

EPISCOPAL ELECTIONS :

Ancient and Modern.

A STUDY IN ECCLESIASTICAL POLITY.

BY

S. E. DAWSON,

DELEGATE FROM CURIST CHURCH CATHEDRAL, MONTREAL, TO THE
DIOCESAN SYNOD AND A DIOCESAN DELEGATE TO
THE PROVINCIAL SYNOD OF CANADA.



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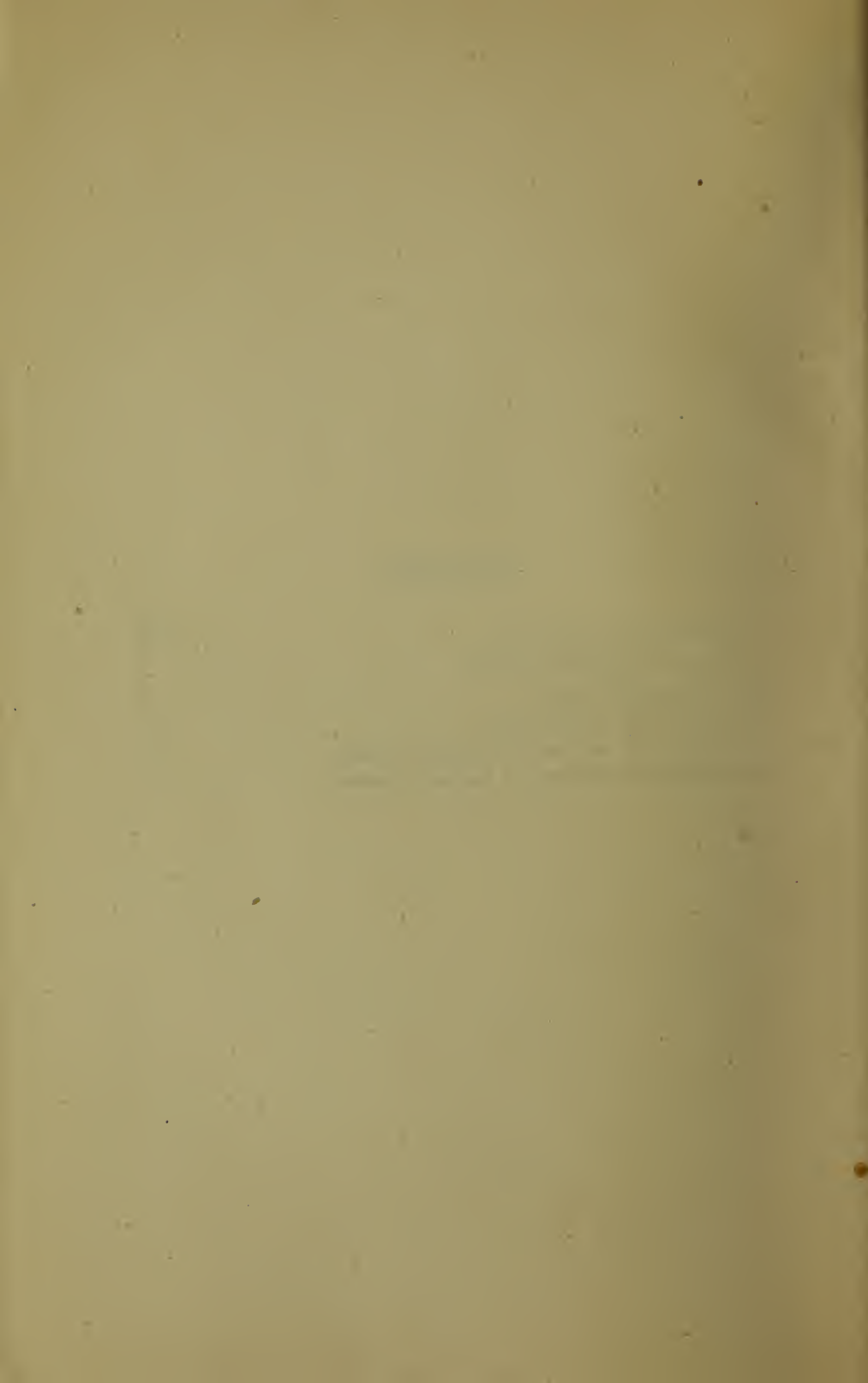
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PREFACE.

This study upon a subject which is now occupying the attention of the assemblies of the Church of England in Canada, is put forth, not as offering any new views, but rather for the purpose of collecting, in a convenient form, the opinions of learned writers upon a much disputed point of Canon law. Care has been taken to cite in all cases the authorities used, and writers of the churches of England and Rome have exclusively been referred to, because, upon such a point, they would naturally have more weight with Anglicans than non-episcopalian writers, no matter how learned the latter might be. Some arguments have been employed which, being of a more general nature, may appeal to the judgment by their own intrinsic force; but none of them are original. They have all been suggested by reading, conversation, or debate. The question is interesting from whatever point it is approached, and public debate could never, in the time usually allotted, go to the bottom of it. The authorities are so voluminous, the period of history covered is so wide, and the circumstances, under which the principles invoked have been applied, are so various, that weeks instead of hours would not suffice properly to discuss them in a public assembly. In all questions concerning the church, a victory in a party sense is a general defeat. When the true governing principle is discovered and adopted, then only the work of legislation is solidly done, and the result can properly be called a victory.

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EPISCOPAL ELECTIONS.

GENERAL CONSIDERATIONS.

When any civil or ecclesiastical institution has been tried by experience and found to work well—when it has been repeatedly tested and has always proved equal to the strain—when the results of its working are evident before our eyes, and when these results, far from exciting dissatisfaction, are continually the subject of congratulation—any proposition to innovate upon such an institution should challenge our earnest attention. If superadded to this, experience has taught us that every deviation has resulted in discord and difficulty, the argument against innovation becomes irresistible, and conservatism has its full justification, for then Lord Bacon's maxim is fully applicable: "it is good not to try experiments in states, except the necessity be urgent, or the utility evident."

These, and many similar considerations apply with full force to the change proposed in the election of Bishops in the Anglican Church in Canada. As to the precise extent of the wishes of the Bishops, they themselves have not informed us. The desires of the Bishops are probably far outrun by the advocates of change, for it is not in the Roman Church only that a man may be "more catholic than the Pope."

It is not pretended that the system of free diocesan election has placed upon the episcopal bench a class of men inferior to their predecessors, or that the surviving nominated Bishops are superior to those chosen by the

dioceses. The diocesan synods have done well in years past, and the presumption must be that, with increased experience, they will do at least as well in the future. The only elections which were accompanied to any extent by conflict were joint elections in which the House of Bishops took part. If the object be to repeat these scenes and to bring the House of Bishops into incessant collision with the synods, the proposed change would most unquestionably effect the purpose. It seems unreasonable to change the rule which has always worked well for that which has always worked ill; or to curtail the rights of the dioceses until they are shown to have made even once a bad election.

It was argued in the Provincial Synod that the divine afflatus rested upon the Bishops. Let it be granted. The proposition is not complete until the clause is added, "and upon the Bishops alone." Another clergyman, referring to the election in the Diocese of Quebec, stated that "everything had turned out well in the providence of God; but what might have occurred—the person chosen might have been a person wholly unfit for the office." It seems harsh to limit the providence of God to that one synod, or to suppose that the clergy and chosen laity of a diocese, entering upon a solemn duty in the method prescribed by the Church, should be, at any time, bereft of the Divine guidance and assistance. The proposition goes far towards a claim for infallibility on behalf of the bishops; while the whole body of the Canon law attaches the chief importance to the testimony of the clergy and people, for they, says St. Cyprian, "have most fully known the life and conversation of each individual." This would naturally result from a residence in the same diocese.

The new canon is misnamed by some "a conservative measure," and its object they say is to rescue the elections from the preponderating weight of lay influence. A

moment's consideration will show that the present method is conservative to a degree. The voting in elections is not conducted in the ordinary way. Every clergyman in the diocese has one vote, and all the lay representatives for his parish have but one vote among them. In the election for Montreal, four, and sometimes six, lay votes counted as one, whereas each assistant deacon, in a church with a large clerical staff, had an entire vote. Moreover the lay votes from a parish were often divided equally and so did not count at all. The fact is that the clergy have a large preponderating influence in elections. This is a most effective check upon the laity, but if superadded to this, there must be another clerical election in the House of Bishops, the laity may as well give up, first as last, any participation in the matter, for it is not consistent with the self-respect of intelligent men to suffer themselves to be amused with the mere shadow of power and responsibility.

And here it is well to note, that what is really claimed, under cover of the proposed canon, is a new election in the House of Bishops, over the Diocesan election. An election to be held with closed doors, and where the reasons of rejection will never transpire. Such an election would be unjust to the candidates, for a clergyman of unsullied reputation might be rejected without reason shown, and that in a house where the members are few in number, and each vote therefore of great weight. If the Bishops would state beforehand what qualifications they require, the electors and candidates would have some guide. These requisites are now unknown, and such a canon as this must produce a violent contest whenever it is acted upon, and the victory will be dearly bought, even if it rests with the House of Bishops, for it will entail the future indifference of a large number of active and independent-minded laymen.

The system of co-optation, which, in course of years,

would probably result from the projected innovation, has the great disadvantage of gradually alienating the body adopting it from the other portions of the civil or ecclesiastical state. By a free system of election alone, can permanent harmony be preserved between the three orders, and the feelings and wishes of the clergy and laity find a voice in the Upper House.

It is not denied that a canon of consecration is necessary. On the contrary, it would be highly proper that rules should be laid down by which the consecrating Bishops should examine into an election, and see that it has been conducted with the canonical forms, and that the person elected has certain specified qualifications. Every organised body has this right; but to reject a Bishop-elect simply because he could not command a majority in the Upper House, would be no more just and reasonable than it would be in the case of the Senate or the House of Lords. A canon of consecration, based on English precedent (*vide p. 47*), might easily be made to command the consent of all.

This proposed change is one of vital importance. It strikes at the foundation of the system which was the pride of the master-builders. The eloquent testimony of Bishop Strachan (*vide p. 50*) to the primitive character of our diocesan elections should be read carefully by every delegate, for there he will find the simple truth stated in simple language. Even a layman, with a fractional vote at elections, can understand it, and may well ask how much less capable, honest, and intelligent, are the laity of 1877 than those of 1858? It is not immediately, or suddenly, that any error in principle shows its ill effect, especially in ecclesiastical matters; but it is in the long course of years, when other occupants have succeeded to the honours of the episcopal bench, that the flaw in the structure will appear, that principles of encroachment will insidiously be worked out in all their logical

sequences, and the laity will find that, as it was in the tenth so will it be in the twentieth century, they will little by little have been ousted of their ancient rights and privileges.

II.

THE ARGUMENT FROM ANTIQUITY.

In the very learned and able discussion which took place, concerning the proposed change, at the session of the Provincial Synod in 1874, great stress was laid upon the custom of antiquity, and especially upon the fourth canon of the Nicene Council. It was maintained by many that these authorities supported a right of absolute veto residing in the House of Bishops.

To this it may well be objected *in limine* that, according to the 21st Article of Religion, general councils may err, and have erred, and moreover that, by the 34th Article, we are taught that it is not necessary that traditions and ceremonies should be in all places one and utterly alike; but that they may at all times be changed according to the diversities of countries, times, and men's manners, so that nothing be ordained against God's Holy Word. It is therefore unreasonable to suppose that regulations of discipline made fifteen hundred years ago, in a semi-pagan community, under an absolute military government, for a state of society which since long ages has utterly disappeared, should be applicable to a society such as ours, where the whole canon of Scripture is in the hands of the laity as well as of the clergy, and upon a continent whose existence was then not even suspected. If the matter were of divine faith, it would fall under another

rule ; but it is one of organisation and outward discipline, and the distinction should be carefully borne in mind.

The most cursory perusal of the Nicene canons will show their inapplicability, and history bears witness to the fact that many of them have been for ages totally disregarded by the church. By the 20th canon* we are absolutely forbidden to kneel when we offer prayers on the Lord's day, and the standing posture is enjoined. The Presbyterian Church alone obeys this command. Then, by the 15th canon,† bishops, priests, and deacons are forbidden to move from city to city, but must remain in the place for which they are ordained, Upon this, Dean Stanley remarks: "By the close of the century it was set aside as if it had never existed, and there is probably no church in Europe in which the convenience or the ambition of men has not proved too strong for its adoption. If the translation of bishops has now become the exception, yet the translation, the promotion, of presbyters and deacons from place to place has been so common as to escape notice." This canon was re-enacted at the General Council of Chalcedon,‡ and the bishop who receives a clergyman from another diocese, as well as the priest who removes, are excommunicated until the wandering clergyman returns to his own bishop.

The transitory nature of many of these canons is seen in the 7th. It is as follows: "Since custom and ancient tradition have prevailed, that the Bishop of Ælia should be honoured, let him have the next place of honour, saving to the Metropolitan his proper dignity." Now Ælia was a new name for the rebuilt city of Jerusalem,§

* See Stanley—Eastern Church, p. 263.

† Eastern Church, p. 261.

‡ Council of Chalcedon, A.D. 451, Canon 20. See also, to the same effect, 21st Canon of the Council of Antioch, A.D. 341. Bp. Hefele, p. 72.

§ Stanley—Eastern Church, p. 261.

Bp. Hefele—History of Christian Councils, p. 408.

the mother city of Christianity, and yet it was made to yield precedence to Cæsarea; and, after all, scarcely a century had passed before Jerusalem was again a patriarchal city, and Cæsarea a simple bishop's see. So much for ancient tradition.

It would be excessively tedious to go over all the canons of this council. Space will permit only of allusion to the questions of the "lapsi," the "catharoi," the "digamists," and others, relating to the manners and morals of the clergy. It may, however, be observed that by the 5th canon, provincial synods should be held twice a year. Our provincial synods are held only once in three years.

It is important to notice that the present attempt to introduce new customs into the Canadian Church stops short of the canons of Nicæa. That council records the first steps which led to the privileges of the great patriarchates, and to the primacy of the see of Rome. The 6th canon reads: "Let ancient customs prevail; those in Egypt, Lybia, and Pentapolis; that the Bishop of Alexandria have power over all these, since this is customary for the Bishop of Rome also (since the Bishop of Rome also has a similar custom). But this is clearly manifest, that if any be made a bishop without the consent of the Metropolitan, the great Synod has determined such an one ought not to be bishop." Clearly then, if the proposed change is to give our church a Nicene status, the Metropolitan should have a veto. Why not take up the whole ground at once, and erect a protestant popedom? Then again, Who should be, by Nicene rule, the patriarch of our church? This is a theoretical point which may be left to more learned canonists, but it is clear that, whereas the Church in Britain was founded by Eastern missionaries, and therefore (although it afterwards yielded) may escape the primacy of Rome, the Christian Church in Canada was founded by Roman missionaries, and by strict canon law, the Archbishop of Canterbury

had no right to ordain bishops in the patriarchate of another prelate. The arguments of Barrow, in his treatise on the Pope's supremacy, though conclusive as to Britain, fail as regards Canada, for the above reason. Such points as these were pressed upon the Oxford tractarians by Cardinal Wiseman in 1840, and one of them, the Rev. Wm. Palmer, fairly driven into a corner by the keen logic of the Cardinal, is obliged to take this position: "We*
 " fully admit that the strictness of the canons may be dis-
 " pensed with, either in a case of necessity, or for the
 " convenience of the church, and the advantage of reli-
 " gion; but there is one exception—the church can never
 " dispense with those canons which are based on the law
 " of Christ." If this be the case, why are our "ancient
 customs" troubled by a resuscitation of customs dead
 and buried for a thousand years?

The particular canon which is relied upon by the innovating party is the 4th: "The bishop ought indeed
 " chiefly to be constituted by all (the bishops) of the
 " province; or, if that is not possible on account of
 " pressing necessity, or on account of the length of
 " journeys, three (bishops) at least shall meet, and pro-
 " ceed to the imposition of hands, with the consent of
 " those absent in writing. The confirmation of what is
 " done belongs by right to the Metropolitan." To this canon
 it should be noted there is no excommunication attached,
 as in the case of the canon forbidding the removal of cler-
 gymen. The point concerning the *consent* given will be
 noticed in another place. Here we would only quote the
 comment of the learned Dean of Westminster:† "This

* Rev. Wm. Palmer—Apostolic Succession and Jurisdiction of the Episcopacy in the British Churches Vindicated, p. 54.

† Dean Stanley—Eastern Church, p. 259.

Rev. Wm. Palmer—Apostolical Succession, &c., of the British Episcopacy Vindicated, p. 248, to the same effect.

The Greek word is translated "ordinari" by Dionysius Exiguus, and in the Decretum of Gratian Dist. 64, c. 1.

“ canon is still observed throughout the greater part of Christendom. It enjoined that at the consecration (ordination, as it was then termed) of a bishop, no less than three bishops should be concerned, as representing the absent bishops of the province, who might be detained by pressing business or the length of the journey.” “ On the observance of this canon in the consecration of Archbishop Parker of Canterbury,” he adds, “ depends the degree of validity and regularity which is attached to the orders of the Church of England.” To this may be added the remark that the same rules, which were observed in the case of Archbishop Parker, are to this day observed in Canada, and upon the canonicity of that one ordination the orders of the whole Anglican Church depend.

All these points, however, are questions of “ discipline,” not matters of “ Divine faith,” and therefore it does not follow that, because Nicæa gave us a creed, we should adopt all its canons. As for the creed in our prayer books, which passes under the name “ Nicene,” its proper designation is Constantinopolitan; for the Council of Constantinople, fifty-six years later, made many changes in the body of the Nicene creed, and added to it all the clauses after the words, “ I believe in the Holy Ghost.” The clause “ and from the Son,”* is the unauthorised interpolation of Recared, a semi-barbarous Gothic king of Spain, who, in the zeal of recent conversion from Arianism, sought to improve upon the deposit of faith. The whole Western Church, Roman and Anglican, has adopted this interpolation, and it is this which prevents inter-communion between the Anglican and the orthodox Eastern Church. If, then, the

* Cabassuetio Synopsis Concilliorum, vol. 3, p. 95.

Rev. E. S. Ffoulkes—Church's Creed or the Crown's Creed.

Do.

Is the Western Church under Anathema?

church in Canada is to be brought to the Nicene standard, why not "let ancient customs prevail," and commence with the creed?

III.

THE PRIMITIVE CHURCH.

From the preceding considerations it will no doubt appear that each particular church has a right to make canons and to repeal them, provided only that nothing be enjoined which is contrary to the law of Christ, or forbidden which is enjoined by that law. It will be admitted also that the New Testament contains the law of Christ; and it will not be denied, at least by the advocates of the proposed changes, that bishops are the successors of the apostles.

It seems strange then that, in the discussion at last meeting of synod, so little stress was laid upon the election of Matthias, recorded in the 1st chapter of Acts. The passage is so clear, and the translation so exact, that no knowledge of Greek or of canon law is required to understand it: "*They* (the disciples generally, not the apostles) appointed two," and, after prayer, "*they* gave forth their lots, and the lot fell upon Matthias, and he was numbered with the eleven apostles." It is evident from this passage that the apostles did not vote separately from the disciples. This election, it would naturally be supposed, was a model instance, at the very commencement, of the organisation of the church; but, at the Provincial Synod, it was explained away as an exceptional case. Bishop Wordsworth, in the same strain, commenting on the passage, says:* "The precise mode

* Bp. Wordsworth—Greek Testament, Vol. I.

“ which was here used in the election of Matthias seems to have been left in uncertainty, that it might not be used as an example for the future ordinations of the Christian ministry.” That is to say, although the general method and principle are clearly recorded, we are to abandon them because it is not stated whether the lots were cast in an urn, or precisely how the names were written upon them. Cabassuetio also thinks the case exceptional.* “ Peter,” he says, “ could himself have elected the new apostle in place of Judas ; but he preferred, because of his prudence and moderation, to gratify the whole church.” Canon Cook† explains the passage thus : “ *Appointed*—or presented, nominated. The nomination appears then to have rested with the whole body of Christians ; but the selection of the individual in this case was referred to the Lord, and the ordination was made unquestionably by the imposition of the apostles’ hands.” Bingham does not think the case so exceptional.‡ Instances similar, he says, “ I confess there are not very many ; but some few there are, which show that that method of electing was not altogether so singular as is commonly imagined. For in Spain it was once the common practice, as may be concluded from a canon of the Council of Barcelona, anno 599, which orders that ‘ when a vacant bishopric is to be filled, two or three shall be elected by the consent of the clergy and people, who shall present them

* Cabassuetio *Synopsis Conciliarum*, vol. I., p. 278.

Petrum quidem potuisse per seipsum novum, loco Judæ, apostolum eligere, sed maluisse per prudentiam et modestiam universæ ecclesiæ gratificari.

De Marca, who was a Gallican, could not go so far, but thinks James and John helped Peter to regulate the form of the election.

† Canon Cook, *Commentary on Acts*.

‡ Bingham’s *Works*, Vol. II., p. 3.

Thomassin *Ancienne et Nouvelle Discipline de l’Eglise*, Vol. IV., p. 237, also notices this custom.

“ ‘ to the Metropolitan and his fellow bishops, and they, “ ‘ having first fasted, shall cast lots, leaving the determination to Christ the Lord ; then he on whom the lot “ ‘ shall fall shall be consummated by the blessing of consecration.’ ” In precisely the same manner the native Christian Church of Malabar proceeded in 1815 in the election of a bishop.* An assembly was held of the presbyters and chief laity, who put three names forward and made the ultimate choice by lot. This poor persecuted people could make out the meaning of the passage though they had been isolated for so long a period. There is in New Testament rules a universal applicability which the canons of councils do not appear to possess.

When the Christian Church became a missionary church and sent out apostles to convert the heathen, it is evident that the missionaries must have been designated for their work.† In the same way the Church proceeds now, as for instance in Canada, in the case of the Bishop of Algoma, or in the North West Territories, where there is no organised Christian community. But it is these which are the exceptional cases ; for, as Maupied shows, as soon as there was a sufficiently numerous body of Christians, the Christian communities each elected their own bishop.‡

The question before us is not concerning missionary bishops, but concerning the succession to sees in settled and organised communities of episcopalians ; and in order to shew that the custom which now obtains in Canada is supported by the most weighty authority, it

* Howard—Christians of St. Thomas, p. 65.

† Bingham's Works, Vol. II., p. 27.

‡ Maupied Juris Canonici Compendium.

Ab apostolis vero creati, eorumque successores episcopi alios similiter constituerunt. Principio vix præsentiam ac testimonium præstabat, episcopi eligebant populus assentiebat ; at post modum Christianus populus numerosior factus planatim præsentiam ac testimonium extendit ad suffragium.

will be best to give a sort of *catena* of extracts from authors of well known ability and learning, but before doing this it will be well to refer to those who have been freely quoted upon the other side.

Peter de Marca, who was made Archbishop of Paris for his defence of the Gallican liberties, and whose name is of much weight, although his book is upon the Index, is of opinion that in ante-Nicene times election and ordination were usually performed together.* The bishop or bishops sought the *testimony*† or suffrage of the clergy and people by questioning, and awaited their consent before ordaining. Their great aim was that, under no circumstances, a bishop should be obtruded upon an unwilling people, and therefore the desires and the votes of both clergy and people were absolutely necessary in order that the ordination should be peaceably performed. The clergy,‡ he thinks, had no power or rights which the people did not equally share, but he thinks that the bishops had the chief part.

This must be so if election and ordination are at any time considered together; for in ordination no part whatever of the ceremony devolves upon any but the bishops, while election is a joint function of clergy and laity. Moreover, as Bingham observes (*vide* p. 29), it is of no consequence what words are used, there was in the hands of the people and clergy a real and § effective power by

* P. 358.—De Concordia Sacerdotii et Imperii.

Sed in personæ deligendæ examine vacantis ecclesiæ clerum et populum interrogantes, eorum testimonia exquirabant, atque consensum præstolabantur, ne invitis obtruderetur Episcopus. Itaque desideria et vota cleri atque populi necessaria quidem erant ut in pace fieret ordinatio.

† P. 359.—Testimonium aut suffragium.

‡ Non reperio discrimen aliquod constitutum a veteribus inter clerum civitatis et populum.

§ DeMarca p. 358.—Solum testimonium et consensum designandi Episcopi clero et populo tribuit, ipsam vero designationem sive electionem et iudicium Metropolitano cum synodo. What is this in reality but saying that the people nominated and the bishops consummated the choice?

which the name of the person they wanted was put forward, and if, as De Marca concedes, the bishops always chose, or designated, or elected, that person and ordained him, the dispute is one of words not of things. Doubtless if * there was any defect in the qualification the bishops would not accept him. No one ever pretended that Catholic bishops would ordain an Arian, for instance. In this respect it is easy to see that the bishops had the chief part.

De Marca† adds that this opinion is a new one, and that many will distrust it because of its novelty. He then goes on to say that in the Western Church election began to be separated from confirmation, and this last from ordination; then the election itself was attributed to the clergy and people, and the decree of election was reserved to the judgment of the Metropolitan and bishops, and that afterwards, on account of the long intervals between the assemblies of synods, it was reserved to the Metropolitan alone. The Nicene Council, he thinks, laid down the powers of the bishops, leaving the rights of the laity and clergy to custom. If this be so, the powers which required a special canon could not have been established very firmly in ante-Nicene times, and this De Marca acknowledges, for he says, on page 251, that it is certain that bishops before the Nicene Council were elected by clergy and people.

The work of Thomassin‡ is of great authority in the Roman Church to the present day. It is a work of learning and research, but the author's conclusions upon

* P. 364.—*Observabat ista vetus illud institutum, ut ab Episcopis, a clero et a plebe in unam congregatis eligeretur, qui præficiendus erat ecclesiæ vacanti cum illo tamen discrimine, quod superius adnotavi, ut iudicium esset Episcoporum, cleri vero et populi suffragium.*

† P. 358.—*Non me latet, quin plerisque nova videri possit hæc opinio et fortasse ob novitatem periclitari.*

‡ *De Antiqua et Nova Disciplina Ecclesiæ.*

historical points are so much influenced by certain preconceived theories that it becomes necessary to draw from the facts he relates the real inferences, rather than to receive them from the author's own statement. In this matter he lays down two theories, both of which deliberately beg the question at issue.

He commences by laying down the maxim that* "the power of calling bishops to the supreme dignity of the royal priesthood of Jesus Christ, being the participation and the complete imitation of the eternal authority of God the Father over His incarnate Son, cannot be more justly entrusted than to the bishops, who are the most lively images of God upon earth."

Now, if this be established, the whole question falls to the ground, for who can or ought to resist the living representatives of God upon earth? Why should lay people, or the inferior clergy, be called on, in or out of synod, to take part in the government of the Church? Some simple method of assessment is surely all that is necessary. Even the most extreme advocates for the apostolic succession in the Church of England do not go so far. In commenting upon the recent unanimous decision of the English Episcopate upon the Society of the Holy Cross and the question of confession, the editor of the *Church Times* (July 13) says that "the powers of hell have done their worst" acting, he means to say, through the bishops. A most inelegant expression if applied even to laymen, and removed *toto calo* from the sentiments of the learned and pious Thomassin. So much for the extreme Anglo-Catholic view of Episcopacy. As for Thomassin, his theory is essential to him when he treats of the primacy and vicarate of Peter, but the vast majority of English churchmen do not go so far as to place the bishops above the canons, although they have a real

* Thomassin *Ancienne et Nouvelle Discipline de l'Eglise*, vol. iv., p. 195.

reverence for the Episcopate. Some, however, think the bishops infallible, but it is only in so far as they happen to agree with them.

The other question-begging assumption of Thomassin is that because ordination in the early times usually followed immediately after election,* the word *cheirotonia* signified election as well as ordination. If this be so, ordination having never been claimed by any but bishops, the question again falls to the ground.

This view is combated by De Marca, Van Espen, Hefele, Bingham, and all other western canonists. For nothing is easier than to distinguish between election and ordination in the case of the seven deacons in the 6th chapter of Acts. "*Look ye out,*" said the apostles, speaking to the "*multitude of the disciples,*" "*seven men from among you.*" "*And they chose Stephen*" and six others, "*whom they set before the apostles, and when they had prayed they laid their hands on them.*" It is true that in classic Greek, the word *cheirotonia* meant voting by stretching out the hand in an assembly, but from the commencement of the Church it was the word appropriated to the stretching out the hand in ordination. The Apostolic Canons enjoin that ordinations (*cheirotoniai*) shall be performed by two or three bishops, and Thomassin (having doubtless before his mind some precedents in the Roman Church)† thinks that one bishop is sufficient. It is absurd to suppose that in such a case a bishop would first vote by show of hands and then ordain; so Thomassin thinks that, in ordaining, the bishops elected and thus he really eliminates election altogether, thereby leaving totally unaccounted for a custom, on his own testimony, general in the Church for eight centuries after the Council of Nicæa. If any doubt could arise upon this

* Vol. IV., pp. 196, 197, 225, 229.

† Vol. IV., p. 197—242.

question, a reference to the 28th Canon of the general Council of Chalcedon would settle it, where election is called *psephisma* and precedes *cheirotonia*, or ordination. About *psephisma* there is no question, for *psephos* was the small pebble used in voting by ballot.

It is true, says our author,* that St. Cyprian (LI. Epis., 4) attributes to the people the principal power of electing worthy and rejecting unworthy persons as bishops; but Cyprian only means that they did it by their testimony (which he elsewhere calls suffrage), for the bishops were not informed in detail of the life and actions of individuals, whereas nothing could escape the eyes of the people of a diocese. The theory in Canada is the very reverse of this. In this way only, continues Thomassin, the people were in some degree masters of the elections.

It must be observed that this theory of Thomassin's applies only to the period preceding Constantine. For the whole period after he recognises fully the power of the clergy and people in elections, only he thinks that elections did not depend *absolutely* upon the people. The bishops had a *judicium* in the matter. This seems to him to have necessarily resulted from the separation of election and ordination, and the well-settled usage which was brought to light at the accession of Constantine could not possibly be explained otherwise, and so he frankly admits it. He quotes the Council of Antioch, † A.D. 341, to shew that a bishop could not be translated to another see *even if chosen by the people*; and the Council of Chalcedon, which decreed in the case of a disputed election at Ephesus that he should be bishop who *shall be elected* (*psephizomenos*) *by all those who are to be under his care*. This is evidently the origin of the maxim of St. Leo the Great: *Qui præfuturus est omnibus ab omnibus eligatur.*"

Passing on to authors of acknowledged weight in the

* Vol. IV., p. 195.

† Vol. IV., p. 199.

Church of England, we will quote the opinion of Dean Hook, a very learned ecclesiastical historian.

HOOK'S CHURCH DICTIONARY, page 114.

“ When cities were first converted to Christianity, the bishops were elected by the clergy and people ; for it was then thought convenient that the laity as well as the clergy should concur in the election, that he who was to have the inspection of them all might come in by common consent.

“ But as the number of Christians increased, this was found to be inconvenient ; for tumults were raised, and sometimes murders committed, at such popular elections. To prevent such disorders, the emperors being then Christians, reserved the election of bishops to themselves ; but the Bishop of Rome, when he had obtained supremacy in the Western Church, was unwilling that the bishops should have any dependence upon princes ; and therefore brought it about that the canons in cathedral churches should have the election of their bishops, which elections were usually confirmed at Rome.”

This is an admirable summary of the whole question from a historical point. The Bishop of Rome claimed the right of confirmation under the canons of the very Council of Nicæa which are now urged upon us. He claimed it as patriarch. There was in early times no representative system answering to our lay delegation in synod, and the populace were whipped up by the clergy into opposing parties, as in the case of the contested election of Damasus and Ursinus at Rome, during which 137 corpses were one morning dragged out of the Basilica of Sicininus (now the Church of Santa Maria Maggiore). That estimable heathen,* Ammianus Marcellinus, lays the whole blame upon the clergy, and a diligent perusal of the old histories will show the inferior clergy and monks,

* Ammianus Marcellinus. Book XXVII, Chap. 3.

not only as instigators, but, their numbers being great, as the chief participants in these riots.* The transfer of the power of election was as much aimed at this turbulence of the clergy, who were then the more to blame as they possessed the greater part of the learning and culture then existing. There is no argument applicable to lay exclusion which will not tell to the same extent for clerical exclusion, for in the case of laymen the stimulus of ambition is at least absent. In the present time laymen are accustomed to transact business in representative assemblies with dignity and order. At† this very Council of Nicæa the Emperor, in his opening address, exhorted the bishops to unity and concord, and, heathen though he was, burned openly (with an oath he had not read them), before the assembly, the heap of accusations and recriminations which the individual bishops had poured in upon him after his arrival at the place of meeting. "It is the command of Christ," said he as the parchments smouldered in the brazier, "that he who desires to be himself forgiven must first forgive his brother." Strange words these to be thought necessary by an unbaptized layman at the first œcumenical council of Christian bishops.

BURNS' ECCLESIASTICAL LAW, VOL. I.

"When cities were first converted to Christianity the bishops were elected by the clergy and the people, for it was thought convenient that the laity as well as the clergy should be considered in the election; that he who was to have the inspection of them all should come in by a general consent."

This sentence is quoted with approval by Muscott—

* Notes to De Marca—Book VI., Chap. 2.

† Dean Stanley—Eastern Church, p. 220.

Socrates—Ecclesiastical History, p. 19. To the same effect.

History of Church Laws in England. Burns gives as his authority Ayliff's Parergon. Dean Hook, finding the statement correct, also took this sentence from Burns, wherewith to commence his article on the election of bishops, above cited. Sir Robert Phillimore* also adopts it from Ayliff.

ROGERS' ECCLESIASTICAL LAW. page 101.

"Although it is clear that in the first ages of Christianity all bishops were elected by the laity as well as the clergy, yet the Kings of this realm appointed bishops from very early periods; and as all the bishoprics in England were of the King's foundation, so the right of patronage thereof accrued to him."

For these statements Rogers cites Ayliff's Parergon, Spelman's *Concilia* (p. 387), and Coke upon Littleton, 134, 344. The same writer, citing as his authority Palgrave's *Anglo-Saxon Commonwealth*, pp. 173-4, says:

"The Anglo-Saxon kings seem to have exercised the power of nomination to bishoprics. When Edward the Confessor notified the promotion of a bishop he simply declared his will by an act under seal. The authority of the Bishop of Rome was in nowise recognised."

* ECCLESIASTICAL LAW, p. 38.—Sir Robert, at page 24, seems somewhat shaken by the authority of Thomassin, and says "that he establishes three propositions with respect to the election of bishops during the first centuries:—1st. That the bishops exercised the chief influence in the election of another bishop. 2. That though the people were always among the electors, their voice carried less weight with it than that of the clergy. 3rd. That the consent of the Prince was an indispensable preliminary to the consecration of the Bishop by the Metropolitan."

Concerning Thomassin, *vide* p. 18. It is only necessary to remark here that the mention of the Prince, in the third proposition, stamps the whole passage as referring to the fifth and later centuries, for it is evident that although pagan emperors may occasionally have confirmed a disputed election, no prince, until the Christian religion became the State religion, would or did meddle in ordinations of bishops.

“ After the death of those who had been ordained by the apostles, the people chose their ministers. The bishops were ordained generally by several of their brethren who laid their hands upon them.”

This passage is found in the treatise on Church Discipline at the end of the 3rd century. The word ministers includes bishops as well as presbyters, the difference noted is that one bishop in the case of a presbyter was sufficient for ordination. Dupin is a writer of great authority. Cabassuetio, distinguishing between election, postulation and ordination, says that election was in the hands of the clergy and people, ordination in those of the bishops.* But Dupin, referring to the fourth century, says: “ The bishops were ordinarily chosen by the clergy and people of the vacant church. The Metropolitan had to be present at the ordination, and he could not perform that ceremony unless he had at least two bishops of the Province with him and the others giving their consent.”

In commenting upon this canon, Van Espen observes, that at that time, it was the custom that “ the election and ordination should take place together.” The bishops present would then make their inquiry and examination and the whole business was completed forthwith. The consent of the absent bishops could not then refer to the *person* of the candidate but to the empowering of the bishops present to act for all; for the reason of the canon, as Van Espen† shews, was “ to prevent secret ordinations.”

* Synopsis Concilliorum, Vol. III., p. 468.—Perspicuum est ab ecclesiæ nascentis primordiis Episcoporum creationem fieri consuevisse accedentis populorum suffragiis, ut contigit in ipsius Matthiæ ad apostolatam electione.

† Opera Omnia, vol. 3, p. 107.

“ The apostles, who were the first teachers, and who planted the first churches, ordained successors—as far as appears—without any consultation of their respective flocks over which they were about to preside. But, as it was neither reasonable nor probable that any set of persons after them should be regarded as their equals, this method of appointing ecclesiastical rulers did not continue; and undoubtedly the election of bishops devolved on the people. Their appearance to vote on these occasions, their constraining of persons sometimes to accept the office against their will, and the determination of Pope Leo, long after, against forcing a bishop on a people against their consent, demonstrate this. The characters of men to be elected to this office were very strictly examined. Public notice was given that any one might inform against them if they were vicious or immoral. The decision on their moral conduct was left to the people; that on their doctrine belonged chiefly to the bishops who ordained them.”

Although the election was with the clergy and people, it is clear that no unorthodox person would be ordained. Election was a title to ordination, and, unless canonical objections were raised, ordination proceeded at once. Palmer* says “ when a See became vacant by the death of its bishop, a successor was elected by the clergy and the people, and his claim to ordination thus commenced.”

HON. W. E. GLADSTONE.—ITALY AND HER CHURCH, page 18.

“ The Bishop himself was elected by the clergy, with the concurrence of the people or their consent.”

CRIPPS' LAWS OF THE CHURCH AND CLERGY, page 74.

“ Election was in very early times the usual mode of elevation to the episcopal chair throughout all Christendom; and this was promiscuously performed by the laity as well as the clergy.”

* Rev. William Palmer—Apostolical Jurisdiction of the Episcopacy of the British Churches Vindicated, p. 18.

BARROW—TREATISE ON THE POPE'S SUPREMACY, page 161.

“ If we consider the manner in ancient times of electing and constituting the Roman Bishop, we may thence discern, not only the improbability, but iniquity of this pretence ; how was he then chosen ? Was it by a general synod of bishops, or by delegates from all parts of Christendom, whereby the common interest in him might appear, and whereby the world might be satisfied that one was elected fit for that high office ? *No ; he was chosen, as usually then other particular bishops were, by the clergy and people of Rome ; none of the world being conscious of the proceeding or bearing any share therein.*”

The force of this quotation for our purpose is in the last sentence. The “ iniquity ” referred to is the supremacy claimed by the Pope. The former part of the sentence is necessary to the sense.

STEPHEN'S COMMENTARIES ON THE LAWS OF ENGLAND.

“ Election—the usual way in early times was *per clericum et populum*, but becoming tumultuous, the emperors and other kings took some portions of it in their own hands.”

DEAN MILMAN—HISTORY OF LATIN CHRISTIANITY, vol. I., page 522.

“ Below the sovereign power, the people maintained the right of the joint election of bishops with the clergy. This old Christian usage would fall in with the Teutonic habits. As the Teutons raised their king upon the buckler and proclaimed him with the assent of the freemen of the tribe, so the acclamation of the people ratified or anticipated the nomination of the bishop.”

CANON ROBERTSON—CHURCH HISTORY, vol. I., page 164.

“ Even to the end of the period (second and third century) we meet with nothing like autocratic power in the bishops. *They were themselves elected by the clergy and people ; they consulted with the presbyters in the more private matters, and with the whole body of the faithful in such as concerned the community.*”

“ And in the first place, so far as regards the election of bishops, it is beyond question that for eleven centuries it belonged to the clergy and people of the widowed church; so much so indeed that the holy fathers thought that that rule of discipline descended from divine and apostolic tradition. And, among others, St. Cyprian speaks to this effect in his 68th Epistle, which is a synodical one, written to the clergy and people of Spain concerning the idolatrous bishops, Basilides and Martial. The people, he says, following the precepts of the Lord and fearing God, ought to separate themselves from an overseer who is a sinner, and should not partake in the sacrifices of a sacrilegious bishop; seeing that *they (the people) themselves have the chief power of electing worthy or rejecting unworthy bishops*. Which very rule, as we have seen, has come down from divine authority, that the bishop, the people being present (or, according to the Beneventan text, *by the people who are present*), be chosen under the eyes of all and approved worthy and fit by public judgment and testimony.”*

Van Espen observes that in one important MS. it is “ a plebe presente;” this would show that the clause was not always in early times read as an ablative of circumstance.

BINGHAM—ANTIQUITIES OF THE CHRISTIAN CHURCH, vol. II., page 15.

“ And here, first of all, it will be proper to observe, that there was no one universal unalterable rule observed in

* Van Espen—*Vindiciæ Resolutionis Lovæniensium*—Opera, Volume V., page 470.

Atque imprimis quod attinet Episcoporum electionem; indubitatum est, eam per xi. secula pertinuisse ad Clerum et populum Ecclesiæ viduatæ; ita quidem ut hanc disciplinam Sancti Patres ex divina atque apostolica traditione descendere existimarint. Atque inter alios sic loquitur St. Cyprianus Epis 68 quæ est Synodica, scripta ad Clerum et Plebes in Hispania consistentes de Basilide et Martiale Episcopis idolatris. “ Plebs inquit obsequens præceptis Dominicis et Deum metuens a peccatore Præposito separare se debet, nec se ad sacrilegî sacerdotis sacrificia miscere; quando IPSA maxime habeat potestatem vel eligendi dignos sacerdotes vel indignos recusandi. Quod et ipsum vidimus de divina auctoritate descendere, ut sacerdos *plebe presente* sub omnium oculis deligatur et dignus atque idoneus publico iudicio ac testimonio comprobetur.”

“ all times and places about this matter ; but the practice varied according to the different exigencies and circumstances of the Church. In the meantime I conceive the observation made by De Marca thus far to be very true, ‘ that whatever power the inferior clergy enjoyed ‘ in the election of their bishop, the same was generally ‘ allowed to the people or whole body of the Church, ‘ under the regulation and conduct of the Metropolitan ‘ and synod of provincial bishops.’ For their power, whatever it was, is spoken of in the very same terms, and expressed in the very same words. Some call it consent ; others suffrage or vote ; but all agree in this, that it was equally the consent, suffrage, vote, election and choice both of clergy and people.”

* * * “ And hence it appears further, that this conjunctive power of clergy and people was not barely testimonial, but, as Bishop Andrewes and Mr. Mason assert, a judicial and effective power by way of proper suffrage and election ; and that as well in the time of Cyprian as afterwards. For Cyprian speaks both of testimony and suffrage belonging to both clergy and people, and says further ‘ that that is a just and legitimate ordination which is examined by the suffrage ‘ and judgment of all, both clergy and people.’ So that they were then present at the choice of their bishop, not merely to give testimony concerning his life, but, as Bishop Andrewes words it, to give their vote and suffrage in reference to his person.”

Bingham gives learned authorities in support of various opinions. The passage cited contains his own opinion. He gives many varying ways in which bishops have been appointed, and shows that missionary bishops, and those sent to heretical communities were, as we have pointed out on page 16, nominated, not elected ; for he says (page 27) :—“ Neither can we suppose the Bishop of Tomi, in Scythia, to be chosen by his people when he was the only bishop in all that region.”

A perusal of the Ecclesiastical History of St. Gregory,

(A. D. 573) Bishop of Tours, will shew how extensively the practice of popular elections prevailed in Gaul*. At page 42, speaking of the successor of St. Martin, he says: "ayant obtenu, *par le vote des citoyens*, les fonctions épiscopales," and on page 75 of the Bishop of Clermont, he says: "a ces paroles tout le peuple oubliant ses dissensions, proclama que c'était un homme digne et juste. Il fut donc placé sur le siège épiscopal."—A. D. 460. Again, at page 111, "Alors *le peuple ayant eü* St. Quintianus" application was made to the King for confirmation; and again, vol. ii, page 384, "Lorsque Quintianus fut décedé, les citoyens de Clermont s'assemblèrent pour choisir un nouvel évêque. Gallus fut choisi et partit pour aller demander sa confirmation au roi Theuderic." St. Gregory finished his history A.D. 594. He speaks of "l'autorité royale d'accord avec le choix des citoyens," page 205, but he does not speak of any episcopal authority as necessary to confirm these elections. The King is often said to have appointed, and two instances are given of elections, entirely episcopal, which were carried to the King for confirmation, but the custom is evidently that prescribed by the Council of Clermont, A. D. 533, "That he who is a candidate for a bishopric shall be ordained by the election of the clergy and people."† The bishops at this Council, wishing to strike at the royal confirmation, added, "with the consent of the Metropolitan." But the Kings maintained their right, and there was no ecclesiastical confirmation in France other than ordination by the Metropolitan and Bishops, until the Popes, in the 12th century, wrested this power from the Kings. Palmer presses this point, and

* See also De Marca—Concordia Imp. et Sac., p. 366, to the same effect.

† Muscutt—History of Church Law in England, p. 195. Milner—History of the Church, vol. 3, p. 24.

Dean Milman* cites a Council of Orleans to the same effect.

We have seen, page 11, that the Council of Nicæa aimed chiefly at establishing the power of Metropolitans and Patriarchs. It has been long a matter of dispute whether or not that Council made any change in the manner of electing bishops. The Orthodox Eastern Church maintains that it did, the Catholic Western Church vehemently denies it. The Greek historians, Balsamon and Zonaras, if they differ on other points, testify at least to the custom anterior to the Council. Balsamon says :—"Bishops were formerly elected by the people generally, but as much scandal was thus created the custom was abrogated by this Canon, and the election given to the bishops alone." "This pseudo-patriarch of Antioch," says Cabassuetio,† "is in error, for there is here no trace of change, and the elections of bishops were made precisely as before, by the suffrage of the people, excepting that they were under the government of the bishops;" and again, "The Nicene Council‡ enacted this only that the care of the election and consecration of the new bishop should be with the Metropolitan; and that the other Bishops should assemble at the ordination of him who was elected, so that the ordination should be performed by three bishops at the least."

That this is a perfectly sound view will appear from the account given of the actual circumstances under which

* Council of Orleans, A. D. 549 :—" Ut nulli episcopatum præmiis aut comparatione liceat adipisci ; sed cum voluntate regis juxta electionem cleri ac plebis."—*Vide* Milman, vol. 1, p. 519.

† Vol. 1, p. 166.

De Marca *Concordia Imperii et Sacerdotii*, p. 251, is very strong on this point, and there is not a single canonist of the Western Church who takes the other view. It is contrary to the recorded history of many centuries after the Nicene Council, both in the East and West. The Novels of Justinian, in the sixth century, are alone sufficient to condemn it. De Marca calls the notion a "*hallucination*."

this mooted fourth Nicene Canon was passed.* It was aimed at the followers of Meletius, a bishop of Upper Egypt, who thought that no one who had lapsed during the preceding persecutions should again be received into the Church. He set up what he called the Church of the Martyrs, and, considering his Church to be purer than the rest of the Church Catholic, he went about ordaining bishops throughout all Egypt, much as Bishop Cummins did in America. This canon, as well as the sixth, was aimed at him, and it was a canon, as we have shown, page 13, which concerned only ordination, not election; for, as Barrow says,† although “there is no express mention concerning the interest of the clergy and people in election of the bishops, these things are only passed over as precedaneous to the constitution or ordination, about which only the Fathers did intend to prescribe, supposing the election to proceed according to former usual practice.” Barrow proceeds to strengthen, by numerous instances, this position. He quotes Pope Celestine: “Let no bishop be given to them against their wills; let the consent and request of the clergy, the people and the order‡ be expected”; and Pope Leo the Great: “When there shall be an election of a bishop, let him be preferred who has the unanimous consent of the clergy and people, so that if the votes be divided, and part for another person, let him, by the judgment of the Metropolitan, be preferred whose merits and interest are greatest, only that none may be

* Bishop Hefele—Vol. I., p. 334.

So Van Espen—Opera, vol. 3, p. 108. “Ideoque hunc Canonem occasione Meletii editum fuisse recte advertet Beveregius ad hunc Canonem.”

† Barrow—Treatise of the Pope's Supremacy, p. 362.

‡ By *order* is meant the municipality, according to Phillimore, p. 23, the nobles, according to DeMarca, p. 252, the magistrates, according to Thomassin. The word might be mistaken as referring to the Episcopal order. It never does so in this connection, but always refers to some class of lay officials as distinguished from the populace.

“ordained against the wills or without the desire of the parties, lest the people contemn or hate a bishop whom they never desired.” There is no reason, says Pope Leo again,* that “they should be accounted bishops who were neither chosen by the clergy nor desired by the people, nor with the Metropolitan’s order consecrated by the provincial bishops.” Leo evidently held the fourth Canon of Nicæa in the same sense as explained by Barrow, Bingham, Stanley and the great majority of the canonists of the Church, as a Canon of ordination and not of election. What is meant by the *consent* of bishops is now evident, as well as the *judicium* of the bishops, referred to by St. Cyprian.

Whatever abstract theory men may please to adopt, as a matter of fact, the election by clergy and people remained customary upon the continent of Europe for many centuries. Van Espen says (vol. i., p. 85) “until the eleventh century.” In the Eastern Church a jealousy of the lay power was first manifested, and at the Council of Laodicea,† A.D. 385, the populace were excluded; but, as Van Espen says ‡ it was the disorderly multitude, not the chief or representative laymen, who were intended; because, for three hundred years later, writers speak of the people as still having a leading part. Justinian, in various novels§ and constitutions, settled the method of episcopal elections in the East. He enacted that, whenever a vacancy occurred, the clergy and chief citizens of the diocese should assemble and choose three

* Barrow on the Pope’s Supremacy, p. 364, and Decretum Dist. 62, Can. 1

† Canon 13—That the multitude be not permitted to elect those who are about to be ordained to the priesthood. According to DeMarca *plebicula*—i.e., rabble; p. 252.

‡ Vol. 1, p. 82.

§ Corpus Juris Civilis, Nov. 137, Cap 1.

“ “ “ Nov. 122, Cap. 1.

names. They should then solemnly testify that these men were known to them to be qualified for the office of a bishop, reciting point by point the canonical qualifications then necessary. From these names the ordaining authority (then the Metropolitan) selected one. By this method the multitude were excluded and disorder was avoided. It is probable that the laity were not altogether excluded in the East until A.D. 787, at the second Council of Nicæa.*

In the Western Church the lay element in elections lingered in the great historic sees of Rome and Milan until the eleventh century, and in France and Germany traces of their concurrence may be found even in the twelfth century.† Concerning the Bishops of Rome, Hallam says:—"They, like the bishops of inferior sees, were regularly elected by the citizens—laymen as well as ecclesiastics. But their consecration was deferred‡ until the popular choice had received the Sovereign's sanction." Occasionally§ the Emperor|| appointed the popes, but, in A.D. 1059, Pope Nicholas II.¶ vested the election in the cardinals, the confirmation remaining as before in the Emperor. This method of election,** modified by the decrees of Pope Alexander III. and of Gregory X., at the Council of Lyons, A.D. 1272, is adhered to in its main features to the present time. The College of

* Cabassuetio, vol. 3, p. 468.

† Hallam—Middle Ages, vol. 2, p. 172.

‡ Hallam—Middle Ages, vol. 2, p. 174. Decretum Gratiani, Dis. 63, Can. 21.

§ Decretum Gratiani, Dis. 63, Can. 22.

|| Barrow on the Pope's supremacy, p. 373.

¶ Decretum Gratiani, Dis. 23, Can. 1.

** Van Espen shows that the transfer of the power of election to the College of Cardinals, at Rome, and to Cathedral Chapters elsewhere, took place in the 12th and 13th centuries, about the same time and for the same reasons. The power of Rome was then at its zenith, under the haughtiest and ablest of the Popes.—vol. 1, p. 85.

Cardinals now consists of six cardinal bishops, fifty cardinal priests, and fourteen cardinal deacons—representing the suburban dioceses and parish clergy of the city of Rome. These all vote* together as one body,† the bishops as well as the deacons having each one vote. In the ancient see of Rome, from the earliest times to the present day, the episcopal veto on elections, now claimed as primitive custom, was never in use.

The same remark may be made concerning the English Church from the very dawn of English history. No instance of the exercise of such a power seems to be anywhere recorded. Hooker (*Works*, vol. ii., p. 555) seems to know nothing of it. “Three things,” he says, “are to be considered in a bishop:—1. The power whereby he is distinguished from other pastors. 2. The special portion of the clergy and laity over whom he is to exercise his bishoply power. 3. The place of his see or throne, together with the profits, &c., thereto belonging. The first he says is received by consecration, the second by election, and the third from the King.” The people, he adds, “in election gave their testimony and shewed their affection or desire, but the choice was wholly in the sacred college of presbyters.”

In the councils of the Church, anterior to that of Nicæa, we have no mention of any power of restraint on episcopal elections. At the synod of Arles, A.D. 314, it was enacted that bishops should not ordain singly, but that seven, or at the very least three, should be present. (Hefele—vol. i., p. 195.) The first of the Apostolic Canons (the most of which date from an early age) provides only that two or three bishops shall be present at ordinations. (Hefele—vol. i., p. 458.)

In commenting on the canon of Nicæa in question,

* Trollope on Papal Conclaves.

† Cartwright on Papal Conclaves.

Bishop Hefele is very precise, following the indications of the custom which prevailed in the time of Cyprian in the African and Spanish churches. Quoting Cyprian, he says (vol. i., p. 333):—"In almost all provinces the business is managed in this manner. The nearest bishops in the province meet in the city for which the election is to be held. The Bishop is then elected *plebe presente*; the people are bound to be present at the election, for *singulorum vitam plenissime novit*. The episcopal dignity is after that conferred *universæ fraternitatis suffragio* and *episcoporum judicio*." Again, quoting Van Espen, he says:—"The *fraternitas*, that is the clergy and laity who are interested in the choice, had the right of presentation the bishops had afterwards to decide. They had then the principal part to perform." They had in fact to ordain, and if the canonical qualifications were present they did ordain. This is the essential part of the whole matter. As to the election and presentation, St. Cyprian says the people had the chief part. That the bishops might refuse to ordain for any specified canonical reason, is not disputed by any reasonable person. Nor is it disputed that great care should be taken in the appointment of bishops. Upon this head a speaker at the Provincial Synod alluded to Arius as a warning against popular elections. Now Arius lived at a time when, if ever, this asserted custom of episcopal veto prevailed. If then Arius was the choice of a popular election, and the bishops had the veto power, why did they not exercise it if they thought him unworthy? But Arius was not elected by the popular vote, as nearly all bishops then were. As a matter of fact, Arius never was a bishop at all. Athanasius, however, was elected by popular vote,* and Ambrose of Milan,† and Gregory the Great,‡ and Leo the Great of

* Barrow—Pope's Supremacy.

† Socrates—Ecclesiastical History, p. 251.

‡ Gregory of Tours, vol. 2, p. 241.

Rome, and Cyprian of Carthage.* Ambrose, perhaps the grandest Bishop who ever lived, was elected while a layman, and before he was baptized.† “You,” says St. Ambrose, speaking of the people of Milan, “You are my parents, who have bestowed upon me my bishophood. You, I tell you, are at once my parents and my children. You are my children if I take you one by one. You are my parents if I take you as the whole.” These are notable instances of great bishops whom the persistent will of the people forced into their sees contrary to their own wishes, and they stand out as bright beacons to tell us that the Spirit of God does not limit His influence to the clerical orders.

Turning to the body of the Canon Law we find that in the first part of the Decretum, with which the Corpus Juris Canonici commences, the fourth canon of Nicæa is placed under the heading of Ordination,‡ not of Election. The dominating influence of the clergy and people may be traced through the whole. It is they alone who are concerned in elections, and, before the Canon of Nicæa, A.D. 325, there is no trace, even in ordinations, of the assembly of the bishops and Metropolitan upon such occasions. The false Isidore, indeed, thinking that it would be useful to have earlier authority, inserted four spurious decretals of Anicetus§ and Anacletus, dated about A.D. 171 and A.D. 103, in one of which a rule similar to the Nicene, is said to be apostolic. There are many

* Jeremie—History of the Christian Church, p. 111.

† Decretum Gratiani.—Note on Canon 8, Distinction 61. So also St. Nicholas was elected pope, and St. Severus archbishop, while laymen. The canons in the Decretum forbidding the election of laymen commence from the sixth century.

‡ Dist. 64, Can. 1—The same view is taken by Isidore and Dionysius, who are followed by Gratian, in using the word *ordinari*.

DeMarca, p. 252, thinks it refers solely to confirmation.

§ Dist. 64, Can. 2 and Can. 4, and both Canons of Dist. 66, are admitted to be spurious by all.

discordant canons in Gratian, relative to the royal power of confirmation. Sometimes it is affirmed and again denied; and again other canons go the length of giving the Kings or Emperors the power of nomination. Gratian* himself thinks that properly speaking the election belonged to the clergy and the petition to the people, but Bingham shows this is a question of names only, the thing itself was the same, and a concurrence of both orders was requisite. Pope Gregory the Great† writes to ascertain if an election at Milan really resulted in the unanimous choice by the clergy and people of one Constantius, and if so, to cause him to be ordained by the neighbouring bishops, *as ancient custom demands*. Stephen‡ writes to the Archbishop of Ravenna about a vacancy in the see of Imola; the clergy and laity are to be called together, and the Archbishop is to ordain him, whom they elect, *if no canonical objection can be made to him*. In like manner Nicholas I.§ writes to the same see saying that no one is to be consecrated unless *elected by the clergy and people*. It is clearly laid down|| that no one can be consecrated unless he is canonically elected, and many qualifications and disqualifications are given as being applicable at various times to candidates for episcopal ordination.

Gratian¶ says that no one was ordained without examination, and a form of examination which was adopted at a Council of Carthage,**A.D. 398, is given. The candidate who is elected by the clergy and people is ordained if this examination is sustained, and a decree of the Council of

* Note to Dist. 62.

† Dist. 63, Can. 10, A.D. 593.

‡ Dist. 63, Can. 12, A.D. 886.

§ Dist. 63, Can. 13, A.D. 857

|| Dist. 62, Can. 3.

¶ Note to Can. 4, Dist. 24.

** Can. 2, Dist. 23.

Laodicea* is quoted, that bishops shall be ordained after examination, by the judgment of the Metropolitan and neighboring bishops. In the 34th Canon of the 63rd Distinction, a capitulary of the Emperor Lewis, A. D. 803, is embodied, to the effect that elections shall be made by the clergy and people, *according to the canons of each diocese*, without the intervention of the Emperor. This intervention of the Emperor, and of great princes it is only which is aimed at in Canon 1 of the 63rd Distinction, in a decree of Pope Hadrian, A. D. 869, at that Council of Constantinople, when the whirl of controversy was commenced which resulted in the great schism of East and West.

The inference from the whole tenor of Gratian's decretum is that the election was solely with the clergy and people, † and that if the person elected was canonically qualified he must be ordained. ‡ In cases of doubt the bishops, or generally the Metropolitan, acted judicially and decided according to the laws then in force. At ordinations three bishops were to be present, the others assenting. The assent signified is a canonical assent, precisely as the obedience promised in the offices of ordination of priests and deacons is a canonical obedience: both are regulated by the laws of the church. No where is there any sign of the absence of this assent invalidating the election, nor an instance of its having been withheld; for if there was no legitimate objection the assent must be given. Such a thing as an election over an election, which is really what is now claimed for the House of Bishops, is a novelty of very recent date, and originated, probably, in the United States of America.

* Can. 4, Dist. 24.

† Van Espen remarks, p. 85, that throughout the whole of the Decretum of Gratian, there is no allusion to Cathedral Chapters.

‡ So Van Espen Jus. Eccl. Univers, p. 107,—“*Metropolitans una cum Episcopis comprovincialibus examine supra electionis forma ae persona electa facto, ad ordinationem seu consecrationem procederet, si electionem canonicam et personam electam idoneam reperisset.*”

IV.

THE "JUDICIUM" OF THE BISHOPS

If any one should suppose that at any time in the Christian Church the ordaining bishops had no canonical check upon the electing or nominating body, he will be very seriously in error. The appointment of bishops, as remarked by Mr. Gladstone,* "is in great degree analogous " to ordinary lay patronage, with respect to the order of " the priesthood." As Van Espen† shows a principle of law underlies all elections that the person chosen must be "dignus," that is, canonically qualified. Papal dispensations or the abuse of regal power sometimes overruled disqualifications, but the law of the Church was recognised in these very irregularities. From time to time these qualifications varied. In another place the law of the English Church, now probably in force here, will be cited, it is proper here to dwell upon the fact that the assent of the Bishops to an election was always a judicial, never an arbitrary assent. Upon this Bingham‡ observes: "When " the election of a person duly qualified, according to the " forementioned rules, was made, then it was the bishop's " office, or the Metropolitan's if the party elect was himself " a bishop, to ordain him." To the like purport Barrow,§ "The clergy of the place did propound a person yielding " their attestation to his fitness for the charge; which the " people hearing, did give their suffrages, accepting him if " no weighty cause was objected against him; or refusing

* Church and State, vol. 2, p. 40.

† Vol. 1, p. 705.

‡ Vol. 2, p. 74.

§ Treatise on the Pope's Supremacy, p. 358:

him if such cause did appear; then upon such recommendation and acceptance the bishops present did adjoin their approbation and consent." This consent was judicial, and was never withheld unless for cause. Van Espen* shows that the choice of the people could not be rejected but for a legitimate reason. He then states in detail the method usually adopted. After the election a formal *decretum*,† a statement in writing of the result, was sent to the Metropolitan, who, with the assistance of the other bishops, examined the form of the election as well as the qualifications of the elect, and if all was found to have been performed canonically, the ordination proceeded in due course.

"It is not the business of the Synod of Bishops to elect "a bishop for a vacant see," says DeMarca,‡ "but to examine "whether the election is canonically made, and whether "no legitimate impediments stand in the way of consecration." And the same author adds:§—"The authority of the Metropolitan and of the provincial bishops is

* Hoc ostendunt, Metropolitanum et Episcopos Comprovinciales non ita fuisse electione populi et cleri constrictos, quin eam *ex causa legitima* rejicere possent.—Van Espen. Jus. Ecclesiasticum Universum, p. 84.

† Hoc decreto accepto, Metropolitanus convocatis suæ Provinciæ Episcopis tum electionis formam, tum qualitates Electi examinabat; quæ si examine instituto Canonica reperiabatur, Electum cum consensu Episcoporum suæ Provinciæ in Episcopum consecrabat.—Jus. Ecclesiasticum Universum, p. 84.

‡ DeMarca Concordia Sacerdotii et Imperii, p. 251—Ea nou erat præcipua istius Concilii cura ut Episcopum eligeret in sede vacante, sed ut examinaret, an electio canonica esset, an electus canonicis impedimentis prohiberetur accedere ad Episcopatum, ob bigamiam videlicet, ætatis defectum, aut ignorantiam; et utrum accusatio aliqua adversus eum instituta esset, et si nihil horum obsisteret, ordinatio peragebatur.

§ DeMarca Concordia Imp. et Sac., p. 251—Auctoritas illa (Metropolitani et Episcoporum Comprovincialium) in ea versatur, nou ut electio ab illis celebretur, sed, ut eam approbent aut repudient, prout consentanea fuerit aut contraria canonibus,—atque dein electi ordinationem aut consecrationem peragant. Certum itaque est Episcopos aute Concilium Nicænum electos fuisse, *cleri et populi suffragio*.

“ not concerned in the carrying on of an election, but that
 “ they approve or reject it *according as it may be in*
 “ *accordance with, or contrary to, the canons* ; and that
 “ afterwards they perform the consecration or ordination
 “ of the elected person. *It is, moreover, certain that before*
 “ *the Nicene Council bishops were elected by the suffrage of*
 “ *the clergy and people.*”

Many quotations to the same purport might be made, but these will no doubt be sufficient to show that the bishops never had the power of excluding from their order any one who might be canonically qualified and duly elected, and that, in the examination of elections, they proceeded in the same manner as civil judges in secular elections, not by arbitrary will, but by the laws laid down by the Church. To assert the contrary is to place the bishops above the canons and to introduce into the English Church the procedure “*ex informata conscientia*,”—an extra-judicial process* applied sometimes in the Roman Church, since the Council of Trent, either to block the advancement of a clergyman or to inflict censure without reason given or fault alleged. It is foreign to English notions of right, as it is confessedly contrary to the principles of canon law ; for to refuse assent without reason given would be to inflict censure upon the Bishop-elect who is presented for ordination—an injury the more intolerable because it would be inflicted in the dark.

On the other hand, the recognition of the right of the bishops to reject for legitimate cause only, reconciles the contradictions of opposing canonists, and that which under any other theory is a mass of confusion becomes a concordant and intelligible whole. The change proposed by the innovating canon must lead to contention and strife, for it is, in effect, an election over and subsequent to the election by the Diocesan Synod, so that a bishop

* Vide Evidence of Cardinal Cullen in the O'Keefe case.

elect might be rejected not only because he was disliked, but because the bishops had adopted some peculiar canon or set of canons to guide their own proceedings in such cases. At the Montreal election the first collision between the bishops and Synod was caused by a resolution sent down "that the Metropolitan should be selected from the "Episcopal order." This was an uncanonical rule, and was violently resented. The House of Bishops soon placed itself in the right, but the very making of the resolution shows the danger of a permanent antagonism.

V.

THE ENGLISH LAW.

There are recorded in Bingham nine distinct opinions, each supported by learned authority, concerning the varying methods of electing bishops in primitive times, and, although the opinion he has adopted has the merit of reconciling and uniting the largest mass of authority, and the method now in use in Canada is, in itself, of the most undoubted antiquity, we gladly pass on to the firmer ground of English law.

It is stated by Bishop Gibson,* that "the bishoprics of England, being all of the king's foundation, he is in right thereof patron of them all; and being anciently donative, they were bestowed *per traditionem annuli et baculi*, as our books and law affirm." For in ancient times in England there seems never to have been any objection taken to the royal appointment of bishops any more than to the royal appointment of any other great magistrate. Besides, at the first, the bishops were royal chaplains, and their dioceses coincided with the ancient

* Codex Juris Ecclesiastici, vol. 1, p. 121.

limits of old petty Saxon kingdoms. They existed before parishes, and hence the saying, that the cathedral is the parish church of the diocese. Gradually under the organizing hand of Theodore of Tarsus,* the English ecclesiastical system took shape. The missionaries became settled clergy, and the chaplain of the nobleman or great land-owner became the parish priest, nominated to his benefice by the descendants of its founder, in the precise method in which the king nominated to the episcopal sees. We have seen (page 24) the method in use in Edward the Confessor's time; the ancient kings of Wales nominated in like manner. To this right of nomination the English kings tenaciously clung, and although it was wrested from them for a short time, under Henry I. and Henry II., it was not until the reign of John that the elections finally devolved upon the chapters, but from that time the Papal power (then at its zenith), under various pretexts and by the multiplication of forms, insensibly drew the larger number of appointments into the hands of the Popes. This continued until the time of Henry VIII., when the Crown resumed its ancient rights by really nominating under the form of the *cong e d' lire* which Henry I. had instituted. The nomination was contained in the *letter-missive* which was thenceforth sent with the permission to elect.

During the reign of Charlemagne† popular election in France and Germany was a mere form. The Emperor absolutely nominated; but in the 12th century, after a long struggle with Rome, the Chapters obtained the privilege, for the prior custom of popular election was very uncongenial to the notions of rulers in those despotic times. But the Kings of Spain,‡ after the 7th century, never gave up their power of nomination. The

* Green's Short History of the English People, p. 65.

† Milman's Latin Christianity, vol. 2, p. 495.

‡ Milman—Latin Christianity, vol. 1, p. 521—Decree of Council of Toledo, "Quod regie potestatis sit eligere episcopos."

Kings of France won back the right by a concordat* between Francis I. and Leo X., and in nearly all Roman Catholic countries, to the present day, either by ancient custom or by concordat with the Pope, the nomination of bishops is in the hands of the Crown.

But if, as we have seen (page 40), a bishopric was considered as a larger benefice,† the unvarying law of benefices applied throughout. Whether the prelate was presented by king, chapter or people, he must be a properly qualified person according to the laws of the Church at that time. So it was formally expressed by Lord Chelmsford :‡ “ If the clerk be *idonea persona* the Bishop “ is bound to institute ;” and the same law applies to the case§ of bishops in the Church of England, but in practice the statute of *præmunire* (which is inapplicable to Canada) checks the full operation of the canon law. This point has been raised four times since the Reformation—first at the confirmation of Bishop Montague, when the objections were not heard owing to a defect of form, although the Vicar-General acknowledged that had the proper forms been observed he would have heard the application. In 1848 the Dean and Chapter of Hereford were compelled to elect Dr. Hampden, much against their will, and at the confirmation the Court refused to hear objections. An application was made to the Court of Queen’s Bench for a writ of *mandamus* to compel the Vicar-General to hear the objector. The four judges who heard the application were equally divided, and the writ did not issue. In the case of Dr. Temple the objectors were heard by the Vicar-General, Sir Travers Twiss, but their allega-

* Dupin—Droit Public Ecclesiastique.

† Phillimore—Ecclesiastical Law, vol. 1, p. 26.

‡ Ex parte Jenkins, 2 P. C., 258.

§ “ It is,” says Phillimore, “ the opinion of all canonists that Catholic Princes, in countries where Church and State are united, have a right to “ nominate the bishop as a private patron, but the person must be *idoneus*.”

tions were not admitted to proof, for he decided that they had come too late and that he had no power to do aught but confirm after the issue of the Queen's mandate.* The proper course, in his opinion, would have been by petition or humble request to the Queen not to issue her mandate for confirmation. The matter was not in this instance carried any further, and the confirmation and consecration were completed. If, however, in these instances the Archbishop and consecrating bishops had refused to proceed, we would have had a precise parallel to a case which might arise in Canada, for, in the words of Mr. Justice Patterson,† “if any *lawful impediment* came “to his (the Archbishop's) knowledge, I cannot believe “that the legislature intended to force him, knowingly “and without regard to such impediment, to perform the “solemn act of consecration.”

VI.

THE LAW IN CANADA.

If any body of persons, said Lord Romilly,‡ band themselves together and call themselves the Church of England, they are by implied agreement bound to its laws, discipline and ordinances except so far as any statutes may exist, which (though relating to this subject) are confined in their operation to the limits of the United Kingdom of England and Ireland. This judgment is followed by Chief Justice Draper in his valuable report on the status of the Church of England in Canada; but going beyond it, he shows from statutes, Colonial and British, as well as from the initial declaration which preceded all ten-

* Phillimore—Ecclesiastical Law, p. 55.

† Phillimore—Ecclesiastical Law, p. 60.

‡ Bishop of Natal *vs.* Gladstone.

tatives towards synodal organisation, that the English Church in Canada is an integral part of the Church of England, in its faith, doctrine, and discipline. It may be said, without hesitation, that the Canon Law of the Canadian branch has for its foundation the Canon Law of the Mother Church, so far as it is applicable to this country, and so far as it is not altered by Colonial statutes or by the consensual legislation of the Colonial Synods. From this it will follow that the qualifications for a bishop elect in Canada are now the same as for a bishop in England. These qualifications are recited in the petition of the Proctor, who, in the name of the Dean and Chapter, in an English election sets forth the regularity of the election and the merits of the person elected. This instrument declares: 1st.* That the See was vacant; 2nd. That the Dean and Chapter, having appointed a day, duly summoned all concerned; 3rd. That they unanimously chose the person elected; 4th. That the election was published to the assembled clergy and people; 5th. That the consent of the elected person was obtained; 6th. That the person elected was a prudent and discreet man—qualified by his learning and knowledge of the Holy Scriptures—exemplary in life and morals—of free condition, lawful age and legitimate birth—in priests' or bishops' orders—devoted to God—necessary to the aforesaid church—faithful and useful to the king and to his state and kingdom; 7th. That the election was notified to the king; 8th. That the king had consented; 9th. That the king had issued letters patent requiring the archbishop to confirm. Under the sixth article of this petition, therefore, the present legal personal qualifications for a bishop in Canada will be found, and the choice of every diocesan synod is limited to men possessing them, for there is not here a “statute of præ-

* Bishop Gibson, *Codex Juris Ecclesiastici*, vol. 1, p. 129.

munire " to enforce an unreasonable choice as in England, and if a *mandamus* were applied for to compel the bishops to consecrate, the Courts would most certainly refuse to interfere unless a flagrant injustice could be shown.

The form of confirmation has never been introduced into Canada. It was originally nothing but an enquiry as to who was elected, for in the early ages election was in itself confirmation,* unless the election was disputed. So Aurelian, a pagan emperor, confirmed a disputed election at Antioch, and the emperors afterwards claimed that right when elections grew turbulent and as bishops began to hold lands. Until the eleventh century the bishops of Rome were confirmed by the emperors.† The popes gradually wrested this right from the sovereigns, and ousted the emperors from interference in papal elections.

The three stages of election, confirmation and consecration are easily distinguished in England. By confirmation‡ a bishop elect gains jurisdiction, and is enabled to administer the temporalities and spiritualities of his diocese. By consecration he obtains orders, and is enabled to perform those spiritual functions peculiar to the episcopal order. A suffragan bishop is consecrated but never

* Rev. Wm. Palmer—Episcopacy of the British Churches, vindicated against Cardinal Wiseman: "According to the discipline of the Church for more than a thousand years, election was immediately followed by ordination or consecration. There was no other confirmation of a prelate elect except his consecration."—page 19.

This may have been the custom in some places, but it is clear that in the great Sees, such as Rome and Milan, the Emperor confirmed. But, as Palmer is contending against the ecclesiastical confirmation of the Roman Patriarch, he is clearly right *to that extent*, for the only confirmation known during that period was the confirmation of the lay power. Neither Roman Patriarch nor Provincial Bishops exercised that power. Under the present strained interpretation of the Nicene Canon they would have had it. See also Barrow p. 441, on the Emperor's power of confirmation.

† Hallam—Middle Ages, vol. 2, pp. 174-5.

‡ Bishop Gibson—Codex Juris. Ecclesiastici, p. 133.

confirmed, and a translated bishop is confirmed but not consecrated. The Archbishop then, in confirming, is acting magisterially for the King.

For this reason, it was that when the Sovereign ceased to nominate bishops in Canada, and when by election the clergy and people consented to the jurisdiction of a bishop, confirmation became an unmeaning form. So it is styled by the Duke of Newcastle. He says* "it was never used "in respect to colonial bishops," and, "merely viewed as "an unnecessary form, its re-introduction would, in my "opinion, be unadvisable. I have, therefore, not suggested it." Now, bearing in mind that confirmation, by the laws of England, is a conferring of jurisdiction, it is clear that the House of Bishops cannot employ it in the English sense, for jurisdiction in the colonies is consensual only,—and if, as decided by all the great lawyers in the Long and Colenso cases, the Crown cannot convey jurisdiction, the House of Bishops have no inherent power to do so, for the diocesan synods, by election, confer the *consensual* jurisdiction, which is the only jurisdiction now possible. Moreover, if the Crown had formerly the power of conferring any jurisdiction over a diocese in Canada, the diocesan synods only could now possess it, for, by statute, the rights of the Crown in the appointment of bishops passed to the diocesan synods.

When the whole course of the organisation of the Canadian Church is reviewed, this attempt, fundamentally, to alter the method of appointment of its officers will appear in all the radicalism which really characterises it despite of its thin conservative varnish. For government by will, instead of government by law, is the essence of radicalism, whether the will be of one or of many. Cæsarism in the State and Vaticanism in the Church are radical, and not conservative forms of government.

* Letter to Lord Monck—12th April, 1862.

That the proposed change is radically subversive of the original consensual basis of the Church of England in Canada, will appear upon an attentive perusal of the following extract from the late Bishop Strachan's address to the Synod of Toronto in 1858. It will be found in Bishop Bethune's life of Bishop Strachan, page 275.

“ Soon after the adjournment of the synod last year, it became my duty to call together the clergy and delegates of the new diocese of Huron, for the purpose of electing their bishop. Such an assembly, and for such a purpose, will mark a new era in our ecclesiastical history. It indeed presented a scene of deep interest, and one which stands without a parallel since the first ages of the church. For, although in the primitive times to elect the bishop was the rule, corruption had crept in, and had grown so general and inveterate, that the manner of choice became not only obsolete, but almost forgotten. Its resuscitation, therefore, excited wonder and astonishment, and offended many as if it had been a new and unauthorised thing. To behold an aged bishop, in this remote corner of the world, gathering around him his elders, his clergy, and his lay brethren, for the purpose of choosing a man well qualified to fill the high and holy office of bishop, according to apostolic usage, by the willing testimony of the clergy and suffrages of the people, was surely a spectacle which could not fail, in its noble simplicity and beauty, to make abiding impressions which exterior pomp and magnificence could never equal.

“ The proceedings were conducted with becoming solemnity; and, though of the most exciting character, the choice was made in a manner worthy of the occasion, and honourable to all concerned. No sooner was the name of the successful candidate announced by the presiding bishop than all rival feeling vanished away, and a unanimous vote confirmed the choice of the clergy and lay delegates. It was refreshing to witness the triumph of Christian unity and love, which threw to the winds all the arguments against the free and honest choice of bishops, which the narrow selfishness of many centuries had mustered up.”

Who could know better than Bishop Strachan, the feeling of the whole church upon this matter? The people would rather have remained in the hands of the Crown had they supposed the free election of bishops would have been interfered with. The primitive character of these elections—their conformity to the customs of the early church—were well-worn themes of congratulation among laymen and clergy as well as bishops, but now it turns out that everybody was wrong, because of the fourth Canon of the Council of Nicæa made to prevent Meletius from going bishop-making, in his wilfulness, throughout the dioceses of the Patriarchate of Alexandria.

If, however, the custom of antiquity had been different from what it really was—if the balance of evidence had been contrary to the practice of the Canadian Church instead of in harmony with it, the law of this country has placed the election of bishops in the Diocesan Synods by the very statute which is the foundation stone of our whole Synod system. This statute was procured by the founders of that system and has passed into the law of the land, not to be altered by the canons of a derivative legislative body. The Provincial Synod can no more touch the appointment of officers in contravention of the statute than it can legislate upon the election of Diocesan lay Delegates. These statutes are a standing evidence of the original consensus of the members of the Church of England in this country, and it is innovation and not conservatism which takes a single canon of the Council of Nicæa, and with it seeks to modify the fundamental statute upon which all our legislation rests. Not only that, but the Canon is taken in a sense contrary to the whole course of history. The interpretation given by Dean Stanley is the one universally received at all times by the Church in England. When was it ever heard that an election made either by King or Chapter,

was overruled by the bishops of the province? As we have stated before, the validity of all acts done in the Anglican Church since the Reformation rests upon the canonicity of Archbishop Parker's consecration. If his appointment is invalid the clergy and bishops of the Church of England are laymen. Now Parker was ordained in spite of the refusal* of all the bishops of England to take part in the ceremony. He was ordained by four bishops who had been exiled by Queen Mary, one of whom was a suffragan, without jurisdiction, and the other three were bishops then without sees, two of whom were afterwards confirmed by the archbishop. They were all bishops, duly consecrated as to orders, and the consecration of Parker was perfectly valid, even by the canon law of Rome at that time, but under the present interpretation of the fourth canon of Nicæa it was irregular. If this interpretation is to be held it will be difficult to meet the objections of Roman Catholics who may take us upon our own ground. In this manner Palmer was driven by Cardinal Wiseman to fall back on the Apostolic Canons which decree that ordination by two bishops is sufficient. These considerations are put forward not to impugn the validity of Archbishop Parker's consecration, but to show that the change proposed in Canada is a novelty which tends to weaken the whole basis of the reasoning by which only Anglican orders can be defended.

In every synod report, diocesan or provincial, will be found the statutes we refer to. The second Act refers to Diocesan lay Delegates, and has no bearing on the point at issue. The first Act has two clauses only. The first clause refers to diocesan synods, and the second to the Provincial Synod. The powers granted are defined clearly, and each body derives them separately from the same source. It is a parallel case to the British North

Palmer—Episcopacy Vindicated.

Bp. Short—History of the Church of England, p. 195.

America Act, under which the powers granted to the smaller bodies cannot be invaded by the Dominion Parliament. Now, among the powers granted to the diocesan synods in the first clause of the Act, is that of making regulations "for the appointment, &c., of any person "bearing office therein of *whatever order or degree*, any "rights of the Crown to the contrary notwithstanding." This clause* covers, and was intended to cover, the election of bishops, and the nominating rights of the Crown were thus transferred to the diocesan synods alone. The second clause, referring to the Provincial Synod, is very vaguely expressed, simply empowering the making of "general arrangements for good government," whereas the powers enumerated in the first clause are specific. Inasmuch as no stream can rise higher than its source, it is beyond the power of the Provincial Synod to re-arrange the distribution of rights laid down in this Act unless with the separate consent of each diocese concerned.

Concerning this matter the Diocese of Montreal has spoken. By a unanimous vote it adopted a report stating "that it would be inexpedient to make any change in the "present mode of electing a bishop." If the Provincial Synod then choose to make any regulation touching the appointment of diocesan bishops, it will be done with the full knowledge that whenever their regulation is attempted to be put in force a conflict will arise in which the diocese whose rights are invaded must be victorious.

* In support of this, see a letter dated November 27, 1866, from Mr. Chancellor Bethune to the Metropolitan, Bishop Fulford, then in England:— "So far as the Crown is concerned, it may fairly be doubted whether the Crown "has not really abrogated its prerogative by consenting to a law which vests "the appointment of bishops *solely with the diocesan synods of the Provinces.*"

The learned Chancellor is arguing against a proposition much more Nicene than the present viz : that the bishops should take their confirmation from the Archbishop of Canterbury.

