

me; here the horrible picture he had drawn of tyranny and outrage. In these humble cottages I saw but simple minded peasants, who had opened their doors to some poor unfriended outcast—one who, like myself, had neither house or home: I saw them offering their hospitality to him who sought it, freely and openly; and at last, adventuring all they possessed in the world, rather than betray him—and their reward was this. Oh, how my heart revolted at such oppression; how my spirits fired at such indignity; I thought a life passed in opposition to tyranny were too short a vengeance, and I knelt me down beside that blackened hearth, and swore myself its enemy to the death.

Communications.

MR. EDITOR,

Your readers are aware that a Reverend Correspondent has seen fit to claim the exclusive and imposing title of THE PARISH CHURCH, for one or two places of worship, lately erected in this quarter, belonging to the Church of England; and that his right to do so has been denied by me, on the ground that the Church of England is not the Established Church of this Province. It will be admitted, I believe, by all who are conversant with such matters, that the churches belonging to an Established Church alone have a just and legal claim to the designation of Parish Churches. I have maintained and trust to be able to prove that there is no Established Church in New Brunswick, and that consequently there are no Parish Churches in the Province. I am aware that it has been customary for those belonging to the Church of England to speak of their church as the Established Church of the colony, but their right to do so has been denied by a vast majority of the inhabitants of the Province, and if they wish to maintain their claim, they must establish a legal and constitutional title to the designation, and prove that they are possessed not only of the name but also of the essential privileges of an Ecclesiastical establishment. And to judge correctly of what is meant by an Established Church, we must turn to Europe, where such establishments are found in a perfect and efficient state, and where they have existed unchanged for centuries. If we wish, I say, to find a correct model of a religious establishment, we must seek for it in the old world, and not on this new fledged Continent, where every thing may be said to be unsettled. Keeping this in view it will readily be admitted, that if the Church of England be the Established Church of this Province, it must be possessed of the privileges and immunities which are invariably found connected with Ecclesiastical establishments in the countries to which I have referred, and particularly must it be shown to correspond in all essential particulars with the parent Church.

In England and Ireland then we find the Established Church is by law entitled to exact TITHES, from all classes of her Majesty's subjects residing in these kingdoms, whether they belong to the establishment or not. The Anglican and Irish Churches are farther authorized in like manner to impose a RATE for the maintenance of the Parish Churches within their respective bounds. Again, the Vestry in each Parish has or had the power of fixing and imposing the assessment necessary for the support of the poor of the Parish. And both in England and Ireland, as a matter of course, the Established Churches alone are called Parish Churches.

If we turn to the Scottish Establishment, we find it in like manner supported by a *tithe* or *taz*, leviable however upon the *soil*, instead of the *produce* of the soil as in England, and that the Land owners are by law required to maintain in each Parish throughout the kingdom not only a Parish Church, but also a suitable and substantial Manse, for the accommodation of the Parish Minister. The established Clergy in Scotland are also entrusted with the superintendence of the Parish Schools, which are in fact part and parcel of the Establishment; and there the Parish Ministers, with their respective staffs of Elders, are the legal guardians of the poor.

And it is worthy of observation that in Scotland as well as in England and Ireland, *Parishes* are possessed of an Ecclesiastical character, and are not, as in these Provinces, mere secular Townships, or sub-divisions of counties, for the better management of local and municipal interests, having no connexion with the religious instruction of the inhabitants. And in considering the question at issue, this distinction should be kept in view. It will be seen then that in all essential particulars, the Scottish Establishment bears a strong resemblance to the English and Irish Establishments. The same distinctive features will be found in the National Church in Holland, which is also Presbyterian. And again in Spain and Portugal, where the Church of Rome is established; in the Lutheran Establishments in Germany; and in the Greek National Church of the Russian Empire, we find existing substantially the same privileges with those enjoyed by the Scottish and English Churches.

In Europe the idea of a Church being called an Established Church without an endowment, was never dreamt of, and would justly be regarded as a mockery. If then the Episcopal Church in this Province be measured by this equitable standard—weighed in this just balance, it will be found wanting in all the essential and important particulars above referred to. It can produce no legal enactment for its establishment,—it has no state endowment,—no right to exact tithes even from the members of its own communion, and it cannot raise one shilling of assessment for the erection and support of its places of

worship. These have been built, and the clergymen who officiate in them have been maintained chiefly by local subscriptions, and grants from the Society for Propagating the Gospel in Foreign Parts. If then, as is pretended, the English Church be the Established Church of this colony, why is it destitute of all the characteristics of such an Establishment elsewhere? This, to my mind, is conclusive proof that it is not *de facto* the Established Church of the colony; and we shall find upon due examination that it has just as little claim to the name *de jure*.

The Church of England, as I shall afterwards shew, cannot produce the authority even of a Provincial Statute for its assumed supremacy in matters ecclesiastical, and even if it could produce such an enactment in support of its claims, I should consider such authority wholly inadequate to substantiate them. The only power adequate to establish a Church, and give it supremacy over other churches in the realm, I hold to be the Supreme Power in the State and that power only. I consider it to be *ultra vires* of a Colonial Legislature, to attempt such a thing. A Colonial Legislature, from the very nature of the case, must be restricted in the range of subjects on which it may legislate. No Colonial Legislature, for example, is permitted to interfere with trade and navigation. One of the highest, and most sacred prerogatives belonging to the Imperial Government, in my view, is that of creating and endowing a religious Establishment. And if the Crown and Parliament of Britain will not allow any of the Colonies to interfere, as we just observed, in a mere matter of traffic, much less will they allow them to exercise a power involving such moral responsibility, upon the due exercise of which the peace and happiness of the Colonial Empire so much depends. Rarely indeed will it be found in the history of the colonies that any dependency of the British Crown has attempted such a measure, and when this has been attempted without the express authority of the Imperial Parliament, the enactment so passed must be wholly inefficient—in fact a dead letter.

The truth of what I have now stated may, I think, be fairly inferred from the decision of the Judges, and of the Legislature of Britain with respect to the 31 Geo. III, Ch. XXXI, commonly called the Quebec Act—an Act be it observed passed by the Imperial Parliament, by which a seventh part of the land in Upper Canada was set apart for the support of a Protestant Church. The Episcopal Church in that Province contended long and strenuously that they were the Established Church of the Province, that the whole of the clergy reserves were meant for their exclusive benefit; and that they and they only had a just and legal title to them, and that to divert any portion of them to any other denomination of Christians would be a sacrilegious robbing the Church of her patrimony. The members of the Church of Scotland in the Upper Province, however, were of a different opinion, and justly considered that they had an equal right to the Clergy Reserves with the members of the Church of England—which right was admitted by an opinion of the Crown Law Officers of Britain in, I believe, 1819. Other denominations of Christians also put in their claim for a share of these Reserves, which proved a fertile source of contention, and had well nigh produced rebellion in the colony. And to set that long agitated and vexed question to rest, the Legislature of Upper Canada, in the beginning of the year 1840, passed an act for the sale of said Reserves, and for the distribution of the proceeds, one fourth of which was to go to the Church of England, and another fourth to the Church of Scotland. By the same act the Executive Government of the Province was authorized to divide the proceeds of the remaining half among the other denominations of Christians in the colony.

This Act, which was regarded with very general satisfaction in Canada, was, by the Ministry in England, submitted for ratification to Parliament. Doubts, however, having been expressed in the House of Lords, by high legal authority, of the powers of the colonial Legislature to pass such an act, the question was submitted by the Peers, along with another, (which we shall have occasion presently to notice) to the Judges for their opinion. And it was found by the unanimous conclusion of the whole ten who were present "that the Legislative Council and Assembly of Upper Canada had exceeded their authority in passing an act to provide for the sale of the clergy Reserves, and for the distribution thereof." And in consequence of the incompetency of the Provincial enactment, an act of a similar nature was introduced by Lord John Russell into the Imperial Parliament for accomplishing the end in view. This decision shews the great jealousy of the Parliament of Britain as to the interference of a Colonial Legislature in questions connected with the establishment or endowment of a church in any of the Foreign Dependencies of the Empire. And had the act of the Province of Nova Scotia of 1753, which pretends to establish the Church of England in that colony, been subjected like the Canada Act just noticed, to the ordeal of the legal opinion of the Judges, it would, I apprehend, have shared the same fate, and the subject of it would have been declared to be beyond the jurisdiction of the Legislature of Nova Scotia.

In answer to another question proposed to their Lordship's Bench by the Peers, whether the words "a Protestant Church," in the 31 Geo. III, Chap. XXXI, includes any other than the Church of England, and if so, what other? Lord Chief Justice Tindal gave it as the unanimous opinion of the Judges, that it included also "the Clergy of the Church of Scotland." And Lord John Russell in a speech delivered in the House of Commons on the Clergy Reserve Question, said that "on referring to the constitution of Upper Canada, it appeared, that

the Churches of England and Scotland alone were actually recognized." At the same time, his Lordship added, that "of course he considered it entirely out of the question that the Imperial Parliament should establish either the Church of England, or the Church of Scotland, with any superiority over the other sects of the Province." His Lordship who is intimately acquainted with the British constitution, denies the assumed superiority of the Church of England over other sects in the Provinces, and also maintains the prerogative of the Imperial Legislature as respects the establishment of any Church in a British Colony. Mr. Packington, M. P., on the same occasion, said "the fact was, that the strongest desire was manifested for the establishment of a religious establishment in Canada"—meaning of course on the part of Episcopalians in Canada. Were it a principle of the British Constitution, as your correspondent has told us, that the Church of England is already the Established Church of the Colonies, then there could be no room to desire an establishment.

Mr. Packington by his remark (and Mr. P. moreover, is a high churchman) manifestly considered the Imperial and not the Provincial Legislature to be the proper authority for effecting the desired establishment. Mr. Labouchere, then President of the Board of Trade, a gentleman deeply versed in colonial affairs, on the same occasion, "deprecating as certain to raise a flame in Canada any attempt to establish a dominant Church in that country. In the Canadas, said the learned and honorable gentleman, "as in all our colonies, the worst service we could do the Church (of England) would be to attempt the establishment of an exclusive provision for her. That attempt would shake the whole Colonial Empire to its centre." Hear also the opinion of Lord Ellenborough, expressed in the House of Lords on the 7th April, 1840. His Lordship said "he was quite convinced of the utter hopelessness of attempting to maintain the predominance of the Church of England in the colonies, and regretted that the Bishop of Exeter had stirred the question."

Your correspondent, I have said, maintains that by the principle of the constitution, the Church of England is already established in the colonies—where he learned this I am at a loss to know, as he has not adduced a single authority in proof of his bold assertion. If this be a principle of the constitution, then those distinguished Legislators, Lord Ellenborough, Lord John Russell, and Mr. Labouchere, were ignorant of it. And whether mere stress is to be laid upon their deliberate opinions, or the mere *ipse dixit* of your correspondent, the public will decide. The Imperial Parliament have decided that the Church of England is not established in Upper Canada, where, of all the colonies, she is best endowed, and if not in Canada, still less in New-Brunswick.

That the Church of Scotland holds the same ecclesiastical status with the Church of England in these colonies, is manifest from the declaration of Lord John Russell, who on introducing the bill for the disposal of the Clergy Reserves into the House of Commons, on the 6th July, 1840, and proposing to give a double portion to the English Church, expressly said, that "that division did not rest on any ground of superiority of the Church of England over that of Scotland, but on the difference of the number of the members of the two churches." And this was the language also of Sir Robert Peel, who on the occasion just referred to, said that "after the decision of the Judges, the Church of Scotland is admitted to the same dignity with the Church of England; and the only difference which exists is the difference arising from the number of adherents which belong to each."

The claim of the Church of England to be considered the Established Church of the Colonies, is in fact inconsistent with a fundamental principle of the British Constitution, as laid down in the TREATY OF UNION between the Kingdoms of England and Scotland. By that treaty the establishment of the Presbyterian Church in Scotland, is guaranteed forever to the inhabitants of that Kingdom, exactly in the same manner as the Episcopal Establishment is secured to the inhabitants of England. Some have supposed that the Act of Union restricts the privileges of the Scottish establishment to the Kingdom of Scotland, and that it secures peculiar advantages for the members of the English Establishment in the colonial possessions of the empire; but this is a mistake. The Act of Union places the members of the Scottish and English establishments upon an exact level as respects the colonies. In confirmation of this statement, I would here quote the IV Article of Union, which expressly declares—"That all the subjects of the United Kingdom of Great Britain, shall from and after the union, have full freedom and intercourse of trade and navigation in to, and from any port or place within the said United Kingdom, and the dominions and plantations thereunto belonging; and that there shall be a COMMUNICATION OF ALL OTHER RIGHTS, PRIVILEGES AND ADVANTAGES, which do, or MAY BELONG TO THE SUBJECTS OF EITHER KINGDOM, except where it is otherwise expressly agreed in these Articles."

And the XXVth and last Article, enacts "That all laws and statutes in either Kingdom, so far as they are contrary to, or inconsistent with the terms of these articles, or any of them, shall from and after the Union, cease and become void, and shall be so declared to be by the respective Parliaments," which was accordingly done by the English as well as the Scottish Legislature. The doctrine that the Church of England has any ascendancy in the Colonies over the Church of Scotland is manifestly inconsistent both with the letter and spirit of the foregoing Articles, and therefore is inconsistent with a fundamental law of the United Kingdom. After the Union all the Colonies of the

Empire were British not English Colonies. Had the Scottish Parliament and nation, who were so jealous of their religious privileges that they would not allow their Commissioners even to treat of a union with England until their National Church was secured—had I say the Scottish Nation and Parliament for a moment supposed, that after the Union, Scotchmen in a Colonial dependency were to hold an ecclesiastical status in any degree inferior to that of Englishmen, or rather had they not expressly and solemnly stipulated with England that in all the dominions and plantations (Colonies) belonging to the United Kingdom they should enjoy a full communication of all rights, privileges and advantages enjoyed, or to be enjoyed by the subjects of England, they would have spurned the idea of a Union. Besides have not the Colonial possessions of the empire been acquired and maintained by the blood and treasure of Scotland, as well as of England? On what principle of equity then, leaving the treaty of Union out of view, can Scotchmen be said to hold in these Colonies an inferior rank either in a religious or civil point of view?

Dr. Burn, in his well known standard work on Ecclesiastical Law, in enumerating the rights and privileges of the English Establishment makes no mention whatever of any jurisdiction or right of establishment possessed by that Church in the Colonies—a convincing proof that she possesses no such right. To show how completely the English Church is restricted as respects the Colonies, I may here observe that it was found necessary to apply to Parliament for an Act to enable the Archbishops of Canterbury and York and the Bishop of London to ordain persons for the Colonies without a *tith*—which was obtained in the 50th year of George the Third.

By said Act persons so ordained for the Colonies were declared incapable of receiving any living or preferment either in England or Ireland, without the express permission in writing, of the Archbishop or Bishop who ordained them, and producing a certificate of their moral conduct from the Bishop under whom they may have served, or in case of there being no Bishop, from the Governor and Council of the Colony in which they may have resided, and this restriction is declared by said Statute to apply to persons ordained by the Bishops of Quebec, Nova Scotia, and Calcutta. This is rather unfortunate for the pretensions of high Churchmen in the Colonies. The only Colonial Ecclesiastical Establishment, noticed by the distinguished Jurist, referred to, is that of the East Indies, which, he it observed, was established not by the East India Colonial Government, but by an Act of the Imperial Parliament, viz., 53, Geo. III, Ch. CLV. (See Vol. II. Page 237.) "By this Act," says Burn, "a Bishopric and Archdeaconry were established at Calcutta, with an Archdeaconry at each of the Presidencies at Madras and Bombay." And having mentioned the salaries allowed to each, he adds, "the bishop has no jurisdiction and episcopal functions in the East Indies, or elsewhere, except as limited by his patent." The episcopal clergy under his charge, are merely Missionaries, supported, I believe, chiefly by Societies in England, and do not rank as Parish Ministers, nor their places of Worship as Parish Churches. It ought to be mentioned also that by the same Act, the Church of Scotland has three Collegiate Chaplaincies established in the East Indies, one at each of the foregoing Presidencies, that the salaries and retiring allowances to these six Chaplains are paid by the Government, and that this portion of the Scottish Establishment, is authorized to send Commissioners annually to attend the meetings of the venerable General Assembly of the Scottish National Church in Edinburgh. So far as regards the East Indies then the Scottish and English Churches hold the same status.

In the Cape of Good Hope, which previous to the Conquest was a Dutch Colony, the Reformed Dutch Presbyterian Church is by law the Established Church of the Province. And in Demerara the Church of Scotland has an establishment of six Parishes, the incumbents of which are paid by Government, and the presentation to which is vested in the college of St. Andrew's, Scotland. In the Australian colonies the Government liberally grants a yearly stipend of 100l., 150l., or 200l. to Episcopal and Presbyterian Congregations, who secure a corresponding sum for the support of their Ministers. And the same favour is extended also to Independants, Methodists, Baptists, &c. In the Australian colonies, therefore, the Church of England has no ascendancy over other denominations of Christians.

In Nova Scotia, as has been stated, at the time of the first settlement of the colony, the Council and House of Assembly, in the year 1758, passed an act for the establishment of the Church of England in the Province, and for suppressing Popery, but the less that is said of that act the better. Even Episcopalians may well be ashamed of it. It must be apparent from what has been said that it was *ultra vires* of the infant Legislature to pass such an enactment, and as it does not appear to have been reserved for the sanction of the King and Imperial Parliament, it can, in my humble opinion, be of no force whatever. The character of this "black act," which should be wholly blotted out from the Colonial Statute Book, may be judged of by the following provisions extracted from it. It enacts that no minister shall officiate in any Episcopal place of worship, but such as have been licensed by the Bishop of London, under the penalty of being suspended and silenced by the Governor. The III section of said statute enacts that "Every popish person and popish priest shall depart out of this Province on or before the 25th day of March 1759, or if found after that day and day of March 1759, or if found after that day he is adjudged to suffer perpetual imprisonment." IVthly—"Any person harbouring a popish priest shall forfeit £50, and shall also