Erskine May, Vol. III, Chapter XIV, pp. 199-209

Dissenters' Chapels: Church Rates

Disputes Among Dissenters

The contentions hitherto related have been between the church and dissenters. But rival sects have had their contests: and in 1844 the legislature interposed to protect the endowments of dissenting communions from being despoiled by one another. Decisions of the Court of Chancery and the House of Lords, in the case of Lady Hewley's charity, had disturbed the security of all property held in trust by nonconformists, for religious purposes. The faith of the founder,—not expressly defined by any will or deed, but otherwise collected from evidence,—was held to be binding upon succeeding generations of dissenters. A change or development of creed forfeited the endowment; and what one sect forfeited, another might claim. A wide field was here opened for litigation. Lady Hewley's trustees had been dispossessed of their property, after a ruinous contest of fourteen years. In the obscure annals of dissent, it was difficult to trace out the doctrinal variations of a religious foundation; and few trustees felt themselves secure against the claims of rivals, encouraged at once by the love of gain and by religious hostility. An unfriendly legislature might have looked with complacency upon endowments wasted, and rivalries embittered. Dissent might have been put into [200] chancery, without a helping hand. But Sir Robert Peel's enlightened chancellor, Lord Lyndhurst, came forward to stay further strife. His measure provided that where the founder had not expressly defined the doctrines or form of worship to be observed, the usage of twenty-five years should give trustees a title to their endowment; and this solution of a painful difficulty was accepted by Parliament. It was not passed without strong opposition on religious grounds, and fierce jealousy of Unitarians, whose endowments had been most endangered: but it was, in truth, a judicious legal reform rather than a measure affecting religious liberty.

In the same spirit, Parliament has empowered the trustees of endowed schools to admit children of different religious denominations, unless the deed of foundation expressly limited the benefits of the endowment to the church, or some other religious communion.(1)

Repeal of Penalties on Religious Worship

Long after Parliament had frankly recognised complete freedom of religious worship, many intolerant enactments still bore witness to the rigour of our laws. Liberty had been conceded so grudgingly,—and clogged with so many conditions,—that the penal code had not yet disappeared from the statute-book. In 1845, the Criminal Law Commission enumerated the restraints and penalties which had hitherto escaped the vigilance of the legislature.(2) And Parliament [201] has since blotted out many repulsive laws affecting the religious worship and education of Roman Catholics, and others not in communion with the church.(3)

Church Rates

The church honourably acquiesced in those just and necessary measures which secured to dissenters liberty in their religious worship and ministrations, and exemption from civil disabilities. But a more serious contention had arisen affecting her own legal rights,—her position as the national establishment,—and her ancient endowments. Dissenters refused payment of church rates. Many suffered imprisonment, or distraint of their goods, rather than satisfy the lawful demands of the church. Others, more practical and sagacious, attended

vestries, and resisted the imposition of the annual rate upon the parishioners. And during the progress of these local contentions, Parliament was appealed to by dissenters for legislative relief.

The principles involved in the question of church rate, while differing in several material points from those concerned in other controversies between the church and dissenters, may yet be referred to one common origin,—the legal recognition of a national church, with all the rights [202] incident to such an establishment, in presence of a powerful body of nonconformists. By the common law, the parishioners were bound to maintain the fabric of the parish church, and provide for the decent celebration of its services. The edifice consecrated to public worship was sustained by an annual rate, voted by the parishioners themselves assembled in vestry, and levied upon all occupiers of land and houses within the parish, according to their ability. For centuries, the parishioners who paid this rate were members of the church. They gazed with reverence on the antique tower, hastened to prayers at the summons of the sabbath bells; sat beneath the roof which their contributions had repaired; and partook of the sacramental bread and wine which their liberality had provided. The rate was administered by lay churchwardens of their own choice; and all cheerfully paid what was dispensed for the common use and benefit of all. But times had changed. Dissent had grown, and spread and ramified throughout the land. In some parishes, dissenters even outnumbered the members of the church. Supporting their own ministers, building and repairing their own chapels, and shunning the services and clergy of the parish church, they resented the payment of church rate as at once an onerous and unjust tax, and an offence to their consciences. They insisted that the burden should be borne exclusively by members of the church. Such, [203] they contended, had been the original design of church rate; and this principle should again be recognised, under altered conditions, by the state. The church stood firmly upon her legal rights. The law had never acknowledged such a distinction of persons as that contended for by dissenters; nay, the tax was chargeable, not so much upon persons, as upon property; and having existed for centuries, its amount was, in truth, a deduction from rent. If dissenting tenants were relieved from its payment, their landlords would immediately claim its equivalent in rental. But, above all, it was maintained that the fabric of the church was national property,—an edifice set apart by law for public worship, according to the religion of the state,—open to all,—inviting all to its services—and as much the common property of all, as a public museum or picture-gallery, which many might not care to enter, or were unable to appreciate.

The Whigs Attempt to Solve the Problem

Such being the irreconcilable principles upon which each party took its stand, contentions of increasing bitterness became rife in many parishes,—painful to churchmen, irritating to dissenters, and a reproach to religion. In 1834, Earl Grey's ministry, among its endeavours to reconcile, as far as possible, all differences between the church and dissenters, attempted a solution of this perplexing question. Their scheme, as explained by Lord Althorp, was to substitute for the existing church rate an annual grant of £250,000 from the consolidated fund, for the repair of churches. This sum, equal to about half the [204] estimated rate, was to be distributed rateably to the several parishes. Church rate, in short, was to become national instead of parochial. This expedient found no favour with dissenters, who would still be liable to pay for the support of the church, in another form. Nor was it acceptable to churchmen, who deemed a fixed parliamentary subsidy, of reduced amount, a poor equivalent for their existing rights. The bill was, therefore, abandoned, having merely served to exemplify the intractable difficulties of any legislative remedy.

In 1837, Lord Melbourne's government approached this embarrassing question with no better success. Their scheme provided a fund for the repair of churches out of surplus revenues, to arise from an improved administration of church lands. This measure might well satisfy

dissenters: but was wholly repudiated by the church. It abandoned church rates, to which she was entitled; and appropriated her own revenues to purposes otherwise provided for by law. She enjoyed both sources of income, and it was simply proposed to deprive her of one. If her revenues could be improved, she was herself entitled to the benefit of that improvement, for other spiritual objects. If church rates were to be surrendered, she claimed from the state another fund, as a reasonable equivalent.

The Braintree Case

But the legal rights of the church, and the means [205] of enforcing them, were about to be severely contested by a long course of litigation. In 1837, a majority of the vestry of Braintree having postponed a church rate for twelve months, the churchwardens took upon themselves, of their own authority, and in defiance of the vestry, to levy a rate. In this strange proceeding they were supported, for a time, by the Consistory Court,(4) on the authority of an obscure precedent.(5) But the Court of Queen's Bench restrained them, by prohibition, from collecting a rate, which Lord Denman emphatically declared to be 'altogether invalid, and a church rate in nothing but the name.'(6) In this opinion the Court of Exchequer Chamber concurred. Chief Justice Tindal, however, in giving the judgment of this court, suggested a doubt whether the churchwardens, and a minority of the vestry together, might not concur in granting a rate, at the meeting of the parishioners assembled for that purpose. This suggestion was founded on the principle that the votes of the majority, who refused to perform their duty, were lost or thrown away; while the minority, in the performance of the prescribed duty of the meeting, represented the whole number.

This subtle and technical device was promptly tried at Braintree. A rate being again refused by the majority, a monition was obtained from the Consistory Court, [206] commanding the churchwardens and parishioners to make a rate according to law. In obedience to this monition, another meeting was assembled; and a rate being again refused by the majority, it was immediately voted in their presence, by the churchwardens and the minority. A rate so imposed was of course resisted. The Consistory Court pronounced it illegal: the Court of Arches adjudged it valid. The Court of Queen's Bench, which had scouted the authority of the churchwardens, respected the right of the minority,—scarcely less equivocal,—to bind the whole parish; and refused to stay the collection of the rate by prohibition. The Court of Exchequer Chamber affirmed this decision. But the House of Lords,—superior to the subtilties by which the broad principles of the law had been set aside,—asserted the unquestionable rights of a majority The Braintree rate which the vestry had refused, and a small minority had assumed to levy, was pronounced invalid.

Church Rates Unenforceable

This construction of the law gravely affected the relations of the church to dissenters. From this time, church rates could not practically be raised in any parish, in which a majority of the vestry refused to impose them. The church, having an abstract legal title to receive them, was powerless to enforce it. The legal obligation to repair the parish church continued: but church rates assumed the form of a voluntary contribution, rather than a compulsory tax. It was [207] vain to threaten parishioners with the censures of ecclesiastical courts, and a whole parish with excommunication. Such processes were out of date. Even if vestries had lost their rights, by any forced construction of the law, no rate could have been collected against the general sense of the parishioners. The example of Braintree was quickly followed. Wherever the dissenting body was powerful, canvassing and agitation were actively conducted, until, in 1859, church rates had been refused in no less than 1,525 parishes or districts. This was a serious inroad upon the rights of the church.

While dissenters were thus active and successful in their local resistance to church rates, they were no less strenuous in their appeals to Parliament for legislative relief. Government having

vainly sought the means of adjusting the question, in any form consistent with the interests of the church, the dissenters organised an extensive agitation for the total repeal of church rates. Proposals for exempting dissenters from payment were repudiated by both parties.(7) Such a compromise was regarded by churchmen as an encouragement to dissent, and by nonconformists as derogatory to their rights and pretensions, as independent religious [208] bodies. The first bill for the abolition of church rates was introduced in 1841 by Sir John Easthope, but was disposed of without a division. For several years similar proposals were submitted to the Commons without success. In 1855, and again in 1856, bills for this purpose were read a second time by the Commons, but proceeded no farther. In the latter year Sir George Grey, on behalf of ministers, suggested as a compromise between the contending parties, that where church rates had been discontinued in any parish for a certain period,—sufficient to indicate the settled purpose of the inhabitants,—the parish should be exempted from further liability. This suggestion, however, founded upon the anomalies of the existing law, was not submitted to the decision of Parliament. The controversy continued; and at length, in 1858, a measure, brought in by Sir John Trelawny, for the total abolition of church rates, was passed by the Commons; and rejected by the Lords. In 1859, another compromise was suggested, when Mr. Secretary Walpole brought in a bill to facilitate a voluntary provision for church rates; but it was refused a second reading by a large majority. In 1860, another abolition bill was passed by one House, and rejected by the other.

Failure to Legislate

[209] Other compromises were suggested by friends of the church: but none found favour, and total abolition was still insisted upon, by a majority of the Commons. With ministers it was an open question; and between members and their constituents, a source of constant embarrassment. Meanwhile, an active counter-agitation, on behalf of the church, began to exercise an influence over the divisions; and from 1858 the ascendency of the anti-church-rate party sensibly declined.(8) Such a reaction was obviously favourable to the final adjustment of the claims of dissenters, on terms more equitable to the church: but as yet the conditions of such an adjustment baffled the sagacity of statesmen.

Footnotes.

1. Endowed Schools Act 1860, 23 Vict. c. 11.
2. First Report of Crim. Law Commission (Religious Opinions), 1845.
3. See 2 and 3 Will. 4, s. 115 (Catholic Chapels and Schools), 7 and 8 Vict. c. 102; 9 and 10 Vict. c. 59. Among the laws repealed by this Act was the celebrated statute or ordinance of Henry III., 'pro expulsione Judaeorum.' 18 and 19 Vict. c. 86 (Registration of Chapels).
4. Veley v. Burder, Nov. 15th, 1857; App. to Report of Church Rates Co., 1851, p. 601.
5. Gaudern v. Selby in the Court of Arches, 1799.
6. Lord Denman's Judgment, May 1st, 1840. Burder v. Veley; Adolph. and Ellis. xii. 244.
7. On Feb. 11th, 1840, a motion by Mr. T. Duncombe to this effect was negatived by a large majority. Ayes, 62; Noes, 117.—Comm. Journ., xcv. 74. Again, on March 13th, 1849, an amendment to the same purpose found only twenty supporters. In 1852 a bill to relieve dissenters from the rate, brought in by Mr. Packe, was withdrawn.
8. In 1861 (beyond the limits of this history) the annual bill was lost on the third reading by the casting vote of the Speaker; in 1862, by a majority of 17; and in 1863, by a majority of 10. See also Supplementary Chapter.

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