFFICE, DUBLIN.

Callan, September 20th, 1874.

GENTLEMEN,—The *Freeman's Journal* has been for years the apologist of the Board of Education, and its most able champion at the public press, in putting forward whatever could be said in support of the arbitrary exercise of authority, by which the majority of its members removed me from my position of Patron of the Callan schools. Yet it has refused to insert the accompanying letter from me, replying to a late repetition of the propriety of the Board's action in my case. I am, therefore, to request that you will have this letter brought before the Board, as a renewed protest from me against the reiterated public assertion in the Board's organ of a right which has no existence whatever, except in its assumption by a tyrant majority of your Commissioners.—I am, &c.,

ROBERT O'KEEFFE, P.P.

To the Editor "The Freeman's Journal."

Tramore, Sept. 16th, 1874.

SIR,—In your leader of this day you say :—"Because certain Protestant members of the Education Board took a

common-sense view of a recent celebrated case, one of our contemporaries brands them as Protestant ultramontanes," and I say that if ultramontanism be a right name for the scholastic system of opinions which supports the pretensions of one party—whether pope, prince, prelate, or Board—to invade the right of another, the term was never more properly applied; and I will prove what I say in a very few words.

I established an infant school at Callan in May, 1863; and after I had put it into working order, provided all necessary furniture and teaching appliances, and appointed a principal and an assistant teacher, I requested the Education Board to take the school into connexion and grant salaries to my teachers. The Board sent an inspector to examine the school, and to report whether I would have the school conducted in accordance with its rules, and give admission to the Board's officers at all times of school teaching, for the purpose of examining and reporting on the condition of the school. I agreed to these terms, and the inspector, having satisfied himself that the teachers were competent, the attendance sufficient, and the school every way suited to its purposes, reported favourably. The grant of salary was then made to the teachers, and my position as patron of the school was recognised by the Board. I always paid the rent of the house, kept it in repair, and looked upon myself as the only person having any legal possession of the premises, or any control whatever over the school or teachers. This state of things continued for nine years, and during all that time I had constantly seen, in the annual publications of the Board, that when non-vested schools, like mine, were connected with the Board, the premises always remained in the possession of the patron, or any manager he might appoint.

Fancy my surprise, then, on the 26th April, 1872, at receiving a letter from the Education Office informing me that my possession of this school was transferred to another gentleman, who, I was told, was my successor in the parish of Callan. I will not weaken the strength of my case by adding another word, except to say that if anyone at all, I care not who, after this short statement, think the conduct of the Education Board was proper or legal—of its courtesy towards a colleague who had worked harmoniously

with the Board for twenty-two years I say nothing—I request he will call upon me to remove the obscurity he will have noticed in my letter, and which may be found in it from my anxiety to be brief, but which certainly cannot arise from the actual state of the facts of the case. These are as true as Gospel and as clear as light; but perhaps when "brevis esse laboro, fio obscurus."

I am, &c.,

R. O'KEEFFE, P.P.

With reference to the Commissioners of Poor Law, I will admit that when it was officially notified to them that I had become a suspended priest, it was their duty to inquire into the matter, because if it were a fact, I could not properly give religious service or administer in the workhouse. I would become unfit to hold the office of chaplain, and ought to be removed from it, if it were a fact that I was canonically suspended from the performance of the functions of my office as parish priest. But this fact should not have been assumed by the Commissioners against my denial of its existence. They were not justified in looking upon me as a suspended priest without evidence that, at a certain place, and on a certain day, I was tried and condemned by a court of competent jurisdiction, sitting not *in nubibus*, but on *terra firma*. It would not be the duty of the Commissioners to inquire into the justice or propriety of the sentence: that would be a matter for a court of appeal, and the mere fact of my trial and condemnation by a competent court would be sufficient to warrant them in dismissing me. It is amazing that men like the Commissioners of Education should think they had the right or even the power to transfer the possession of property from one man to another without any process of law; and it is equally amazing that men like the Commissioners of Poor Law should be guilty of the outrageous injustice of depriving a clergyman of his office on the mere allegation of crime, and the gratuitous assertion of a fact which, if it existed, could be proved without any difficulty. Both these Boards, from their shameful ill-treatment of me, are evidently unfit to hold any office or commission from the gracious Queen of this free State, who would not allow any subject, however exalted, to invade the rights of property, person, or character of any other subject, however

humble. I shall have the honour of sending her Majesty a copy of my book, and of directing her attention to the misconduct of those public servants who have misplaced their allegiance, and disentitled themselves to remain in the service of the crown. They have sinned with their eyes open to gain the favour of the representative of a potentate that should not be allowed to claim temporal rule over the subjects of this realm. I was not without telling the Commissioners of Poor Law how improperly they were acting in my case; but my warning was unheeded for purposes of their own. On the first day of February, 1872, I sent them this letter:—

THE POOR LAW COMMISSIONERS. Callan, Feb. 1st, 1872.

GENTLEMEN,—I have received your letter of yesterday's date in which you inform me that you have never doubted that a copy of Dr. Cullen's document professing to be a suspension of me has been sent me; yet I can assure you most positively that what you have considered certain is absolutely untrue. No doubt, it must be difficult for you to believe that any one claiming the right to sit in judgment on another, and to pronounce sentence upon him, could be capable of pronouncing this sentence behind the back of the accused, and cautiously withholding the judgment from him; yet this has been done in my case; and I assure you, without fear of contradiction, that I had never seen a copy of the document in question, nor known its existence till a shoemaker of this town brought it to me on the 26th November last, after he had indignantly torn it down from the door of the Friary chapel here. I can further assure you, without fear of contradiction also, that the citation said in the document to have been sent has never reached me. You that are accustomed to the courts and the laws of this free country, must find it difficult to believe these facts; but you little know with what absolute sway an ecclesiastical despot, brought up in a foreign country, and claiming to be above the laws of his own, can affect to rule. You have been dazzled with the glare of the scarlet robes; and your disordered vision has transferred the black colour of the cloth of my order to my very soul. At the bidding of a man who has no right whatever to sit in judgment upon me, you take it upon your-

selves to enforce a sentence uttered in the dark, and hidden from the accused. I told you before, and I repeat it now, that "by the canon law of the Roman Catholic Church in Ireland, a parish priest does not forfeit his rights or his fitness to discharge the functions of his office, until he is condemned by a tribunal of competent jurisdiction as guilty of some gross impropriety on the testimony of, at least, two witnesses, and denounced by proper authority publicly to his people, as having lost his jurisdiction over them;" and I challenge contradiction to my assertion. I have never been tried, and I have never been justly condemned. I know you have acted in this matter through what you consider a sense of public duty; but I will ask you to reflect on the grave responsibility you take upon yourselves of executing the sentence of a judge who has no right to sit in judgment, and who pronounces his sentence in the dark.

I have, &c.,

R. O'KEEFE, P.P.

The reply to this letter was the sealed order of my removal.

SECTION XXIII.

The author's contention with other ecclesiastics—His address to the jury at Naas—His autobiography—His labours in the cause of education—His first appearance in court, when non-suited—His suspension for bringing the action—Laws of the Church just—No condemnation without a trial.

MY contention with other ecclesiastics will, I think, be best understood by giving here the address which I made to the special jury at Naas, last July, in my action against Bishop Moran, tried before the Lord Chief Justice, and which resulted in a verdict for me, with fifty pounds damages. I said:—Gentlemen of the jury I am the plaintiff in this action, and the Right Rev. Patrick Francis Moran, Roman Catholic Bishop of Ossory, is the defendant. The action is brought by me for damages arising from the act of the defendant, who has written, printed, and published of me, what I shall prove to you was a most malignant libel.

Gentlemen, I was born at Callan on the 11th April, 1814, and when seventeen years of age I was sent to the Bishop's college at Kilkenny. In the year 1834, a free place became vacant at Maynooth, and the Bishop, Dr. Kinsella, put up the place to competition, when it was secured by me, although thirteen competed for it. I was examined at Maynooth to ascertain what class I was fit to join, and I was found sufficiently acquainted with Greek and Latin to be put at once into the logic class. There were eighty-four students in that class—twenty of them freshmen like myself, and our studies for the year comprised logic, metaphysics, ethics, and the French language. The freshmen logicians, however, were required to attend lectures twice a week in English rhetoric, jointly with the students in classics; and in this class there were a hundred and twenty students that year. At the close of the year premiums were distributed in presence of the bishops who assemble every year at Maynooth, and I was awarded third premium in logic, first premium in French, and first premium too in the extra class of a hundred and twenty. These were distinctions which, I believe, were never attained by any student at Maynooth, either before or since the year 1834. At the end of my ordinary course I was put into the Dunboyne class, for a new curriculum of three years in the study of theology, canon law, and Hebrew. I was withdrawn from this class after eight months, and appointed by the Bishop, Dr. Kinsella, to teach science and classics in the college at Kilkenny, where I remained ten years, and for the last three was the resident principal. I was appointed parish priest of Rathdowney, in 1860, and I was translated to Callan, at my own request, in 1863.

When I came to Callan I found one of the curates in temporary charge of the parish as administrator. This gentleman, Rev. Edward Rowan, was chaplain of the workhouse and manager of the schools. I directed him to resign these appointments, and inform the Commissioners that I was the new parish priest. He said to me the Education Commissioners will not appoint you manager of the town schools without a recommendation from the schools committee. I said to him there was no committee, and he said the Commissioners think there is, and I was obliged to send up a recommendation from some of the shopkeepers before they

appointed me to the Callan schools. I then said, do you resign the management of all the schools in my favour, and we shall see what will be required. He did as I directed, and I was appointed workhouse chaplain and manager of the two country schools; but I was informed at the Education Office that their rules required that, before I was named manager of the town schools, I should send up a recommendation from the committee. I immediately wrote a recommendation, and signed it with my own name as parish priest, and took it to the persons who Mr. Rowan informed me had signed his recommendation, and to some others. I went to every one that I knew was in the habit of attending meetings of the chapel committee, thinking that probably these might be the same persons whose names had sometime or another gone up to the Education Office. Every person on whom I called, and found at his house, signedt he recommendation, and I sent it up to the Education Office with eight names attached. There was never a more genuine and regular document in every particular. Now, gentlemen, I never heard a word of that document for ten years, and in the meantime I had been most active in the management of my schools. I have been for five and twenty years the manager of schools, and been always most active. When I was appointed parish priest of Rathdowney, I found a male and female school there, under the charge of two low-classed teachers with a very small attendance. I set to work at once, appointed first-class teachers to both schools, and made the other teachers their assistants. In a very short time I trebled the attendance, and had nine teachers and monitors receiving a salary from the Board, and before I was three months at Callan I had a fifth school in operation there. This was in May, 1863.

In the year 1867, I laid the foundation stone at Callan, of "Christian Brothers" schools, and the "Brothers" opened the schools in September, 1868. At that time a large house, called the Callan Lodge, became vacant, and I rented it for a community of nuns in the South of France, and expended more than five hundred pounds of their money in alterations and repairs, so as to fit it for their purposes. I was laying out this money for about ten months, and at the end of the time the bishop, Dr. Walsh, refused to allow the nuns to come to Callan, although

before I rented the premises I got his permission to do so, and it was well known to him all through that I was preparing the place for the nuns. To account for the bishop's refusal to allow the nuns into my parish, I must return to the Christian schools. It was my intention to continue to keep open the male National School after the coming of the Christian Brothers, and the bishop told me to keep it open, but I was unable to keep it open as an ordinary Nationol School, as all the boys except seven went from it to the Christian Schools. I then changed its character altogether, in order to attract pupils. I made it every way superior to the Christian Schools. I appointed a man of great ability as a teacher to give instruction, in addition to the usual course of a National School, in agriculture, horticulture singing, and drawing, and I assisted myself in teaching Latin, Greek, and French. I connected the school with the Science and Art Department, South Kensington, and delivered a course of lectures on popular science, in the courthouse. By all these means I attracted pupils, and at his last visit to the school in December, 1871, the school inspector counted a hundred and twenty-one boys present. It will give you some idea of the success with which I laboured in the csuse of education, if I read for you a paragraph from a report in the *Kilkenny Journal*, of the 27th October, 1869, of what took place in the school some days previously on the occasion of a visit by Lady Clifden and her children, from whom the school holds an endowment of fifteen pounds a-year :—

"The whole party, now consisting of more than sixty ladies and gentlemen from the town and neighbourhood, next proceeded to the academy, where they were entertained for more than two hours by a series of the most brilliant experiments in natural philosophy and agricultural chemistry. The agricultural claes was first examined by Mr. Hawe, and the French class by the Rev. Mr. O'Keeffe. The experiments then commenced with the Maynooth galvanic battery, and the parish priest explained by means of it and diagrams, which he exhibited to the audience, what he called the most marvellous of all the miracles of science ; namely, that when the wire connected with the zinc plate of the battery is conveyed into the earth, and the wire con-

nected with the copper plate, after being conducted, say more than a thousand miles, is conveyed into the earth also, the electric current runs with the rapidity of lightning back through the earth to the battery which it had left. It finds its own way with unerring certainty to the distance of a thousand miles, without anything whatever to guide it, such as a wire, a pipe, or communication of any sort!! This mystery of science, it was observed, throws all other mysteries and miracles into the shade, and makes any wonderful fact easy of belief. Electric shocks were given from the Leyden jar of a cylindrical electric machine, and a spark was conveyed through copper wire into a large ox bladder filled with a mixture of the gases, oxygen and hydrogen, and suspended from the ceiling at the remote end of the room, when it exploded with a report louder than that of a fowling gun. Oxygen gas was then exhibited to the audience, and the pupils were questioned as to its properties by Rev. Mr. O'Keeffe, while their answering was illustrated by Mr. Hawe showing, experimentally, with the gas itself, the energy with which it supports combustion, &c., &c. Carbonic acid was next exhibited in a similar manner, and the apparatus for producing and collecting it was placed before the audience. Hydrogen was next exhibited, having been also produced in presence of the assembly. Its properties were explained and elucidated, and the series of experiments was concluded by inflating a balloon of gold-beater's skin with this gas. Young Lord Clifden detached it, when inflated, from the gasometer, and by means of a string attached to it, he several times allowed it to rise from his hands to the ceiling of the room. All the experiments were most successful, and the Rev. Mr. O'Keeffe stated, with the assent of Lady Clifden, that he had never seen the wonders of nature more beautifully illustrated at the Polytechnic Institution in London."

Gentlemen, in the course of this trial, you will see that all my troubles arose from my devotion to the cause of education; and that I have been loaded with infamy for no other reason in the wide world, except that I employed my leisure hours in the instruction and mental improvement of the youth of my parish. It is most relevant, therefore, to this case that I should read for you a short notice of a visit to my school by a South Kensington

Inspector, as I find it in the *Irish Times* newspaper, of the 29th March, 1871 :—"On Friday last, Mr. Walter Hawe's school at Callan, which is in connection with the Science and Art Department, South Kensington, was visited by Colonel Hassart of the Curragh Camp, in order to inspect the science classes. He was met at the school by the Rev. Mr. O'Keeffe, chairman, with Captain Knox, and some other members of the Education Committee. The classes were taught in his presence by Mr. Hawe, and, much to the surprise of the Colonel, the first boy that was called to the black board to prove the forty-seventh of the first book of Euclid, commenced by writing the proposition in the French language on the board (each boy in the class doing the same on his own slate), and while proving it never used a word of English. When the classes were gone through, Colonel Hassart made an inspection of the apparatus, &c., for experiments and illustrations, assuring the gentlemen of the Committee, that the report to the Science and Art Department of his visit to the school would be a most favourable one." All these proceedings of mine gave great offence to the Christian Brothers and the bishop. My school was denounced to the congregation as a godless institution by my curates, and I was represented as having made untrue statements in connection with this school, and the expenditure of some money which was received at the doors of my church, during a three weeks' mission given there by the Oblate Fathers of Inchicore, Dublin. I complained to the bishop of these denunciations, but I could get no answer to my letter. I then instituted legal proceedings against the bishop, as the curates alleged that they acted in the matter by his directions, but I was non-suited on the evidence of one of these same curates, who swore at the trial that the bishop only permitted the denunciations, but did not direct them. For having brought this action, the bishop's vicar-general sent me a letter of suspension, which I utterly disregarded as being entirely invalid. I afterwards brought actions against the curates, and was sent other suspensions, which I treated in the same way. After these curates had been left more than two years in my parish abusing and vilifying me, in public and private, they were at length removed to another parish by Cardinal Cullen, who sent two others

in their place, and directed them to proclaim me a suspended priest. I paid no more respect to the cardinal's suspension than I did to the bishop's, as I looked upon it as equally invalid and undeserving of any respect, and I will tell you why.

Gentlemen, the great man that sits on that bench will tell you that in this free country no man has a right to sit in judgment on another, and pronounce him guilty without his knowledge. Every man has a right to accuse another before a competent tribunal, and bring home guilt to the accused, if he be able to establish it; but no man has a right to be a judge and an accuser at the same time. If one of you should think that a neighbour has forged your name on a bill of exchange, and should form this judgment in your own mind, not rashly or lightly, but on reasonable and probable grounds, you are justified in charging the man with guilt before the proper tribunal; but you have no right to anticipate the sentence of the judge, and publish the man's guilt before his conviction in the court. If you do so, you do the man a wrong, for which you must answer in damages in proportion to the amount of injury inflicted. Every reasonable man must see that this is agreeable to natural justice, and that the man who takes it upon himself to judge and condemn his neighbour must answer for his conduct to the violated laws of his country. Now, will any one tell me that the laws of the State are just, and the laws of the Church unjust? If he do, I tell him he is calumniating my religion. The canons of the Church to which I have the happiness to belong are just; and if they were at variance with natural justice, they could not be rules in the Church of God. One of these canons is expressed in the words of St. Augustine:—"Nos in quemquam sententiam ferre non possumus nisi aut convictum aut sponte confessum"—"We cannot pass sentence on anyone unless he be convicted or confess his crime." I have never been convicted, I have never confessed guilt—no, I have never even been charged with crime, except behind my back and without my knowledge. A man may call me a suspended priest or a degraded man, but I will call him a cowardly slanderer; and if he write, print, and publish me a forger, I will call him a foul libeller.

SECTION XXIV.

Continuation of address to the jury—Facts of the case—Conduct of the Poor Law Commissioners and Education Board—Ultramontanism supreme—Charge of forgery met—Calumny a great crime—Defendant's ignorance inexcusable—Charity of the Gospel—Jury bound by religion as well as justice to find a true verdict.

I COME now, gentlemen, to the facts of this case. The defendant is a gentleman of high station in the Church to which we both belong, and he has the reputation of being a man of learning. He came from Dublin into the diocese of Ossory, after his uncle had published me a suspended priest; and he has left nothing undone, in public and in private, by pen and voice, to discredit me, to degrade me, to banish me from society, as if I were infected with the leprosy. This gentleman I believe to be my lawful bishop, and if he claimed obedience from me, I was always ready to yield it; but he claimed something else. The Apostle Paul would say:—"Non vestra quæro sed vos"—"I seek not the things that are yours, but you." This modern successor of the apostles, as we believe bishops to be, says:—"Non vos quæro sed vestra"—"I seek not you, but yours." It is not your soul I want, but your parish. His uncle foisted him into the diocese of Ossory by refusing my vote, and he follows up the injustice by making him a present of my parish. Accordingly, the defendant came with the bit of writing in his pocket to take possession of the parish of Callan; but the old man that was there in the thirty-second year of his sacred ministry, in place of handing him the sod and twig, presented him with a certain hat and rug to make him comfortable on the return journey: it was a cold day in March. Gentlemen, I am not drawing on my imagination. The defendant will tell you that he did go to Callan to take possession of the parish, and will even say to you that his papers were written in Rome itself. I have no doubt they were; but I believe somebody told Rome there was a comfortable place vacant in the ancient town of Callan. Well, gentlemen, all sorts of contrivances

were resorted to in order to deprive me of everything I possessed. The Poor Law Commissioners dismissed me from the chaplaincy of the workhouse, and the Education Commissioners turned me out of my schools. They all told me I was a suspended priest, and that they would hold no correspondence with me. They would not tell me who suspended me, when or where I was tried and condemned, or what was my crime. It came to this simply: they had power, and they exercised it; they had the "giant's strength," and they "used it like a giant." There was a time when the word of Cæsar might have stood against the world: it is now the word of the ecclesiastical despot in Eccles-street. Cæsarism is defunct; ultramontanism rules supreme. I was told by one of these Boards that my suspension was unmistakable, and that there was no doubt it proceeded from competent authority, although I told these gentlemen that the man who said he suspended me had no more jurisdiction over me than the Cardinal Archbishop of Vienna, and that his suspension was issued behind my back and without my knowledge. Gentlemen, I suppose every one of you respects his own religion, and would like to see it exalted; but I tell you that if you put unlimited power in the hands of ecclesiastics, you establish a tyranny. I never heard of a religion that would not persecute if it were able, and my own just as much as any other, and perhaps more so. I am very far, however, from thinking this any argument against the truth of my religion; on the contrary, I say with the illustrious Bossuet, the author of the Gallican liberties, "that there is no illusion more dangerous than to make toleration a characteristic of the true Church." All I say is this, gentlemen, if you love civil and religious liberty, tell ecclesiastics to stay within the sanctuary and pray there as much as they like for sinners and worldlings; but outside the Church give them all the power you are unable to keep from them, and no more.

Gentlemen, every means had been tried to deprive me of the possession of my schools, my chapels, and my parochial house; but they had all failed. In the course of his correspondence with the Education Board, the defendant had discovered that before I was named manager of the Callan Schools I had sent up to the office the recommendation which I have already described; and

knowing the villany of which a suspended priest is capable, he jumps at once to the conclusion that the document was a forgery. He will tell you, no doubt, in this court, as he did before, that a gentleman at Callan, a justice of the peace, informed him that every name on the paper was a forgery, and that this gentleman was so respectable that he could not for a moment question the truth of the information; but I will produce this same gentleman before you, and he will tell you on his solemn oath that he never had a word of conversation with the defendant on the subject. Gentlemen, it is a matter of perfect indifference to me whether the calumny originated with the bishop or the magistrate. It was undoubtedly published by the bishop; and it is its publication that has done me the injury for which I claim compensation at your hands.

Gentlemen, I need not tell you that the sin of calumny is among the most grievous crimes which man can commit. It is denounced in the Book of Proverbs as the abomination of men, and in St. Paul's epistle to the Romans as hateful to God and worthy of death. St. Thomas, the angelic doctor of the schools, places calumny, in the gradation of crime, between theft and murder, making it a greater crime than theft, though inferior in malice to murder; and our own prince of poets places it in the very same position :—

> "Who steals my purse steals trash; 'tis something, nothing,
> 'Twas mine, 'tis his, and has been slave to thousands;
> But he that filches from me my good name
> Robs me of that which not enriches him,
> And makes me poor indeed."

And this crime, gentlemen, is still further increased in malice in proportion to the enormity of the guilt with which an innocent person is charged, and the value of his character to the calumniated man. I will only remind you that my position is that of parish priest of Callan; and that the crime imputed to me was one that would place me in penal servitude for life.

Gentlemen, the defendant says he was privileged to make this publication to the Board of Education and the Lower House of Parliament; but I tell you no man can be privileged to commit sin. The defendant is a man who knows that no one is justified

in doing any act which he is not fully convinced is every way right and proper; and that if he, even through ignorance, was the cause of loss to his neighbour, he is still accountable to God and his neighbour for the evil consequences of his act, unless his ignorance was altogether invincible and incapable of removal by any ordinary means within his reach. Was there such ignorance in this case, assuming the defendant was *bona fide* in the belief that I had committed this great crime? Could he not have written to me? Could he not have spoken to me, and asked me whether I had done the wicked deed with which he charged me, before he proclaimed me to the parliament of the nation as a criminal unfit to associate with honourable and good men? If there were ignorance at all, gentlemen, it was evidently quite vincible and most easily removable, and not such as any moralist would say, could in any way excuse or extenuate the guilt of imputing great crime to one's neighbour. No, gentlemen, his uncle had made me a reprobate, and the nephew accepted the duty of hunting me from society. I say it is nothing but a mockery of justice to put such a defence on the file of this high court of her Majesty the Queen of these realms.

The defendant here claims to be my bishop, and he has even said that his feeling in regard to me was no other than one of paternal love. Well, gentlemen, some of you, I suppose, are fathers—but certainly all of you have been children. Imagine, then, for a moment, the love that father has for his child, who, as soon as he is informed his child is guilty of an enormous crime, puts a trumpet to his mouth and blows the infamy of his own offspring to the four winds of the earth. You have all heard of the golden rule of morals—"Do unto others as you would be glad they would do unto you." The defendant knows that rule well. Has he practised it? If fifty magistrates told one of you, gentlemen, that your son was guilty of a horrible crime, would you be treating that son as you would like to be treated yourself, if you then and there condemned him without a hearing, and published his infamy to the ends of the earth? Gentlemen, I am an old preacher. I have often told people they should love even their enemies—should do good to those that hated them—and should pray for those that persecuted and caluminated them. I thought that was the charity of the Gospel, and the

teaching of the Redeemer of mankind. I thought this charity was universal, and that whatever we differed in—let it be race, country, religion, manners, or anything else—we were all brothers as children of the same God. I am now, however, in the end of my days to correct the false teaching of my life, and to except a suspended priest from the charity of God and men.

Is it so, gentlemen? It rests with you to say it or not. You are bound to do justice in this case, and you have sworn to do it. You are at all times, and in all places, bound by the obligations of the virtue of justice towards your fellowmen; and you are bound in this case by the additional obligation of the virtue of religion, by reason of the oath you have taken to do justice. If you pronounce an unjust sentence your souls are damned, and you perish everlastingly. Be not offended, gentlemen, at this language. It is conditional, and the same that I frequently address to my own people. It is language that can be properly addressed to all Christian men to whatever form of Christianity they may belong. I care not, therefore, whether we kneel before the same altar or not, I look upon you all as followers of Christ, and I have a right to remind you of the words of His holy Gospel, where he says that the charity of God makes his rain to fall and his sun to shine upon the just and upon the unjust; but the just alone will enter into everlasting life. I think it would take a large sum of money indeed to compensate me for the injury that has been done me; but it is not money I seek at your hands. I seek the restoration of my good name. I ask from you a verdict, accompanied with such damages, as will show to the world, that you believe me to be a deeply-injured man. The defendant has taken from me everything that I possessed in this world. He has taken away my means of living, and I need not tell you that, that is taking away my life. My character he would take as well. If you let it go with him, nothing remains for me but a dishonoured grave. If you find by the evidence in this case that I am the atrocious criminal the defendant has represented me to be, send me without mercy to that grave "unwept, unhonoured, and unsung;" but if you believe, on the other hand, the imputation of this crime to be a calumny on me, tell my foul libeller that the brand of infamy has been put upon the wrong man.

SECTION XXV.

Cardinal Cullen's motive in suspending the author—The Cardinal's evidence at the trial—The author's remarks thereon—Power of a vicar-general—Dr. M'Donald's suspension invalid for want of jurisdiction—For want of citation—Epictetus and St. Thomas à Kempis—Only one case in canon law requires no citation—Author guilty of no crime.

As far as I have been able to learn, the motive which influenced Cardinal Cullen to draw up a document in the Latin language, in his house at Eccles-street, Dublin, on the thirteenth November, 1871, in presence of his three vicars, but in the absence and total ignorance of the man chiefly concerned, pronouncing me a suspended priest, was that I had disregarded, as undeserving of any respect or notice, certain other papers of a similar kind written about me, without either my presence or knowledge, twelve months previously. On Monday, the 19th May, 1873, at the hearing of the case O'Keeffe *v.* Cullen, Mr. O'Hagan said to Cardinal Cullen :—"It has been proved that Dr. M'Donald, the vicar-general of the diocese of Ossory, on the 10th October, 1870, wrote and sent the following letter to the Rev. Mr. O'Keeffe (letter read)--here again I say that I shall be happy to send anyone who wishes for them all the letters which were read at this trial if he will only send me his address :—"I ask your Eminence, as an expert, was that in your judgment a valid suspension of Mr. O'Keeffe from his office ?—I think it was perfectly valid. It is a suspension in punishment of an offence, and that offence was notorious : and on that account it did not require a citation."

"It has been impeached on the following grounds : one of them you have mentioned as not being preceded by a citation; the other is this, that it did not set out in full the authority under which he acted. What observations has your Eminence to make with regard to the second ground of objection ?—Any judge, when he sits, is supposed to have authority. The vicar-general when he is vested with official authority, and says that he has authority to try a case, is to be believed. In this case Dr. M'Donald was

the vicar-general; he asserted that he was vested with full power to act in the case; he was to be believed. If the plaintiff had grounds to believe that he had not the power, he might have impugned his power; but he should have abided by it until he proved that the sentence was issued without authority."

"Is it by canon law to be presumed that a judge has authority until the contrary is proved?—It is distinctly laid down in the canon law."

"The Rev. Mr. O'Keeffe having written a letter to the Rev. Dr. M'Donald on the 12th October, which letter has been read here, Dr. M'Donald did, on the 13th October, write as follows (letter read). That letter has been termed here the second suspension. Was it or was it not, in your judgment, a different suspension from the first?—Oh, it is a repetition of the first. Dr. M'Donald's first suspension was turned into ridicule by the plaintiff: he was so scrupulous about the matter that he sent the second censure with the date to it; the month was to the first, but not the date. However, that would not invalidate it; it was a mere accidental circumstance. If Dr. M'Donald had not been so scrupulous, he need not have sent the second censure."

Now, lest the Cardinal should charge me with throwing ridicule on this evidence, as his Eminence says I did on Dr. M'Donald's censures, I shall merely say, before I refute it, that when I heard it uttered in court I was astounded; but as I had given my evidence before I heard it, I was unable till now to make any reply to it. To this evidence, then, I say, first of all, that Dr. M'Donald had no jurisdiction at all in the matter of censures on the 10th October, 1870, the day on which, he afterwards informed me, he wrote the paper in question, and which was handed to me on the 13th, in the chapel of Newtown, by one of my curates, in presence of the other, and I won't ask the Cardinal or anybody else to take my word for what I assert, having abundant proof to support my assertion. In the Maynooth class book on canon law, I find Devoti saying (lib. i., tit. iii., sect. ix.) that in Italy the practice is for the bishop to appoint one vicar, to whom he commits the charge and administration of spiritual things, and also gives contentious jurisdiction. He adds in a foot note that the Council of Trent follows this custom of Italy when it confounds

(sess. xxiv., cap. 16 de Reform) the official (*officialis*) with the vicar (*vicarius*). But in France and other ultramontane countries (to us cisalpine) the official is distinct from the vicar. The power of the vicar comprises all voluntary jurisdiction *(jurisdictio voluntaria)* and of the official, contentious *(jurisdictio contentiosa)*. Yet he adds that even in Italy, without a special mandate, the vicar cannot entertain criminal causes where the person convicted of guilt should be severely punished *(in quibus in reum criminis gravius est animadvertendum)*, and he cannot give a parish, visit the diocese, convene a synod, &c., &c. If he cannot give a parish, I suppose it is only reasonable to infer that he cannot take away a parish by a stroke of his pen, and this even in the middle of ultramontanism. Van Espen says (pars. i., tit. xii., cap. v., no. 5) that the authority of vicars is both by law and custom only vicarial, and depends on the will of the bishop; so that he can either extend it or restrict it, and therefore, he says, we must learn his authority from his commission. Now, if we come home from Italy and Belgium, and turn to the statutes of this diocese, I find there that :—"By the name vicar-general is designated the person who is appointed by the bishop with general power, and who represents him in the place where he resides and is accustomed to give justice *(jus dicere solet)*, differing in this from the vicars-foreign that his care extends over all the diocese, and theirs is limited to their own districts." When I resigned the parish of Rathdowney, in order to be translated to Callan, I also had to resign my authority as vicar-foreign in that part of the diocese, and I know well that my commission contained no power to issue a suspension against any one of the forty priests who were subject to me, or to entertain criminal causes at all. The statutes add :—"The bishop's vicar can do generally what the bishop does; but he cannot convene a synod, visit the diocese, confer parishes, &c., &c. Now, with this information distinctly before me, what reason had I to suppose that Dr. M'Donald possessed any power to inflict censures? And if he had it not from his office, how was I to know that he had it at all? Yet Cardinal Cullen would have me to shut my eyes and bow down my head in reverence and submission to this alleged power, because the man that claimed to exercise it said he was a judge, and, according to his

Eminence, every man that says he is a judge is a judge, and when he takes a seat he proves his power. It so happens that I am to this moment unaware whether Dr. M'Donald wrote his sentence in a standing or a sitting posture, or even whether it was an ante or post-prandial production. Indeed, I could not imagine the man to be so grossly ignorant as to write it at all only that I was acquainted with his handwriting. The Cardinal says the thing is distinctly laid down in canon law; but I have not been able to find it there, and if I ever do, I will give my volumes a new and more appropriate name by writing on the title "Lynch law," in place of canon law. The real fact of the matter of Dr. M'Donald's jurisdiction is, that when he found I denied his having it, he considered the question, and sought some information on it, which enabled him to see that he assumed a power which, perhaps through ignorance, he thought he possessed, and on finding that he did not possess it, he sought it from the bishop who gave it to him by the following document, dated fifteen days after he had, according to the Cardinal's swearing in a court of justice, validly exercised it.

To the Very Rev. E. M'Donald,
Vicar-General of Ossory.

Very Rev. Sir—We empower you, as our vicar-general, in respect of your office, to absolve from cases reserved to us, to hear and adjudicate upon criminal causes, inflict censures, and perform all such things as require a special command.

Edward, *Bishop.*

Given at Kilkenny, 25th October, 1870.
Thomas Kelly, Secretary.

The cardinal believes the pope has power to absolve subjects from their oath of allegiance, but we, cisalpines, think it even disloyal to say so. We are all agreed, however, that he can absolve, from any and every sin, the sinner who is contrite for having fallen into it; and I think the sooner his Eminence bends his knee at the confessional chair of his Holiness, the better for the interests of his immortal soul. Of course I do not mean to insinuate that the cardinal was capable of swearing, or even of stating unsworn, what he knew to be false; but I say that he swore what he should have known was false, and swearing this to

the prejudice of his neighbour, he has an account to settle with that neighbour and their common Father who is in heaven.

I say, in the second place, that the suspension was altogether invalid for the want of a citation, which it is admitted was never issued before the sentence was written. Nothing is better established in canon law than that a sentence of condemnation passed upon one, who has not been cited to appear before his jndge, has no validity or force whatever. But what need is there of any law to tell people this? Has any man on earth the power, with all the pens, ink, and paper in the world at his command, to make another man a sinner—to make him a murderer, a thief, a drunkard, a rebel, or a criminal of any sort? And if Dr. M'Donald were writing sentences of, upon, or about me till the day of doom, I think I have sense enough to keep never minding them, and to give myself no uneasiness or concern whatever about any one of them. Every one is accountable for his own acts, but he is only a busybody that concerns himself in the affairs of others. Epictetus says:—"All things whatsoever may be divided into two sorts; those that are, and those that are not within our own power. But our bodies, possessions, preferments, reputation, and places of honour and authority, and, in short, everything besides our own actions, are things out of our power." Whatever Dr. M'Donald or Cardinal Cullen, therefore, may think of the interest I should take in the paper writings of the former, I look upon the pagan Epictetus as a better guide than either of these Church dignitaries, even in the laws and rules of a religion which his philosophy alone forbade him to contemn. But, perhaps, the Enchiridion is on the *Index Expurgatorius;* and lest it should be, I will treat these Christian brothers of mine to a little bit of Christian philosophy from the undoubtedly orthodox Thomas à Kempis. He says, in the twenty-eighth chapter of the third book of the *Imitation of Christ*:—"Son, be not troubled, if some people think badly of you and say what you would not willingly hear. You ought to think more meanly of yourself, and believe no one inferior to you. If you walk from within you will not attach much weight to flying words. Put not your peace in the mouth of men, for whether they interpret well or ill, you are not on that account a different

man." Dr. M'Donald's papers made no change in me, further than to afford me some amusement, and make me wield my rebellious pen at his dignity, with a quotation from Shakspeare, which had something in it about angels in high heaven weeping at the fantastic tricks of certain animal beings on low earth, who must flaunt in everybody's face, for his admiration and reverence, the newly made dress of a "little brief authority." To what has appeared already in this book on the necessity of a citation before judgment can be pronounced, I will merely add one passage from *Devoti*:—"Omnia judicia a citatione inchoanda sunt; neque ea omissa, ulla judicii vis et auctoritas est, vetat enim non civilis modo sed etiam naturalis juris ratio, damnari aliquem, qui anditus ac defensus non sit. Hine defectum citationis *insanabilem* pragmatici appellant; quoniam sanari non potest judicium quod sine citatione gestum est" (Lib. iii. tit. v. sect. i). Can the reader believe that more than a month after these two papers called suspensions were sent to me, I was handed the citation to trial calling on me to appear at the sacristy of the cathedral church of Kilkenny, to answer the charge of having, "contrary to the sacred canons, especially those that forbid clerics from drawing other ecclesiastics of whatever rank to lay tribunals, grievously erred by citing to trial before the judge of the Court of Queen's Bench, his own bishop and the bishop of this diocese, the most distinguished and most Reverend Lord Edward Walsh"? It is a fact, that the citation was dated November 16th, 1870, and handed me on the 19th same month. I was noticed to appear on the 19th December, but ten days before that date, the very same gentleman that was such a grief to the angels, played a new "fantastic trick" by causing a common bailiff to put into my hands a fresh suspension for the offence which he had cited me to appear to justify on the day and at the place named!!!

The cardinal says that as my offence was notorious there was no citation required; but the canon law and natural justice say the contrary, and every one knows that no one but a cruel tyrant, bent on the destruction of his victim, could see the least harm in allowing the most notorious criminal to say a word in defence or extenuation of his act. There is one case, and no other, in the canon law where a culprit is disentitled to a trial, and that

is the case of a person who, at the instigation of the devil (*suadente Diabolo*), lays violent hands on a cleric in so public a way as that by no tergiversation can the wicked deed be concealed or excused; but in every case, it is most strictly forbidden to consider any priest disqualified to discharge the functions of his office, or to decline his ministrations, on the pretence of his having contracted guilt or incurred censure, unless after the judge who tried and condemned him, canonically promulgates the sentence to the persons concerned in it. I said before, and I say again, the canon law is just and equitable, and only unsuited to the present day, by reason of its numerous rules of discipline enacted in mediæval and still more remote times, which the manners and customs of our century have altogether abrogated by contrary usage.

I say, in the third place, that so far from my guilt being notorious, I was no criminal at all; and before the cardinal came among us, with his commission to preach and teach the omnipotent power of popes and their bulls over all law, order, and authority, every bishop in Ireland was of agreement with the far-famed patriot and accomplished scholar and divine, who from his archiepiscopal seat in the far West, sheds a bright lustre on his country and his religion, "that according to the constitution of our country every clergyman is certainly amenable for his conduct to the laws."

And, in the fourth place, I say that I have abundantly proved already that I treated properly Dr. M'Donald's invalid censures, by informing him that they were utterly worthless.

SECTION XXVI.

Suspension *ex informata conscientia*—The cardinal's evidence thereon—The author's comments on this evidence—The chief justice's criticism on same.

On the 12th January, 1871, after I had been at least three times suspended by the vicar-general, and still found with an

unbroken neck, the bishop himself tried his hand at a death-blow, which he was sure would make an end of me. I was handed on that day the following letter enclosing this fourth suspension :—

THE REV. ROBERT O'KEEFE.

Kilkenny, 11th January, 1871.

REV. SIR,—As you have disregarded the ordinary mode of procedure, I, after mature deliberation, send you hereby a suspension *ex informata conscientia ab ordine officio et beneficio.* You are aware that from this suspension there is no appeal; and that should you violate it you will incur an irregularity.

(Seal.) † EDWARD WALSH.

Enclosure.

It having been established to us that the Rev. Robert O'Keeffe, priest, is guilty of misconduct for reasons which worthily influence our mind, and, for which we are bound to give an account to God and to the Apostolic See, as we are commanded, and from an informed conscience, we suspend and declare him suspended from rank, office, and benefice; and order the decree of suspension to be made known to him.

Given at Kilkenny, 11th January, 1871.

EDWARD (Bishop).

(Seal) THOMAS KELLY (Secretary).

The Cardinal was asked—"On the 11th January, 1871, Dr Walsh, the bishop, sent the following letter (letter read). Would you kindly explain to his lordship and the jury the nature of a suspension *ex informata conscientia* according to the canon law—Suspension in general, and also having special regard to a statement that has been made here, that a suspension *ex informata conscientia* only applies to private offences, and only applies to the regular clergy as contradistinguished from the secular?—There are two ways of proceeding in canon law—judicially and extra-judicially. When a person proceeds judicially, he is obliged to observe the essential conditions which are laid down by the canon law for the validity of the suspension; when he proceeds extra-judicially he is obliged to attend to natural justice, and to

perform everything that is required for the justice of the sentence. They are distinct ways. At the Conncil of Trent this method of suspension was introduced in the first chapter, *De Reform*, 14th sess. The Council finding that in many cases it was very dangerous, and an occasion of great evil to leave certain persons in possession of parishes, benefices, and other clerical dependencies, on account of the evils they might be performing in private life, determined on passing an act for the suspension of persons in such cases when required. They did away, therefore, with judicial form, and authorized bishops to prevent clerics to ascend to a higher order, or to suspend clerics from their office and their order without going through all the processes of legal conditions, upon the condition that they should be themselves perfectly cognisant of the offence for which they suspended the person. On that account it was called extra-judicial suspension. Since the Council of Trent, the Council in Rome called the suspension, *suspensio ex informata conscientia;* that is, a bishop who suspends a person in this way must have a full knowledge of the offence of the person he suspends; and there is another condition, that he must be prepared to give an account of these offences, or of the reasons for which he suspended the person, to the pope if called on. This suspension requires no previous citation; from this suspension there is no appeal to the metropolitan, but there is a recourse to the pope. The person who considers himself aggrieved, can represent his case to the pope. The pope calls on the bishop to explain everything he has done, and if the pope finds the person aggrieved, he absolves him from the censure; if he finds the bishop acted properly, he confirms the proceeding of the bishop. This suspension is most necessary at certain times in a parish. If it happened unfortunately, as it might happen, as we are all men, that a parish priest was doing a great deal of mischief, scandalizing the people and corrupting them, and if the bishop had full proof of this, but could not get witnesses to come forward and prove what he knew perfectly, then he might, in order to save the people, to save the souls of his flock, suspend the priest without giving him a reason why he suspends—that is the nature of this suspension."

"May I ask your Eminence's attention to this. I think you use

the phrase that the Council of Trent did away with the necessity of judicial form—that is, as I understand in certain cases?—Only in this case, and when the bishop is proceeding so, he need not adopt the judicial form when it is necessary to save the souls of the people from the scandal of a bad pastor."

"Is the phrase *ex informata conscientia* a term of art applied in the canon law to extrajudicial suspension?—Oh, yes; applied since the Council of Trent."

"Adopted as a term of art?—Adopted by the pope and council."

"Had the Council of Lateran anything whatever to say to that species of suspension?—The Council of Lateran, which was held before the Council of Trent, could not act on the Council of Trent, or abrogate the laws of the Council of Trent. The Council of Trent could interfere with the regulations made by the Council of Lateran, and change them, adapting itself to the circumstances of the times in which the Council of Trent was held. You asked me, I think, whether such law applied to a parish priest."

"To a secular as well as to a regular?—It applies to secular as well as regular priests. It applies to persons having benefices, having parishes, having any rank in the Church. They may be suspended *ex informata conscientia.* I brought down here Geraldi's canon law. He is a very distinguished author on canon law."

The Chief Justice—"When did he write, Cardinal?—I think about 140 years ago, the time of Benedict XIV., who was a great canonist also. He declares that the suspension *ex informata conscientia* can be applied to every person of whatever rank he may be among ecclesiastics."

I was at first surprised that the judge allowed all this most extraordinary evidence to be exposed in all its branches and ramifications in a court of British justice; but when I noticed the close attention which he paid to it, and the care with which he noted down every word of it, I said within myself, I only hope his Eminence will be an attentive listener when the judge will comment on this evidence in his charge to the jury. The Cardinal, however, got a hint from his lawyers, who knew it well beforehand, that an airing in the country would be more agreeable to his mind and exhilarating to his spirits than the eloquence of the distin-

guished judge in discoursing on the principles of law and natural justice to the jurymen in connexion with his Eminence's evidence; so he took the hint and the airing in the country, and contented himself with reading next day in the newspapers the charge of the judge to the jury, in which he observed on this part of the case :—This severe sentence was accompanied by a letter, dated Kilkenny, 11th January, 1871, purporting to be signed by the bishop, Walsh, in which the bishop is represented to have written : "I, after mature deliberation, send you hereby a suspension *ex informata conscientia, ab ordine officio et beneficio.* You are aware that from this suspension there is no appeal." There was no proof given that the bishop wrote or signed either of the two papers, or dictated or authorized them to be issued. There was no positive evidence, as I have said, that the bishop, Walsh, wrote or, indeed, knew anything of this last adjudication, and the evidence subsequently given would tend to show he did not. Having never in my lifetime heard or read of such a sentence as this last and final one, which appears to deprive the plaintiff at one blow, without citation or notice, and without any appeal, of everything he possessed in his office of parish priest, I felt it to be my duty to review and carefully consider the whole of the evidence relating to this sweeping sentence *ex informata conscientia*, which appeared to me to have been resorted to because the regular citation would fail upon a hearing, and the other alleged suspensions were unauthorized, or irregular, or abortive. I have to report (I am copying from the Chief Justice's report to his brother judges on the trial for the purposes of the new trial motion still pending in the court) that it was clearly shown that this sentence, conclusive and unappealable, was bad on the face of it. The prelate who pronounces this form of sentence, it was proved, can only deprive the subject of the censure of his rank and office, but not of his benefice. When this proof was made, I considered a bishop educated in the canon law must have understood the limits of his jurisdiction, and would hardly usurp an authority he did not possess, and have pronounced a sentence in the most material part unsustainable. The judgment was shown in the substantial part of it to be void on the face of it, and evidence was given that if the judgment was manifestly invalid, the party to be affected

by it might disregard it; but a canonist proved, in order to show that the sentence was not wholly void, that under the canon law, although the judgment might be void as to one and the most important point, yet it was separable, and might stand good as to any other part of it to which there was no objection by canon law, and so that the sentence *ex informata conscientia*, although bad as to depriving the plaintiff of his benefice, yet was valid to deprive him of his rank and office as parish priest. I was not satisfied with this exposition of the foreign law, yet I did not rest my ruling on my doubts of the sufficiency of this evidence to maintain the judgment bad on the face of it. Evidence I have to report was given to satisfy me that this crushing sentence, from which there is no appeal or redress within the kingdom, cannot be inflicted for an offence which is notorious. A canonist from Rome proved that it could not be applied for a notorious fact, such as a trial in this court. Archbishop Leahy's evidence was distinct on the same point. He deposed that it ought not to be applied in such a case, that he would not so apply it himself, and, lastly, that the opinion in Rome was altogether against an ecclesiastical judge proceeding *ex informata conscientia* in the case of a public transgression. Having considered all the evidence given on the question of the validity of the judgment *ex informata conscientia*, I delivered my opinion to the jury, summing up what the evidence proved, viz. :—"That this sudden sentence might be levelled against any ecclesiastic without the slightest knowledge that he was accused—without ever having seen his accuser—without any citation—without any witness—without any examination and without any charge—and that, as it was admitted this proceeding was not judicial nor under any known form of procedure, but extrajudicial, yet conformable to natural justice, I had to direct them that this judgment was flatly opposed to natural justice, and that it was equally opposed to reason that any man should be condemned unheard, and that whether the proceeding against him was to be considered criminal or civil. I told the jury this judgment was utterly void as opposed to natural justice, and could give no privilege to the defendant, nor any sufficient foundation for his prosecution of the plaintiff."

I make no comment on this scathing denunciation of ultra-

montane tyranny, by this able, eloquent, and upright judge, except to say, that while we have the laws of our country administered by men who are acquainted with these laws, and who possess any share of the deep sense of justice which fills the bosom of James Whiteside, our lives, our property, our character, and our liberties, are in safe keeping. A judge holding the balance of justice in his out-stretched hand, and weighing in its scales the rights and the wrongs of mortal men, is the most perfect image and representation of God on earth. The pope's legate and his justice have been weighed in this balance, like Baltassar of old, and they have been found wanting. "Appensus es in statera et inventus es minus habens" (Daniel v. 27).

SECTION XXVII.

Author's explanation of the censure *ex informata conscientia*—What the Council of Trent really did in this matter—Bishop M'Evilly's evidence freely commented upon—A second chapter of the Council of Trent explains what it meant in the first—Laws of Trent just.

Now this whole business of an *ex informata conscientia* suspension, when handled by a cisalpine, and properly explained and understood, is the most innocent affair imaginable, as I shall show most clearly. I will prove, in the first place, that this form of censure is only applicable in the case of regulars who make vows of obedience to their superiors, but not to the secular clergy who are bound by no *regula pietatis* and make no vow, but promise their bishop and his successors *canonical* obedience. In the second place, I will show that the emphatic and essential rule of the canon law, and of natural justice, which I have repeated so often; namely, that no one is to be condemned without proof or admission of guilt, comprehends all the clergy as well as it does all the laity. The eighth canon of the greatest council that was ever held in the Latin Church, the Fourth Council of Lateran, under Innocent III., in the year 1215, is thus found in Du Pin's history:—"The eighth canon regulates the process which ought to be minded in the accusation of ecclesiastics. It is therein

declared that it is not to be tolerated to accuse them lightly; that they ought to be present when they are informed against, unless they absent themselves out of contumacy; that they ought to be told the heads of the information against them, and to know their accusers, and to be admitted to put in their replications and lawful exceptions; that there are three ways of proceeding against a criminal, by way of accusation, by denunciation, and by inquisition; that the accusation ought to be ushered in by the complaint of the accuser, the denunciation by a charitable admonition, and the inquisition by common report; that yet it was not requisite to observe this method precisely, with respect to regulars, and that one might divest them of their offices when it was expedient, without observing all these formalities." This canon was re-enacted by the Council of Trent, and it was put into the canon law by Gregory IX., as a decree made by Innocent III. (his uncle), in the General Council of Lateran. Now if there be any part of the *Corpus Juris Canonici* more undoubted canon law than any other, it is the Decretals of Gregory IX., and if there be any decretal more binding than another, it is this identical one. Will any ultramontane stickler for canon law tell me now that a bishop can treat a *secular* priest with as little ceremony as his superior could the *regular*, subject to his arbitrary will, or say that I have not at least as good a right to quote against him the canons that are unchanged and unchangeable, as rules of justice, as he has to quote against me canons of discipline merely, which have been abrogated for centuries by contrary usage? I have proved, to full evidence, my first point, and now for my second.

This informal proceeding which in late times has been called *ex informata conscientia*, is much older than even the Council of Lateran, which assumed the existence of the practice rather than enacted it. The Council meant to leave the practice as it found it existing, and made no rule about it. The practice was, and is this. It comes to the knowledge of a superior that a friar, for instance, is leading a bad life; living, if you will, in sin with the servant maid of the community. The superior sends this friar this informal sentence, because he wishes to save the character of the man, as he is bound to do, and spare their common religion a great scandal. The man accepts the sentence, retires from the

convent, and goes into spiritual retreat till the superior is satisfied that he has reformed his life, and restores him to his position. Will any one say to me that even the regular in such a case as this is condemned without a confession of guilt? I say he is not; but, on the contrary, the very fact of accepting the sentence is a confession of his guilt to the judge, and an acknowledgment by the subject that the judge was not only just, but charitable and merciful, as every judge ought to be, more especially if the ermine of his judicial dignity were put upon him by the Church of Christ. Let me suppose now, that the suspension was sent to the wrong man, who is not conscious of having committed any fault or done anything which could be visited with censure, will anyone tell me that this wrong man is to receive that sentence with respect, and act precisely as the other man, or that he has no remedy in his down-stricken and prostrate condition, except a recourse to the pope from perhaps the Roman antipodes in Chatham Island in the South Pacific Ocean? The ultramontanes will say and swear all this no doubt; but I say the man that makes the voyage of half the oceans and seas of the world, to seek relief from an *ex informata conscientia* suspension, knowing well that at a hearing of his case no guilt could be brought home to him, may be a very good subject in the matter of his vow of blind obedience, but unless he denies his guilt and demands a trial, his obedience to reason is quite as unenlightened. The man is simply a fool, and my second point is established.

I have, however, to meet the assertion of the ultramontanes, that this form of censure was made applicable to seculars by the Council of Trent, and that it applies, as the Cardinal says, even to parish priests, and all beneficed clergymen of any rank in the Church; and I say, first of all, that the Council of Trent could not make such a law, as it is one which is evidently unjust, and in open contradiction to the law of Lateran re-enacted in Trent. No council, no pope, no human authority, can deprive a man of his natural right to be considered innocent aud guiltless till the contrary is proved, assuming the man does not contract himself out of that right by a vow of blind obedience to the arbitrary will of another. So that if the council made such a law, the council was a tyrant, and its law was iniquitous; but it is a calumny on

this great council of the Church to say it made such an unjust law. What the council did, simply was this; it directed that clerics should not be advanced to a higher order from a lower one, against the judgment of their own bishop, whether he forms that judgment extrajudicially or not, and that clerics who might have been suspended from the exercise of the functions of their office or their order, should not be restored against the judgment of their own bishop, again in this case acting extrajudicially or not. This gives no power at all to bishops over their own subjects, nor takes away any they might have possessed; but, as it was a common thing at the time of the council for clerics who had been suspended by their own bishop, to seek employment and restoration from another, the council very properly made a rule against the practice, and not many years ago the bishops in the United States of America, after many scandals had occurred there, in consequence of giving employment to emigrant priests from Ireland, made a somewhat similar rule for themselves. In the middle ages, clerics were exceedingly numerous, and very many of them never became priests, but remained all their lives in some of the lower orders of deaconship, sub-deaconship, and even in minors. It became a practice for those who wished to advance a step, and were refused promotion by their own bishop, to seek advancement from some other bishop, and the council very properly put a stop to this improper practice also. So far, however, was the council from doing what the cardinal foolishly said it did, that even the ultramontane writers themselves who notice this *ex informata conscientia* at all, are all agreed that it cannot be made available to suspend *ab beneficio.* It is true that, in some instances, parish priests have accepted the sentence of suspension in this form, but for a very good reason, namely, that if they resisted, their character was gone. The parish priest, however, that knew he was innocent, and let his parish or anything else be taken from him by a *hodœdocos* with his *hocus pocus*, is the very man that was served right, because he deserved to lose it. Very few canonists have thought it worth their while to treat of this form of censure at all. I never heard or read of it while I was a student at Maynooth, and until the cardinal brought it over from beyond the Alps, no secular priest in Ireland

was ever clutched in its manacles or fetters. I give the only passage in the decrees and canons of the Council of Trent, which relates to this matter, with the heading under which it stands in the book, as the first chapter of the fourteenth session.

"Si prohibiti ascendere ad ordines, ascendant; si interdicti, si suspensi puniantur.

"Cùm honestius ac tutius sit subjecto debitam præpositis obedientiam impendendo, in inferiori ministerio deservire quàm cum præpositorum scandalo graduum altiorum appetere dignitatem; ei cui ascensus ad sacros ordines a suo prælato, ex quacumque causa etiam ob occultum crimen quomodolibet, etiam extrajudicialiter, fuerit interdictus; aut qui a suis ordinibus, seu gradibus vel dignitatibus ecclesiasticis fuerit suspensus, nulla contra ipsius prælati voluntatem concessa licentia de se promoveri faciendo, aut ad priores ordines, gradus et dignitates sive honores restitutio suffragetur."

The council simply wished that clerics would be controlled, promoted, or degraded by their own proper bishop, without any interference by another bishop with his subjects. The English translation of the chapter is :—" It being always more honourable and more safe for inferiors to serve in a lower function by rendering due obedience to their superiors, than to cause them to be scandalized by endeavouring to raise themselves to a more exalted post : the holy council ordains that no permission granted against the mind of the superior for any one to be advanced, nor any restoration to the functions of orders already received, or to any degrees, dignities, or honours whatsoever, shall be valid in favour of him, whom his bishop or superior shall have forbidden to obtain holy orders for any cause whatsoever (even though it should be a secret crime), and in what manner soever, even extrajudicially; nor shall such permission be valid in favour of him who should have been suspended from the exercise of his orders, or from his degrees, or ecclesiastical dignities." I have taken this from the English translation of Du Pin, lest the ultramontanes should say I gave a version of the chapter too favourable to my own contention. Bishop M'Evilly, the most expert of all the episcopal "experts," was asked by the Chief Justice :— "Have you ever seen a case of this kind before?—I have myself,

my lord, inflicted the same; I will state to your lordship what it is. According to the law of the Church" (the law which in common with the witnesses who preceded him he named the common law of the canon law), "before the Council of Trent, no bishop was warranted in excluding a subject from advancement to holy orders, however unworthy, or suspend a priest from the orders with which he was already invested, no matter how unworthy, without a regular judicial process in consonance with the laws and decrees. The result of this had been that the bishops witnessed the advancement to orders of unworthy subjects, and they also saw unworthy clerics dishonour the sanctuary and ruin souls instead of saving them; because they could not, even though some crimes were public, be proved judicially, and therefore they saw evils existing without a remedy. In order to remove this, the Council of Trent, for the first time, in the first chapter of the fourteenth session, gave bishops power to prevent clerics from ascending to higher orders; and in the second clause of that decree they also gave them power to suspend from their order, office, or dignity, priests already in orders, for the same cause. Because there are several decrees of the sacred congregation of the council that was appointed by the Council of Trent to interpret its decrees—there are several decrees of the congregation declaring that the clause applied to the second as well as to the first case, and applies to clerics to suspend them from orders as well as to prevent them from ascending to higher orders. Moreover, Benedict XIV., who was the highest authority of the Catholic Church, besides being a pope, declares that to be the case, and he brings forward decrees from the sacred congregation in support of his opinion. Then a bishop in passing this sentence does not state the cause: he may inflict it *etiam ob occultum crimen*, that '*etiam*' would show that he can inflict it for crimes that are not occult where it is impossible to institute a proper legal proceeding; and where the crime is brought home to the delinquent; so that in my opinion it is more or less a mistake to say that it is confined too ccult crime; even public crimes that cannot be proved fall within it."

This evidence is somewhat more pronounced than that of the other witnesses, but substantially they were all agreed that bishops

in the Church of God, with proof of guilt confined to their own breasts, can form a judgment on the conduct of their neighbour, and that neighbour a priest of the same holy Church, convicting him of crime, then require the man they have found guilty to acknowledge the justice of his conviction, and, finally, publish to the world his sin and his shame. Must I not ask, do these men believe that bishops are not bound by the "ten words" of Mount Sinai, or that the exercise of the duties of the episcopal office is inconsistent with the natural and divine law? No, I am well aware they do not believe it, but I am, at least, equally well aware that they have all said it in their ignorance. They have calumniated the Church of God and the great Council of Trent; but fortunately for this council, if it made one chapter on which these men found their right to rule in God's Church with a deadly tyranny, it added a second, which shows that it was very far indeed from the mind of this holy council to sanction crime committed even with a crosier in hand and a mitre on head. This council dealt out its censures as liberally to criminal bishops as to the humblest members of the Church of God, and I give it my hearty thanks and applause for having done so. Here is chapter No. 2, from the same translation :—"And because some bishops of churches in *partibus infidelium*, having no clergy or Christian people of their own, being for the most part vagabonds, (cùm ferè vagabundi sint) and without any fixed abode, go about seeking, not the interest of Jesus Christ, but other men's flocks," (one would think the fathers were prophetic, and saw three hundred years ago the Cardinal's nephew, who was a bishop *in partibus* invading my fold) "without their proper pastor's knowledge; and after the holy council had forbidden them to exercise episcopal functions in other men's dioceses, without the express permission of the ordinary of the place, and that too only upon persons under that ordinary's jurisdiction; set up fraudulently, and in contempt of the law, in a rash manner, a sort of an episcopal see in some place which is in no diocese, where they have the boldness to confer orders, even those of priesthood, indifferently to all that come to them, though they have no testimonials from their bishops or prelates; so that it often happens that the least worthy, the rudest and most ignorant, who have been refused by their own bishops, as unworthy and incapa-

ble, come to be ordained in that manner, and cannot perform their functions afterwards as they ought, either in what relates to the divine office, or to the administration of the sacraments of the Church. None of those bishops who are called titulars, though they have their residence or abode for sometime in a place that is in no diocese, even exempt, or in any monastery of any order whatsoever, shall by virtue of any privilege which may have been granted him to ordain for a certain time, all those that shall present themselves to him, confer sacred or lesser orders, nor even the first tonsure to any person whatsoever, without the express leave of his prelate, or letters dimissorial, under pretence of his being one of his domestics, eating and drinking every day at his table. Every bishop that shall transgress this regulation shall be suspended of his episcopal functions for one year *ipso jure;* and he that shall be so ordained, shall also be suspended from the exercise of the orders which he shall have received, as long as his prelate shall think fit." The prohibition of the council to exercise foreign jurisdiction without leave of the ordinary, to which it here refers, is in the eighth chapter thus :—"Forasmuch as there are pastors who, not contenting themselves with the government of their own flocks, seek to enlarge their authority over those of other men, and sometimes concern themselves so much with strangers as to neglect their own people; whosoever shall have a privilege of punishing the subjects of other men, even though he be a bishop, shall not proceed against ecclesiastics that depend not upon him; especially if they are in holy orders, without the intervention of the bishop to whom those ecclesiastics belong, if he resides upon his church, or of some other person deputed from him; let the crimes of which they are accused be never so heinous, otherwise the whole proceedings and all that shall follow upon them shall be entirely null."

Has this legislation any spice of injustice or tyranny in it?—No : individual churchmen, however exalted their station, may play the tyrant and act that part before men in the name of our holy religion; but the fond mother of all her children, without distinction of priest or layman, of high or low, and the spouse of Christ, without spot or wrinkle, is, was, and never will or can be unholy or unjust.

SECTION XXVIII.

The Cardinal's evidence on the promulgation of the Council of Trent—Author's remarks on his evidence—The Cardinal's evidence on the crime of impleading ecclesiastics in lay courts—Author's remarks thereon—The Cardinal's evidence on the binding force of the *Bulla Cœnæ*—Author's comments on this evidence—Some observations on the general evidence of the experts—Church no tyrant.

THE Chief Justice said to the Cardinal :—" May I ask, are the decrees of the Council of Trent received in Ireland?—They were received here in Ireland, my lord, at a very early period. I have here present a decree of the province of Dublin, which emanated from a synod held in Kilkenny in 1613, receiving all the canons of the Council of Trent and publishing them; and according to that, on account of the circumstances of the time, they could not publish the canons regarding clandestine marriage, or a canon which had reference to an examination of a priest for a parish by *concursus*, as they call it."

" What was to be the form of the promulgation to make a thing binding on the different countries of the world? How was it to be promulgated?—Is it this law?"

" Any of them, for I somewhere read that the decrees of the Council of Trent were not received in Ireland?—All were received in Ireland except this upon clandestine marriages. They were simply not put in practice because they could not be put in practice in Ireland."

Mr. O'Hagan—" As your Eminence explained, it stood apart because the very words of the canon prescribed that it should not be in force."

Chief Justice—" Except for that it would not have required any promulgation at all, and would have bound the whole world?—Certainly, in canon law and in conscience."

Mr. O'Hagan—" Mr. O'Keeffe stated that marriages which were celebrated in his parish, after he had been suspended, were invalid or clandestine by reason of not being in his presence as parish

priest, or in the presence of some priest authorized by him according to the decrees of the council?—He is quite mistaken. When the decree of the Council of Trent is published, any marriage contracted without the presence of the parish priest, or a priest deputed by him, and two witnesses, shall be considered as invalid; but the bishop himself is parish priest in every parish. He can assist at marriages without consulting the parish priest or any priest in his whole diocese. He can give leave to persons to contract marriage in any part of the diocese without the consent of the parish priest. He is the ordinary of the whole diocese. The vicar-general has the same authority as the bishop. Just as the pope, if he came over, could celebrate a marriage in any diocese without asking permission of anyone, the bishop can celebrate a marriage where he wishes, and depute persons to celebrate them."

I never said, as this question supposes, that a bishop or a vicar-general could not celebrate a *valid* marriage anywhere throughout the diocese, because I know he can; but I said it was *improper* for the vicar-general to authorize such marriages in my parish, and I say it still. I say, too, that if the pope celebrated or authorized them, they would, as the Cardinal says, be valid; but his conduct in the matter would be much more improper than that of the vicar-general or the bishop, as it would be a greater scandal for a pope than for an inferior dignitary to violate all law and order.

Mr. Purcell, on cross-examination, said to the Cardinal:—"Suppose a bishop grossly slandered a parish priest not in the exercise of his jurisdiction, would the priest be guilty of a canonical offence by bringing the bishop into a court of law?—It is very difficult to decide some general questions. It would be the duty of the parish priest to seek redress in every way possible within the Church, and if he could not obtain redress, to bear with patience, and if he could not do that, he should have recourse to the pope, and state his case; and then he would be sure of redress. The same as if the Queen was supposed to do wrong to somebody, or somebody do wrong to her, he would break out into rebellion against the Queen, or do anything wrong against her; and I think the parish priest should not take an action against his bishop."

"The question I ask your Eminence is this—first, I just refer to the fact that you have already stated in your evidence that the suing of a bishop—any cleric suing another in a court of law is, according to the canon law of the Church, a canonical offence, provided that it was something done *qua* cleric, or is it absolutely unqualified—one cleric suing another in any case whatever?—That is the general rule of the Church. Any cleric suing another before a lay tribunal would be deprived of his benefice. That was for anything that was between clerics, such as between the parish priest and his bishop."

"For any cause whatever?—This is a rule of the Church. If a parish priest wishes to violate that rule he can do so, and summon his bishop before a civil tribunal and obtain that redress which he wishes; but by so doing he incurs the displeasure of the Church."

"If one cleric sue another for any offence whatever, though unconnected with the clerical office or position, is that an offence against canon law?—That is the law of the Church; because the persons of the clergy are looked upon as sacred from their holy and sublime office, and anything which will tend to lower that character is contrary to the spirit of the Church: bringing a man for slander into a court tends materially to injure his influence and position."

"Though he happens to be guilty of slander, in fact, though he has so far forgotten his clerical office as to be a slanderer, still to sue him in a court of law for slander is a canonical offence?—If he wishes to be a Catholic priest, he must abide by the law of the Catholic Church."

"But that is the law?—It is the law: if he wishes to go outside the law, he has public tribunals to go to, but he incurs responsibility."

"That is, that as a subject of the Queen he has the right?—Yes, to go where he likes."

"As I understand you, if one cleric slanders another (and I am speaking now not of slander arising in the execution of his canonical office), and if the man who has been publicly slandered brings the case into a public court, does he commit a canonical offence?—Yes."

"Subjecting him to deprivation?—It depends on the offence:

if the offence be a proper offence in that genus which subjects him to be deposed. Recollect, a bishop and priest are looked upon by the Catholic Church as having a most sacred office. The bishops, as successors of the apostles, are fathers of the priests. They are the superiors, and have to direct and guide them. If a priest for every little thing took an action against a bishop, their authority, influence, and character would be ruined."

"And do you think this a little thing?—When priests have engaged under that rule to follow the *forma cleri* they must abide by it. A priest pledges himself not to get married; he has a legal right to get married, but if he do so, he is cut off from the Church."

When the Cardinal was giving this evidence he knew as well as I do that the "little thing" for which I sued both priests and bishop was this, that on the 15th of August, 1869, my two curates publicly announced in my church that they were directed by the bishop to inform my congregation that I had on the previous Sunday made false statements from the altar. On the 20th same month I informed the bishop of the conduct of the curates, and requested him to remove them to another parish; but so far from taking any action in the matter, he would not even return an answer to my letter, but left the curates for more than two years in my parish, abusing and vilifying me in public and private. I still did not cite either the bishop or the curates into a law court till after I wrote to the Prefect of Propaganda in Rome for leave of absence from my parish that I might go to Rome and explain my case; and Cardinal Cullen is the man that advised his brother Cardinal (Barnabo) to refuse me this leave. Yet he swears in a court of justice that I was sure to get redress if I had recourse to Rome, and he swears that by going into a law court for the purpose of protecting my character from the slanders of the bishop and the curates, after I had been refused all redress in the Church, was so great a crime that I was properly treated by being deprived of my parish.

Now, whatever laws existed in the Middle Ages, protecting the clergy in their immunity from the jurisdiction of civil courts, there has been undoubtedly no such law in any part of this kingdom for centuries; and even if there were, it could not

apply to my case. It is a principle of morals recognized by all theologians that positive laws do not bind under great inconvenience, and this holds good even in the case of divine positive laws. The law of the Sabbath, for instance, is not broken by withdrawing an ass or an ox from a ditch on the Lord's day, and no sin was committed by David when in his hunger he ate the loaves of proposition. In truth, every child from his catechism knows that no sin is committed on a Sunday by the performance of laborious work, if it be necessary, and that a poor man is not bound to hear mass on a Sunday if he have not a hat for his head and a shoe for his foot. If there were such a law, then, as the Cardinal alleges, I was abundantly justified in ignoring its existence. But there is no such rule of discipline binding on me, simply because it is not to be found in the statutes of my diocese.

The Cardinal was asked whether the *Bulla Cœnæ* was in force in Ireland before and up to the publication of the new constitution *Apostolicæ Sedis*, and he said :—"I think it was in force in the diocese of Ossory. I brought a manuscript copy of the statutes of the diocese of Ossory for 1676, in which I find a statute to this effect, that every priest in the diocese of Ossary should have a table posted up in his oratory containing cases reserved in the diocese of Ossory, besides the cases reserved to the pope, especially those contained in the bull *In Cœna*, in order that they might know within what limits their faculties were restricted. That is a proof that in the diocese of Ossory the bull *In Cœna* was in force. There is another little matter which I might add. In the statutes of the diocese of Ossory, which I have with me, a good many cases which occur in *Cœna Domini* are named, and the following observation is added :—'Besides the cases mentioned in canon law we add the following cases.' This statute, therefore, supposes that cases of canon law were still in vigour in that diocese, and that a few more were added to them."

The Cardinal was very incorrect in saying that the statutes add any new cases of suspension to those of the canon law, as the statutes do no such thing, but on the contrary give it to be understood clearly that no discipline is adopted into them from the canon law, except what is stated in express terms. The statutes say, that besides the *causes* for passing censure stated in the canon

law there are several others, which they enumerate, and *threaten* censure on the guilty; but those things regard the moral duty of the clergy and not mere discipline. He is quite wrong again in saying that anything is extracted from the bull *In Cœna* and published in the statutes. Dr. Doyle and Dr. Murray were at the making of these statutes, and they were not the simple people His Eminence takes them to have been, that would contradict by their legislation for the clergy their sworn evidence before the nation. They adopted nothing from the *Bulla Cœnæ*, but, naturally enough, some things which they prohibit are also probibited by that bull; nothing, however, in the same language or with a reservation to the pope. These men were truthful, and they were consistent, and they were learned, and they were loyal to their king and country as well as to their pope. They not only did not adopt or acknowledge any clause of this monstrous bull, with all the heads and horns that have been growing upon it for centuries; but if there were any vestige of it to be found in the province of Leinster it was swept away by the broom of the new statutes, expressly abrogating any old discipline of the four dioceses of the province not renewed by themselves. As a priest of this diocese, I am and have been bound by its discipline, and by none other. It is no part of this discipline to compel a man to submit in silence to be slandered by another, or to deprive him of the common law right of every subject of the crown to seek redress for a wrong from the laws and the courts of his country, whether his slanderer be dressed in black, in purple, or in scarlet. Perhaps for the information of the general reader, I may as well here explain the nature of the obligation arising from rules of discipline, and how it differs from that arising from moral rules. Rules of morals forbid a thing which is bad in itself, and is forbidden because it is bad; as, for instance, to lie, or to steal; but rules of discipline regard things which are indifferent in themselves, and only become bad when they are forbidden to be done. Thus, for instance, to use flesh-meat or not of a Thursday is an indifferent thing; but to use it on a Friday is sinful, because the Church forbids its use on that particular day. The foundation of this distinction is, that morals regard the mind, and discipline the body. The outward act of theft adds nothing to the guilt of the man who has made

up his mind to commit it; but the outward act by which discipline is violated, creates all the guilt in the mind of the man who did the act in wilful opposition to the commands of authority. Whether discipline, then, be enjoined by the laws of God or the laws of men, the man that breaks its rules is no sinner if he cannot observe them without great inconvenience. He is a fool that would injure his health by abstinence on a Friday, or that would let his ass perish in a ditch on a Sunday. By violating discipline in both cases a man contracts no guilt, because discipline is not violated through a spirit of disobedience, but for a reasonable and sufficient cause.

This is, perhaps, the best place to make some remarks in explanation of the extraordinary evidence that was given by all the "expert" witnesses at the trial, O'Keeffe *v.* Cullen, and to show how little it can affect the character of the Church of God for justice and charity towards all her children. As to her treatment of those who have withdrawn from the fold from time to time, whatever can be said in her justification has been said already, and on that point I will merely quote here two sentences from Bossuet's Variations; but I will fully clear her character from the stain which would be an indelible blot upon her holiness, if she were truly represented by these experts as a tyrant even over her own beloved children. Bossuet writes:—"The Church of Rome is the most intolerant of all Christian sects; it is her holy and inflexible incompatibility which renders her severe, unconciliatory, and odious to all sects separated from her; they desire only to be tolerated by her, but her holy severity forbids such indulgence. The exercise of the power of the sword in matters of religion and conscience is a point not to be called in question; there is no illusion more dangerous than to make toleration a characteristic of the true Church." The Church is severe, no doubt, in punishing the undutiful and disobedient when they contemn her authority by heresy or schism, but who ever, before the celebrated half-dozen experts turned up, charged her with cruelty to her obedient and dutiful children? Besides the Cardinal, five other witnesses, Archbishop Leahy, Bishop M'Evilly, Parish Priest Neville, Dr. Roncetti, and Dr. Jacobini, were examined, and they were all perfectly unanimous in swearing that a bishop could write, at his

own private desk, a paper suspending, without appeal from the sentence, every priest of his diocese from his order and his office, without informing the priest of what crime he was guilty, how his guilt was established, and whether it was known to anyone but his bishop and his God. Some said this form of proceeding could only be adopted when the crime was occult; others said it would be a proper mode of proceeding against one whose crime, though not occult, was not easily provable; and others said other things; but all, without exception, agreed that if the bishop believed, on information which he thought reliable, that any one of his priests was a sinner, he could at once dispose of him effectually by a stroke of his pen. My solicitor said to me before the trial that this evidence would be brought forward against me, and asked me to name some experts to be summoned on my side. I said to him, they will not attempt such an exhibition in a court of British justice; but he said he knew positively they would, and he was right, as the event proved. I told him, however, I cared nothing for such swearing, that my case would be tried by a learned man, a constitutional lawyer, and a conscientious judge, and it was safe in such hands. I summoned, therefore, no expert, and no expert was wanted. If I wanted experts, I had them in abundance in the college at Maynooth, where several of the professors referred to in this book are still living, and still teaching cisalpine opinions. Before my interview with the Cardinal, on the 27th October, 1871, I wrote out a statement of my case specifying the grounds on which I treated all the censures as invalid, and in no way affecting me, and I sent this statement to my very old and confidential friend, Dr. O'Hanlon, the professor of canon law, asking him to revise and improve it where it wanted amendment. He returned me the paper unaltered, saying that my case was incapable of any augmentation of strength; and when I informed him, immediately after my interview with the Cardinal, that it was agreed between us to refer the decision of my case to Rome, he wrote me this letter:—

Maynooth, October 30th, 1871.

My Dear Father Robert,

I should rather that you had settled matters with the Cardinal without any reference to Rome. You are aware that the

Romans would suspect a man's orthodoxy if he should assert that a promulgation of the papal constitutions solely in Rome was not sufficient to make them binding in Ireland. Besides, a considerable time will, in all probability, elapse before Rome gives any decision. I take it for granted that you are not required to regard yourself as suspended, or to forego any portion of your revenue as parish priest.

I may, I presume, also conclude that you have abandoned the intention of proceeding against the bishop and vicar-general in the after sittings of next term. The missionaries, I hope, will re-establish peace and concord in Callan.

Wishing you, my dear Father Robert, every happiness,

I remain yours, most faithfully,

JNO. O'HANLON.

Now, if the Cardinal wanted to present before the court the opinions really prevailing in this country on the questions raised at the trial, why did he pass over all the Maynooth professors that were within half an hour's journey from the court, and travel to Galway, Cashel, and Cork, to find witnesses of the truth? The answer is plain, he sought not the truth, but he sought partisan witnesses, and I am sorry to say that with all his efforts, and all his influence, he was able to bring up from the whole country, even three such witnesses. Archbishop Leahy, Bishop M'Evilly, and Parish Priest Neville, have borne testimony to the justice of the Cardinal's treatment of me, but it was equally testimony to the injustice of our common fond mother, the spouse of Christ. What value, I confidently ask, can there be in such testimony against our holy Church, when weighed in the balance against the overwhelming testimony in her favour, given in no party spirit, by our greatest and most learned divines, who for that reason alone were selected to give it before royal and parliamentary Commissioners, uninfluenced by anything but a sense of truth and duty? Mr. Whittle, in his book on "Catholicism and the Vatican," writes of "J. K. L.:"—"The churchman of whom Irish Catholics have most reason to feel proud in this century is Dr. Doyle. With intellectual abilities of a very high order, he

combined great cultivation, and took a very leading part in the struggle for Catholic emancipation. No one could exceed him in high notions of Church authority, nor in his devotion to Church principles. But his conception of the Church was of an organization constituted by law, and maintained in accordance with a recognised plan or system of its own. The Church was a great institution appointed by Christ to carry out the purpose of God in relation to man, pursuing serenely a regular ordained course. Dr. Doyle's name is dear to the Irish people, for in his writings and public utterances he gave clear and noble expression to those sentiments about the Church, that warm and simple faith which lay deep in the people's hearts. He was the most important Catholic witness before the House of Commons in 1825. When asked as to the authority of the pope, he answered that it was 'purely spiritual;' and he added, that this spiritual power was limited by decrees of councils, and also by usage; thus, if the pope directs any decree respecting local discipline to any nation beyond the limits of the papal territory, the assent of the bishops of such country is necessary, in order that the decree should have effect." Mr. Whittle again writes most accurately:— "It cannot be denied that in 1825, Bishop Doyle was the voice of the Irish Church, and it will hardly be alleged that he spoke on this occasion otherwise than according to his conviction, and his statement was adopted by the whole Irish Church, and tacitly accepted by Rome."

Dr. Doyle was questioned particularly as to the authority of the bishop over his clergy, and he answered distinctly that, with regard to parish priests, their position was secured to them, unless some grave offence were proved against them at a regular trial of their case in the bishop's court; but with regard to the curates, the bishop, of his will, could remove them from one parish to another, as no censure was involved in such removal. In the case, however, even of curates, the bishop cannot inflict canonical censure, such as suspension from the celebration of mass, without a regular trial. This man was learned in the laws of his Church and in the principles of justice; but what need is there to refer to any witness when the law itself is an open book in which anyone who chooses will find it laid down in more than fifty places

that conviction or admission of guilt is essentially necessary for the infliction of punishment. Shame on the men that could impute tyranny to a Church that re-enacts so often the laws of God and nature for the protection of her children from the ruthless exercise of power.

SECTION XXIX.

Chief Justice's charge—On canon law and *Bulla Cœnæ*—Father Neary's libel an ecclesiastical matter—"Common law of the canon law"—The Cardinal's evidence on the promulgation of papal laws—Author's remarks—Chief Justice on conduct of Poor Law Board—His direction to the jury on the whole case.

THE Chief Justice, in his report to the other judges, says:—"Next I referred to the relation of the canon law to the questions raised in the case and to the law of the land; and no objection was taken to what I said, viz.:—That no part of the canon law was to be regarded as the law of the land, save so far as it had been accepted by long usage or by the consent of parliament. Here I said it was introduced as foreign law under the ninth defence, and as if agreed to and accepted by the plaintiff under his contract. And yet I laid it down that the plaintiff could be bound by it only so far as it was consistent with the municipal law of the State. The particular part of this canon law, discussed and examined into at such length, with so much historical research, and with so many quotations from the opinions of professors and bishops, especially of Bishop Doyle and his evidence to the House of Lords relative to the bull *In Cœna Domini*, specified by the defendant in his letter as having been disregarded by the plaintiff, appeared before me to have been denied positively by eminent prelates and professors of the Roman Catholic Church to have had any acceptance in or to have imposed any obligation on Ireland. Then when it was by some admitted that it did apply to Ireland, they insisted it applied only to criminal causes and not to civil. Then it was, and with authority, asserted it applied both to criminal and civil cases. Then the ground was

shifted, and the principle the bull *In Cœna Domini* embodied was represented as contained in what was loosely described as the common law of the canon law of the Church, to be collected (according to Archbishop Leahy) from various sources, prodigious in variety and extent. The defendant, to whose evidence I refer, maintained confidently that the bull *In Cœna Domini* was in full force in Ireland, and Archbishop Leahy proved that the prohibition against one ecclesiastic bringing another ecclesiastic before a lay tribunal applied with equal force as well to civil as to criminal cases; and, in theory, to a layman suing a cleric before a lay tribunal, although relaxed in practice. I refer the court to the body of evidence given on this subject, of such importance to the whole case of censures against the plaintiff for suing ecclesiastics, to enable the court practically to apply the doctrine contended for—if the bull *Cœna Domini*, and any other bull of the like character, applied to civil actions for temporal wrongs, erroneously described as ecclesiastical matters. I refer to a piece of defamation proved before me to have been deliberately composed by the curate Neary, and written into the book kept in the Callan Union Workhouse, and which was relied on in the action against him tried before me:—'As a ratepayer of this union, and as a priest of this parish, consequently as one interested in the welfare, spiritual and temporal, of the inmates of this house, I respectfully submit that those poor people ought not to be sent out on Sundays to hear mass celebrated by a suspended priest in a church where the altar has been turned into a platform for slander and buffoonery; where, Sunday after Sunday, the bishop of this diocese, in the eightieth year of his age, is slandered and lampooned; where a deliberate, systematic, and persistent effort is made to bring the bishop's person and authority into contempt, and to drag into schism such of the parishioners as can be duped by sophistry or terrified by altar denunciations. If the poor are to be sent out, surely they ought at least to have the option of going to the convent, where they would hear the Gospel preached and mass celebrated by unsuspended priests.' It was insisted, and one of the censures on plaintiff was to the like effect, that the above was an ecclesiastical matter (not duty certainly), and that the bulls cited and principles embodied in them applied to such

a case. I have to report that, having considered the bull *In Cœna Domini*, so picked out and relied on by the defendant in his letter, and all that was proved in relation thereto, and having adopted the defendant's evidence that the bull was in full force in Ireland, which I believe to be true, I read out the clauses relied on from that well-known bull, and I expressly told the jury that if that bull was in force in Ireland, which I believe it was, so far as the authority of a pope could give it force, and whether by adoption, reception, promulgation, or consensus, it was wholly null and void. I did not limit my direction merely to the effect of the statute of Elizabeth, because I hold it to be void by the general law of the land from its character and awful contents. I directed the jury that no contract to carry out and obey that bull could be enforced in this kingdom, and that any such contract, if made, would be void ; because no part of the canon law could prevail against the statute or common law of the land. And I said this bull was treated as if, being accepted and received by the Roman Catholic bishops, it became part of the law of the country, whereas I directed the jury it was no part of the law of the land, but opposed thereto and void. And I should also report that I directed the jury that the canon law, whether in bulls or in what was described as the common law of the canon law, when it came into conflict with the laws of the land, was all void or of no effect. That the bull *In Cœna Domini*, or the bull now termed *Apostolicæ Sedis*, and the so-called common law of the canon law, so far as they prohibited one ecclesiastic from resorting to the criminal courts of justice of the realm, or giving evidence there against another cleric, were either irrelevant or wholly void. And I therefore ruled there was no evidence, legal or by our law sufficient, to go to the jury in support of the ninth defence, or that so far as the ninth defence relied on a contract of plaintiff's to be bound by certain laws, which, when proved, appeared to be at variance with the law of the land, that defence failed."

The Cardinal was asked by Mr. Purcell :—" Is it your opinion that the *Apostolicæ Sedis*, by promulgation in Rome, binds the people in this country and people all over the world ?—That is my opinion, and I would act on it myself ; but I would not enforce it on those who say it has not been sufficiently promulgated in any

place. That was the reason I did not act on it when I came to act judicially. It was handed to every bishop in the Vatican Council, and by that means it was made known all over the world. The pope himself, who is the law-giver, declares that when he publishes a bull in Rome it is to bind everywhere. It is binding over the whole Church. I do not mean to say that everyone is to become acquainted with it all at once, and become aware of it. The moment it becomes known over the Church it is binding, just as a penalty for any particular Act by the Parliament in England will bind in Ireland as soon as the time for its promulgation arrives. If there was an Act that a certain clause made a will invalid, and that Act was published in London, in a year or two afterwards a poor man in Ireland, without knowing of it, might put in that clause, and his will would be null and void, though he knew nothing of the Act making it invalid. There is another thing in regard to censures that shows the mercy of the Church. There is a law that declares that a man is not bound by a censure who does not know anything about it. In the greater part of the world they do not know of them."

The Cardinal is correct, when he says that a man is not bound by a censure of which he knows nothing. Divines unanimously teach that when a law is made under pain of censure, to be incurred *ipso facto*, by the person who breaks the law the act of this person must be contumacious against the authority of the Church, that is to say, the person must not only know that the act was prohibited, but that a censure was annexed to it. For instance, the statutes of this diocese forbid a priest to demand fees at the baptism of an infant before the sacrament is administered, and it would be improper to do so. The synod of Thurles in 1850, whose laws are binding in the diocese of Ossory, annexed an *ipso facto* suspension to this improper act. Suppose, now, that a priest of this diocese refuses to baptize the infant as the fees are not forthcoming, but is unaware of the censure annexed to his act by the Thurles synod, the censure is not incurred for the want of contumacy. If the Cardinal extended to me the mercy which he says the Church shows every one, he would never have been exhibited to the world as a canonist that knows next to nothing about canon law. Indeed the very jargon—"common law of the canon law"—which he

uses in reference to it shows every canonist how very little he knew about it. He would have been spared, too, the disgrace of having been found guilty by a judge and jury of his fellow-citizens, of having written and published a wilful and malicious libel on a poor helpless old priest of his own Church. Not only was I unaware that any censure was annexed to my act in citing an ecclesiastic before a lay tribunal, but I well knew the contrary, namely, that even if the bulls he referred to were in full force in Ireland, my proceeding was at variance with none of them, and even if it were, it was in the circumstances in which I was placed fully justifiable. I will give at the end of my book an abridgment of the clauses of two of these bulls, and the full text in the original Latin of a third, to which he referred in his first letter to me, and on which he swore he chiefly relied when writing his sentence upon me. This bull throws into the shade even the extravagant claims of immunity secured (?) to the clergy by the thunders of the *Bulla Cœnæ.*

Two other bishops, Dr. Leahy and Dr. M'Evilly, and three priests—two of them Roman officials—were examined after the Cardinal, and of course there was very little difference of opinion among the whole of them, and it would be only fatiguing the reader to pass in review the evidence of these "experts" in what all the episcopal witnesses called "the common law of the canon law." I was surprised to find how the Irish witnesses had gone over so completely to ultramontanism from the teachings we learned at Maynooth. Even my own class-fellow (forty years ago,) Bishop M'Evilly, had in his pocket in the witness chair evidence to prove that an *ex informata conscientia* suspension was not entirely unknown in this country. He is the man, as far as we know, that first administered this ultramontane medicinal potion to a weak brother in Ireland, in the class of secular priests intended, of course, to cure his malady, but at the same time well calculated to speed his journey in the other direction, if he were really a sick man.

In the report of the Chief Justice to his brother judges on the part acted by the Poor Law Commissioners in this business, at the desire of the Cardinal, he writes :—"I said to the jury—now, gentlemen, let us direct our attention to another part of the case which

is in my mind of great practical importance. It is proved, or rather admitted, to save the necessity of calling additional witnesses, that the Cardinal having published his sentence exercised his authority to have it obeyed. Accordingly, he had regard to the fact that the plaintiff held a chaplaincy, of pecuniary value, to the Callan poor-law union, and there are many such chaplaincies under the State in this kingdom. The local poor-law guardians, who are elected by the ratepayers, were entirely satisfied with the manner in which the plaintiff had discharged his duties as their chaplain for years. The supreme authority over the local union is vested by Act of Parliament in the Board of Poor-law Commissioners, the members of which are paid by the State, and of course appointed by the Queen. This Board of Commissioners sits in Dublin, as it is an important public institution, not, however, having a shred of authority to meddle with any subject outside their defined powers. They are plentifully supplied with all things needful for the exercise of their limited authority. Amongst other advantages they possess, as we all do, Thom's Almanac, and therefore, and from other sources of information, they knew that Dublin was not Kilkenny, and that a Roman Catholic bishop of Ossory had not jurisdiction in Dublin, nor a Roman Catholic archbishop of Dublin, in the diocese of Ossory. Their correspondence is with Ossory. That being so, what have we before us? Here again, gentlemen, I regret very much the absence of Dr. M'Donald. I should like to have heard from Dr. M'Donald if he was entrusted to deliver the message from the cardinal to the officials of the Poor-Law Board. I should like to have heard how the diplomatic interview between the representative of the cardinal and the officials of the State was conducted. We have nothing of verbal evidence, therefore, but what I shall now read for you. Question to the cardinal :—' Was it with your Eminence's authority that a communication was made to the Poor-Law Commissioners communicating the fact of the suspension ?' Answer : ' I spoke to Dr. M'Donald about the matter, and I told him that the rule was, that a suspended priest could not occupy the office of chaplain to a workhouse or of patron to a school.' Observe these words, gentlemen, ' I told him to communicate to the officials of the Board of Poor-Law Commissioners that a suspended

priest could not be a chaplain to a workhouse.' The Cardinal communicates that, as his decision, or 'a patron of a school.' These seem simple words, gentlemen, but what I have just read may give rise to mighty issues in the kingdom. I think, gentlemen, we have much reason to complain that Dr. M'Donald has not been called; his evidence would have been material on this and other topics of importance; but we have it not; we must therefore turn to the correspondence between the Poor-Law Board and the plaintiff, and glean from it what we can in reference to this very critical part of our inquiry, Gentlemen, it begins thus :—

'Dublin, 17th January, 1872.

'REV. SIR,—The commissioners for administering the laws for relief of the poor in Ireland have to inform you that their attention has been *officially* directed to the fact that you have been suspended from the performance of certain clerical duties by the Cardinal archbishop, and a printed copy of the document suspending you therefrom has itself been submitted to the commissioners for their information. The commissioners apprehend that under these circumstanees, you are not qualified to perform the ordinary duties of a chaplain in the workhouse of Callan Union; and unless you can satisfy them that you are so qualified, they must require your resignation of the office.' You see, gentlemen, that their attention had been officially directed to the fact, that is, by Dr. M'Donald, who waited on them, and produced to them, I should say, what satisfied them. In reply, on the 18th January, plaintiff said :—'Gentlemen, I have received your letter of yesterday. The Cardinal Archbishop of Dublin has no more jurisdiction over me than the Cardinal Archbishop of Vienna; and even if he had, he would have no more power to suspend me without alleging some fault, than I would have to suspend him. If, therefore, you will have the goodness to send me a copy of any communication you have received on this subject, I shall be able to refute at once any assertion, by whomsoever made, that I have been canonically suspended. In the meantime I send you a pamphlet lately published by me, from which you can get much information regarding the alleged case of my suspension.' Gentlemen, in replying, on the 24th January,

the commissioners, after acknowledging the receipt of plaintiff's letter of the 18th, with his pamphlet of defence, use these words :—'It is plainly and unmistakably before them that you have been suspended from the ordinary functions of a Roman Catholic priest, and therefore you are no longer, in the opinion of the commissioners, qualified for the office of chaplain of the Callan workhouse.' On the 29th January, the plaintiff, in replying to that letter, says :—'I beg of you to impress your minds strongly with the paramount necessity of keeping this rule—to hear both sides—in view when dealing with the case of a clergyman who has been certified by the Board of Guardians here, in their unanimous resolution of yesterday, to have done no act, during the nine years that he has been chaplain, unbecoming his sacred calling as a clergyman. When you informed me that some one alleged that I had been suspended by the Archbishop of Dublin, I immediately informed you that it was utterly impossible that I could be canonically suspended by an ecclesiastic who had no jurisdiction over me, and who, as far as I am aware, charges me with no guilt.' Then he goes on to a considerable length with his case. On the 31st January, the commissioners write :—'The document in question, which bears the signature of the Cardinal Archbishop of Dublin, purports to suspend you, for reasons therein stated, from the exercise of any spiritual functions, specifying particularly the administration of sacraments, the celebration of mass, the hearing of confessions, and preaching the Word of God.' Then, gentlemen, there is a letter from the commissioners of the 7th February, in which they say :—'Your remarks upon the controversy which has unfortunately arisen regarding your case, do not alter in any degree the view which the commissioners have felt bound to take of your present position, nor do they see any reason to doubt that your suspension has proceeded from competent authority.' These latter words are of the utmost importance. One of the serious questions which have sprung up in this extraordinary case must here be put. What grounds had the Poor Law Commissioners for their statement that they had no doubt the suspension of the plaintiff had proceeded from competent authority? They must have known that, as Roman Catholic Archbishop of Dublin, the defendant, as

he swore on the table, had no authority to dismiss the plaintiff. That was repeated over and over again to them by the plaintiff. What, then, was the competent authority which satisfied those officials? The papal delegation to the Cardinal which bestowed upon him authority, which he is bound to prove, as he has it not as archbishop? Possibly that document to support the sentence, otherwise worthless, was submitted to the Poor Law Board by Dr. M'Donald. I collect that they were requested (it must follow that they were so requested by the defendant through Dr. M'Donald) to carry out his sentence founded on the rescript, although his judgment did not refer specifically to the chaplaincy, and they obeyed; they were satisfied that the authority was competent, and they obeyed and executed the papal mandate. Gentlemen, a question arose, in the argument on the case in the court above—whether, in the event of the statute of Elizabeth being removed out of the way, the mandate of the Propaganda to dismiss a chaplain might not be sent direct to the Poor Law Board, and not indirectly through a delegate? and it would seem to me logically to follow, that this would be so; but I feel it my duty to say, that whether the Commissioners of the Poor Law Board obeyed and carried into execution such a mandate from the pope, receiving it directly or indirectly through his delegate, in either case they violated the statute of Elizabeth, and are shown, in the words of the Act, to have directly affirmed, maintained, and defended the authority, power, and jurisdiction, spiritual and ecclesiastical, of a foreign prelate and potentate. This may have been a mistake on the part of those commissioners, for whom I have much respect, but it was, in principle, a very serious mistake; and this Poor Law Board, before expressing so resolutely an opinion, ought to have laid a copy of the commission from the Propaganda, and the sentence thereunder, before a discreet lawyer, and enquired from him whether as the archbishop had no manner of authority as such to require the dismissal of the chaplain of Callan workhouse, in another diocese, they, the Board, were bound to act upon it, and obey the request made to them, founded upon his delegation from the Propaganda. In whatever point of view we regard this part of the case, we must arrive at a conclusion unfavourable to the course taken by the commis-

sioners; but, as it was the defendant who prevailed upon the Board to pursue this course, he is, in law, responsible in damages for the result, and you may estimate in damages the loss the plaintiff has sustained by the dismissal from his chaplaincy caused by the acts and intervention of the defendant. Mr. O'Hagan, who argued with great vigour, said the statute of Elizabeth was disentombed in the spirit of the penal laws, and for the oppression of the Church. A statute, gentlemen, which was recon sidered, materially modified, and then re-asserted in principle, cannot fairly be said to be now disentombed after the sleep of centuries. The principle it embodies has been maintained by England with unshaken resolution and constancy. It does not interfere in the smallest particular with the profession of any opinion, or the practice of any rites, ceremonies, or usages adopted or employed by the Church of Rome. The synod of Thurles sat and framed its decrees without the smallest interruption. The bishops meet, deliberate, and publish their resolutions freely. The choice of a bishop is not only perfectly free, but is regarded with much interest, and even anxiety, as a domestic act of a national Church; such is the state of the law at this day. Furthermore, gentlemen, the Roman Catholic bishops, clergy, and laity, may and do communicate freely, daily if it pleases them, with the pope, or rather with what I guess is the ruling power, the Council of Propaganda. No one enquires what these communications relate to, or how often they are repeated. No one enquires what advice or directions are received from the Propaganda in religious matters, or indeed in any other matter, nor in what manner, or to what extent, the advice received is accepted and followed. The general observation made by foreign writers is that in no country in Europe, not excluding Italy and Rome itself, has the Church of Rome the ample measure of liberty which she enjoys in Ireland. That being so, gentlemen, what is there but the law to protect this country? What is it that this Act of Parliament does, or what is there to protect the State against the introduction of bulls from Rome except this Act of Parliament. It is, gentlemen, the open assertion of the jurisdiction of the pope to issue into this kingdom his commission to try her Majesty's subjects, either for temporal or ecclesiastical matters: in fact, the exercise of temporal juris-

diction that is met by the Act. Gentlemen, the Act of Parliament of Victoria is a modern statute. It recites the whole of the Act of Elizabeth; it recites the penalties and punishments that were attached, and all the unpleasant statutes affecting the Roman Catholic creed are here collected. The bill was brought in by an eminent statesman, now no more, the late Lord Derby, and the object of it was to accommodate the law to the feelings and opinions of many of the Catholics of Ireland, although it included Jews and other parties. Gentlemen, having cited that Act and recited the penalties it abolishes them all, but with this proviso—'Provided always, and be it so declared, that nothing in this Act contained shall authorize or render it lawful for any person or persons to maintain, set forth, or defend such foreign power, jurisdiction, or authority; and this Act shall extend no farther than to the repeal of the penalties and punishments, but in all other respects the law shall continue the same as if this enactment had not been made.' I think, gentlemen, there is much reason in that law. To receive directions, to ask advice about religious observances and such matters from men peculiarly learned therein, is a harmless thing for the State; whereas to exercise jurisdiction is more or less to govern. Moreover, should the attempt succeed, the love of power, which has in all ages characterized churchmen, might lead to fresh aggressions and increased difficulties. Therefore, it was the principle of that measure that while everything in the shape of penalties was abolished, the principle of the common law and the statute law was preserved. Gentlemen, I cannot even at this hour avoid, as I was invited to the subject by Mr. O'Hagan, saying a word or two upon a subject that ought to be understood by the people of this country. It is not the case that the refusal or prohibition to receive papal bulls authoritatively sent into this country is an event of modern growth or modern times. Gentlemen, I will not go back further for the present than two hundred years before there was a Protestant so-called in England. In the reign of Edward I. a subject brought in a bull of excommunication by the pope against another subject of the realm, and published it; and this was by the ancient law of England adjudged treason against the king, his crown, and dignity. This is, as clear as can be, a case over five hundred

years ago, and there are other ancient authorities to the same effect. Lastly, there may be in this case a question of damages. I have already told you that, if you gave a verdict with damages, you could not give against the defendant the value of the plaintiff's benefice, for the best of all reasons, that the plaintiff is still there, and the utmost he could recover would be the difference in value between the income the parish rendered him before and what it renders him now, if it has been reduced by the act of the defendant. It is not for depriving him of his benefice that the plaintiff sues, but for the defamatory publication proclaiming to the world that he is a degraded and suspended priest. That is his case. I also tell you that, in point of law, what is called special damages may here be recovered on the ground that the Cardinal thought proper to send Dr. M'Donald to the Poor Law Board, whose conduct I have already described, and that it was by the authority of the defendant, and the representation made by his messenger, that the Poor Law Commissioners were induced to act against the remonstrances of the local guardians, and to dismiss the plaintiff. Gentlemen, you may ask me now what is my opinion and direction, and I have written it that there may be no mistake as to what I direct, and that everything I have done may be subject to review as is the right of the defendant. Gentlemen, I have to inform you, although I have explained myself somewhat fully on the facts of this important case, that my opinion on the law is perfectly clear ; and if you, gentlemen, think fit to cast upon me the responsibility of what I direct, you may do so. I am of opinion—and I so direct you—that every one of the special defences—whether by way of privileged communication or of justification—in addition to the objections discussed, rests more or less upon the papal rescript. I am of opinion that without the papal rescript, not one of them could be established or maintained. The contract sought to be established, is a contract to submit to the jurisdiction of the pope in a spiritual matter, to be decided under his commission within this realm. I feel bound to tell you that that contract was illegal. The publication of that sentence was illegal. The authority by virtue of which the inquiry into the conduct and proceedings of the plaintiff was held was the papal ordinance. I am bound to tell you that that

authority was illegal, and could warrant no such inquiry. I am constrained to tell you, by my duty, that what was called a trial under the commission was illegal. The publication of that sentence was illegal; and I must tell you that the privilege of publishing that sentence, as claimed—whether by way of duty or of interest—did not and could not arise, and that the defence of justification of the sentence as being conformable to the laws and ordinances of the Roman Catholic Church is not, under the circumstances I have before explained, available, inasmuch as the sentence was absoluteiy illegal according to the laws of this realm, and was not truly and in fact a suspension such as the libel purported it to be—that is, a due and effectual suspension of the plaintiff from his office of parish priest. On all those grounds—set out at too great length—I hold that each and every one of the special defences has failed, and that neither they nor any of them can be established as true in substance or in fact; and consequently the publication of the libels having been proved, and their meaning being such as is set forth, and the publication being unquestionably defamatory of the plaintiff as parish priest of Callan; I say, upon all these grounds, and I tell you that in my opinion he, the plaintiff, is entitled to a verdict on each of these counts of his summons and plaint—the question of damages being entirely for you. Gentlemen, do not imagine that in giving you that direction I am trespassing on your functions; but there are, at times, questions of such a character that it becomes the judge to speak out frankly, that he may be corrected and set right if he has erred. All I have to say to you, gentlemen, is to give you that advice that I would give to every jury under similar circumstances; for you will find, gentlemen, it is a true advice for a judge to give to a jury, that whatever you do, be sure of one thing—that you take your stand upon the laws of your country."

SECTION XXX.

Some extracts from the decrees of Council of Trent—Extracts from the bull *In Cœna Domini*—Extracts from the bull *Apostolicæ Sedis*.

To the amazement of the Chief Justice—who is doctus in omni scientia—the Cardinal and the other episcopal "experts"—lucus a non lucendo—among other very extraordinary things, swore, in contradiction to Dr. Doyle, Dr. Slevin, &c., &c., that the Council of Trent was received in Ireland in all its canons and decrees. I give some extracts from the decrees of the twenty-fifth session. Dr. M'Evilly was asked by the Chief Justice :—

"Were the Council of Trent's decrees ever published in France. The doctrinal decrees?—Well, I should say they were, my lord. There are some persons in France, my lord, who resisted the spiritual authority of Rome, particularly those who were called Gallicans and Jansenists."

Chief Justice.—"I merely wished to know whether the government or country of France so far allowed it to be published?"

Witness.—"It was."

Chief Justice.—"That is very odd."

In the twenty-fifth session and third chapter of the Council of Trent are these paragraphs :—

"In judicial causes, all ecclesiastical judges, of what dignity soever, are commanded to abstain from ecclesiastical censures and interdicts, both during the process and in the giving of sentence, as often as real or personal execution can be made by them in any part of the cause by their own authority. But in civil causes, which have any manner of relation to the ecclesiastical jurisdiction, they may, if they shall think it convenient, proceed against any persons whatsoever, even laymen, in their sentences, by laying a fine, to be given immediately as soon as levied, to pious houses in that very place, or by making a seizure of goods and imprisoning persons, and that by their own officers or by others, or by deprivation of benefices and other legal remedies. But if

a real or personal execution cannot this way be come at against the guilty, but they be rebellious against the judge, then besides other punishments, he may smite them with the sword of an anathema at his own pleasure."

"So also in criminal causes, when a real or personal execution can be made as above, they shall abstain from censures. But if they cannot easily come at such an execution, the judges may use this spiritual sword against the delinquents, if the quality of the crime shall require it; but then there must be two previous monitions made by open proclamation; all secular magistrates whatsoever, in the meantime, being strictly forbidden to hinder any ecclesiastical judge to proceed to excommunication of any person, or to command him to call in an excommunication already published, upon pretence that the things contained in this present decree have not been observed; such cognisance belonging only to ecclesiastical judges, and not to secular."

"All excommunicated persons who shall not repent, after having been duly admonished, shall not only be excluded from the sacraments, and the communion and conversation of the faithful, but if, when bound by censures, they shall with a hardened heart continue under the infamy of them for one year, they may be proceeded against as persons suspected of heresy."

"But those clergymen who have neither ecclesiastical benefices or pensions, shall be punished by the bishop according to the quality of their fault, and as they have been more or less contumacious, by imprisonment, suspension from exercising their functions, declaration of their incapacity to hold a benefice, or by other ways as the holy canons shall direct."

From the nineteenth chapter:—"The detestable custom of duelling introduced by the contrivance of the devil to gain the destruction of souls by the bloody death of bodies, shall be utterly driven out of the Christian world. The emperor, kings, princes, dukes, marquises, counts, and all other temporal lords howsoever entitled, who shall allow a place upon their territories for a single combat among Christians, shall be actually excommunicated, and understood to be deprived of the jurisdiction and dominion of that city, castle, or place in or about which they suffered this duel to be fought, if they held it of the Church;

and if it was held as a fief, it shall be immediately acquired to the direct lord."

"But those that shall actually fight, and those that are called their *God-fathers* (or seconds), shall be excommunicated, and shall forfeit all their goods, and incur the penalty of perpetual infamy, and ought to be punished as murderers by the holy canons, and if they die in that fight, they shall be perpetually deprived of Christian burial."

From the twentieth chapter:—"The holy council, desiring that ecclesiastical discipline may not only be restored among Christian people, but also perpetually preserved entire from all manner of attacks; besides what it has decreed concerning ecclesiastical persons, judgeth that secular princes ought also to be admonished of their duty, being confident that they, as Catholics, whom God has appointed to be protectors of his holy faith and Church, will not only suffer its rights to be restored to the Church, but will also oblige all their subjects to pay due reverence to the clergy, their parish priest, and the superior orders; and that they will not suffer their officers, or inferior magistrates, to violate the immunities of the Church and of ecclesiastical persons, which are established by the ordinance of God and by canonical sanctions, either out of a greedy desire, or through any inconsiderateness, but will oblige them, and also be an example to them, to pay a due observance to the holy constitutions of sovereign pontiffs and councils."

"The holy council therefore decreeth and commandeth all men exactly to observe the holy canons and decrees of all general councils, and other apostolic constitutions made in favour of ecclesiastical persons and ecclesiastical liberty, and against its violators; all which it doth also revive by this present decree. And for that reason it admonisheth the emperor, kings, republics, princes, and all and every other persons, of what rank and dignity soever they be, that by how much they are the more liberally endowed with temporal goods, and with power over other men, by so much they pay a more holy veneration to those things which are of ecclesiastical right, as principally appertaining to God and under his particular protection, and that they do not suffer any barons, gentlemen, governors, or other temporal lords

or magistrates, especially any of their own officers, to do them any injury, but to punish those severely who disturb them in their liberties, immunities, and jurisdictions ; setting them an example themselves in whatsoever relates to piety, religion, and the protection of the Church ; imitating their most holy and religious predecessors, who not only preserved it from foreign injuries, but were the chief increasers of its interests by their own authority and munificence. That so every man may diligently do his duty in this matter, and that the worship of God may be devoutly performed, and the prelates and other ecclesiastics in their several residences and offices, may continue quietly, and without molestation, to the profit and edification of the people."

On the reception of the decrees of the council by the states of Europe, Du Pin writes :—"The Venetians were the first that received the decrees of the Council of Trent. The senate caused them to be solemnly published in St. Mark's Church, and commanded them to be executed. The King of Spain, who was vexed that the council had been closed against his opinion, was not so ready to receive it; he hesitated some time whether he ought to do it, and caused several synods to be held, to which he sent his commissioners to inquire what was fit for him to do upon that occasion. At last he concluded in his council, that the council should be received and published in his dominions without any formal restriction, only with a proviso to save the rights of the prince and kingdom. Thus it was published, not only in Spain, but also in Flanders, and in the kingdoms of Naples and Sicily. The King of Portugal made no scruple of receiving the decrees of the council, without any limitations. Commendone also got them to be received in a diet of Poland, August 17th, 1564."

"In Germany, the Protestant princes would not hear speak of the council. The ministers of the Augsbourg Confession protested against its decrees. The Emperor, the Duke of Bavaria, and other Catholic princes, earnestly solicited the pope to allow a liberty to the faithful to communicate under both kinds; and to the married priests to keep their wives when they entered again into the Church : assuring him that that was the method to preserve the remainder of the Catholic religion in Germany, and

to drive out heresy by little and little. The letter which Ferdinand wrote upon that occasion was written February 14th, 1564."

"France never gave in to the desire that the decrees of the council might be received; on the contrary, whatsoever solicitations the popes made by their nuncios to cause them to be received and published there, our kings would never receive or publish them in the kingdom, so as to obtain the force of a law."

"The reasons for which they would never receive the decrees of the Council of Trent in France, may be reduced to two heads; first, the attempt upon the jurisdiction of princes and magistrates; secondly, the liberties of the Gallican Church."

"The principal articles, in which it is pretended that the jurisdiction of kings and magistrates is struck at, and that the council claimed an authority to itself which did not belong to it, are these: Sess. xxv. cap. 19, of reformation, it forbids duels; and at the same time excommunicates emperors, kings, and other princes who suffer them; and declares them deprived of the right and dominion of the city, castle, or other place in which they shall permit a duel to be fought. Sess. xxiv. cap 9, the penalty of excommunication and deprivation of goods is also inflicted upon kings. Sess. xxiv., the council gives bishops a power of punishing authors and printers of prohibited books, and of laying a pecuniary fine upon them. Sess. v. cap. 1, of reformation, and chapter fourth, it enjoins bishops to force ecclesiastics, by depriving them of the revenue of their benefices. Sess. v. cap. 15, Sess. xviii. cap. 8, and Sess. xxii. cap. 8, it gives the entire disposition of hospitals to bishops. Sess. xiv. cap 5, it takes away the jurisdiction of the conservators. Sess. xxi. cap. 6, it allows bishops a power of obliging parishioners to allow a maintenance to their priests. In the same session, chapter fourth and eighth, it gives them, as delegates of the Holy See, a power of forcing laymen to repair churches, and putting the profits of benefices under sequestration. Sess. xxii. cap. 10, it allows bishops to punish imperial and royal notaries, and to suspend them from the exercise of their functions. Sess. xxii. cap. 6, it gives bishops a power to change testators' wills; and chapter seventh, it says that appeals from the temporal judges of bishops shall be cognizable before the archbishops. Sess. xxiii., cap. 6, it confirms Pope Boniface VIII.'s

constitution ; by which tonsured clerks, though married, provided they be not bigamists, are exempt from lay jurisdiction," (bigamists here means persons twice married in *succession.*) " Sess. xxiv., cap., 1, the marriages of the sons of the family under their fathers' power made without their parents' consent are declared valid, and the council gives bishops a power of punishing not only those that contract clandestine marriages, but also the witnesses that assisted at them. In chapter the eighth, ordinaries are allowed to banish concubinaries, and to punish them even more severely. In chapter the fifteenth, the council gives bishops a power to unite prebends, and to turn the whole into distributions. Sess. xxv., cap. 3, ecclesiastical judges are permitted to cause their sentences against laymen to be executed, by seizing the profits of their estates, and even by imprisonment of their persons. In this chapter, the council gives bishops a power of converting the revenues of hospitals into other uses. And in chapter the ninth, cognizance of right of patronage is given to bishops."

" All these decrees by which the council challenges to itself, or bishops, an authority and a jurisdiction over bodies and estates seemed to the magistrates to be an encroachment upon their jurisdictions. But that which shocked them most was, that the council seemed to overturn the liberties of the Gallican Church, and to destroy its principal articles. The superiority of councils above the pope is its foundation. This the council not only did not own, as the Councils of Constance and Basil had done ; but it seems to have favoured the contrary opinion by submitting its decrees, as it did in the last session, to the judgment of the pope, when it requires a confirmation to be demanded from him, and declares (Sess. xxv., cap. 21) that all the decrees of the council ought to be understood and explained with a saving to the authority of the Holy Apostolic See."

" One of the principal articles of the liberties of the Gallican Church is the ancient custom of the judging of bishops. This the Council of Trent has departed from, when it commanded that criminal and important causes against bishops, even of heresy, which deserves deprivation of dignity, should be heard and judged by the pope alone, exclusively of all others. This practice is absolutely contrary to the disposition of the ancient canons and

usage authorized in this kingdom. It is contrary likewise to the concordat and the laws of the kingdom, which do not allow that any of the king's subjects should be compelled to go in person to plead out of his dominions. Sess. vi., cap. 1, the council gives the pope a power of deposing non-resident bishops and of putting others in their places. This also is an encroachment upon the episcopal authority and a breach of the concordat. Sess. xxiv., cap. 20, it is said that some causes ought to be tried in the first instance before their ordinaries, and yet the council allows the pope to call ecclesiastical causes, which are depending before the ordinaries, up to Rome. This is a derogation to the rights and liberties of the Gallican Church. The council also seems to lessen the episcopal character, and to take from bishops the jurisdiction which belongs to them *jure divino*, when it allows them no power of exercising it in several cases, but as delegates of the Holy See. Lastly, the council of Trent in several cases derogated from the received usages of the kingdom; as in appeals as from an abuse, in commendams, in indults, in ordinances by which secular judges require monitions to be published, in lay rights of patronage, and in several other customs received in France."

"These are the motives upon which the magistrates have hitherto opposed the reception and publication of the Council of Trent in France, and which have hindered our kings from suffering it. Though otherwise the doctrine of the council is approved here, and it is acknowledged that several very useful regulations were made in it for the reformation of manners, which the Church of France has adopted; because they are taken out of the canons conformable to the ancient discipline of this Church, revived by the statutes of its councils, and inserted into the ordinances of our kings."

Extracts from the Bull In Cœna Domini.

I.

We excommunicate, and curse, on the part of God Almighty, Father, Son, and Holy Ghost, by the authority also of the blessed Apostles Peter and Paul, and by Our Own, all Hussites, Wickliffites,

Lutherans, Zuinglians, Calvinists, Huguenots, Anabaptists, Trinitarians, and Apostates whatsoever from the Christian faith, and all and singular other Heretics, under whatsoever name they may be classed, and of whatsoever sect they may be, and those who believe, receive, or favour them, and all those who defend them in general, whosoever they be, and all those who, without our authority, and that of the Apostolic See, knowingly read or keep, print, or in any way whatsoever, from any cause, publicly or privately, upon any pretence or colour whatsoever, defend their books which contain heresy, or treat of religion; also, Schismatics, and those who pertinaciously withdraw themselves or secede from obedience to us, and to the Roman Pontiff for the time being.

II.

Also all and singular of whatsoever station, degree, or condition they may be (but the Universities, Colleges, and Chapters, by whatsoever name they may be called, we interdict,) who appeal from the ordinances or commands of us, and of the Roman Pontiffs for the time being, to a future General Council; as also those by whose aid or favour the appeal shall be made.

III.

Also all pirates, corsairs, and others.

IV.

Also all who plunder wrecked vessels.

V.

Also all who impose new taxes without the Pope's leave.

VI.

Also all who falsify letters apostolic, or who falsely publish letters apostolic, &c.

VII.

Also all who carry or transmit to Saracens, Turks, and other enemies and foes of the Christian name, or to those expressly or by name declared heretics by our sentence or by that of this Holy

See, horses, arms, iron, wire of iron, tin, steel, and any sort of metals and instruments of war, piles of timber, hemp, ropes, as well of hemp as of any other matter, and the matter itself, and other things of this sort with which they fight against Christians and Catholics; as also those who, by themselves or by others, give information of things concerning the state of the Christian world to the Turks and to the enemies of the Christian religion, to the hurt and injury of Christians; or to heretics, to the prejudice of the Catholic religion, or for that purpose give them in any way whatsoever aid, advice, or favour; notwithstanding any privileges whatsoever, which do not expressly mention this sort of prohibition, hitherto granted by us and the aforesaid See to any persons whatever, princes or commonwealths.

VIII.

Also all who prevent necessaries from being brought to Rome, whether bishops or kings.

IX.

Also all who, going to or returning from the Holy See, mutilate, despoil, seize, or detain their own goods or those of others, or who, without power from the Pope, attempt to assert any power against those who reside at Rome.

X.

Also all who kill or injure travellers or pilgrims to Rome.

XI.

Also all who kill or injure in any way cardinals, archbishops, and other dignitaries, or drive them from their territories.

XII.

Also all who slay or injure those who have recourse to Rome for their causes.

XIII.

Also all, as well ecclesiastics as seculars, of whatsoever dignity they be, who, under pretence of some frivolous appeal from the

grievance or future execution of apostolic letters, or of any citations and other decrees issued from us and the aforesaid See, or from our legates, &c., either have recourse to secular courts and to the lay power, or cause appeals of this sort to be admitted by it, or who apprehend, strike, wound, imprison, detain, banish, plunder, frighten, harass, and threaten, publicly or privately, the parties or their agents, their kindred, their connections, their friends, notaries, the executors or sub-executors of the aforesaid letters, citations, monitions, &c., or who in any other way presume to hinder, directly or indirectly, any persons whatsoever in general or particular, that they should not go or have recourse to the Court of Rome; or ordain or command that they should not go or have recourse to the Court to prosecute their affairs of any kind whatsoever, or obtain indulgences or letters, or hinder them from obtaining such indulgences or letters from the said See, or from making use of them when obtained, or presume to retain the said indulgences or letters.

XIV.

Also all who, under pretext of any exemptions whatsoever or any other indulgences or letters apostolic, take away the cognizance of causes relating to benefices and tithes, and other spiritual causes, and annexed to spiritual matters, from our auditors and commissaries and other ecclesiastical judges, or prevent the course and hearing of them, &c., &c., even though they who commit such things be presidents of chanceries of councils or parliaments, chancellors, or vice-chancellors, counsellors, ordinary or extraordinary, of any secular princes whatsoever, even though they were emperors, kings, dukes, or invested with any other pre-eminent dignity whatsoever, or archbishops, bishops, abbots, commendatories, or vicars.

XV.

Also all who, under pretence of their office or at the instance of any party, or any others whatsoever, draw or cause, or procure to be drawn, directly or indirectly, on any pretence whatsoever, ecclesiastical persons, chapters, convents, colleges of any churches whatsoever, before them to their tribunal, audience, chancery,

council, or parliament, contrary to the disposition of the Canon Law. As also those who, from any cause or excuse whatsoever, or even under pretext of any custom or privilege, or in any other way whatsoever, shall make, enact, publish, or use, when made or enacted, statutes, ordinances, constitutions, pragmatics, or any other decrees in general or particular, whereby ecclesiastical liberty is violated, or in any way injured or depressed, or in any other way restricted, or whereby the rights of us and of the said See, and of any other churches whatsoever, are in any way whatsoever, directly or indirectly, tacitly or expressly, prejudiced.

XVI.

Also all who, by imprisoning or molesting their agents, proctors, kindred by blood or marriage, or by any other means, &c., prevent archbishops, bishops, and other superior and inferior prelates, and all other ecclesiastical judges whatsoever, from executing their ecclesiastical jurisdiction against any person whatsoever, according to what the canon and sacred ecclesiastical constitutions, and the decrees of general councils, and especially that of Trent, do appoint; and also those who, after the sentences and decrees of the ordinaries themselves, or even of any persons whatsoever delegated by them, or at any other time, eluding the judgment of the ecclesiastical court, have recourse to chanceries and other secular courts, and thence procure prohibitions, and even penal mandates, to be decreed against the aforesaid ordinaries or delegates, and executed against them. Those also who make these decrees and execute them, or give aid, counsel, protection, or favour in the same.

XVII.

Also all who usurp the jurisdictions, fruits, revenues, &c., belonging to us and the Apostolic See, and to any ecclesiastical persons whatsoever, on account of churches, monasteries, &c., or even upon any cause or occasion, sequester the said revenues, without the express licence of the Roman Pontiff, or of others having lawful faculty for that purpose.

XVIII.

Also all who, without the like special and express leave of the Roman Pontiff, impose tributes, tithes, tolls, subsidies, or other burdens upon clergymen, prelates, and other ecclesiastical persons and upon their goods and the goods of churches, monasteries, &c.

XIX.

Also all and every, magistrates and judges, notaries, and scriveners, executors, sub-executors, in any way whatsoever intermixing themselves in capital or criminal causes against ecclesiastical persons, by processing, banishing, taking them, or by pronouncing against them any sentence, without the special, specific, and express licence of this Holy Apostolic See; and those who extend licence of that sort to persons and cases not expressed, or in any other way improperly abuse it, even though persons committing such things may have been counsellors, senators, presidents, chancellors, vice-chancellors, or persons named by any other name.

XX.

Also, all who invade the Roman territory.

XXI.

Ordains that this Bull continues in force till superseded by others.

XXII.

Reserves all the cases of those who violate this Bull to the Pope, and commands that none who do so can receive absolution at any but his hands, except in *articulo mortis*, whether they be kings, emperors, or any others.

XXIII.

But if by chance any persons, contrary to the tenor of these presents, should *de facto* presume to bestow upon such as are involved in excommunication and anathema, or upon any one of them, the benefit of absolution, we include them in the sentence of excommunication, intending afterwards to proceed against them more severely both with spiritual and temporal punishments, according as we may know it to be expedient.

XXIV.

Declares that no absolution, even from the Pope himself, can avail anything unless the criminals desist from their offences, and revoke and annul any acts they have done or laws they have passed against ecclesiastical liberty.

XXV.

Abolishes and revokes all privileges, indulgences, &c., excepting from the operation of the Bull.

XXVI.

But that these our present processes may be more easily brought to the public knowledge of all persons, we will cause the papers, or parchments, containing the processes themselves to be affixed in the city to the doors of the Church of St. John of Lateran, and of the Church of the Prince of the Apostles, that those whom processes of this sort concern may not be able to pretend any excuse, or to allege any ignorance, as if they had not come to their knowledge, or as if they were ignorant of them, since it is not likely that that should remain unknown which is so openly published to all.

XXVII.

Moreover, that these processes themselves, and these present letters, and all and singular the things contained in them, may become better known the more cities and places they are published in, we, by these writings, enforce and, in virtue of holy obedience strictly charging, command all and singular patriarchs, primates, archbishops, and ordinaries of places, and prelates, wheresoever constituted, that, after they shall have received these present letters, or have knowledge of them, they, by themselves, or by some other or others, once in the year, or even oftener if they shall consider it expedient, do solemnly publish them in their churches when the greater number of the people shall be assembled in them for divine service, and bring them (the processes) back again to the recollection of Christ's faithful people, relate them, and declare them.

XXVIII.

And furthermore, let all patriarchs, archbishops, bishops, and other ordinaries of places and prelates of churches, as also rectors and others having cure of souls, and secular priests and regulars of whatsoever orders, deputed by any authority to hear confession of sins, have a copy of these present letters in their possession, and diligently study to read and understand them.

XXIX.

Our will is that the same credit as would be given to these presents, if they were produced or shown, shall in all places be altogether given, in judgment and out of judgment, to copies of these said presents, even printed ones, subscribed by the hand of a public notary, and fortified with the seal of the ordinary Judge of the Court of Rome, or of any other person in possession of ecclesiastical dignity.

XXX.

Therefore, let no man at all infringe, or with audacious daring oppose this our letter of excommunication, curse, interdict, innovation, innodation, declaration, protestation, abrogation, revocation, commission, mandate, and will; but if anyone shall presume to attempt it, let him know that he shall incur the displeasure of the Almighty God, and of his blessed Apostles, Peter and Paul.

Given at Rome, at St. Peter's, on the 8th day of April, 1610, in the 5th year of our pontificate.

Extracts from the Apostolicæ Sedis.

PIUS BISHOP,

Servant of the servants of God, to perpetuate the memory of the thing now decreed.

It is pleasing to the clemency of the Apostolic See so to retain those things which have been wisely appointed by the authority of the ancient canons as that, if the change of time and circum-

stances require anything to be mitigated by a prudent dispensation, the same Apostolic See may apply to it its forethought, and a remedy suitable to its own supreme power.

Wherefore, since we have long weighed in our mind that the ecclesiastical censures, which, by means of sentence pronounced, and *ipso facto* to be incurred, have been in every age solemnly declared and promulgated for the protection of the safety and discipline of the Church itself, and for restraining and correcting the unbridled licence of the wicked, have insensibly increased to a large number; and that some of them, in the changes of age and custom, have lost the end and causes for which they were imposed, or their former use and suitability; and that on this account no unfrequent doubts, anxieties, and twitches of conscience arise in those to whom is committed the care of souls or in the faithful themselves: We, wishing to put a stop to inconveniences of this kind, ordered a full review of these censures to be made and laid before us, in order that, having given them our diligent consideration, we might determine which of them we ought to preserve and retain, and which of them it was suitable to moderate or annul. Therefore, the review being made, and our venerable brothers, Cardinals of the Holy Roman Church, general inquisitors in the affairs of faith, deputies of the whole Christian republic, being summoned to Council, and the matter having been considered long and maturely, by our own motion, certain knowledge, and mature deliberation, and of the plenitude of our apostolic power, by this constitution, which is to endure for ever, we decree that of all censures, whether of suspension, excommunication, or interdict, which have hitherto been imposed by means of sentence pronounced, and *ipso facto* to be incurred, none are hereafter to have any force except those which we embody in this constitution and in the manner in which we embody them. At the same time, we declare that the same shall receive their force not only from the authority of the ancient canons, as far as they agree with this our constitution, but also from this our constitution, as if they were first pronounced by it.

Excommunications, "latæ sententiæ," specially reserved to the Roman Pontiff.

Therefore we declare subject to excommunication, *latæ sententiæ* (*i.e.*, *ipso facto* to be incurred), specially reserved to the Roman Pontiff:—

I.

All apostates from the Christian faith, and all and singular heretics, under whatever name they may be classed, and of whatever sect they may be, and those who believe, receive, or favour them, and generally all who defend them.

II.

All and singular who knowingly read, without the authority of the Apostolic See, any books which defend the heresies of those apostates and heretics, also the books of any author prohibited by name by apostolic letters, and those who keep such books, print them, or in any way defend them.

III.

Schismatics, and those who pertinaciously withdraw themselves or secede from obedience to us and the Roman Pontiff for the time being.

IV.

All and singular, of whatsoever station, degree, or condition they may be, who appeal from the ordinances or commands of the Roman Pontiffs for the time being to a future general council; as also those by whose aid, counsel, or favour the appeal shall be made.

V.

All who slay, mutilate, strike, capture, imprison, detain, or pursue with hostility, the cardinals, patriarchs, archbishops, and bishops of the holy Roman Church, and the legates or nuncios of the Apostolic See, or eject them from their dioceses, territories,

lands, or dominions, and those who command or ratify these things, or lend aid, counsel, or favour thereto.

VI.

Those who impede, directly or indirectly, the exercise of ecclesiastical jurisdiction, whether of the internal or external forum, and those who for this purpose have recourse to a secular court; and those who procure or declare its mandates, or lend aid, counsel, or favour thereto.

VII.

Those who compel, directly or indirectly, lay judges to draw before their tribunals ecclesiastical persons, contrary to the disposition of the canon law; likewise those who enact laws or decrees against the liberty or rights of the Church.

VIII.

Those who have recourse to the lay power to impede letters or decrees of any kind issuing from the Apostolic See, or any of its legates or delegates; and those who, directly or indirectly, prevent their execution or promulgation, or those who, on their account, either injure or terrify the parties themselves or others.

IX.

All who falsify letters apostolic even in the form of a brief, and supplications concerning mercy or justice by the Roman Pontiff or vice-chancellors of the holy Roman Church, or their vicegerents, or signed by order of the said Roman Pontiff; also those who falsely publish letters apostolic even in the form of a brief, and also falsely sign supplications of this kind in the name of the aforesaid Roman Pontiff, vice-chancellor, or vicegerent.

X.

Those who absolve an accomplice in a degrading crime, even in *articulo mortis*, if another priest, even though he be not approved for confession, can, without causing great scandal and infamy, receive the confession of the dying person.

XI.

Those who usurp or sequestrate the jurisdiction, fruits, and revenues pertaining to ecclesiastical persons in virtue of their churches or benefices.

XII.

Those who invade, destroy, or detain, either by themselves or others, the states, lands, places or rights pertaining to the Roman Church, or who usurp, disturb, or retain the supreme power therein, and also those who lend assistance, counsel, or favour in any of the aforesaid matters.

From all which excommunications before mentioned we declare that absolution has been and is specially reserved to the Roman Pontiff for the time being, and that for those any general power of absolving from cases and censures, or from excommunications reserved to the Roman Pontiff, is by no means sufficient. Moreover, we revoke all indults in respect of the same which were granted to any persons, under any form whatever, or to any persons whatever, even regulars, of any order, congregation, society, or institute, even those worthy of special mention, or invested with any dignity. But let those who presume to absolve without due power, on any pretext whatsoever, know that they are involved in the bonds of excommunication reserved to the Roman Pontiff, provided only it is not done in *articulo mortis*, in which case, however, the obligation of adhering to the commands of the Church will be binding on the absolved if they recover.

Excommunications, "latæ sententiæ," reserved to the Roman Pontiff.

We declare subject to excommunication, "*latæ sententiæ*," reserved to the Roman Pontiff,

I.

All who teach or defend, publicly or privately, propositions condemned by the Apostolic See, under pain of excommunication,

"*latæ sententiæ*:" likewise those who teach or defend as lawful the act of inquiring from a penitent the name of his accomplice.

II.

Those who lay violent hands, at the instigation of the devil, on clerics or monastics of either sex, &c.

III.

Those who fight a duel or simply provoke to it, or those who accept it, and any accomplices, or those who lend it any assistance or favour; also those who intentionally witness it and permit it, or, as far as in their power, do not prevent it, of whatsoever rank they may be, even regal or imperial.

IV.

Those who become members of the society of Freemasons or Carbonari, or other societies of the like kind, which either openly or secretly conspire against the Church or the legitimate powers; also those affording any favour to such sects; or those who do not denounce their secret heads and leaders, as long as they do not denounce them.

V.

Those who, in their rash daring, order others to violate, or themselves violate, the immunity of an ecclesiastical asylum.

VI.

Those who violate the privacy of monastics, of whatever kind or condition, sex or age, they may be, by entering into their monasteries without lawful authority; and likewise those who introduce or admit them; and likewise monastics who leave them contrary to the circumstances and the formalities prescribed by St. Pius V., in Const. Decori.

VII.

Women violating the cloister of regulars; and superiors or others who admit them.

VIII., IX., and X.

Those who are guilty of simony, and their accomplices.

XI.

All who make gain by indulgences, and other spiritual graces, &c.

XII.

Those who collect alms of greater value for masses, and who make gain by them, &c.

XIII.

Those who are excommunicated in the Constitutions of Pius V., 28th March, 1567, "Admonet nos;" Innocent IX., "Quæ ab hac sede," 8th November, 1591; Clement VIII., "Ad Romani Pontificis curam," 26th June, 1592; Alexander VII., "Inter ceteras," 27th September, 1660, concerning the alienation and infeudation of the states and territories of the holy Roman Church.

XIV.

Religious persons presuming to administer unnecessarily the Sacrament of Extreme Unction or the Eucharist, without the licence of the parish priest.

XV.

Persons taking relics from the catacombs.

XVI.

Those who communicate with one excommunicated by name by the pope in the criminal offence, by giving him assistance or favour.

XVII.

Clerics who knowingly or willingly communicate in divine things with persons excommunicated by name by the Roman Pontiff, or those who receive them in office.

Excommunications, "latæ sententiæ," reserved to the Bishops or Ordinaries.

I.

Clerics ordained to holy orders, or regulars, or monastics, after a solemn vow of chastity, who presume to contract matrimony; also, all who presume to contract matrimony with any of the aforesaid persons.

II.

Those who attempt to cause an abortion, if successful.

III.

Those who knowingly use false apostolic letters, or their accomplices.

Excommunications, "latæ sententiæ," reserved to no one.

I.

Those who command or compel notorious heretics, or those excommunicated or interdicted by name, to be given Christian burial.

II.

Those who injure or terrify inquisitors, and denounce witnesses or other servants of the Holy Office, or those who steal or burn the documents of that sacred tribunal, or give assistance, counsel, or favour thereto.

III.

Those who alienate or presume to receive ecclesiastical goods without apostolic permission, according to the form *Extrav. ambitiosæ de Reb. Ecc. non alienandis.*

IV.

Those who neglect or culpably omit to denounce within a month confessors or priests by whom they have been solicited to commit crime in any cases expressed by our predecessors Gregory XV. and Benedict XIV.

In addition to those thus far mentioned—those whom the sacred Council of Trent has excommunicated, whether the power of absolvlng is reserved to the supreme pontiff or the ordinaries, or is without any reservation—we in like manner declare similarly excommunicated, except the punishment of anathema imposed in Decree, Sess. IV., "On the publishing and use of sacred books," to which we only wish those to be subject who print books which treat of sacred things without the approbation of the ordinary, or cause them to be printed.

Suspensions, "latæ sententiæ," reserved to the Supreme Pontiff.

I.

Suspends at the pleasure of the Holy See, chapters and convents who admit bishops and other prelates, before presenting their apostolic letters of promotion.

II.

Suspends for three years any one ordaining another without a title to a benefice or a patrimony.

III.

Suspends for a year those ordaining any one under the jurisdiction of another bishop, without letters dimissory.

IV.

Suspends for a year those who ordain without a title to a benefice or a patrimony any cleric living in any congregation where no solemn profession is made, or monastics who are not yet professed.

V.

Visits with perpetual suspension from the exercise of their orders religious persons who live outside their religious order.

VI.

Suspends from the order they have entered those who presume to receive that order from a suspended or excommunicated person.

VII.

Suspends foreign secular clergy who delay more than four months after their ordination in Rome without licence.

Interdicts, "latæ sentientiæ," reserved.

I.

Universities, colleges, and chapters, by whatever name they are called, "*ipso facto*" incur interdict specially reserved to the Roman Pontiff who appeal from the ordinances or commands of the Roman Pontiff for the time being to a future general council.

II.

Those who knowingly celebrate or cause to be celebrated holy things in places interdicted by the ordinary, or by the delegated judge, or by the canon law, or those who admit persons excommunicated by name to divine offices or the sacraments of the Church or Christian burial, "*ipso facto*" incur interdict from entering the Church until they make full satisfaction, according to the judgment of him whose sentence they have despised.

In fine, whomsoever the sacred Council of Trent has decreed to be "*ipso facto*" suspended or interdicted, we in like manner will and declare to be subject to suspension or interdict.

Moreover, we wish and declare to be firmly established and to remain in full force all those censures, whether of excommunication, suspension, or interdict, which have been imposed by our constitutions and those of our predecessors, or by the sacred canons, in addition to those which we have mentioned and which,

up to this time, have remained in full force either at the wish of the Roman Pontiff or through the internal regulations of certain orders and institutions of regulars, and also of certain colleges, congregations, societies, and pious places of whatever name or kind they may be.

Moreover, we decree that it ought not and cannot be in any manner or way supposed that the faculty of absolving from any cases and censures reserved to the Roman Pontiff is comprehended in any new concessions and privileges which may have been granted to anyone by the Apostolic See, unless formal, distinct, and express mention is made of them, but those privileges or faculties which were granted at any time whatever, either by our predecessors or by us, to any assembly, order, congregation, society, and institution, even a regular one, of whatever form, and although invested with a peculiar title and worthy of special mention; all these by this our constitution we wish to be recalled, suppressed, and abolished; accordingly we actually recall, suppress, and abolish them; no privileges whatever preventing or opposing, even though they be special ones, and whether they are comprehended or not in the code of law or in the apostolic constitutions, and established by any apostolic confirmation or immemorial custom, or any other stability of form or tenor, and with any derogatory or other more efficacious and unaccustomed clauses, all of which, as far as is necessary, we intend to repeal and do hereby repeal.

We wish, however, to remain intact the faculty of absolving, granted by the Synod of Trent to bishops, *Sess. XXIV., c. VI., de reform,* in any censures reserved to the Apostolic See by this our constitution, those only excepted which we have declared reserved in special manner to the same Apostolic See.

Therefore it is permitted to no one to infringe this page of our constitution, ordination, limitation, suppression, abrogation, and will, or to contradict it with rash daring. But if anyone shall presume to attempt this, let him know that he will incur the indignation of Almighty God and of his blessed apostles, Peter and Paul.

Given at Rome at St. Peter's on the 12th day of October, 1869, in the 24th year of our pontificate.

SECTION XXXI.

Bull of Martin V.—Cardinal Cullen on these bulls—Author's comments on his evidence.

BULL OF MARTIN V.

Laicis in clericos nulla potestas, et ideo Ecclesiasticorum causæ in foro jurisdictionis ordinariæ debent decidi.

Ad reprimendas insolentias transgressorum, eorumque præsumptionem refrenandam, si nervus Ecclesiasticæ disciplinæ lentescat, eorum voluntas proclivior sit ad peccandum, et exemplum impunitatis periculosius in alios derivatur. Propter quod ad præsidentis officium pertinet, sic debitam executionem adhibere justitiæ, quòd commissa jam puniat, et committendorum in posterum audaciam interdicat. Sanè, sicut displicenter accepimus, nonnulli diversorum regnorum et terrarum judices, aliique officiales laici, et laicales personæ, jurisdictionem in temporalibus exercentes, exercerique facientes, non attendentes, quòd laicis in clericos et Ecclesiasticas personas, et illorum bona, nulla sit attributa potestas, prætextu hujusmodi, quòd asserant in suis dominiis ad se pertinere coërcere viâ facti, quæ verè et ficte attentata asseruntur etiam in quocunque loco sacro vel religioso, quantumcunque Deo dicato, ex quacunque causa, etiam si ratione delationis corporis Christi, collationis Sacramentorum, et beneficiorum Ecclesiasticorum venditionis factarum, aut aliarum rerum, et bonorum ad Ecclesias, et Ecclesiasticas personas pertinentium quomodocunq ; etiam si solâ negatione vel affirmatione facti interveniat et ad eos recurratur, cognitionem ad se spectare, pro eo, quòd factum et novitas, quæ prætenduntur etiam sine alia violentia, quamvis in loco spirituali, et in loco sacro, sive religioso, eò quòd immediatè, ut prætenduntur, spiritualiter non existant : propterea ministros Ecclesiæ, et personas Ecclesiasticas, quantumcunque res, causa, vel occasio, unde dependent et derivantur, pia, sacra vel Ecclesiastica sit aut spiritualis, ad forum suum, et ipsarum cognitionem trahunt, et respondere cogunt : necnon procuratores fiscales in curiis temporalibus multoties agere procurant, ad quos (quod deterius est)

nonnulli prælati et personæ Ecclesiasticæ, in superbiam et elationem dati, ad superandum et sibi subjiciendum, per tales inventiones et cautelas, alias personas Ecclesiasticas et religiosas, habent plerunque recursum; et propterea in eisdem regnis, et terris, civitatibus, castris, et locis, auctoritas et jurisdictio Ecclesiastica penitùs absorbentur: et nihilominùs ipsi laici judices alios laicos in foro Ecclesiastico, super rebus quantumcunque Ecclesiasticis vel spiritualibus, et concernentibus immediatè Ecclesiasticas personas, ne respondeant, et judicibus Ecclesiasticis, ne cognoscant, inhibitiones fieri sub gravibus pœnis temporalibus faciunt, et procurant, et si secùs fecerunt, emendam pecuniariam excessivam exigere, ac vastatores in domibus, et aliis piis locis Ecclesiasticis, et religiosis; inducere, ac loca ipsa, personasque Ecclesiasticas, jocalibus et paramentis Ecclesiasticis, et bonis mobilibus, ac aliis spoliare, illaque vendere et alienare, fructus quoque et proventus ad temporalitatem ad manus suas ponere, nec non diversas injurias, et molestias reales et personales eisdem personis Ecclesiasticis inferre non verentur, in Dei offensam, animarum suarum periculum, Ecclesiasticæ libertatis vilipendium, et plurimorum gravamen, præjudicium, et jacturam. Nos igitur adversus talia præsumentium temeritatem, remedia apponere, et super his salubriter providere cupientes, ac concilii Milevitan. ac fel. record. Innocentii Papæ III. prædecessoris nostri constitutionibus super hoc editis, auctoritate Apostolicâ, ex certa scientia, hâc nostrâ irrefragabili constitutione perpetuò duraturâ, tenore præsentium statuimus, decernimus, ac etiam ordinamus, quòd omnes et singulæ personæ Ecclesiasticæ, seculares et regulares, ordinum quorumlibet, quâcunque exceptione suffultæ, etiamsi Patriarchali, Archiepiscopali, Episcopali, Abbatiali, vel aliâ quâvis præfulgeant dignitate, quæ aliam personam Ecclesiasticam, collegium, vel conventum, in actione reali, mixtâ, vel personali, civili vel criminali, etiam occasione cujuscunq; summissionis, etiam juramento vallatæ, vel aliàs ad forum sive judicium laicale, directè vel indirectè (de qua in foro Ecclesiastico ordinari consueverit) possit, vel debeat, de jure, vel de consuetudine, aut aliàs cognosci, trahere præsumpserit, causam ipsam, et omne jus ei, sive eis, in possessorio vel petitorio, in re vel ad rem, causâ vel occasione hujusmodi quomodolibet competens, eo ipso perdant penitus et amittant, et singulares

personæ, excommunicationis; capitula verò et conventus, suspensionis et interdicti sententias incurrant ipso facto; et si personæ ipsæ, et eis in præmissis adhærentes et servientes, in aliquo rebelles fuerint, et incontinenti non obedierint, omnes illas per privationem suorum beneficiorum Ecclesiasticorum quorumcunque, quæ obtinebant, et in quibus, et ad quæ jus quomodolibet competit, et inhabilitationem ad alia in posterum obtinenda coërceri et compelli volumus antedictas. Et nihilominùs omnes et singulos judices et executores, communitates, dominia, laicos, et laicales personas, postquam exceptum fuerit de non jurisdictione eorum, aut evidenter appareat, hujusmodi cognitionem ad eos de jure non spectare, talia præsumentes, et ea fieri mandantes, seu eorum nomine et mandato facta rata habentes, vel eis faciendis dantes auxilium, consilium, vel favorem, cujuscunque præeminentiæ, dignitatis, gradûs, ordinis vel conditionis existant, seculares personas, eorum videlicet singulos officiales, quocunque nomine censeantur, et consiliarios, et privatas personas, quæ præmissorum principales perpetratores existerent, excommunicationis sententiam incurrere volumus ipso facto, nullusque ab eisdem sententiis, per alium, quàm per Romanum Pontificem, præterquam in mortis articulo constitutus, absolvi valeat, sive possit: et præmissa omnia, non tantùm ad futura, sed etiam ad præsentia, et pendentia extendimus auctoritate memoratâ; quòdque etiam procurator fiscalis causarum Cu. Cameræ Apostolicæ contra culpabiles in præmissis, desuper summariâ informatione præhabitâ per se vel alium seu alios, agere et procedere possit et valeat, nihilominùs concedentes.

I cannot give the precise date of this bull, as I have taken it from the canon law where dates are not put in; its author, however, was raised to the papacy by the Council of Constance in 1417, and reigned fourteen years, so that the bull is at least four hundred and forty-four years old. Many enactments on the subject of this bull are found in the canon law, and it refers expressly to some of them, but no enactment is so comprehensive and conclusive as this, since it hurls a sentence of reserved excommunication at all lay judges and their officers and assistants that dare to try any case—criminal, civil, or mixed—in which an ecclesiastical person is in any way concerned; and at all ecclesiastical persons of every sort, condition, or degree, who in any character whatever,

appear before lay judges, in any case whatever in which they or any other ecclesiastical person may be concerned.

Cardinal Cullen was asked by Mr. Purcell—"Now let me call your attention to the bull which is substituted for the bull *In Cœna Domini.* These 6th, 7th, and 8th clauses, I suppose, Cardinal, would be the clauses you refer to—'those who impede directly or indirectly the exercise of ecclesiastical jurisdiction whether of the internal or external forum; and those who for this purpose have recourse to a secular court; and those who procure or publish its mandates, or lend aid, counsel, or favour thereto.' 7. 'Those who compel directly or indirectly lay judges to draw before their tribunals ecclesiastical persons contrary to the disposition of the canon law; likewise those who enact laws or decrees against the liberty or rights of the Church.' 8. 'Those who have recourse to a lay power to impede letters or decrees of any kind issuing from the Apostolic See, or any of its legates; and those who directly or indirectly prevent their execution or promulgation; or those who on their account either injure or terrify the parties themselves or others.' I suppose these are the clauses within which or some of them you consider that the case of Mr. O'Keeffe comes?—I don't apply this constitution at all to his case, nor the bull *In Cœna Domini.* I apply to his case the bull of Martin V. and several other bulls, and I apply to his case the general discipline of the Church, which condemns those who drag their bishops or their brother clergy before secular tribunals. Before the day I undertook to examine Father O'Keeffe's case, I made up my mind, and so did Dr. Forde, not to enter into any defence of *In Cœna Domini* and *Apostolicæ Sedis;* for they were not necessary to his case."

"In one letter you referred to one of them?—I referred to both of them."

"Of course when you referred to them it was as being obligatory upon Father O'Keeffe?—In my opinion—I knew there were others who differed from me—they were; but, if he had a fair case to stand on, I would not condemn him on that account. I did not go on these bulls—either the bull *In Cœna* or the new constitution—but upon the general discipline, doctrine, and traditions of the Church"

"Now as a matter of fact, down to the interview on the 27th October throughout the correspondence, is there any letter of yours which refers, as a law declaring and publishing the offence, to any canon or to the common law of the Church, or to anything except the two bulls, the one *In Cœna Domini*, and the other *Apostolicæ Sedis* ?—There was in 1869, I think."

Chief Justice—"Is the bull *In Cœna Domini* expressly repealed now ?—It is repealed in this way, that the pope declares that he collects into one body all the excommunications which were scattered in different others before ; and if he did not repeat certain excommunications in the new bull *Apostolicæ Sedis*, he declares that they cease to exist."

"Is it in the nature of a codification of existing censures ?—It is in the nature also of an abolition of a great number of censures. Any censure previously existing is repealed, if not found in the new constitution, *Apostolicæ Sedis*."

Now all my crimes were committed since the publication of this new constitution, which abrogated all former censures not expressly renewed and embodied in it, and according to the Cardinal himself, in a letter to me, dated July 22nd, 1871, the censure in this new bull regards the case of those "who drag ecclesiastics, and especially bishops, before lay tribunals, and there charge them with criminal offences." My proceeding against the bishop and other ecclesiastics was a civil action for damages, and not of a criminal nature. It could not, therefore, come under the new bull nor any old ones, since their censures were all revoked by the bull of 1869, unless expressly continued in force by it. How plainly iniquity has lied to itself, and how necessary it is for me to say with holy David :—"Deliver me not over to the will of them that trouble me : for unjust witnesses have risen up against me ; and iniquity hath lied to itself." (Psalm xxvi. 12.)

SECTION XXXII.

Some of the Author's letters on his case to the public press.

In order that the public everywhere may know my case in all its particulars, I give here some letters which were published at

the time of their respective dates, and in which nothing has been put forward by me which is capable of being contradicted. From the beginning of my quarrels with the ecclesiastics who have so long been able to misrepresent me before the public as a man in opposition to the laws and the discipline of his church and under the ban of her censures, I have been only desirous that the whole truth should be known everywhere, being fully convinced that in public and in private I have done nothing wrong; and that in warding off the blows of my assailants I have never exceeded the limits of blameless defence. I have never sought anything but to live in peace and charity with all men, and to be allowed to do my duty to my God and my people as a pastor without reproach.

The Editor—"The Dublin Evening Post."

Callan, August 10th, 1872.

SIR,—Strange as it may appear to you, I believe that few people love seclusion and privacy more than your present correspondent. I had lived fifty-five years as quietly and as obscurely as most people of my class of life, up to the 15th August, 1869, when I was denounced as a liar by my two curates to three congregations of my own flock, and on the following Sunday to the remaining fourth. I complained of this by letter to the bishop, to Cardinal Cullen, and to Cardinal Barnabo. I requested, from this latter cardinal, permission to visit Rome, and his answer is in my possession, informing me that Cardinal Cullen told him to leave me at home.

I am become, no doubt, a very public person, but unless you can contradict the facts I state, I think you are not warranted in assuming that I have come before the public in courts of law through a desire for notoriety. I tell you, moreover, and I am not ashamed to own it, though it pains me sorely, that as surely as I hold a pen in my hand, if I had the means of doing so, I would bring more than a dozen actions at law before the Queen's Bench next December against the people that have libelled or slandered me, including especially Dr. M'Donald, Dr. Moran, and Cardinal Cullen. As for this last eminent ecclesiastic, I would sell the bed on which I lie, if it were necessary to do so, in order to bring him before the public, and make him account in open day

for his deeds of darkness. You and others may talk of Döllingers and doctors' caps, but I have no desire to be thought—what I well know I am not—learned in the laws of either the Church or the State—and if I admire the genius and the learning of a Döllinger, I love the Catholic faith more.

Though you have been unable to find a flaw in my logical demonstration that I have been improperly and illegally removed from the patronage of my infant school, you still attempt to justify the action of the commissioners in my case. This is because, like a great many others, you misunderstand the nature of the questions at issue, but I shall set you right in a few words.

I lay down two propositions :—1st. That the commissioners have no right, under any circumstances, to remove a patron; and 2nd, even if they had, that my case is one in which they could not exercise it. Now what is a patron? I answer in the words of the rule, "A patron is a person who applies, in the first instance, to place the school in connexion with the Board." Suppose, for instance, Lord Bessborough, who is the patron of many schools, provides a school-room, properly furnished, appoints teachers, gets the school into working order, and after the school has been for some time in operation, asks a grant of salary for the teachers. If, on inquiry, his lordship be thought a gentleman of position in society, he is recognised as patron, and if the district inspector be satisfied that the teachers are competent and their work properly done, salaries will be paid them. While this state of things continues, and that the school is worked to the satisfaction of the inspector, all the rules of the Board being complied with, including the continued good character of the *teachers*, Lord Bessborough may become a Freemason or anything else, and may incur censures or not, just as he pleases; he was once recognised as patron of the school, and that recognition can never be cancelled. Lord Bessborough got no appointment or office from the Board, and therefore he cannot be *dismissed.* His appointment was made by himself, and simply *recognised* by the Board, and what the Board has not given it cannot take away. If the attendance of children fall away owing to any cause, or if anything else go wrong, the Board can withdraw the salaries, and even put the school off its rolls; but to

say the patron can be changed by the Board, is the same as saying that the Board can give one man the property of another, or that Cardinal Cullen can take my parish, and give it to his nephew. This reasoning is applicable to *all cases* of patronage, including my infant school. I have sent Mr. Bouverie a contradiction of Lord Hartington's statement regarding it in the House of Commons. On the 27th July, 1871, I informed Cardinal Cullen that :—" It has cost me more than one hundred pounds to maintain my position as head of the education of the youth of my parish ;" and I tell you that the most agreeable hours of my day are those which I spend in giving instruction in my schools.

Now I say, in the second place, that if the commissioners had power to remove a patron for misconduct, or for having incurred censures, they could not exercise that power in my case, simply because I am charged with no misconduct, and I have incurred no censure. A parish priest cannot be visited with censure unless charged with and convicted of some grave offence, but nothing of the sort has occurred with reference to me. God knows I have been pelted with censures enough behind my back, but every one of the people who fire these blank cartridges at me will deny most stoutly having had hand, act, or part in their discharge, when I call them to an account for their insults. The canon law in this matter is clearly defined—quite as distinctly as the civil law. If you were brought before a court of competent jurisdiction, and fined in any penalty, you should pay the penalty, whether the sentence is just or not ; but if you thought it unjust you could appeal. Now suppose the court condemned you without a citation or any hearing of the case, would you pay any respect to the sentence, or would you let your goods go with the bailiff, if you were able to chase him from your door? It strikes me that you would immediately give such a man in charge as a thief. Now I tell you the case is quite the same in the canon law. If a censure be passed after the essential forms of justice are observed, it ought to be respected, whether just or not, pending an appeal, but if these forms be altogether disregarded, the sentence is not only unjust, but it is completely null and void. In truth, no one but a fool would pay such a censure the slightest respect.

Your reference to the case of deans in the Queen's Colleges is beside the question. These clergymen, supposing them to exist, have no ordinary jurisdiction, as parish priests have from their office, in the same way as the bishop holds his, but merely delegated jurisdiction; and the same is true with regard to the priests referred to by Lord O'Hagan. His lordship and you are quite at fault when you confound the case of a parish priest, who holds his jurisdiction from his benefice, exactly as the bishop does (what canonists call ordinary jurisdiction), with that of a priest to whom jurisdiction is delegated. Lord O'Hagan laboured under a strange mistake; and if he were as friendly to me as he professes to be in some of his letters, he would have sought some explanation from me before he blindly condemned me, and I would gladly have saved him from the discredit into which he has fallen by his misguided zeal. What a sad thing it is that anyone, and more especially a judge, will condemn a brother without asking him is he guilty. What harm could it be to give a trial to the most notorious culprit? God says:—"Judge not that you may not be judged;" and St. Paul, "Why judgest thou thy brother?" Yet, alas! nothing is more common among men, and these oftentimes the highest in the land, than to erect their tribunal on the body of an absent brother, to make themselves the judge, to dispense with a jury and witnesses, and to pronounce a sentence of guilt, which the recording angel is entering against themselves in the book, not of life, but of death. But I forgive you all, and may God's forgiveness follow.

Yours, &c.

R. O'KEEFFE, P.P.

The Editor—"The Times."

Callan, Ireland, October 16th, 1872.

SIR,—Unhappily for my own peace of mind, I am become one of the most remarkable men in the community, and for the past three years I have been subjected to a persecution as unholy and tyrannical as the pages of history record. Papal bulls of the

middle ages have been brought to bear upon me by the government of the country, and I am deprived of £310 a year for being faithful to my oath of allegiance, and refusing to acknowledge the temporal supremacy of the pope. The cabinet of England promises me redress for the wrongs done me by the State, but this redress is only to come after I shall have got a court of justice to redress the wrongs done me by the Church. The public, however, are now everywhere taking an interest in my case, and with your kind permission I will place some of the facts of it before them.

I was born in this town fifty-nine years ago, and I have been its parish priest for the past ten. I had a quarrel with my bishop, Dr. Walsh, in 1869, and he removed one of my two curates with whom I was very friendly; and the very first Sunday that the new curate officiated in my church, both curates denounced me to three congregations of my own flock as a liar on the altar, stating that they did so by directions from the bishop. I wrote a letter of complaint to the bishop, and asked him to remove the curates to another parish, and I have never since received any answer. I sent a copy of the letter to Cardinal Cullen, and he took no notice of it. I applied to the Prefect of Propaganda in Rome for permission to leave my parish for three months, that I might go to Rome and make my complaint there, but the application was referred to Cardinal Cullen, and I was left at home. I then brought the bishop into the Queen's Bench, and I was non-suited, as one of the curates swore that the bishop only permitted, but did not direct the altar denunciations. The trial was had in July, 1870, and in October I was sent a letter of suspension by the bishop's vicar-general, for having gone to law with the bishop, and when I asked the vicar-general what right he had to suspend me, he said it was no business of his to argue with me, and he repeated his sentence. I then commenced an action at law against the curate, in utter disregard of the censure of the vicar-general, who then sent me a citation to a trial; but ten days before the day named for the trial I was handed another letter of suspension for taking the action against the curate. In this action I was awarded £100 damages, but the verdict was upset on a legal technicality, and a new trial is

to take place. After the last trial I was sent a letter of suspension by the bishop himself, which of course I treated with the same respect as those of the vicar-general. The curates in the meantime withdrew themselves altogether from my control, and set up for themselves in a chapel of this town belonging to a community of Augustinian friars. They commenced denouncing me as a suspended priest, and called upon the people to leave me and go for sacraments and mass to them. I took an action against the second curate for these new denunciations, and was awarded £100 damages; which, however, with the law costs, still remain unpaid.

In July, 1871, Cardinal Cullen opened a correspondence with me; and after many letters had passed between us, in which he constantly wished me every happiness, he suspends me over again, and deprives me of my parish. He directed his sentence to be read in the friary chapel, and I have taken an action at law against him for libel. The cardinal has got his nephew, Dr. Moran, appointed bishop of Ossory in succession to Dr. Walsh, and Bishop Moran says the parish of Callan belongs to him and not to me. Now it is as well established in the canon as in the civil law, that no condemnation can take place or produce any effect whatever, without a trial, or at least a citation to one; yet every one of the censures passed on me was written behind my back, and without the slightest intimation to me that such a thing was even contemplated, and without any cause whatever being assigned, except that I went to law with an ecclesiastic. Cardinal Cullen made known to the Poor Law Board that he had suspended me, and the commissioners dismissed me from my workhouse chaplaincy, although I informed them that the Cardinal had no jurisdiction over me, and that I was condemned without a hearing. The Commissioners of Education removed me from the managership of my five schools without any previous notice of any kind, and have since paid no salaries to my teachers. The consequence is, that I am rendered unable to bring my wrongs before a court of justice, and if all this treatment be not tyranny of the blackest dye, there was never a tyrant on earth.

My persecutors justify their conduct by the celebrated *Bulla Cœnæ*, which excommunicates anyone who charges an ecclesiastic

with guilt before a lay tribunal, and excommunicates the judge too who dares to try the case, unless the ecclesiastic be first degraded by the Church; and these censures, according to Cardinal Cullen and the British Government, are self-acting, and apply themselves to the soul and body of a man without the slightest necessity for asking him does he think he is guilty. Are we in a land of freedom and subjects of a realm whose ruler, in the person of William the Conqueror, informed Hildebrand, that he owed and would pay him no civil allegiance?

I am, &c.,

ROBERT O'KEEFFE, P.P.

To the Editor "The Freeman's Journal."

Callan, November 11th, 1872.

Sir,—I protest in the strongest way I can against your representing me before the public as a suspended priest. This is really representing me as a public sinner and a reprobate. Everybody knows that a priest, and especially a pastor, ought not to be suspended unless proved guilty of some grievous crime, and will you tell me what fault I have committed? If you do not and cannot, what sort of conscience have you to charge an innocent man publicly with great crime?

When my curates were denouncing me in public and private as a suspended priest, and swearing this in presence of congregations of my own people, I took an action against one of them for slander, and was awarded £100 damages. Well, I am not going to take an action against you as unfortunately my hands are already only too full of law business of this sort, but I call upon you to do me the common justice, which unhappily for me has lately become a very uncommon thing in Church and State, of hearing me before you condemn me. I have never been able to learn that I am charged with any guilt except going to law with an ecclesiastic; and yet I have never brought one into a lay court, until after I was refused all redress from my superiors in the Church for having been denounced to my people as a liar.

You praise the zeal of Mr. Justice Fitzgerald in taking the lead

in my degradation at the National Board, and yet you must know that his offence was exactly the same as mine, save and except that I sought redress from the Church in the first instance, and that he rushed at once into the law court. There has never been any distinction made by the canons of the Church as to whether the plaintiff—the "actor" of the canon law—in the cause of an ecclesiastic is a layman or a cleric. The crime to which excommunication is annexed in the *Bulla Cœnæ* is for *anyone* to charge an ecclesiastic with guilt before a lay tribunal. In this respect the judge and I are on the same level.

I have lately given a history of the *Bulla Cœnæ* to the public, and I shall say no more on the matter now than this, that I believe Cardinal Cullen is doing immense injury to the Catholic religion by reviving these antiquated censures of the middle ages, and endeavouring to apply a legislation which was enacted to screen the vices of ecclesiastics from the public view, to the civil proceedings of our courts of law, before which all her Majesty's subjects, without distinction of class or creed, stand equal.

The whole truth will now come prominently before the world very soon, and I call upon you not again to condemn me before a court of justice finds me guilty. God knows my judges have been numerous enough; but while they sit in judgment behind my back, and with a one-sided knowledge of my case, I am possessed of philosophy enough to feel that if all the world condemned me unjustly, I am still the guilty or innocent man my own mind makes me, and of religion enough to say :—"Si Deus pro nobis quis contra nos."

I am, &c.,

R. O'KEEFFE, P.P.

The Editor—"The Hour."

Callan, Ireland, June 6th, 1874.

SIR,—When the Commissioners of Education informed me last October that a series of charges would be brought against me by Dr. Henry, on the occasion of considering at the Board my fitness for the office of school manager, I think I would show

myself to be the veriest dolt in creation, if at the plaint of one of its members, I put in an appearance before a court that had eighteen months previously formally condemned me without any knowledge whatever on my part ; and, as far as it could be done by people, who had no right whatever to do it, put another gentleman into the possession of my schools. Now, however, that these charges have been again made against me in parliament, and assumed by many to be well-founded, I know you will allow me to show that they are utterly groundless, and to challenge Dr. Henry to support them before the court of public opinion. I will take the charges in the order in which they have been put by the Education Board in the document sent to me on 7th Nov. last, and found at p. 49 of the Cartwright Parliamentary returns.

I. "The Town Commissioners of Callan protested against Mr. O'Keeffe being recognised as manager of the schools." My answer is that, as all the commissioners, except one, are also members of the schools committee, this charge will be disposed of in the next paragraph.

II. "The Callan Schools Committee, who are trustees of the male and female schools, and on whose premises the infant school is partially situated, protested against Rev. Mr. O'Keeffe's appointment." To this, I say, most positively, that there has been no school committee at Callan for more than forty years, with the exception of the South Kensington School Committee, which I established here in 1869 ; and that I, myself, was present at the last meeting of the old body in the Callan Lancasterian School (now the National school), in the year 1830. It was a committee of subscribers to the support of the school before it was put into connexion with the National Board ; but since that date the school has been exclusively under the sole control of the successive parish priests, and in their legal possession exactly as the other schools of the parish. It has received no support from subscribers from that date, with the exception of Lord Clifden and me. Since I established the infant school in 1863, I have always paid its rent ; and in 1869 I made a very large expenditure on the male school, after I had put it into connexion with the Science and Art Department, South Kensington. On the 21st April, 1873, Bishop Moran held a meeting at

the opposition female school, which my former curates established here in 1870; and at the request of this meeting wrote and printed a paper for circulation in Parliament, in which I have been charged with sending a forged document to the Education Office in 1863. This paper has the name of Patrick Cody, J.P., secretary to the Callan Schools Committee, attached to it, and is said to have been issued by order of the committee; but Mr. Cody has sworn that he never sanctioned the paper, or permitted his name to be appended to it; and I have sworn more than once that the document I sent to the Education Office in 1863 was every way genuine and regular.

III. "The Rev. R. O'Keeffe directed a teacher to falsify a return, by affixing the name of the Rev. Mr. Martin, without his knowledge, to a certificate of the accuracy of the return." This return was the one which I sent to the Education Office on the 1st July, 1872, in the usual way, with the teacher's signature and mine, and which was sent back to me, with an observation that I was no longer the recognised manager. In the following February I had reason to believe that the teacher (Funcheon) had been receiving his salary from the Board through Mr. Martin, as I found that the district inspector had been making visits to this school, and in order to discover the truth of the matter, I gave the return of July 1st to the teacher to take it to Mr. Martin, to have it sent by him to the Education Office, and told the teacher to say to Mr. Martin, that I allowed Mr. Martin's name to be substituted for mine on that paper, but that with regard to the two other quarters' salary that was due from the office, the teacher was to make out the returns for Mr. Martin, and hand all three to him for transmission to the office. I saw by the record of the inspector's visit to the school in January, that the accuracy of the return of July 1st was verified by him, and I said to Funcheon, therefore, that with reference to that return, all he had to do was to substitute Mr. Martin's name for mine. My object was to learn whether the teacher was true to me or not, and when I found he was playing a double part, I wrote to the office to say that unless I was recognised as manager of that school, I would have it closed. In fourteen days afterwards I closed it. It is quite untrue, then, that I directed a

teacher to affix Mr. Martin's name to any paper without his knowledge.

IV. "The Rev. Mr. O'Keeffe dismissed, without notice, a teacher of twenty-three years' faithful service, for having taken Paschal communion in the Catholic Cathedral of Kilkenny, instead of his own church." I wonder the commissioners could forget that eighteen months previously they dismissed me, after twenty-three years' faithful service, without notice :—

"eheu !
Quam temere in nosmet legem sancimus iniquam ;"

but I am not capable of the tyranny which this statement ascribes to me. "Man's inhumanity to man," can be found at the Education Board, but it has never held a place in the breast of the persecuted Parish Priest of Callan. My voice and my pen have been for years denouncing the tyranny of men who, possessed of the excellent quality of the "giant's strength," can barbarously "use it like a giant." It is the duty of a parish priest to see that the canon of the General Council of Lateran, requiring the faithful to communicate at least once in their own church during the Paschal time, is observed by them, and to present to the bishop at his visitation a list of absentees from the sacrament as persons living in public sin ; and how could I present such a list with the name on it of the principal teacher of my school ? Accordingly, I made inquiry from the teacher herself, and she admitted the fact, and gave me to understand distinctly that she disavowed my authority as parish priest. I still did not dismiss her summarily, but informed her that after this admission she could not expect me to continue her in the school, when she herself insisted on leaving immediately.

V. "Mr. O'Keeffe has used coarse and offensive language, and designated a perfectly true statement of the secretaries an infamous lie." After I had established Christian Schools at Callan, in 1868, the attendance at the male National School fell away to seven pupils ; and in order to attract boys to it, I put at its head a man of unusual ability as a teacher, largely supplementing his salary from the Board. This man was capable of teaching agriculture, horticulture, singing, and drawing, and had been for many

years in the commissioners' own institution in Dublin. I also introduced the teaching of Greek, Latin, and French. I received every encouragement at the Education Office; and I was informed there that even the Board would pay for these extra branches, if Cardinal Cullen could be got to assent to the teaching of classics in National Schools. But having, in 1870, brought an action against Bishop Walsh for denouncing my school as a godless institution, and myself as a liar, one of the commissioners (John O'Hagan) examined me on the character of the school, and from that time my school was discouraged in every possible way at the Education Office; and when the attendance at the school increased, so as to justify me in appointing assistant teachers, the commissioners would make them no grant of salary. The two assistants were forced to emigrate in March, 1872, and I sued the Board for their salaries; but the commissioners defended the cases on the technical plea of no privity of contract. Judge O'Brien, on appeal from the Recorder's Court, recommended one of them (Woods) for payment; but when I sent the secretaries Woods' receipt for the money, they would not pay it without getting a letter from Woods, although I informed them that Woods signed the receipt before he left for America, in order that I might receive the money for him, and send it to him in America, and I swore this more than once in a court of justice. After all this, the commissioners wrote to Woods in America, for the purpose of getting him to withdraw the authority he had given me to receive the money for him, and represented to him that I was claiming the money for myself. I consider I was perfectly justified in designating that statement an infamous lie.

VI. "Mr. O'Keeffe denied on one occasion to the head inspector access to the records of the Callan schools." This is simply untrue. The head inspector visited my schools at Callan on the 4th October, 1872, and was handed by the teachers all the books he wished to inspect. In the male school I requested him to make no extract from the records of that particular school, as I was at the time engaged at law with the commissioners for the salaries of the assistant teachers, when he very politely handed me some extracts he had made, and asked my

permission to record his visit in the report book, which of course I gave. I had been at the time paying the teachers from my own pocket.

VII. "On another occasion he expelled, with abuse and insult, an inspector who was endeavouring to do his duty, and obtain information for the guidance of the Board." The real facts are, that on the 17th October, 1872, Mr. Harkin entered my female school, and I repeatedly told him to leave. When he refused to leave, I told him more than once that I would put him out by force if he would not leave quietly. He dared me to do so, and I then put my hand on the collar of his coat to walk him out, thinking he would not after that insist on remaining, but he still remained in the school, and I then sent for the teacher in the boys' school, and with his help walked the inspector out. Mr. Harkin sued me for £1000 for this expulsion, but he has lost his cause, and paid my costs in the suit. The facts, as stated, were proved by me and others in the public court.

VIII. "The suspensions appear to have produced results most injuriously affecting Mr. O'Keeffe's fitness for the duties of manager." Now I protest in the strongest way I can against the assumption of the Board that I have become a canonically suspended priest. I have never been charged with guilt before an ecclesiastical tribunal; and, as a matter of course, I have never been justly condemned or validly censured. The words of St. Augustine :—"Nos in quemquam sententiam ferre non possumus nisi aut convictum aut sponte confessum," have been adopted into the Corpus Juris Canonici, as a rule of justice that must be universally observed. The canon law itself expressly declares that the judicial proceeding which does not commence with a citation to the accused, labours under an incurable defect, it being, as it says, against natural justice to condemn anyone without giving him an opportunity of being heard in his own defence. If I were cited to a court, and condemned after being heard, I would submit to the sentence; but if I thought it unjust, I would appeal to another court. From a lawless sentence no appeal can be made, and no one but a fool would treat it otherwise than with contempt.

I have now gone through all the charges brought against me,

and I think answered fully every one of them. If I have not done so, let Dr. Henry, or any other champion of the Board, say in what particular I have failed.

I am, &c.

R. O'KEEFFE, P.P.

To the Editor "The Hour."

Callan, Ireland, June 26th, 1874.

Sir,—I have lately had a good deal of correspondence with the Education Commissioners, and I have made arrangements for its production in Parliament. It must lead to the appointment of a select Committee. I send you the last letter I have addressed to the Board; but as it regards only one of several claims still unsettled, I shall have to bandy personalities with these "men" for a long time to come. They are owing, according to a parliamentary return, £42 12s. 11d. to an unfortunate teacher, named James Cody, whom I assisted to emigrate to Australia twelve months ago. He is the young man that assisted me in expelling their inspector from my female school.

I am, &c.,

ROBERT O'KEEFFE, P.P.

To Cardinal Cullen's Education Commissioners.

Callan, June 25th, 1874.

Men,—I have your letter of yesterday's date again addressed to me with studied insult; but as it is necessary for me to notice it I shall do so under the protest which I hereby make against your ungentlemanly conduct by addressing you simply as men without the qualification "gentle." The persons at your Board that assume, on the *ipse dixit* of people with whom I am contending at law, that my degradation has been accomplished, know well that, if they dared to slander me outside the four corners of your Board-room, they would soon be challenged to justify their con-

duct in a court of justice; but I tell them that, if they can use the privilege of their position to save their pockets from damages, they give my pen the privilege of naming them base cowards.

It is known to you that I swore twice over, that before you drove William Larkin into exile, and compelled him to become a common labourer in a foreign land, he signed a stamped receipt for his salary, that I might have a proper voucher for your office, if you consented to pay the money; and that he authorized me to proceed at law against you for its recovery, if such a proceeding should become necessary. You are aware, too, that all this was done in March, 1872, before the ecclesiastical despot, whose political and state influence you worship,

"With bated breath and whispering humbleness"

put a fold over your eyes, while he was dictating to you an order for the transfer of the legal possession of my schools to the nominee of the pretender to my parish. More than twenty times, while I was recognised as a manager of schools, I passed such receipts into your office; and if you will not pay in that way in the present case, I will, as soon as I can do it, again expose publicly your infernal injustice.

I am, men, your obedient servant,

ROBERT O'KEEFFE, P.P.

SECTION XXXIII.

Brief summary of facts.—All incontrovertible.

I now conclude this book with a summing up of facts relative to my case which are beyond all dispute :—

No. 1. I was denounced by my two curates publicly in my church on the 15th August, 1869, as having uttered falsehoods from the altar on the previous Sunday.

No. 2. I wrote to the bishop a letter on the 20th same August, complaining of the conduct of the curates and asking their removal to another parish without ever having received any answer.

No. 3. I sent a copy of this letter to Cardinal Cullen, and he left it unnoticed.

No, 4. I wrote to Rome for leave to go there at my own expense, to make my complaint against the bishop, and was refused this leave through the interference of Cardinal Cullen.

No. 5. I sued the bishop for damages for the denunciation by the curates, and I was non-suited on the evidence of one of the curates (Walsh), who swore that the bishop *permitted* the denunciations but did not *direct* them.

No. 6. This non-suit cost me more than £200.

No. 7. I sued one of these curates (Walsh) for the denunciations, and obtained a verdict with £100 damages.

No. 8. A motion was made for a new trial, and after two years' litigation the new trial was granted.

No. 9. At this second trial the curate made no appearance, and I obtained a verdict with damages £250.

No. 10. My costs in this protracted litigation amounted to £350.

No. 11. Neither costs nor damages have been paid me up to this, and I never expect to get a farthing of either.

No. 12. I sued the other curate (Neary) for damages arising from a libel written on me in the chaplain's book in the union workhouse, and was given a verdict with £100 damages.

No. 13. I have never received either damages or costs (in this case £120), and I believe I never shall.

No. 14. These two curates were left in my parish from August 15th, 1869 till November 25th, 1871.

No. 15. I was handed in October, 1870, a paper wrirten by Dr. M'Donald, V.G., professing to suspend me for having taken the action at law against the bishop—the one that cost me over £200.

No. 16. When I wrote to the V.G., to ask him what authority he had to suspend me, he said it was no business of his to argue with me, and he sent me, through the curates again, a renewed sentence supplying the date omitted in the former one.

No. 17. The curates handed me in the following month a citation to a trial for the offence of which I had been already found twice guilty.

No. 18. Ten days before the day fixed for the trial I was suspended again by the same V.G.

No. 19. On the 12th following January the curates handed me a suspension from the bishop, which he said, in a letter accompanying it, was a censure *ex informata conscientia*, and admitted of no appeal.

No. 20. Cardinal Cullen refused my vote at the election of a bishop on the 19th September, 1871, on the ground that I was disqualified to vote, as being a suspended priest.

No. 21. The same Cardinal suspended me over again on the 13th November, 1871, for not respecting the censures already passed on me.

No. 22. He printed this paper, declaring me a suspended priest, and had it placarded in my parish.

No. 23. He had this done by two new priests, who at that time succeeded the curates, Neary and Walsh.

No. 24. I took an action against the Cardinal for the libel which he wrote on me without my presence or knowledge, and which he called a suspension, and I was granted a verdict with a farthing damages.

No. 25. The Cardinal has got a conditional order for a new trial, which I expect will be argued in the approaching Michaelmas term.

No. 26. The Cardinal and all the other experts swore that Dr. M'Donald had power to pass sentence on me on the 10th October, 1870, although he only got power on the 25th same October, "to hear and adjudicate upon criminal causes, and inflict centures."

No. 27. Cardinal Cullen swore that I was bound to believe Dr. M'Donald had power to try my case because he said he had.

No. 28. "Experts" swore that my crime was so grievous that no trial at all was required, even for the purpose of extenuating it, and moderating the punishment the judge might award.

No. 29. No man in Ireland ever read the bull, *Ad reprimendas insolentias*, which Cardinal Cullen swore he relied on as satisfying him that I was so great a criminal that I had no right to a trial.

No. 30. Dr. M'Donald was listening for several days to the experts swearing that he had power to suspend me, and he never went forward to inform the court and jury that it was fifteen days

after passing sentence he got power to inflict censures, and never told the experts they were swearing what he knew was false.

No. 31. The Cardinal suspended me without notice, when I was 100 miles away from him, and perhaps saying my prayers, or fast asleep; without ever having told me that he applied for, or got any authority to judge me at all.

No. 32. The Cardinal made over my parish to his nephew without my knowledge or leave, and the nephew told the Commismisioners of Education to sheriff the decree.

No. 33. The Commissioners did the bidding of the Cardinal's nephew—wrote an order for the transfer of my five schools to the possession of the nephew's nominee, and informed me that this nominee was my successor in the parish.

No. 34. One of the judges (Fitzgerald), who is to sit on my case next month, was a party to this order, although at the time he was informed by two other judges (Lawson and Morris), that my case was already entered for trial in his court, and that he himself might be the judge to try it.

No. 35. This judge (Fitzgerald), that condemned me unheard was himself guilty of the same crime with which I was charged.

No. 36. The Cardinal sent his commands to another public board, and his commands were obeyed.

No. 37. When I told this board, I was never tried or justly condemned, they told me my suspension was unmistakable.

No. 38. Two successive governments have sanctioned the proceedings of these boards.

No. 39. The House of Commons has done the same in the case of one of them.

No. 40. People of this realm ask the veteran statesman, Earl Russell, to tell you whether Ireland is ruled by the Queen of England or the Pope of Rome.

No. 41. And, reader, if you have a doubt upon your mind as to the truth of any of the facts, or the soundness of any of the principles put forward in this book, apply for proof, or further information to the writer, who will be happy to give it to all who may take the trouble of seeking it. Vive valeque et Deum amato.

P.S.—My book is a full answer to Mr. Gladstone's challenge as thrown out to loyal Roman Catholics in his pamphlet issued

on the 7th instant. When I first saw the four propositions of his pamphlet in his article in the *Contemporary Review*, I wrote him the following letter, which I publish here for the purpose of showing that I am not called upon to notice in any other way the last publication of this eminent statesman. If he, or any other member of Parliament, will get a select committee to inquire into the treatment I have received from the two public boards, I will prove before it every thing I state in my book; and let the ultramontanes give an account of their loyalty before such committee.

In a public letter which I addressed Mr. Gladstone on the 8th Angust, 1872, I wrote :—"I propose to show in this letter that certain theological opinions which the State has always looked upon as inconsistent with true allegiance, and as subversive of civil and religious liberty, have been lately preached from high places in this country, and have exercised an influence over people in lofty stations, which is so pregnant with danger to the civil supremacy of the Queen, and the allegiance due from her subjects, that her responsible advisers are called upon to inquire into the facts of the case, and provide a remedy for the evil, if it be found to exist, before its widespread influence becomes incapable of being fully counteracted. The opinions I refer to are known among Catholic theological writers as the teachings of the ultramontane divines—they being held chiefly by Italian and Jesuit writers. I do not allude to a scholastic opinion which has become a dogma of faith, namely—the infallibility of the pope. Statesmen, generally, have viewed this doctrine too, with jealousy and dislike; but its belief appears to me in no way inconsistent with the civil duties of Catholics, as members of a free State; and I, therefore, expressly exclude all allusion to it. The pretensions to temporal sway, however, on the part of the pope, lately put forward by his legate in this country, and this legate's attempts to enforce the censures of the celebrated *Bulla Cœnæ*, are things of quite another sort. Catholic emancipation would never have been granted, and I will say it should not, if the hierarchy of that time were imbued with the same sentiments which Cardinal Cullen has imported from Rome, and with which he has impressed the minds of very many ecclesiastics in Ireland. If these sentiments were mere

mental impressions, propagated by spiritual means, I do not say the Queen's ministers would be called on to notice them; but when pains and penalties are inflicted, and when public boards become the executive of papal bulls, and the agents of a policy of aggression, that, in the hey-day of their power the Roman pontiffs were unable to carry out in these islands—I say the minister who thinks he can ignore such a state of things, mistakes his duty."

In his own good time, and after he had made himself fully acquainted with all the facts of the case, Mr. Gladstone has spoken out in a manner every way befitting his high position in the State; and with a moderation of language altogether in accordance with the character and previous public career of the leader of the liberal party, whether he was in or out of the service of the Queen.

The Right Hon. W. E. Gladstone.

Callan, Ireland, October 3rd, 1874.

DEAR SIR,—Poverty, it is said, makes us acquainted with strange bedfellows; but my poverty has made me acquainted with many of the greatest men in England, including the late and a former prime minister of the Queen; and my visit of distress to Hawarden Castle made me acquainted with some other highly distinguished people, including the great ecclesiastic whose lamented death Winchester and all England still mourn.

I am not insensible of the honour you have conferred upon me; and it is for this reason that I write to request that you will set yourself right before the public in the matter of a passage in your late publication, which has not been understood in the sense in which I know you meant to write it. I beg, therefore, you will allow me to inform the public that in this passage which I quote from your essay, you do not refer to Roman Catholics generally, but to the people of that religion, who are endeavouring to revive in our days pretensions and opinions which have been almost everywhere exploded for centuries. You will remember how bitterly I complained to you of my persecution by the ultramontanes, whose disloyalty I abhor quite as much as you do your-

self. "At no time since the bloody reign of Mary has such a scheme been possible. But if it had been possible in the seventeenth or eighteenth centuries, it would still have become impossible in the nineteenth : when Rome has substituted for the proud boast of *semper eadem*, a policy of violence and change in faith : when she has refurbished and paraded anew every rusty tool she was fondly thought to have disused : when no one can become her convert without renouncing his moral and mental freedom, and placing his civil loyalty and duty at the mercy of another : and when she has equally repudiated modern thought and ancient history."

In August, 1872, I sent you a letter which I afterwards published, in which I gave you some idea of the efforts that people were making to establish in Ireland a papal temporal sway; and I even informed you that public boards in this country had become the executive of papal bulls of the middle ages. If I be a Roman Catholic, I say, with our O'Connell, that I am still no papist; and if I accept the infallibility of the pope, it is only because the doctrine has been defined by a general council, and that I am still free to consider the pope, as a mortal man, to be as fallible and as peccable as I am myself, except when he is teaching the universal church from the chair of Peter the faith of Christ.

I have the honour to remain, dear sir,

Yours faithfully,

R. O'KEEFFE.

P.P.S.—At the desire of friends I reprint here a statement which I made public three years ago, after Cardinal Cullen had proclaimed me a suspended priest, and I add a list of subscribers to my defence fund. For various reasons, many subscribers have wished to contribute privately, and all such contributions have been added to the list in one sum.

The bull called In Cœna Domini takes its name from the circumstance that it used to be read in Rome every year, on the

day of the Lord's Supper by a cardinal deacon in presence of the pope. After the reading of the bull, the pope threw a burning torch in the public place to denote the thunder of this anathema. The author of this celebrated bull is unknown. It chiefly contained excommunications and anathemas against heretics and all who disturb or oppose the jurisdiction of the Holy See. Pope Clement XIV. suspended the publication of this bull in 1773, and Pope Pius IX. annulled it in 1869. In the new constitution which he issued in its place in October, 1869, he renews the censure of excommunication against any one who brings a prelate before a lay judge for the purpose of impeding him in the exercise of his jurisdiction; and he also thunders excommunication against any one who charges an ecclesiastic with a criminal offence, before a lay tribunal. The words of the text are:— "Cogentes, sive directe, sive indirecte, judices laicos ad trahendum ad suum tribunal, personas ecclesiasticas præter canonicas dispositiones: item edentes leges vel decreta contra libertatem aut jura ecclesiæ." Cardinal Cullen maintains that I have incurred the censure of excommunication, under that clause of the bull, for having brought Dr. Walsh on a charge of slander before the Queen's Bench; although his Eminence knows that some days after I was denounced as a liar on the altar by my own two curates, I wrote a letter of complaint to the bishop (the one dated August 20th, 1869), sending the same day a copy to his Eminence and that, when I could get no redress from any ecclesiastic in Ireland I applied to the Prefect of Propaganda in Rome for leave of absence from my parish for three months, in order to visit Rome and make my complaint there. Cardinal Barnabo refused me this leave after, as he informs me in the letter, he had made inquiries on the subject from Cardinal Cullen. In the face of these incontrovertible facts, I care not who blames me for seeking redress in one of the Queen's Irish Courts. Accordingly it having been proclaimed in a very public manner last Sunday (November 26th, 1871) in the Friary chapel here, that I had been suspended by Cardinal Cullen, I have served a writ on his Eminence for slander, and if I can provide the necessary funds, I shall certainly follow up the proceeding. My solicitor thinks the case will end in the House of Lords. I appeal to the public

therefore, Catholic and Protestant, for support. An attempt is made to introduce a discipline into the Irish Catholic Church which would make the laity the slaves of the clergy, by screening the latter from the consequences of their illegal acts, and which would make the clergy the slaves of the bishops, by visiting them with the censures of the Church, if they dared to remonstrate against episcopal tyranny. My cause is the cause of freedom from unjust and tyrannical laws, at least as far as these countries are concerned. To exempt the clergy from the jurisdiction of civil courts may suit the circumstances of other countries; but in this free country the clergy generally would, I believe, themselves indignantly disclaim such privileges, even though they were not to be used against them, as attempted to be done in my case.

The Protestants of these countries, of course, on principle care nothing for papal excommunications; yet Cardinal Cullen would maintain stoutly that the censures of the bull *Apostolicæ Sedis* (Oct. 12, '69), as the Bulla Cœnæ affect them quite as much as they do the members of his own church. His Eminence has been educated in a school of divinity, where the bull of Adrian IV. in 1156, making over this island to Henry II. of England, and the bull of Pius V. in 1570, absolving the people of these countries from their oath of allegiance to Queen Elizabeth, are held in reverence. Will the people of these free countries, Protestant or Catholic I care not, tolerate a papal assumption of temporal power in the 19th century, which our ancestors in the 16th denounced as an invasion of the rights of the monarch, and an unwarrantable tampering with the duties of the subject, and which the Irish of the 12th century resisted in arms, until reduced to subjection by the superior strength of the English nation? If Cardinal Cullen succeed in exempting the Irish clergy from the jurisdiction of civil courts, what redress will a Catholic have, if illtreated by a priest or bishop? My case proves that none need be expected, at least where the bishop is the delinquent; but if I get from the public the support I require, I will baffle with ease all attempts to put the brand of slavery on the clergy, or laity of the Irish Church.

Dr. Lingard (reign of Henry II.) writes :—"To justify the invasion of a free and unoffending people, Henry's ambition had discovered that the civilization of their manners, and the reform of

their clergy, were benefits which the Irish ought cheerfully to purchase with the loss of their independence. Within a few months after his coronation, John of Salisbury, a learned monk, and afterwards Bishop of Chartres, was despatched to solicit the approbation of Pope Adrian. The envoy was charged to assure his Holiness that Henry's principal object was to provide instruction for an ignorant people, to extirpate vice from the Lord's vineyard, and to extend to Ireland the annual payment of Peter-pence ; but that, as every Christian island was the property of the Holy See, he did not presume to make the attempt without the advice and consent of the successor of St. Peter. The pontiff, who must have smiled at the hypocrisy of this address, praised in his reply the piety of his dutiful son ; accepted and asserted the right of sovereignty which had been so liberally admitted ; expressed the satisfaction with which he assented to the king's request, and exhorted him to bear always in mind the conditions on which that assent had been grounded."

And Dr. Carew, with whom the P. P. Callan was intimately acquainted, when he published his History of Ireland in 1835, writes at page 161 :—" But besides the prejudice which was excited against the invaders by the immorality of the ecclesiastics whom Henry sent over to reform the manners and improve the piety of the people and clergy of Ireland, there was another circumstance which created a hostility to the pretensions of the English sovereign, which the superior force of his arms alone could subdue. Remote as the clergy and people of Ireland were from the contests, which in those times had so often occurred between popes and kings, on the limits of their respective authority, they, notwithstanding, appear to have been always deeply impressed with the conviction, that to the Roman pontiff obedience in spiritual matters only was due. The pretensions put forward by some of the popes to temporal dominion over them, the Irish people sometimes, indeed, passed by with becoming silence ; but no document can be adduced to show that they ever recognised in the Roman pontiff the right to exercise any temporal dominion over them. During the pontificate of Gregory the Seventh, that pope, in a letter which he addressed to Turlogh, who then swayed the Irish sceptre, advanced the same pretensions to temporal

power, which, in his intercourse with other sovereigns, he so frequently insisted upon. Yet, neither on this occasion, nor on any other, do we find any tribute remitted to Rome, or any act performed, which would imply that the sovereign of Ireland regarded his temporal authority as dependent on that of the Roman pontiff. On the contrary, even after many years had elapsed since the invaders had first landed in Ireland, the Irish people addressed a letter to a successor of Pope Gregory, in which they openly asserted the entire temporal independence of their sovereign, and denounced the proceedings of Adrian with regard to Ireland, as a flagrant violation of order and of justice. In the year 1316, Donald O'Neill, Prince of Ulster, and several chieftains, addressed a letter to Pope John the Twenty-third against the tyranny and cruelties of the English. In this letter they state that from the conversion of Ireland by St. Patrick, and their coming under the spiritual obedience of the Roman Church, until the year 1170, they had sixty-one kings, who acknowledged no superior in temporals. They say that Adrian acted unjustly without any respect for law or justice. The letter of O'Neill, and that which the pope addressed in consequence of it, to Edward the Second of England, are subjoined in the Appendix. Doctor Lanigan remarks, p. 274, vol. iv., that in the old Irish Synods, he has not met with any assumption of power by the clergy with regard to political or civil matters."

Thomas Moore, in the second volume of his history of Ireland, at page 204, writes :—"The permission accorded to Henry by the pope to invade and subdue the Irish for the purpose of reforming them, was accompanied by a stipulation for the payment to St. Peter of a penny annually, from every house in Ireland, this being the price for which the independence of the Irish people was thus coolly bartered away. Together with the bull containing the grant and stipulation, was sent also to Henry a gold ring adorned with a valuable emerald, as a token of his investiture with the right to rule over Ireland; and this ring, as we are informed by the bearer of it, John of Salisbury, was, by Adrian's orders, deposited in the public archives."

Nicholas Breakspear (Adrian IV.) was the only Englishman who ever sat in the chair of St. Peter.

See Blackstone on the Benefit of Clergy, vol. iv., chap. 28, and Lingard (Reign of Henry II.) on the origin of the ecclesiastical courts.

The bull of Adrian may be seen in the original Latin in O'Sullivan Bear.'s Hist. (Tom. II. Lib. I. cap iv.), and Dr. Lanigan says of it in his History (vol. iv. chap. 28) :—"Adrian's Bull is of so unwarrantable and unjustifiable a nature, that some writers could not bring themselves to believe that he issued it, and have endeavoured to prove it a forgery; but their efforts were of no avail, and never did there exist a more real or authentic document. Adrian's grant of Ireland to Henry is expressly mentioned, and confirmed by Pope Alexander III. in his letter to him of the year 1172."

Mr. Heron, M.P. in his speech against me, in June '71, took a cowardly advantage of his position as an advocate to say in court that the case O'Keeffe v. Neary, could more properly be called, Martin Luther *v.* the Catholic Church; but I indignantly repudiate the epithet applied to me. My faith is strong in the religion I profess, and I would not for any consideration do any thing that would damage it. I have gone into courts for the purpose of protecting my character from vile slanders; and, if scandals have turned up in connexion with the trials in which I have been plaintiff, it was Mr. Heron himself that brought them before the public. Law has been a painful necessity for me. I love peace, and I have always sought seclusion and retirement. I think, too, I love my fellow-man, and certainly, my conscience has never accused me of the slightest unkind feeling to any human being.

Dec. 3rd, 1871. R. O'KEEFFE, P.P. Callan, Ireland.

Callan, Dec. 3rd, 1871.

His Eminence Cardinal Cullen.

MY LORD CARDINAL,—A document was read in the Friary Chapel here on last Sunday, which pretended to be a sentence of suspension passed on me by your Eminence. You have thus for the sixth time passed censure on me behind my back, without any trial or citation to one, and without alleging any crime as far as I have been able to learn, except that I went to law with Dr

Walsh. I think in the circumstances no one can reasonably expect me to make an apology for going to law with your Eminence. I proposed before to leave the whole of my case to the professors of canon law and theology at Maynooth, and I propose now to leave it to the saying of the three other Archbishops in Ireland. I made every effort to keep all the former cases out of court, and in virtue of my love for peace and religion, I make this final effort to keep the present one out of court also. No doubt another half dozen suspensions will be flaunted before my face; but, my Lord Cardinal, I tell you plainly, that until I degrade myself first by the commission of some crime, I laugh at the folly of the attempts of others to degrade me.

I have the honour to remain,

Your Eminence's most humble servant,

R. O'KEEFFE.

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R. Kyle Knox and Friends	7	15	0
J. M. Masney	2	0	0
A Friend at Longford (coll.)	3	15	0
James H. Dalton ...	2	0	0
John Bowron	3	0	0
E. R. M'Donnell ...	2	2	0
W. H. S. Monck ...	3	0	0
John Hickey	1	0	0
Cecily Keeffe	1	0	0

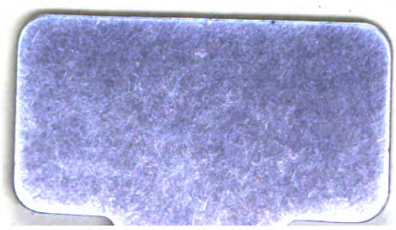
	£	s.	d.
Edward Wallace ...	1	0	0
Michael Keeffe ...	1	0	0
Martin O'Keeffe ...	1	0	0
Andrew Long	1	0	0
Edward O'Keeffe ...	1	0	0
Rev. R. Johnston ...	1	0	0
Mr. George Peel ...	1	0	0
Patrick Healy ...	1	0	0
Rev. George Reid ...	1	0	0
Francis Spaight ...	1	0	0
William Spaight ...	2	0	0
James Kelly	1	0	0
Michael Butler ...	1	0	0
Samuel Creswell ...	1	0	0
Rev. Wm. Kilbride ...	1	0	0
James O'Flaherty, per Do.	1	0	0
William Tobin ...	1	0	0
A. MacDowell ..	1	0	0
J. and W. Jameson ...	1	0	0
Con. Dwyer	1	0	0
Andrew Miller (collected)	2	0	0
Rev. John D. Cooke ...	1	0	0
W. D. Cooke	1	0	0
Thomas Wyse... ...	2	0	0
Samuel M'Comas ...	2	0	0
Patten S. Bridge ...	3	0	0
John Walton	2	0	0
John Lynch	1	0	0
J. Lowry Whittle ...	1	0	0
Rev. John Lynch ...	1	0	0
Rev. Alexander Irwin ...	1	0	0
Rev. Thomas F. Black ...	1	0	0
Patrick O'Neill ...	1	0	0
Denis Laherty ...	3	0	0
James Finn	1	0	0
James Maher	1	0	0
Anthony Callaghan ...	1	0	0
Miss Ellen Cass ...	1	0	0
Philip Keeffe	1	0	0
John Drennan... ...	1	0	0
Mrs. Mahoney ...	1	0	0
Hugh Green	3	0	0
Michael Cormack ...	2	0	0
Edward M'Namara ...	1	0	0
Pat. Walsh	1	0	0
Walton and Nolan ...	5	0	0
Richard Burke ...	1	0	0
James Tobin	1	0	0
Patrick Tobin ...	1	0	0
Anthony Fennelly ...	1	0	0
James Fennelly ...	1	0	0
Thomas Kenny ...	1	0	0
Patrick Dunne ...	1	0	0
Thomas Cormack ...	1	0	0
John Hoyne	4	0	0
Patrick Keeffe ...	5	0	0

	£	s.	d.
Robert Hawe	1	0	0
Patrick Donovan ...	1	0	0
Wm. Buckley	1	0	0
Mrs. Lynch	1	0	0
Michael Dunne ...	1	0	0
James Neil	1	0	0
John Gorman	1	0	0
Michael Grady ...	1	0	0
Robert Cahill	2	0	0
John Tobin	1	0	0
Mrs. Green	1	0	0
Murtough Synnot ...	1	0	0
Richard Somers ...	1	0	0
John Bryan	1	0	0
Michael Keeffe ...	5	0	0
Edward Hally ...	1	0	0
Michael Heron ...	1	0	0
Pat. Bolger	1	0	0
Nicholas Bishop ...	1	0	0
John Calaghan ...	1	0	0
Michael Dwyer ...	1	0	0
Michael Fennelly ...	1	0	0
Michael Ryan ...	1	0	0
John Ruhan	1	0	0
Patrick Walsh ...	1	0	0
Richard Neary ...	1	0	0
Patrick Torpy ...	3	0	0
William Cormack ...	3	0	0
Michael Hickey ...	2	0	0
Walter Shea	1	10	0
Joseph Murray ...	1	10	0
Michael Ryan ...	1	0	0
Gordon O'Neil ...	1	0	0
Edward M'Namara ...	1	0	0
Richard Murphy ...	1	0	0
David Coughlin, senr. ...	1	0	0
David Coughlin, jun. ...	1	0	0
James Hickey ...	1	0	0
John Torpy	1	0	0
Maurice Donovan ...	1	0	0
Michael Tobin ...	1	0	0
Thomas Lonergan ...	1	0	0
Patrick O'Shea ..	1	0	0
Philip Byrne	1	0	0
Mrs. Prendergast ...	1	0	0
Michael Fennelly ...	1	0	0
John Ryan	1	0	0
Nicholas Landy ...	1	0	0
	£492	2	0
Anonymous, and in sums under a pound ...	257	10	0
	£749	12	0
Per London Committee	792	4	0
	£1,540	16	0
Rev. J. T. Waller ...	2	0	0

The three years' litigation with the Cardinal alone has cost me £1,000 up to the present time, and there may possibly be a new trial, as after a seven days' argument before the full court in November, the matter is still undecided. At the trial I stated that previous litigation in defence of my position as Parish Priest of Callan, and in fighting a battle in which every man in the nation is deeply concerned, had cost me more than £700.

"Nam tua res agitur, paries cum proximus ardet;"

and if might can overpower right in my case, what subject of this realm can say that he lives in a free state?

ROBERT O'KEEFFE,

January 4th, 1875 P.P. Callan, Ireland.