THE SOUTH AFRICAN CHURCH QUESTION. THE GRAHAMSTOWN JUDGMENT. DECISION OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL IN THE APPEAL OF 'MERRIMAN V. WILLIAMS'; PP. 13 - 59

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IN THE APPEAL OF

"MERRIMAN *v.* WILLIAMS."

EDITED, WITH AN INTRODUCTION,

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INTRODUCTION.

THE Statute Book of the Colony of the Cape of Good Hope bears witness to the fact that in the second quarter of the present century the English Church was striking root in South African soil. An Ordinance bearing date the 1st September, 1829, after reciting *(inter alia)* that several persons had "subscribed certain sums of money for the purpose of erecting a Church at Cape Town for the celebration of Divine Service according to the rites of the United Church of England and Ireland as by law established," goes on to authorise the raising of money on loan by shares, and to make regulations for the administration of trusts and for the election of a Vestry "by and out of the resident inhabitants of Cape Town, being members of and holding communion with the United Church of England and Ireland as by law established." This important Ordinance is the precursor of others, most of them similar in expression, providing for the building and government of churches at Bathurst (1832), Wynberg (1833), Graham's Town (1839), Port Elizabeth (1842), Sidbury (1842), Fort Beaufort (1845), and Graaff-Reinet (1846), and the origin of all of them is to be ascribed rather to the expansion of the British Empire then steadily proceeding, than to the new birth of energy, which amid much surging of thought upon matters social and political as well as religious, was just at that time manifesting itself in the Anglican Communion at home.

It is important to observe that the circumstances of the British Colonies in South Africa were, as indeed they are still, widely different from those of almost every other. The Cape had long been a Dutch possession, and such of its inhabitants as were of European extraction (these being a comparatively small minority of the whole population) were of Dutch descent. The pastoral care of them had been for many generations, as to a very large extent it remains, in the hands of the ministers of the Dutch Reformed Church; whilst Christianity itself had made but slight progress among the coloured people. When the English Churches above mentioned were erected, their relation to the general ecclesiastical system of the Colony was a similar one to that existing at the present moment upon the European Continent between the isolated buildings there maintained for the benefit of a few English residents and those of the various national systems. As years went on and the British element gained in numerical strength, this aspect of things became very considerably modified, but over a wide area it is the aspect still actually presented. In a very limited number of places the Anglican Church is a factor of pre-eminent influence in the community; but for the most part its congregations are those of missionary stations pure and simple, or of small and struggling outposts.

In 1853 a metropolitical throne was, by virtue of Royal Letters Patent, set up in South Africa, and Dr. Robert Gray, who for some six years had been Bishop of Cape Town, became first Metropolitan. The interests of the Colonial Church were at about that period exciting considerable attention, and causing much anxiety in England. Efforts had recently been made to bring Imperial legislation to bear upon them, but the objection had been raised that such legislation would be an interference with Colonial liberties. "It would infringe" wrote Sir James Stephen, giving expression to the opinion of many thoughtful people,

"the sacred colonial franchise of self-government." And so the doctrine gradually emerged that where there had not already been any enactment, either of the Imperial Parliament or of a Colonial Government or legislature, the Anglican Body was in no other position than that of a "voluntary association." "We are not" said Bishop Gray, in delivering his charge at his first Diocesan Synod (1857), "established in any sense, as the Church is in England. Neither the Holy Scriptures—nor the Book of Common Prayer—nor the Articles—nor the Canons—nor the Book of Homilies—are in any legal sense, that is, by the civil law of this country, our standard of faith, of worship, and of discipline. . . . We are, in the eye of the law, a mere voluntary association, bound together by our own internal rules and regulations, but having no more claims for countenance and support, on the part of the civil law, than the most ordinary association for worldly purposes—an insurance society, or, as it has been said by a high authority, a convivial club."

It is too late now to lament over the course of events which made this doctrine true. The correctness of Dr. Gray's statement of the legal situation is unquestionable, and was a few years later brought into relief by the language of the highest court of civil appeal which the Constitution of the Empire recognises. Modern jurisprudence, where unaffected by the special historic position of an Established Church has in a remarkable manner maximised the autonomy of ecclesiastical bodies,*, and the State tacitly consents to such a limitation of its own authority as is involved in allowing its courts to give effect to the decisions of tribunals which have their law made for them without the intervention of the supreme legislature. But it ought never to be overlooked that the autonomy of a body corporate does

* See the language of Lord Cranworth in *Forbes* v. *Eden*, L. R., 1 Sc. and Div. 582, "I feel it impossible to say that any Canons which they [Synods] establish can be treated as being *ultra vires*. The authority of the Synod is supreme."

not necessarily mean the liberty of its members. On the contrary, they must the more jealously guard their liberty. The word "Voluntary" must not be taken from the law-courts, and applied in a sense, at which all true Churchmen may well shudder, remembering, as they ought to remember, the fundamental truth that the Church of God can never be "voluntary," since she was neither made nor can be unmade by man. How extreme was Bishop Gray's bewilderment is amply illustrated by a quotation from one of his letters, which has recently been brought to public notice by the author of an able pamphlet.* "Writing on May 9th, 1865, to the Rev. C. N. Gray," says the author of the pamphlet, "the Bishop, relating a conversation which he had recently had with the then Governor, uses these words, 'Oh, no! said I, we *are* a voluntary religious association; we have been ever since I came here, and those have joined it who liked, and we have been a visible association ever since I held my first Synod. *It is for me to say whether I will take you into my association and on what terms.* This was rather a new idea to him, and I think it will be to many others when they find it out.'"

No wonder that a prelate who could write in this way should be found assaulting the rights of members of the Church. To dwell at greater length, however, than is necessary for explaining present troubles in South Africa, upon the mistakes of a devoted and noble-minded servant of God, now departed to his rest, would be graceless and ungenerous. The living should carefully beware of condoning the mistakes committed, and of perpetuating the spirit which led to them.

Bishop Gray's differences with the Revd. William Long arose out of his attempt to *enforce* the recogni-

* "*Unity or Uniformity:*" A letter to the Metropolitan and Bishops of the Church of England in South Africa. By an English Clergyman. Cape Town: Darter Brothers and Walton. Page 12.

tion of his Synods upon all his clergy ; at a time, moreover, when very grave doubts existed as to the legality of Synodical action. Without express licence from the Crown, it had admittedly been rendered illegal in England by Stat. 25 Hen. VIII., c. 19, on the part of the two great assemblies which have been usually deemed to be the Provincial Synods of the Church of England—viz., the Convocations of Canterbury and York. The 12th Canon, moreover, of the year 1603, presumed by not a few to be as binding upon Colonial Churchmen as upon those at home, had declared that "whosoever shall hereafter affirm that it is lawful for any sort of ministers and lay persons, or either of them, to join together and make rules, orders or constitutions in causes ecclesiastical, without the King's authority, and shall submit themselves to be ruled and governed by them ; let them be excommunicated *ipso facto*, and not be restored until they repent, and publicly revoke those their wicked and Anabaptistical errors."

In the absence of permissive statute (which in Canada and in Victoria was supplied by the Colonial Legislatures) Dr. Gray, backed by the sympathy and similar conduct of certain other Colonial Bishops, resolved to proceed without it. The first Diocesan Synod of the "Church of the Diocese of Cape Town" (such to the scandal of some good men was the official title adopted) met amid the emphatic protests of several prominent persons, and upon Mr. Long's refusal to take any steps to procure the election of a delegate for his parish to a subsequent Synod (convened for January 11th, 1861), the Bishop thought fit to go the length of holding a court, and to pronounce a sentence of suspension. As Mr. Long treated the sentence with entire contempt, a further court was held, and a sentence of deprivation passed.

Nothing was left for Mr. Long but to appeal for protection to the civil power. And from an adverse decision of the Supreme Court of the Colony he

finally carried his case to the Judicial Committee of the Privy Council, where the decision just mentioned was reversed with costs. His acts, said the Committee, had to 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 the episcopal office in England. Now he had not, they continued, in recognizing the Bishop's authority, acknowledged a right on his Lordship's part to convene a Synod and to require his clergy to attend it. And it was a mistake to treat the particular assembly convened by the Bishop as a Synod at all. It was simply 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," proceeded their judgment, "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 manner subject to its control."

The Long case illustrated the manner in which, notwithstanding the extension given by the policy of the Law in our age to the principle of the self-government of religious societies, secular authority must unavoidably intervene to prevent abuses of individual freedom. Although from the most solemn point of view the only supreme Power in the Church is that of her Living but Invisible Head, speaking through Holy Scripture, through the experience of passing centuries, through the corporate Reason and Conscience, through what Cardinal Newman has well called the *Schola Theologorum*, and through the lives of Saints; and although it is wicked on the part of Christians to invoke the aid of Civil Courts whenever such a course