Churches, that has led so many Bishops of the Church in Australia and New Zealand and Canada and Africa and elsewhere to call into active life the dormant power and authority of Synods. Without Synods, Bishops must be the nominal autocrats of the Church; they must, by their sole authority, enact laws, or give up the reins of discipline, and allow anarchy to prevail. They must act as best they can amid emergencies, and without those constitutional aids and checks which the existence of Synods brings along with them; and the Church, under such a system, must be weak and lifeless in the extreme."

The Bishop went on to show—

I. That Synods are the constitutional bodies for making laws for the Church.

II. That the Bishop is entitled to summon his Diocesan Synod.

III. That the Synod of this Diocese was properly constituted.

IV. That its acts are the acts of this Church, and are binding upon the absent, as well as those present.

In the course of this part of the Bishop's argument, there occurs a striking passage on abandoned opinions.

"Ten years ago," he said, "when the subject of Synods was brought before the English mind and lawyers' minds, it was a new one. Men were called upon suddenly to express opinions, and it is not much to be wondered at that these opinions are not worth much. Some few very respected names, when claims hitherto little urged were put forth, said they could not be sustained. Others maintained the contrary, but the first class of objectors soon gave way. The present Lord Chancellor[1] was among them. Confounding the Convocation with Diocesan Synods, he at first said that the latter were unlawful in the Colonies, because the former could not be summoned in England, except by the Queen's writ, in company with the Parliament; but he soon saw his mistake, and we find him, in com-

[1] Lord Westbury.

pany with Sir F. Thesiger (since Lord Chelmsford and Lord Chancellor), T. Napier, T. Stephens, who has been so often quoted by the learned counsel, declaring that there was no law to prevent their being held in Australia, or in Adelaide, where they have ever since been held without challenge, the Governor of the Colony being himself a delegate, and the Synod doing quite as much in the way of legislation as we have done. . . . There has been of late years a great growth in the opinions of lawyers (*pace tua*, I say it), with reference to the liberties of the Church. Twenty years ago they denied it almost any liberty. In the last few years they have had different views. It has fallen to my lot to have something to do with such questions. When I first asserted the right of the Church to consecrate a Bishop for the heathen in my Cathedral Church, Earl Carnarvon, Under Secretary of State, told me that my claim, which I requested might be submitted to the law-officers of the Crown, came as a thunderbolt upon them. The case, however, was submitted and considered, and I was informed that the claim was admitted. But at that time it was not believed that the Bishops at home could do such a thing—the idea was scouted. Nothing daunted, however, the Bishops submitted a case to the present Lord Chancellor, this same Sir R. Bethell, the Queen's Advocate, and the present Attorney-General, and they all pronounced that the English Bishops could do the same, but very amusingly cautioned them against the exercise of so novel and unusual a power."

The Bishop proceeded to dissect Mr. Long's other pleas, to examine into the actual nature and force of licenses, the ecclesiastical position of the parish of Mowbray, the endowment thereof, etc., going on to show what the real question at issue was, "not what the plaintiff's ecclesiastical status is . . . but whether under any circumstances the Bishop had a right to deprive him of his license, his cure, and his emoluments; and, if this be admitted, then whether he had the right to do so under the circumstances of this case." He proved that to officiate "in the teeth of an ecclesiastical sentence, and that without an appeal, but treating it as a mere nullity, is, accord-

ing to the laws of the Church, one of the very gravest of ecclesiastical offences."

"In this case," he said, "*contempt* was repeatedly offered, and that after repeated admonition. . . . The sentence of deprivation followed, because, after the sentence of suspension was defied . . . there was no other remaining course open except excommunication, which I should have been very loth to adopt, because in the eye of the Church it would have been a heavier sentence than deprivation, however lightly man may regard it in these days. . . . Were I to point out the awful nature of this sentence from Church authorities, I might possibly be charged with popery and priestcraft; I shall therefore quote from a less suspected source—the Heidelberg Catechism, which is, as we all know, the form of instruction for the members of the Dutch Church in this Colony. . . . In its 31st section this question occurs: 'What are the keys of the Kingdom of Heaven?' The answer is: 'The preaching of the Holy Gospel and Christian discipline, or excommunication out of the Christian Church.' Then it is asked, 'How is the Kingdom of Heaven shut and opened by Christian discipline?' And the answer is: 'Thus; when according to the command of Christ, those who . . . are complained of to the Church . . . and if they despise their admonition, are by them forbid the use of the Sacraments, whereby they are excluded from the Christian Church, and by God Himself from the Kingdom of Christ.'" After quoting the Dutch Church's forms of excommunication and of reconciling penitents, the Bishop went on to say: "Now, if all this be a reality, and not a lie—if to excommunicate a soul be to cut it off for the time from Christ and from the Kingdom of Heaven—to place it out of the pale of salvation—to remove it from the Kingdom of our Lord unto the Kingdom of that Lord's enemy—to reduce the excommunicated person to the condition of a heathen man—the Court will, I am persuaded, agree with me that it is a sentence to which a Bishop should, in dealing with one of his Priests, have recourse only in the last extremity, and after all other expedients had been tried and failed. It was because I believed that depriva-

tion was a lighter punishment than excommunication that I had recourse to it. But what would have been his position had I excommunicated him, according to the Canons, and then, if he had not submitted himself, had proceeded to deprive him? Could your Lordships, under any circumstances, have set aside a sentence of excommunication? I apprehend not. Excommunication is a spiritual act, cutting a soul off, as we have seen, by a sentence of the Church, from spiritual privileges, and no sentence of your Lordships could restore those privileges, recover for the plaintiff that status, make a spiritual sentence null and void, or compel a Bishop to revoke it. The deed of contract expressly provides that the Incumbent of this Church must not be under the censures of the Church."

Referring to the Counsel's assertion that in these days it is impossible to deal with heresy, or to expel those who may teach it from the Church, the Bishop went on to say: "If it should be ruled that the Bishop of this Church cannot suspend or deprive a Clergyman under any circumstances, the claim to do so being Popish and medieval, he could not prevent infidels from occupying the pulpits of our churches. There would be no protection for the flock of Christ from false teachers. My Lords, the first duty of the Christian Church and of a Christian Bishop is to witness to the truth—to guard the deposit of the Faith committed to his keeping. It is not his business to consider whether the doing his duty will help forward or not the retention of numbers in the outward Communion of the Church;—he must leave that to the Great Head of the Church. His business is to be faithful to his Lord at any cost. Should evil days come upon us; should the love of speculation lead men astray; should the unbridled license of private opinion lead ministers of Christ to re-echo in this land the teaching to which allusion has been made,[1] as, alas! may be the case; it will, I am sure, be a grief to some sincere though mistaken Christians to feel that, by these proceedings, and the line they have adopted, they have done much to weaken the hands and discourage the efforts of him whose special office it would be

[1] Essays and Reviews.

to stand up for the truth of God handed down to us from our forefathers in the Faith. My Lords, if a Church does not witness for the truth, it does not witness for Christ. It ceases to be a true Church. Its light becomes dim, its life wanes, and at length its candlestick becomes removed. But it is the very power of the Church to eject heresy from its bosom that excites the alarm of the learned counsel, and rouses his powers of declamation." . . .

In conclusion, the Bishop said: "To have been compelled in person to defend in a temporal court not only my conduct with regard to a brother Clergyman, and my general rule and administration of the affairs of this Diocese, but also with regard to the Crown and its supremacy, whose legitimate rights I have ever sought to maintain, and would be the last man to invade, has been sufficiently distressing and humiliating. I shall not, however, regret it, if by so doing I may in any degree have established the Church and its laws on a firmer basis than that upon which they have hitherto rested, or have led any of my brethren . . . to weigh and consider and realise for themselves what that true constitution and principles of the Church are.

"It may be too much to expect that gainsayers will be convinced. It is not, however, too much to hope that henceforth they will be silent or unheeded. That an erring brother might be recovered and brought to recognise his fault is perhaps more than I dare venture to anticipate; but even to him one would think the reflection must bring pain, that (with it is believed a single exception) he is the only Clergyman among some thousands who, during the period that England has had Colonies, have served the Colonial Church—who has called in question the jurisdiction and defied the authority of him who was set over him in the Lord, compelling him to vindicate his right and just authority in the Civil Courts of the country.

"My Lords, I leave the case with confidence in your hands. The real question I submit at issue is, whether the Church shall be tolerated in this land or not? whether her officers shall be allowed to put her laws into execution? whether she shall

be denied the right to carry out her own discipline? whether the Church is an organised body, with rules and laws and officers to govern it? or whether her parishes are so many congregations of Independents? Upon the decision which you give, rest, I believe, not only the religious liberties of this Church, but of every denomination in the land. If, unfortunately, it were to be ruled by your Lordships that the sentences of recognised authorities in religious bodies shall not be final and conclusive, but that this Court will assume to itself the function of deciding upon the right or the wrong of such sentences—will claim the right to enter into the merits of every case of spiritual discipline that may be brought before it—to say whether a man shall or shall not remain a member of a religious body—in a word, to bind and to loose;—then, my Lords, knowing what the composition of this Court might be, that there is nothing to prevent a Mahometan or a Jew from sitting on this judgment-seat, and that it is far from impossible that in a few years we may behold distinguished unbelievers occupying your Lordships' places, and knowing what are the kind of cases which would probably be hereafter brought before this Court by members of religious bodies;—that they might relate to the inspiration of Holy Scripture, the doctrine of the Ever-Blessed Trinity, the Incarnation, or the Atonement;—knowing these things, I should tremble for the religious liberties of my adopted country;—I should be filled with apprehension for the future wellbeing, if not the very being, of the Church of Christ in this land. And, my Lords, I feel constrained to say, that if it should be ruled that the Church shall not have freedom in this land;—that she shall not be allowed to put in force her own laws;—that the real office and function of the Episcopate shall be proscribed; it would be a matter of grave consideration whether I ought not to abandon a post, the duties of which I should not be allowed to fulfil, and seek to exercise my ministry in other lands, where full liberty is granted to her.

"But, whatever your Lordships' verdict may be, for myself I am not troubled or disturbed. I have stood up for the right at

great pain and cost to myself—*liberavi animam meam.* I have done my duty in this matter to God, and for God. I have for these thirteen past years administered discipline in this Church, and at this day, in this case, not harshly or severely, but firmly, though reluctantly; and I believe my brethren of the Clergy throughout the land feel that this is so.

"It has caused me as much suffering to inflict as it can ever have caused my brother to bear the blow. Influenced by no personal considerations, acting in this matter simply as the responsibilities of my office have required me to act, I do not fear the result. I know that the issue will be for good. I am persuaded that what has happened will tend hereafter to the furtherance of God's Glory, the strengthening of the Church, and the advancement of Christ's Cause and Kingdom in this land."[1]

Soon after this the Bishop writes (September 12th, 1861): "I send you my last speech in the Supreme Court, which I am vain enough to think conclusive. The Judges, however, have gone off on a long circuit, and will not be back till near

[1] How strikingly these words are confirmed by Bishop Cotterill,—November 1st, 1872—being then Bishop of Edinburgh—who said: "In other branches of the Colonial Church Synodical action was commenced, and in some respects matured, long before it was completed in South Africa. But nowhere was it conducted among difficulties so perplexing as those with which Bishop Gray had to contend; nowhere was opposition so vehement, and for a time apparently successful; and nowhere, except in South Africa, did that opposition lead to judicial decisions, which, whilst they involved him in great anxieties and losses, yet even while they seemed to be adverse, nevertheless, by sweeping away the fiction of a Royal Supremacy, exercised through letters patent, ended in establishing on far safer and higher principles the ground on which the Church might exercise its inherent right of self-government. It is through these struggles with which his name will ever be associated, that the Church has gradually obtained, even from those who seemed most reluctant to admit it, a recognition of the truth that she need not wait for acts either of a Sovereign or of a Parliament to exercise her own functions. A few words of his own, written to me long since, will explain better than any words of mine the principle on which he acted in these matters, and which, while exciting opposition at first, ultimately produced such important results: 'My conviction is,' he said, 'that there is less loss in the long run by making a stand at first for what is right, than by yielding points of importance because you cannot get people to see that they are important as clearly as you do yourself.'"

Christmas. I am glad that they will have time to think before they speak, for many new and important questions have been raised. Watermeyer argued his case better than before; but has, I think, established nothing."

"February 14, 1862.—I dread the possibility of a fresh collision and fight, for if the Judges were to assume spiritual power I should be compelled to excommunicate. To admit that the temporal Court has a spiritual jurisdiction above that of the Church would be to unchurch the Church! This I may not do, at whatever cost. I shall do nothing rashly; but if the Judges assume spiritual jurisdiction, I shall be beset with difficulties, and I think there will be a row."

Judgment was not given till February 15th, 1862, when the Chief Justice summed up. In the course of his summing up his Lordship expressed several strong and important opinions —*e.g.*, "The proofs that Mr. Long has acknowledged the authority and jurisdiction of the Right Rev. defendant as his Bishop, are full, ample, and complete. In truth, if the Bishop be not a Bishop, Mr. Long is not a Priest. . . . If such Courts act within their jurisdiction, and there is no irregularity or fraud in the proceedings, it appears to me that their decision is final, and that this Court has no power whatever to inquire into the grounds of their decision. . . . I cannot for a moment doubt that a Bishop of the Christian Church may suspend or deprive a Presbyter. 'Order is Heaven's first law,' and surely we must expect to see it maintained in every branch of Christ's Holy Church. The next inquiry is whether the Bishop regularly exercised his power in the present instance." This his Lordship judged he had done, and he concluded by saying: "I have only to add that when the prohibition was applied for, on which these proceedings are founded, I was against granting it; because I held the same opinion on this all-important question then that I have endeavoured to express to-day; and if my opinion proves to be correct, the result will be that in this Colony every church and community will be allowed self-government, and to manage its own internal affairs without the interference of this Court, provided its proceedings, rules, and

regulations are not illegal, or calculated to impair the security, peace, and tranquillity which now happily prevail."

Mr. Justice Bell then gave his judgment, which dissented from that of the Chief Justice, and Mr. Justice Watermeyer last. He said emphatically, "I believe the plaintiff to have been throughout in error, and for his error he suffers. At the same time this error has been induced by the very anomalous position of the Church of England in this Colony . . . and the plaintiff, wrong as he is, and punished for the wrong, is certainly entitled to sympathy." The Chief Justice then gave the Judgment of the Court in favour of the defendant.

"The Supreme Court" (the Bishop wrote, February 19th, 1862, to his son), "Judge Bell dissenting, have given a verdict in my favour, with costs. They have affirmed every great principle that I have thought it my duty to contend for, and put the liberties of the Church upon a safe foundation. . . . Mr. Long appeals to the Judicial Committee, and I am plunged into fresh and anxious litigation. All will, I doubt not, end well; but it is very harassing."

To Dr. Williamson he wrote at greater length by the same mail.

". . . . The Court gave judgment in my favour . . . they were five hours delivering themselves. The Chief Justice took the ground of not interfering with the internal affairs of spiritual bodies, and spoke very strongly on this point. It was a very able judgment and very sound. Bell followed for two hours and a half; letters patent good for nothing; Crown could not give ecclesiastical jurisdiction; no Church of England here, nothing but certain congregations; nothing to bind us to the Church of England—neither prayer book, nor canons, nor anything. If Mr. Long chose to have extempore prayer instead of Liturgy I could not touch him; I had no jurisdiction of any kind. Synods, if not illegal, were nearly so. We had nearly, if not quite, violated law in some of our proceedings. I had done wrong in every point—there was no contract by ordination vows, or licence, or in any other way, between me and Long; and if there had been, it would have been a violation of

law—my judgment and the ground of it were wrong. It was the speech of a partisan and an advocate, not the sober judgment of a judge. He is a Scotch Presbyterian by birth; his wife was a Glassite, and is now a communicant, and I have confirmed his children. . . . Watermeyer's judgment was a very powerful one. He is our leading Judge, and a Lutheran; brother to Long's counsel. He had worked the whole subject thoroughly out. His argument was an admirable one. They have affirmed every principle that I have contended for; the only point in which the Court differs from me is on the perpetual existence of the first letters patent, and a *coercive* jurisdiction arising out of them. I argued this (and I am not convinced that I was wrong), not because I wished it to be so, for I think it would have been injurious to the Church, and I should have had, by law, Episcopal and perhaps not Metropolitical jurisdiction over Graham's Town and Natal; but because it was a point which might serve, if others failed. I need not tell you that the result is a great relief to my mind. They talk of an appeal, and even the *Argus* thinks that a judgment of the Privy Council alone can finally and fully settle these questions. I trust that the expense may deter them, for the Court has given me costs; but I do not fear the result. No judges in England would upset the judgment of the Supreme Court here, that religious bodies are to govern their own internal affairs by their own laws, without interference from secular Courts, provided that they do nothing against the law of the land. I have had a long and anxious contest, God knows, but I do not regret it, if it is to settle the question of the religious liberties of the Church in the Colonies for ever. Long has been at the Wesleyan chapel in Mowbray for the last three Sundays, and has done all he could to keep people away from the Church, which is, however, full."

To the Rev. Dr. WILLIAMSON.

"March 18th, 1862.

"I send you by this mail the judgment. Watermeyer's is the best, though I doubt his law. Bell's has given great

offence. I am writing notes on its perversions and misrepresentations for R. Palmer and R. Phillimore, for there is to be an appeal. Perhaps, as this will settle the status of the whole Colonial Church for ever, it is best for the Church that there should be one. But it is an additional source of anxiety to me, and will (with costs here) compel me to find £700 or £800. I saved £100 by pleading my own cause. The Chief Justice says my speech was the best sermon I ever preached;—I suppose because I converted hardened judges! What do you think of our new Governor writing to me, re-opening and re-affirming all the points against which the judges have decided, and declining to appoint Hughes to Rondebosch till he has laid the matter before the Duke of Newcastle? I have sent him this morning a letter of twenty-seven folio pages in reply, and pretty strongly set before him the determination of this Church not to allow of any interference on the part of the civil power with its religious liberties or the acts of its Synods. He has forced me to this. I fear that it may destroy harmonious action during his government. But I have learnt this, that these men—the world—will crush you if you do not tell them in the plainest words that they shall not. Even Dizzy, in his Wycombe speech, seemed to intimate that the Mother Church was too complaisant to the civil power. I wish she were more independent.

"February 20th, 1862.

. . . "Had the rule simply been discharged, they say that an appeal would not lie to the Privy Council. It is vacation now, and they say that these pleadings will not take place for near three months. Their decision was that, *pendente lite,* Long should not officiate, but receive his pay, as he has half-a-dozen children. The Dean and the Clergy and Tennant, my solicitor, think that the decision was the best that could have been given, inasmuch as it turns Long out of the Church, to which he would have clung if the case had been settled against him, and I should have been compelled to proceed in Court as plaintiff for his ejectment, and this would not have been decided for three months. I think, with the Chief Justice, that the case

was closely made out in all points, and logically and conclusively proved; but though it worries me a good deal, and will give me much trouble to work up the case more fully than I could do in the two days before the trial, it will teach both Judges and public what the nature and the true principles of the Church are. . . . I had meant, if the case had been settled yesterday, to have offered to reinstate Long, on condition that he expressed sorrow, and promised future obedience. I have no personal feeling in the matter, but as jurisdiction has been repudiated, it must be asserted."

To EDWARD GRAY, Esq.

"Bishop's Court, February 20th.

"I have received notice of appeal, and have written to S. Oxon to ask him to advise you how to proceed. My own view (looking at the importance of the case as fixing the status and liberties of the whole Colonial Church) would be to employ Sir R. Palmer and R. Phillimore, asking the latter to name an attorney to prepare the case. I send you the whole of the published proceedings of the trial. . . . I will, if I have time (I am writing now during the night) prepare a paper of remarks upon the judgment, as hints to counsel; but this will be very difficult, even if I have time, without the judgment before me. . . . At seven this morning I leave for town, to watch the petition of appeal and oppose certain parts of it. This is the fourteenth anniversary of my landing here. Anxious years they have been. Would that all the errors of them had not been."

To the Same.

"Bishop's Court, March 18th, 1862.

. . . "During this year I shall draw as little as possible on my private account, for you will want full command of it to pay the expenses of an appeal to the Privy Council. The Court here has bound Mr. Long's attorney to the extent of £600 for my costs. I suppose it may not come up to that in England, but I probably shall pay £200 here, having saved £100 by pleading my own cause. . . . The case will be pre-

pared here, I am told, and printed, so that there will be very little for an attorney to do. The Chief Justice signs the case to go before the Judicial Committee. If anything should occur to prevent R. Palmer from taking up the case, I should be glad if you would take the Bishop of Oxford's opinion as to counsel. . . . This case will settle the right of the Metropolitan and his Suffragans to try an erring brother. . . . If Courts should refuse to endorse the opinion of Watermeyer, the Church must break up in the Colonies. It could not hold together long as a body. But the Privy Council will not. It will endorse that view, and it will be an immense boon to the Church everywhere, and save it from prostrating itself before Colonial Parliaments, composed of men of all denominations, and asking them to be gracious enough to define rights of Bishops, Priests, and Deacons, and tell them what they may do and what they may not. Colonial legislation for the Church is no better than a device of Satan to destroy it."

As it seems desirable to keep the details of the Long case together as a whole, apart from other matters, it need only be said here that Bishop Mackenzie's death, which occurred February 22nd, 1862, led the Metropolitan to return as soon as he was able to England, although he had resolved not to do so concerning his own affairs. Accordingly, he landed at Plymouth on June 26th, 1862.

The Appeal of Long *v.* the Bishop of Cape Town, came before the Judicial Committee of Privy Council on February 9th, 1863;—Sir Hugh Cairns, Dr. Twiss, and Mr. F. M. White, being Counsel for the Appellant; the Solicitor-General, Sir Roundell Palmer, the Queen's Advocate, Dr. Phillimore, and Mr. Henry Buller, for the Bishop. The Arguments were concluded on the 13th, but the Judgment was not given till June 24th.[1] Probably this judgment surprised most Church people when it appeared, reversing, as it did, that of the Supreme Court of the Colony. The Lords present were—Lord Kingsdown, the Dean of the Arches, Sir Edward Ryan, and Sir John

[1] See Appendix I.

T. Coleridge. Lord Kingsdown, in giving judgment, after describing the case, said:

"In the argument at our Bar many questions of great novelty and importance were raised and discussed with remarkable ability. Some of them were considered, and very justly, by the Counsel, as seriously affecting the wellbeing of members of the Church of England in the Colonies and other dependencies of the Crown. We propose to deal with these questions only so far as may be necessary for the present decision, and to abstain as far as possible from saying anything which may prejudice cases that may hereafter arise."

Lord Kingsdown then proceeded to give a statement of the facts, going on to express an opinion upon them as follows:—

"The first question which we have to consider is, What authority did the Bishop possess, under and by virtue of his letters patent, at the time when these sentences were pronounced? The Judges below have been unanimous in their opinion: 1*st*, That all jurisdiction given to the Bishop by the letters patent of 1847 ceased by the surrender of the Bishopric in 1853, and the issue of the new letters patent; and 2*ndly*, That the letters patent of 1853 being issued after a constitutional government had been established in the Cape of Good Hope, were ineffectual to create any jurisdiction, ecclesiastical or civil, within the Colony, even if it were the intention of the letters patent to create such jurisdiction, which they think doubtful. In these conclusions we agree.

"Dr. Gray had been duly appointed and consecrated a Bishop of the Anglican Church in 1847, and such he remained after the resignation of his See; but by such resignation he surrendered all territorial jurisdiction and power of proceeding judicially *in invitos*, so far as such authority depended upon the letters patent of 1847. These points have not only been decided by the Court below, but have been embodied in their judgment, by which they have expressly rejected the second claim of the Bishop. But a majority of Judges below has held that the defect of coercive jurisdiction under the letters patent has been supplied by the voluntary submission of Mr. Long,

and that he is on that principle bound by the decision of the Bishop. This point we have next to consider.

"The Church of England, in places where there is no church established by law, is in the same situation with any other religious body, in no better, but in no worse position, and the members may adopt, as the members of any other communion may adopt, rules for enforcing discipline within their body, which will be binding on those who expressly or by implication have assented to them. It may be further laid down that where any religious or other lawful association has not only agreed on the terms of its union, but has also constituted a tribunal to determine whether the rules of the association have been violated by any of its members or not, and what shall be the consequence of such violation, then the decision of such tribunal will be binding when it has acted within the scope of its authority, has observed such forms as the rules require, if any forms be prescribed, and if not, has proceeded in a manner consonant with the principles of justice.

"In such cases the tribunals so constituted are not in any sense courts; they derive no authority from the Crown, they have no power of their own to enforce their sentences, they must apply for that purpose to the Courts established by law, and such Courts will give effect to their decision, as they give effect to the decisions of arbitrators, whose jurisdiction rests entirely upon the agreement of the parties. These are the principles upon which the Courts in this country have always acted in the disputes which have arisen between members of the same religious body not being members of the Church of England. . . . To these principles, which are founded in good sense and justice, and established by the highest authority, we desire strictly to adhere; and we proceed to consider how far the facts of this case bring Mr. Long under their operation.

"To what extent then, did Mr. Long, by the acts to which we have referred, subject himself to the authority of the Bishop in temporal matters? With the Bishop's authority in spiritual matters, or Mr. Long's obligations *in foro conscientiæ*, we have not to deal.

"We think that the acts of Mr. Long must be construed with reference to the position in which he stood as a Clergyman of the Church of England towards a lawfully appointed Bishop of that Church, and to the authority known to belong to that office in England; and we are of opinion that by taking the oath of canonical obedience to his Lordship, and accepting from him a license to officiate, and have the cure of souls within the parish of Mowbray, subject to revocation for just cause, and by accepting the appointment to the living of Mowbray under a deed which expressly contemplated, as one means of avoidance, the removal of the incumbent for any lawful cause, Mr. Long did voluntarily submit himself to the authority of the Bishop, to such an extent as to enable the Bishop to deprive him of his benefice for any lawful cause, that is, for such cause as (having regard to any differences which may arise from the circumstances of the Colony) would authorise the deprivation of a Clergyman by his Bishop in England. We adopt the language of Mr. Justice Watermeyer (p. 81), that 'for the purpose of the contract between the plaintiff and the defendant, we are to take them as having contracted that the laws of the Church of England shall, though only as far as applicable here, governs both.'

"Is, then, Mr. Long shown to have been guilty of any offences which, by the laws of the Church of England, would have warranted his suspension and subsequent deprivation? This depends mainly upon the point whether Mr. Long was justified in refusing to take the steps which the Bishop required him to take, in order to procure the election of a delegate for the parish of Mowbray to the Synod convened for January 11th, 1861. In what manner and by what acts did he contract this obligation? The letters patent may be laid out of the case, for if the Bishop's whole contention in respect of them be conceded, they conferred on him no power of convening a meeting of Clergy and laity to be elected in a certain manner prescribed by him for the purpose of making laws binding upon Churchmen.

"A very elaborate argument was entered into at our Bar to

show that Diocesan Synods may be lawfully held in England without the license of the Crown, and that the statute with respect to Provincial Synods does not extend to the Colonies. It is not necessary to enter into the learning on this subject. It is admitted that Diocesan Synods, whether lawful or not, unless with the license of the Crown, have not been in use in England for above two centuries; and Mr. Long, in recognising the authority of the Bishop, cannot be held to have acknowledged a right on his part to convene one, and to require his Clergy to attend it. But it is a mistake to treat the assembly convened by the Bishop as a Synod at all. It was a meeting of certain persons, both Clergy and laity, either selected by the Bishop, or to be elected by such persons and in such manner as he had prescribed; and it was a meeting convened, not for the purpose of taking counsel and advising together what might be best for the general good of the society, but for the purpose of agreeing upon certain rules, and establishing in fact certain laws by which all members of the Church of England in the Colony, whether they assented to them or not, should be bound.

"Accordingly, the Synod, which actually did meet, passed various acts and constitutions purporting, without the consent either of the Crown or of the Colonial Legislature, to bind persons not in any way subject to its control, and to establish Courts of Justice for some temporal as well as spiritual matters; and, in fact, the Synod assumed powers which only the Legislature could possess. There can be no doubt that such acts were illegal.

"Now Mr. Long was required to give effect as far as he could to the constitution of this body, and to take steps ordered by that body for convening one of a similar nature. He was furnished with a copy of the acts and constitution of the last Synod, and he was requested to attend carefully to the enclosed printed regulations with regard to the election of delegates. He clearly, therefore, was required to do more than give notice of a meeting, and he could not give the notice at all without himself fixing the time and place at which the meeting was to

be held. He was required to do various acts of a formal character for the purpose of calling into existence a body which he had always refused to recognise, and which he was not bound by any law or duty to acknowledge. The oath of canonical obedience does not mean that the Clergyman will obey all the commands of the Bishop against which there is no law, but that he will obey all such commands as the Bishop by law is authorised to impose; and even if the meaning of the rubric referred to by the Bishop in his case were such as he contends for—which we think it is not—it would not apply to the present case, in which more was required from Mr. Long than merely to publish a notice.

"We are, therefore, of opinion that the order of suspension issued by the Bishop was one which was not justified by the conduct of Mr. Long, and that the subsequent sentence of deprivation, founded upon his disobedience to the order of suspension, must fall with it.

"It was strongly pressed, both before us and in the Court below, that, supposing these sentences to be erroneous, Mr. Long had no remedy against them except by appeal to the Archbishop of Canterbury under the provisions of the letters patent. What authority his Grace might possess, under the letters patent or otherwise, to entertain such an appeal if it had been presented, it is unnecessary, and we think it inexpedient, to discuss. It is sufficient to say no such appeal has been presented, and that the suit in which this appeal is brought respects a temporal right, in which the appellant alleges that he has been injured. It calls for a decision as to the right of property, and involves the question whether Mr. Long has ceased by law to be what in England is called *cestui que* trust of funds of which the Bishop is trustee. Whatever else Mr. Long may by his conduct have done, we cannot hold that he has precluded himself from exercising the power which under similar circumstances he would have possessed in England, of resorting to a Civil Court for the restitution of civil rights, and of thereby giving to such Courts jurisdiction to determine questions of an ecclesiastical character essential to their deci-

sion. Indeed in this case the appellant and respondent have alike found it necessary to call upon the Civil Court to determine the right of possession of the church of Mowbray.

"We think that even if Mr. Long might have appealed to the Archbishop, he was not bound to do so; that he was at liberty to resort to the Supreme Court, and that the Judges of that Court were justified in examining, and indeed under the obligation of examining, the whole matter submitted to them. We are, of course, in the same situation, and after the most anxious consideration we have come to the conclusion that the sentence complained of cannot be supported; and therefore we must humbly advise Her Majesty to reverse it, and to declare that Mr. Long has not been lawfully removed from the church of Mowbray, but remains minister of that church, and entitled to the emoluments of it."

The learned speaker went on to make some observations, which must have struck every one cognisant with the case as altogether mistaken and unfair, concerning the Bishop's course of proceeding, as to form, with respect to his assessors, etc., concluding with the words:

"On this occasion (the sentence of deprivation) the sentence seems to have been founded on what are termed repeated acts of disobedience and contempt by Mr. Long, instead of on the single charge which he was called upon by the citation to meet. We cannot say, therefore, that the proceedings have been conducted in a proper manner, although our judgment rests on the other grounds already stated.

"We have been much embarrassed by the question how we ought to deal with the costs in this case. We do not doubt that the Bishop has acted in the conscientious discharge of what he considered to be his public duty, and he has succeeded at great personal trouble and expense in bringing this contention in the Court below to a favourable issue. On the other hand, it is impossible not to feel that Mr. Long has been subjected to probably not less trouble and expense by a course of proceeding on the part of the Bishop which we have been obliged to pronounce is not warranted in law. Feeling the hardship of

the case upon the Right Rev. Respondent, we still think that we are bound to award the costs of the suit and of the appeal in favour of the Appellant. We cannot, of course, suggest to Her Majesty any consideration of what it may be fit to do, at the expense of the public, for this is beyond our province. But it is not beyond our province to observe that the Lord Bishop has been involved in the difficulties by which he has been embarrassed in a great measure by the doubtful state of the law, and by the circumstance that he, not without some reason, considered the letters patent, under which he acted, to confer on him an authority which, at the time he acted under them, Her Majesty had no authority to grant, and that either in this or in some other suit it was important to the interests of the Colony generally, and especially of the members of the Church of England within it, that the many questions which have arisen in this case should, as far as possible, be set at rest."

It may perhaps be well here to mention the significant fact that the Treasury contributed the sum of £285:5s. towards reimbursing the Bishop (his expenses coming to above £1,600); others also who felt moved at the injustice of the case, contributed to the same end, notably Mr. Keble and Mr. Isaac Williams, eventually reducing the Bishop's charges to £900. No doubt these might have been far more materially lessened, but for his own very strong feeling against asking for any help, or allowing any of his family to do so on his behalf,—considering, as he did, that it was for the Church's cause he was pressed, and that, while gladly accepting help from those who offered it, the cause was too dignified a one to solicit aid.

The Bishop had returned to Cape Town in April 1863, before this judgment was delivered. On receiving it, his first step was to write a letter to the Churchwardens of Mowbray, which is so important a document in this episode of Colonial Church history, that it is necessary to quote it at almost full length:

"Bishop's Court, August 14th, 1863.

"My dear Brethren—The final decision of the Judicial

Committee of Privy Council on the many important questions relating to the Church in the Colonies has at length reached me. You will expect to hear from me in what light I regard that decision as affecting both, first your own parish, and second the Church at large. First, as to the parish (here the Bishop quotes the judgment as to giving of notices). However little I may be satisfied with this interpretation of the law of the Church—(and I am not satisfied, but still believe that by that law the presence of the laity does not destroy the character of the Synod, and that by the canons of the Church every Clergyman of a Diocese is bound to acknowledge the authority of the Synod of the Diocese, and to attend it when summoned, without entering into any contract to do so)—I frankly allow that I am bound in practice to admit the authority of the Judges on such a point; and that it sets the conduct of Mr. Long, so far as the fact of refusal to give the notice is concerned, in a different light from that in which I have regarded it. In law, according to the judgment of the highest court of law, he was justified in refusing to give the notice. With his moral obligations the Court does not concern itself. They do not properly come under its cognisance. 'With Mr. Long's obligations *in foro conscientiæ* we have not to deal'!

"Acquiescing, as I feel bound to do, in this interpretation of the law, I have felt the greatest difficulty in making up my mind as to how I ought to deal with Mr. Long himself. The decision puts him in possession of the emoluments of the living and of the building. Professedly, if I understand it aright, it does not go beyond this. It does not affect to give him the cure of souls, and the right to minister Sacraments, which have been taken away. It says expressly, 'The suit respects a temporal right,' 'calls for a decision as to rights of property.' . . . 'With the Bishop's authority in spiritual matters we have not to deal.'

"But indirectly it does this. Admitting, as I do, the deprivation to be a sentence of a mixed character, the suspension was purely a spiritual sentence. It affected no temporal right. It left the emoluments untouched. That sentence of the Bishop

is set aside. If there be such a thing as the Christian Church, all spiritual power within it must be derived from Christ. Neither kings nor parliaments nor civil courts can confer it. It has been given by Christ (at least so the Church of England holds) to the Bishop. Herein lies my difficulty. Is not acquiescence in this assumption a surrender of spiritual authority to a temporal Court, and a betrayal of the trust which Christ has committed to me? With great hesitation I have come to the conclusion, after weighing well the advice which has been tendered to me both here and in England, that I may restore, and perhaps ought to restore, Mr. Long to the cure of souls, and the right to celebrate Sacraments, upon the ground that he had in law justification for his conduct. I have therefore to inform you that I have, with the advice and concurrence of the majority of my assessors in his trial, formally restored him to the exercise of spiritual functions in the parish of Mowbray; and I pray God to give him grace to act hereafter with faithful allegiance to the Church, and dutiful submission to its authority. But in doing this I desire to guard myself against any recognition of spiritual authority in the Judicial Committee as regards this Church; and I therefore feel solemnly bound to protest—as in cancelling my spiritual sentence I have protested, and here again protest—that in accepting their judgment on a matter of law, I do not admit the claim of the Court, if such claim be involved in its decision, to set aside a spiritual sentence of a Bishop of the Church in Africa. In that case I repudiate the asserted right, and declare that my acquiescence is not to be regarded as a precedent, should any future case arise of an appeal from my jurisdiction to that of a secular Court. I hold myself free to give or to withhold spiritual powers, let the sentences of temporal Courts be what they may.

"You will, perhaps, look for some expression of my view as to the bearing of this judgment upon the general position of the Colonial Church. The Court admits the Bishop's jurisdiction, and the right of the Church to meet in her religious assemblies, and to regulate her own affairs. Her members,

when they meet, may make rules for the enforcement of discipline within their body, which will be binding on those who, expressly or by implication, have assented to them. They may 'constitute a tribunal to determine whether the rules of the association have been violated by any of its members or not, and what shall be the consequences of such violation.' This is all very valuable, and it is all that has been claimed for the Church here.

"The Judges further declare—I. That the Queen's letters patent convey no ecclesiastical or civil jurisdiction—are worthless for the purpose for which they have been chiefly framed; and II. They neither affirm nor deny the jurisdiction of the Archbishop of Canterbury. Upon this latter point I offer one or two observations.

"The subject of appeals in spiritual causes from Colonial Churches is one of great moment. The Crown, so far as it had power to do so, appointed the Archbishop of Canterbury by letters patent a final court of appeal. In this the Church has generally concurred. . . The Judicial Committee, by leaving the question of right of appeal doubtful as regards the Archbishop, but not doubtful as regards itself, manifestly encourages appeals to secular courts. I regard this as full of danger to the Church. If the Court claims the right to hear appeals in cases of discipline, it certainly will make the same claim in cases of doctrine. It will, *de facto*, decide what is or what shall be the recognised faith of every religious body in the empire; and its decisions will become virtually fresh articles of faith for those bodies. It may add to or diminish what those bodies, by their own courts, have decided to be their faith.

"Is such a system to be allowed to grow up among us? Is a secular court, whose judges need not be Christians—before which causes cannot be pleaded except at a ruinous expense—to be acknowledged—for it does not claim to have been made—a final court of appeal for all religious bodies in the empire? In this case it has been laid down that parties choosing to appeal to it, or indeed to any civil court, 'thereby give to such courts jurisdiction to determine questions of an ecclesiastical character essential to their decision.'

"I confess that to my mind such language is alarming, and dangerous to the liberties of the Church; and as a Bishop and a judge in ecclesiastical matters, I feel bound to say that I cannot assent to it, or recognise any civil court as having ecclesiastical jurisdiction in this branch of the Church of Christ.

"The Judicial Committee, while admitting the right of the members of the Church to meet and consult together, has accused the Synod of this Diocese with interference in temporal matters, and with the commission of illegal acts. This is a grave charge, but, as far as I know, it is a charge for which no ground exists. The regulations passed by the Synod are of the same character as those which have been adopted by Synods in almost every Colonial Diocese, and had reference only to matters of internal administration, interfering in no way either with the functions of the civil power, or with civil privileges. I can only, therefore, express my surprise that such a charge is made, and my belief that it is entirely groundless. To say that a Synod may not frame such rules and regulations as those which have been passed by the Synod of this Diocese, is to deny that we may act as a Church, and to interfere with our religious liberties.

"As to claiming to bind those who do not assent to its authority, it is sufficient to observe, that, by deciding that all Clergymen who should hereafter be received into the Diocese should assent to its authority, it sufficiently showed that it did not assume authority over persons independent of that assent.

"There are certain statements made by the Judges which are incorrect as to matters of fact. Some of these I feel bound to notice; there are others which I pass by. I. They speak of some of the delegates of the Synod being 'elected by the Bishop, or elected in such manner as he had prescribed.' You are aware that there is no foundation for this statement. The delegates were all elected, and elected in the manner in which the Clergy and lay delegates of the previous Synod appointed them to be.

"II. They admit that the Bishop could not do otherwise than act as judge in this case, but say that he should have pro-

cured the advice and assistance of assessors, of men of legal knowledge and habits, and have left it to them to frame the decision. No one acquainted with the facts of the case, or the circumstances of this country, could have made such a remark as this. Bishops for a thousand years gave their decisions without the aid of civil lawyers, and I should be justified in doing the same. In this case, however, I did obtain the best professional advice which, at the time, I thought it in my power to procure.

"III. They say that, instead of this course, the Bishop selected three gentlemen, all Clergymen sharing his own opinions.

"There were five Clergymen. The Synod had decided that Clergymen should be the Bishop's assessors, and had appointed these very men to be such. The Canons of the Church (122) do the same. Mr. Long was asked if he objected to any of them. There was only one Clergyman then in the Diocese who did not share the Bishop's opinion as to the lawfulness of Synods. All this was in evidence before the Judges.

"IV. They say, 'The Bishop insisted that Mr. Long was bound by the rules established by the Synod, and must therefore, it should seem, have considered himself bound by them; and yet, without any regard for these rules, without calling in the aid of any legal adviser whatever,' etc.

"The facts are these:—1. The Bishop never insisted that Mr. Long was bound by the rules established by the Synod. 2. Was not himself bound by the regulations as to the Consistorial Court established by the first Synod, for these regulations were suspended by the second Synod. 3. Did keep as close to them as was possible. 4. Did not act without calling in any legal adviser whatever. These facts were all either in evidence before the Judges, or mentioned in my speech, for copies of which they asked in Court.

"Lastly, they say that the sentence of deprivation was founded upon repeated acts of disobedience and contempt, instead of on the single charge which he was called upon by the citation to meet.

"In the citation of February 19th, Mr. Long was charged

with repeated acts of disobedience, 'failing to render due Canonical obedience to your Bishop, continuing to discharge parochial duties, officiating and performing Divine service,' etc. These were continued for more than a month, and these were the repeated acts of disobedience on which the sentence was founded.

"I do not suppose that the proceedings carried on before a Bishop, *foro domestico*, are likely to be so conducted as to escape criticism, but I have no doubt substantial justice was secured in this case. It might be a mistake *in law* to regard Mr. Long's proceedings after his suspension as fresh faults; but I believe that the Church here generally concurred with me in regarding them as such. . . . The Court expresses its sympathy for me under the hardships of this case, and expresses its opinion that the difficulties by which I have been embarrassed are, in a great measure, owing to the doubtful state of the law, and the fact that Her Majesty professed to confer by letters patent power which she had no authority to grant; and they appear to think these difficulties will be in some measure removed by the decision which they have given. I trust it may prove so. I much fear, however, that they will be increased. . . . I remain, my dear Brethren, etc. R. CAPETOWN."

Some of the Bishop's more private letters express his mind fully at this trying period, and show with how keen a feeling he accepted what was certainly a severe blow:—

To EDWARD GRAY, Esq.

"Heidelberg, August 29th, 1863.

"My dear Edward—I had no time to write to you before leaving home. The judgment is in many respects a blow and a disappointment. It must unsettle this and other Dioceses. Had it been a sound and a just one there would not have been a cloud overhanging our future progress in Africa, for the Natal case would really, I believe, have strengthened the Church here. It makes my future very difficult, because of the principles which it lays down. It really, in effect, claims

for the Privy Council the right to decide our faith as well as that of the Church of England, and encourages plainly the Bishop of Natal to go to it, and appeal against any purely spiritual sentence of the Metropolitan. I can never consent to put the Church of Africa and its faith under the heel of the Civil Courts, and let them decide for all future ages what shall be taught in our Churches, how much or how little of the deposit of the Faith we shall hand on to our children's children. Hence I foresee future troubles, struggles, suspensions, schisms. Looking forward to this, and believing that it is a compromise of duty to admit that a Civil Court *can* set aside a spiritual sentence of a Bishop of the Church, it was against my own conviction of what is right that I reinstated Long. I did so in deference to the views of others, dear S. Oxon among the rest.

"The judgment itself is a mean one; and all the more mean because it was expressly worded, as Lord Wensleydale wrote to Lord J. Thynne, so as not to let the Bishop of Natal escape. But it is more than mean—it is in many ways unjust. You would see in my letter to the churchwardens how the Judges have misstated facts on points which were most likely to carry people's feelings with them and against me. The *Guardian* takes those points up, and they are such as to cause distrust of me as a just man, and to weaken confidence in my manner of dealing with the Natal case. The errors as to fact are quite inexcusable, especially as there was no need to have touched upon the points, and they are only indicative of an animus.

"The judgment I consider a shabby one, because the Judges knew from this whole case that the real causes which led to these trials were—I. An utter repudiation on the part of Mr. Long of any jurisdiction on the part of the Bishop; II. An accusation, on his part, of the Bishop, on the ground that by summoning a Synod he had violated the supremacy of the Crown. It was to settle these, and other purely legal questions, as, *e.g.*, the value of the letters patent, that I consented to go before the Civil Courts. How do they deal with these

great questions? They bring the laws and the constitution of the Church to restrict the Bishop's jurisdiction, and to reduce it as far as possible. But they neither affirm nor deny that those laws and that constitution place him in a certain relation to his Priests, and they to him. They evade anything like a recognition of the real laws and the constitution of the Church, upon which the whole case turned, and treat the matter simply as a question of contract between two individuals. And in doing this they seem to me to violate the very principle they lay down. Mr. Long takes an oath of canonical obedience. They truly say this does not bind him to obey the statute law of England regarding the Church; but the laws of the Church itself, so far as applicable here. Among these laws are those which bind the Bishop to summon his Synod, and the Clergy to attend it. But the Judges rule that Mr. Long was not bound to obey, because Synods have not been in use in England for 200 years. But we are not in England; and just as we are not bound to obey the State's laws which are not made for us, so are we bound to obey the Church's own laws, which were made for communions in our circumstances, and of which we feel the need.

"It is a monstrous thing to say that a Clergyman ordained in Africa, and expressly and solely for Africa, is not bound to obey the Church's laws, which are of infinite value to us in Africa, because in England the State has established the Church and governs it by Act of Parliament.

"But the Judges are not content with refusing to allow that the Church's Canons are binding upon her Priests who take the oath of canonical obedience. They take upon themselves to decide what is not the true constitution of a Synod. They affirm that the presence of the laity destroys its character. Now, to put aside the plain fact that it rests by the Canons with the Bishop to say whether any or what laity shall attend the Synod, they have throughout the Church's history actually been present. Did Constantine's presence destroy the character of the Synod of Nice? Did the presence of lay representatives at Trent destroy the character of that Synod?

"I hold that the decision is unjust to the Church, because by its laws Mr. Long was bound to attend the Synod, and to abide by its conclusions. But the meanness of this judgment is to be seen also in this, that having been expressly called to say whether the summoning of Synods was lawful or not, and being unable to declare them unlawful, they decline to pronounce them lawful, but pass the question by, saying, This was not really a Synod. My letter to the Churchwardens you have seen. I did not in it point out one thing which I thought very mean. The Judges wished to show that I held Mr. Long responsible to the Synod—bound to recognise it. They make nothing of my repeated statements from the very beginning that I had no wish to hold him as in any way bound by its decisions, or to be present at it if he did not like it; but they say that I sent him a copy of the acts and constitutions, evidently meaning to imply that I challenged his obedience to them. This is not true.

"I had printed the regulations as to the mode of conducting elections, which I forwarded to him, and sent them as my own instructions for the meeting, at which he was in no way called to be present. I called upon him merely to give the notice as *my* directions, not the Synod's. Another mean thing, I think, was to have wholly overlooked the fact that while the trial was going on before the Supreme Court I offered to withdraw my sentence if Mr. Long would—I. Recognise the Bishop's jurisdiction. II. Withdraw his charges of disloyalty to the Crown. III. And express regret for the same: and that he refused.

"I trace throughout this whole judgment a very decided animus. It will place us in great difficulty as to our future course. It will weaken—it is possible that it may break up—the Colonial Churches. It must be a fruitful source of dissension within them. One or two Clergy in a Diocese can almost defeat anything like corporate action. If I held a secular instead of a spiritual office, I would withdraw at once from the contest. But being what it is, I must bear the cross. I had looked forward to some rest and quiet and peace, after sixteen years of

an Episcopate full of unusual labours and anxieties. This judgment will certainly lead to strifes which will not end in my time. Well, the end is not far off. May we, my dear brother, each be found faithful. I have nothing else to live for but my work. I have lived for nothing else, and at present defeat and disappointment are the result. Ever your affectionate, R. CAPETOWN."

To the Rev. and Hon. HENRY DOUGLAS.

"August 30th, 1863.

"My dear Douglas—Many thanks for your affectionate and sympathising letter. The judgment is in many respects a sad one. It does not recognise the Church in the Colonies as a body. It treats us all, Clergy and laity, Priests and Bishops, as individuals, who may or may not contract with each other. It makes the laws which bind us in one communion go for nothing, and yet when it reviews the Bishop's proceedings it regards him as under these laws, and bound by them. It regards us as under an unknown quantity of English law, which it is in the breast of a civil Judge to apply in as large or as small a degree as he likes to us. It does not pretend to say that we are under the statute law of England; but it talks of the Bishop being only authorised to give instructions according to law. What law? I have always contended the law, Canon law, received and enacted by the Church. That law not only authorises, but enjoins him to hold his Synod, and the Clergy to attend it; and makes the Synod's rules the laws of the Church, and leaves at his option to invite the presence of the laity. On all these points the judgment really slights the law of the Church. They have not convinced me that by the laws of the Church (or even of the State in England) a Clergyman is not bound to give notices, at the discretion of the Bishop, which are not contrary to law. However, they are the interpreters of law, and I yield to their interpretation. There is, however, an animus in the judgment which is not creditable, and this I feel more than their decision itself, for it has led them to reflect unfairly upon my proceedings, and to misstate

facts." [Here the Bishop refers to his letter to the Churchwardens of Mowbray explaining these facts.]

To the Rev. Dr. WILLIAMSON.

"Riversdale, August 31st, 1863.

"My dear Richard—It is not very easy to do more than one's actual work on Visitation, but I must write a line to thank you for your affectionate letters under my anxieties and troubles. The judgment has, of course, its good points among many evil. It could not but have without utter indecency. I think its great unfairness is that, professing to place the Church on the same footing with any other religious body, it really puts it on a worse, because it subjects it, which it does no other religious body, to an unknown quantity of English law, which lies in the breast of civil judges in England to diminish or increase *ad libitum*, as their prejudices or the state of public feeling may incline them.

"They ought to have stated distinctly whether—

"I. Any English statute law was to be applied to the Colonial Churches.

"II. Failing this, whether there were really any laws to which they were subjected.

"III. Whether the laws received or enacted by the Church of England previous to the formation of our Churches were not really the laws to which, and to which alone, we owed allegiance.

"I have always contended that this is our true position. The judgment does not offer to decide it. But when, wishing to press upon the Bishop, it affirms that he was restrained by law (it says not what law); and when, wishing to release the Priest, it says that he was not bound by law (it says not what law),—I contend that the laws by which we are bound—the Canon laws—are in the very teeth of this judgment. That the Priest is bound to obey the Bishop's order—that the Bishop is bound to summon his Synod, and that he may invite any of his faithful laity to be present at it, and counsel him. . . . To me personally the judges have been most unjust. They

have striven to make me appear in the eyes of the public both a bungler in my proceedings, and unfair towards the accused, and unfit to have to deal with such a case as that of the Bishop of Natal, and they have effected this by a distortion and misrepresentation of the facts of the case. . . . Here the misrepresentations do no harm, for people know the facts, and I believe nearly the whole Church sympathises with me; but in England they are calculated to do harm; and they are to my mind an indication of that want of fairness and that dislike of spiritual authority which I think is strongly marked throughout this judgment. You will be glad to hear that Long is behaving well. The Churchwardens, who at my request have not thrown up their office, have first told him their view of his conduct, and then promised him their assistance in all in which they can conscientiously help him. Mann, Sir Thomas Maclear's son-in-law, a thorough Christian Churchman, is one of them."

To Mrs. Mowbray.

"George, September 8th, 1863.

"The more I consider the judgment of the Privy Council, the more discreditable does it appear to me, and I may add, to all thinking persons here. *Unfairness* is the impression which it has left, I think, upon the mind of the Church here. It will be most difficult to work the Church in the Colonies with such a document overhanging it. . . . Hatred of spiritual authority, a determination to keep the Church where it is not established in the same bounds as where it is established, are the chief features of this judgment. It speaks of settling questions, but it has done more to unsettle men's minds, to raise doubts, difficulties, disputes, than any step that has ever been taken with regard to the Church in my day. It makes the future of the Church very gloomy. Here Romanists and Dutch are chuckling over it, and taunting our members with our unfortunate position—with our highest Law Court refusing to recognise us as a Church, or as more than individuals who contract with each other. . . . But I might go on for ever. I believe a more

grossly unfair decision was never given, or one more certain to be full of mischief to the most important religious body in all parts of the British Empire. They have done their best to break up the Church. We cannot now efficiently organise without Acts of Parliament, which is what they wish to drive us to; and Parliament here would not legislate for us if we wished. . . . I believe the general feeling throughout the Church here is *indignation*."

To the BISHOP of OXFORD.

"The Knysna, September 11th, 1863.

"My dear Bishop—I heartily hope that your Swiss tour did you good. You never get real rest for the mind at Lavington, or elsewhere, in the way that you cannot but get it on the Continent. . . . I find the Clergy everywhere utterly disgusted, and the laity perplexed, by the Long judgment. All are offended not only at its unfairness to me, but to the whole of the Colonial Churches. I believe they mean to address me, but they hardly know what to do, for we are all at sea about the future. The more I think about it, the more indignant I feel at the so-called principles laid down. We had a right to be recognised as a body, as a branch of the Church not governed by the laws framed by the State for the Established Church in England, but governed by the laws which the Church herself had framed for her own government. That would have laid down principles. Then we had a right to be told that we had perfect liberty to meet in our Synods and accommodate ancient laws to present needs.

"Everything that could possibly hamper and impede the progress of the Church throughout the Empire has been done, and done out of jealousy and hatred of spiritual authority. I am very much troubled and perplexed as to the future. . . . What you say about the Privy Council line in the cases of Wilson and Williams is full of warning. Here are 10,000 Clergy calling upon their Bishops to put down a certain heresy, the Bishops in Synod condemning it. A lay judge tries whether it is heresy; says he is told all the Bishops declare it such, but

cannot be governed by their opinion, however respectable; declares certain parts of the teaching, which the Church calls heresy, *not* to be heresy, other portions to be heretical; decides that the heretics shall be suspended for one year, and then being still heretics shall resume the cure of men's souls, and the office of ambassadors of Christ. Against this the heretics appeal to another Civil Court. Archbishops and Bishops are upon it. The lay Judges, against the views of the Bishops of the Church, decide that these heretics shall not be condemned, so they resume at once their office. Where is the faithfulness of the Church if they are allowed to do so? How is she a witness for Christ? I do not think that if I were in the position of my dear brother the Bishop of Salisbury, I could refrain from excommunication.

"But what is all this but a just punishment of the Church for allowing a Civil Court to decide upon questions of heresy? If you do not break down this, the Church must become a witness not for, but against, her Lord. . . . I shall take no step without much prayer. . . . The Bishop of Graham's Town is very hearty and very indignant at the judgment."

It is with a sense of soothing and comfort that amid this cloud we read the following letter from one whose words must always have carried strength and consolation to those to whom they were addressed. Mr. Keble writes:

"Hursley, November 8th, 1863.

"My dear Lord—I have long wished to say a word or two to you. Mr. Gray gave me a fair account of your health, and that you had not suffered so much from wakefulness as might be expected; but I wanted to say that although it is in many respects a deep grief and disappointment that your Long cause has come to such an issue, I yet have a sort of gratification in the thought that in any future battle you may have to fight for us, you will stand simply upon your Apostolical authority, unembarrassed by endowments and lay Synods, to which course I understand you to be invited by that passage in the Privy Council Judgment which proposes to recognise your inherent powers as Bishop, and virtually promises to uphold them. It

seems unfortunate that the question in the Long case was—I daresay unavoidably—narrowed to his duty of publishing the notice of Synod when required. It seems to the popular eye but a small point on which to rest a case for deprivation. I presume that the *endowment* is the thing which enabled him to appeal to the civil power, and so far the case is a warning against acceptance of endowments. It does not seem that the English law, as set forth in this judgment, is against the plan adopted in the Synod, provided only that it be not enforced on persons who have not bound themselves to submit to it. I must own that I cannot admire the *tone* of the judgment, and think that it must have been drawn up under some strange misapprehension. The costs I do most deeply regret, and if they are to be taken at all as the measure of expense in appeals from you to us, they really seem to amount to a denial of justice, and will be an element some day in a South African independency move. . . . I have no time to write more than our affectionate and respectful love to yourself and Mrs. Gray.—I am, my dear Lord, your faithful and obliged servant in Christ, T. KEBLE."

Bishop Wilberforce's opinion on this judgment will be read with interest by all, and, though slightly out of chronological order, is given here.

To the LORD BISHOP OF CAPETOWN.

"Lavington House, July 5th.

"I have been waiting to write to you when I received, as I have been constantly expecting to do, the Privy Council Judgment. It has now come, and the post goes. . . . I think that you were prepared for the result, the reversal of the decision of your Supreme Court. I do not affect to you not to be very much annoyed, though I think that Lord K.'s remarks accompanying the judgment will as far as possible deprive it of the effect it would otherwise have of injuring you. It is a great point that he should have said that the patent created such difficulties as probably could have been settled in no way without such a trial; and then your having the Supreme Court with you

is a real justification to every reasonable man of your course. . . . For the future the judgment seems to me very valuable. It makes out how in every colony the whole question of our discipline is to be settled and asserted—*i.e.*, in free colonies by the grant of jurisdiction by the Representative Assembly, or by voluntary agreements to be afterwards enforced as voluntary agreements by the Colonial Courts. Then *you* will, I suppose, at the institution of any one, require him to sign a paper engaging to submit himself obediently to all rules which may be from time to time enacted by the General Assembly or Synod of the Church in Cape Town. Under the Privy Council decision obedience to such orders, after such voluntary agreement, would be enforced by the Courts. To apply this to the Colenso case seems to me easy and direct. He has taken the oath of canonical obedience to you;—this being a voluntary act he cannot question your jurisdiction; and if you proceed strictly on the line that the Metropolitan at home would have to do for trying him if he were his Suffragan Bishop under this sentence, it would seem clear to me that your judgment on him would be enforced by the Civil Courts. Since I came to this conclusion I have had a talk over the whole matter with Phillimore, and he quite agrees in this view.

"As to Long, I should be disposed to think that your statement to him and the Diocese should be, that the home Court having decided that, upon a point not of doctrine, but of *legal discipline*, his resistance to your authority could be justified,—you should mark in your conduct to him that in proceeding against him you were actuated by no personal feeling,—nor indeed could be;—but only by a determination at any cost to do your own duty in maintaining the discipline, the guardianship of which was placed in your hands; that the judgment of the Supreme Court in your favour, and the express declarations of the learned Judge who, on behalf of the Privy Council, gave sentence, show how difficult and perplexed was your course; but that, it having now been made plain, you were at once ready to give Mr. Long the fullest benefit of it, and to trust and believe that he would manifest in his future demean-

our that it was from no contumacious spirit of opposition that he had acted in this matter."

At the risk of some repetition, it has seemed well to produce and keep together the progressive records of this case, so important in itself, although, as Mr. Keble observes, arising from a seemingly trivial cause, the real weight of which obviously was not understood at the time by the outer world, which accused (how unjustly those who knew him intimately alone could fully tell!) Bishop Gray of acting arbitrarily and from love of power.

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