It is to be borne in mind that all the Northern Bishops were members of the Savoy Commission. Their joint sittings with the Canterbury Bishops, thus beginning long before the King's reference of the Prayer Book to either of the Convocations, could not be for the general business of the Convocation of Canterbury; for it would be both irregular and illegal for the Bishops of one Convocation to sit as part of the Upper House of the other Convocation; because, whether greater or less in number, their votes might turn the scale upon a division; which might have the effect of making the canons of a body of which they were not members. Whatever the Northern Bishops did, in conjunction with the Southern, must, therefore, have been as part of an assembly of Bishops of all England, and not as part of the Convocation of a Province.

R. D. CRAIG.

(To be continued.)

ART. III.—CHURCH COURTS.

Church Courts. An Historical Inquiry into the Status of the Ecclesiastical Courts. Second Edition. Revised, with Appendix. By LEWIS T. DIBDIN, M.A., of Lincoln's Inn, Barrister-at-Law. Hatchards. 1882.

IN this well-written pamphlet Mr. Dibdin has discussed the status of our ecclesiastical courts, and the objections taken to them by the Ritualists, in a candid and conciliatory spirit, and with a considerable amount of research. The present edition has been materially improved and added to, and contains a new appendix, in which various disputed points are discussed, and a good many little known authorities are brought together.

The principal point Mr. Dibdin endeavours to establish is that there is nothing Erastian in ecclesiastical courts deriving their authority solely from Parliament, nor is this any violation of that Reformation settlement to which the leaders of the Ritualists have appealed, and which both the Bishops and the Government have made the starting-point for the Ecclesiastical Courts Commission. For this purpose Mr. Dibdin insists on the distinction between matters of faith and matters of discipline, between the doctrine and ritual of the Church and the machinery by which this doctrine and ritual are maintained unaltered; and contends that the true constitutional theory and that which has been in substance adhered to ever since the separation from Rome, is that, while no change in doctrine,

ritual or substance can properly be made, except with the joint consent of Church and State, the courts, procedure and penalties through which the established doctrine and ritual were to be maintained, were matters for the State alone to regulate.

While I agree that there is a distinction between the modes of legislation on these two classes of subjects, I think it would be more correctly described by substituting for "except with the joint consent of Church and State," in the above statement of Mr. Dibdin's view some such words as "without Parliament being authoritatively certified that such changes were in accordance with the true doctrine of the Church." During Henry VIII.'s reign the Convocations of Canterbury and York were habitually appealed to on all doctrinal questions, but from the beginning of Edward VI.'s reign, it has been much more usual for Parliament and the Crown to rely on a selected committee of bishops and learned men as their advisers on doctrinal questions. In 32 Hen. VIII. cap. 26, we have an earlier instance of such a Commission being placed by Parliament on the same level with the whole clergy of England. The two Prayer Books of Edward VI. were both prepared by commissions of bishops and learned men (see preamble to 2 & 3 Edw. VI. cap. 1, and Cranmer's letter of the 7th of October, 1552; "State Papers (Domestic) Edward VI.," vol. xv., No. 15; Perry's "Declaration on Kneeling," p. 77), and a similar commission of bishops and learned men was authorized by 3 & 4 Edw. VI., cap. 12, to prepare the ordination services. Elizabeth's Act of Uniformity (1 Eliz. cap. 2) authorized the Queen to make any orders as to ornaments of the Church or the ministers upon the advice of the Ecclesiastical Commissioners or the Metropolitan, and though the Ecclesiastical Commissioners who acted as to the Advertisements of 1566 and as to James I.'s Prayer Book were bishops, there was always a majority of laymen on these commissions, and there is considerable reason to suppose that those powers were first exercised by a commission consisting entirely of laymen in Elizabeth's Injunctions of 1559. These Injunctions certainly emanated solely from the Queen and the lay members of her Privy Council, but the evidence that these Privy Councillors were clothed with the character of Ecclesiastical Commissioners is only circumstantial and would occupy too much space to state here. A limited number of bishops and learned men obviously could not be regarded as giving the consent of the Church, though they might be very good authorities as to its doctrine. Even before the Reformation, the Convocations were not regarded as the only authorities as to doctrine. The Council of the Earthquake of 1382, whose condemnation of Wicliffe's doctrines was the foundation for the first statute against heretics (5 Rich. II. cap. 5), and was

also communicated by the Archbishop of Canterbury to his suffragans as an authoritative list of heresies (3 Foxe, p. 23; Knighton, p. 2651), was not a provincial convocation, but an assembly of a limited number of bishops, doctors of civil and canon law, friars, monks, and bachelors of divinity, whose names are to be found in 3 Foxe, p. 22, and in Shirley's "Fasciculus Zizaniorum," p. 498.

But for those who hold that the Convocations are the representative organs of the Church, while Parliament is only connected with the State, as well as for all who may doubt whether, though Parliament formerly legislated by itself for the Church, it is any longer competent to do so without the consent either of the convocations or of some other body representing the clergy and laity in communion with the Church, Mr. Dibdin has furnished a satisfactory explanation why the machinery for maintaining the established doctrine and ritual should be left to the State alone. According to Mr. Dibdin (p. 5) "the State says:— "It is the creed, the ceremonies, the doctrines of this Church, "as they now are, that we wish to make the religion of the "nation, not whatever modifications of them the leaders of the "Church may at any future period see fit to introduce. To "guard, therefore, against the danger of unwelcome changes, "the State, in exchange for its support and countenance, takes "certain securities. First, it requires that no changes of "doctrine, ritual, or substance, shall be adopted without its "consent; and secondly, it demands to have confided to it the "duty of seeing that the teachers, and to some extent the other "members of the Church, are true to its doctrines, ritual, and "substance for the time being. This duty is practically dis- "charged by the erection of tribunals, to the judges of which 'are entrusted the adjustment of all litigation on Church "matters, and the punishment of all offences either of doctrine "or practice. Thus the supremacy of the State or Crown is "exercised by means of courts, set apart, indeed, for ecclesias- "tical purposes, but deriving their jurisdiction from the State."

That, in fact, this has been the constitutional practice ever since the separation from Rome, Mr. Dibdin does not attempt to prove in detail, but directs his attention specially to the great Statute of Appeals, 24 Hen. VIII. cap. 12, and to that part of the Act of Submission, 25 Hen. VIII. cap. 19, which related to ecclesiastical appeals, and brings together (pp. 94–101) some curious pieces of evidence bearing on the subject. But he could have made a much clearer case, as it seems to me, if he had made use of certain statements in the third volume of Wilkins's "Concilia" as to the different sittings of the Canterbury Convocation and the principal business transacted there, stated to be made up from the Acts of Convocation, and from extracts made

by Heylin, and covering the whole period from 1530 to 1545. As Dr. Wilkins lived in George I.'s reign, his materials must have survived the fire of 1665, when the registers of the Canterbury Convocation were destroyed; but whether they are still extant I have not been able to ascertain. As Heylin was a politician and historian, as well as a divine, we may feel sure that he would not have omitted to notice if Convocation were consulted upon any important statute, and, therefore, these statements of Dr. Wilkins constitute valuable negative evidence that Convocation was not consulted as to either of these enactments as to appeals.

In connection with the statutes 24 Hen. VIII. cap. 12, and 25 Hen. VIII. cap. 19, Mr. Dibdin discusses Dr. Pusey's and Mr. C. L. Wood's contention that the latter Act (the Act of Submission) which gave an appeal to delegates appointed by the Crown "for lack of justice at or in any of the courts of the archbishops," did not give them any appellate jurisdiction in cases of doctrine; and after pointing out that both Dr. Pusey and Mr. Wood assume the language of the Act of Submission to be very different from what it really is, he displaces the only possible real ground for their contention by showing in detail (Appendix, pp. 73–89) that bishops and archbishops unquestionably had jurisdiction in matters of doctrine before the Reformation.

Among the passages collected for this purpose a considerable number (pp. 79–84) relate to the question whether, apart from statute law, a heretic could be burnt on a conviction by a bishop, or only on a conviction before the provincial convocation; and they show in a curious way how little the most eminent common lawyers were to be depended upon when dealing as textbook writers in their studies, and without the assistance of arguments on opposite sides, with questions relating to out-of-the-way branches of ecclesiastical law. We find Fitzherbert in Henry VIII.'s reign ("Natura Brevium," p. 269), and Sir E. Coke in Caudrey's case, 5 Coke's Reports, and again, in 12 Coke's Reports, pp. 56, 57, laying down that before the statute 2 Hen. IV. cap. 15, no one could be burnt for heresy, except on conviction before Convocation. Next, we find that in James I.'s reign this question was solemnly argued before four judges in connection with the conviction of one Legate by a bishop, the statute 2 Hen. IV. cap. 15 having been repealed; and in accordance with a report by Dr. Cosins, Dean of the Arches, they decided that a conviction before Convocation was unnecessary. Legate was burnt in accordance with this decision; which Coke not only reports, 12 Coke's Reports, p. 93, but also adopts as correct in his third Institute, p. 39. Nevertheless, after this Finch (1678), Hawkins, "Pleas of the Crown," book 1, pt. 2, cap. 26 (1723); and Blackstone, 4 Comm. pp. 46, 49 (1765), all repeat

Fitzherbert's rejected doctrine without noticing the contrary decision. Perhaps, however, their disregard of this decision may be partly due to a mis-translation in the printed editions of Coke's report of the case, which states that the judges decided "without considering Coke's authorities," instead of "on consideration of" them, as the Law-French MS. in Lincoln's Inn Library has the passage.

This is a digression from Mr. Dibdin's pamphlet, as he merely quotes these authorities to show that it was universally admitted that the bishops had a certain jurisdiction in heresy, and that the only dispute was whether a bishop's conviction could be the foundation for a writ *de hæretico comburendo*, but I have been tempted to make it, partly because the alleged necessity of a conviction before Convocation has a material bearing upon the question what a trial for heresy before Convocation *really was*. Mr. Dibdin touches on this question, pp. 85–87, though more briefly than I could have wished, and without arriving at any definite conclusions beyond these, that the cases which came before Convocation seem to have been treated in some way or other as under the jurisdiction of the archbishop, and that there are two possible modes of accounting for this—viz., that either the archbishop in synod may have been the most complete form of a provincial court, or the archbishop may have invited the synod to sit with him as assessors. Mr. Dibdin assumes that the jurisdiction of Convocation (if any) belonged to the whole body, but in his subsequent account of Whiston's case in Queen Anne's reign, he quotes Burnet as writing ("Hist. Own Times," vi. p. 54) that "two great doubts still remained, even supposing Convocation had a jurisdiction, the first was of whom the court was to be composed, whether only of the bishops, or what share the Lower House had of this judiciary authority." Also the records of the cases which came before Convocation as reprinted in 3 Wilkins's "Concilia" from the registers of the archbishops, show that occasionally (*e.g.*, pp. 433, 497) the archbishop was only assisted by the bishops, the rest of the Convocation being excluded, which suggests that if they were not all merely assessors, at any rate the lower clergy were so.

One of Mr. Dibdin's statements as to Convocation has puzzled me a good deal, and I am doubtful whether the words may not have been accidentally transposed. He says, "we do not know whether Convocation acted merely as a Court of Appeal or also as a Court of First Instance." After examining a good many cases, including almost all those Mr. Dibdin refers to, I have not found any instance of its acting as a Court of Appeal, while I have met with a considerable number in which it seems to me to have acted as a Court of First Instance.

Mr. Dibdin devotes part of his appendix (p. 89) to discussing

a statement of Lyndwode, the great English authority on canon law, that the cognizance of heresy belonged to only two judges, the bishop and the inquisitor appointed by the Pope (Lyndwode, "Provinciale" p. 296), a statement which Chief Justice Hale (1 "Pleas of the Crown," p. 392) understood to mean, that according to the canon law, and until the statute of 2 Hen. IV. cap. 15, no vicar-general, commissary, or official of the bishop could try heresy. Mr. Dibdin inclines towards this being the correct view of the law before the Reformation, and only doubts whether it is still law, on the ground that the canon law is in this respect contrariant to the laws, customs, and statutes of the realm, and therefore not in force in England under 25 Hen. VIII. cap. 19, sect. 7. This statute of 2 Hen. IV. cap. 15, assumes that the bishop's commissary (*i.e.*, some one commissioned by him) had jurisdiction in heresy as well as the bishop himself; and it appears from the "Fasciculus Zizaniorum" (p. 334) that part of the proceedings against Swinderby some years before this Statute (A.D. 1389) were before the commissary of the Bishop of Lincoln. It is very unlikely that a Dean of the Arches, in a commentary on the constitutions of the archbishops of Canterbury, should have laid down a rule contrary to the English usage of his own time, without remarking on the difference of usage. Lyndwode had been saying just before that, in a peculiar—*i.e.*, where the general ecclesiastical jurisdiction had been transferred from the bishop to some other ordinary—the bishop had jurisdiction in heresy, not the ordinary, and he might easily say what he did thinking only of the ordinary of the peculiar, and not of any delegates of the bishop. Besides, according to Bernard of Como, as quoted by Mr. Dibdin, the bishop may appoint a special delegate to hear cases of heresy, though his vicar-general cannot do so without special authority; and Mr. Dibdin considers that the authorities quoted by Lyndwode and Bernard bear out the latter rather than the former. But whatever Lyndwode may have meant, or whatever the rule of the canon law may have been, it is clear that inquisitors appointed by the Pope, though not bishops, had jurisdiction in heresy; and, therefore, the denial of jurisdiction in heresy to the bishop's vicar-general and commissaries did not rest on any ecclesiastical principle. I strongly suspect that if this denial did exist, it was devised by the Papal Court and the commentators on canon law to extend the practical jurisdiction of the Papal inquisitors, by limiting the number of other persons who could adjudicate on heresy. Nearly all the canon law as to heresy dates from after the introduction of Papal inquisitors of heretical pravity, and consists of orders issued for their guidance and to regulate their relations with the bishops.

Besides developing and illustrating his own views, Mr. Dibdin

has devoted a considerable part of his pamphlet to analyzing Mr. Gladstone's well-known pamphlet on the Royal Supremacy, and criticizing some of his principal propositions. In connection with the visitatorial jurisdiction of the Crown, and to show that it is not so absolute as Mr. Gladstone alleged, Mr. Dibdin explains how this visitatorial jurisdiction was the source of the Commissions of Review, which were frequently granted down to the abolition of the Court of Delegates, to re-hear cases decided by that Court. He also discusses the claim Mr. Gladstone makes that Convocation should be the instrument of legislation for the doctrine of the Church, explaining how far it agrees with his own views; and to meet Mr. Gladstone's assertion that the Reformation settlement contemplated that the ecclesiastical laws would be administered by ecclesiastical judges, he brings together a good deal of interesting information on the difference between civil law and canon law. A statute passed in 1545 (37 Henry VIII. cap. 17) authorized the employment of lay and married men as chancellors, &c., in ecclesiastical courts, provided they were doctors of civil law, and this is quoted by Mr. Gladstone as if a civil law degree was a security for knowledge of ecclesiastical law. Mr. Dibdin shows that throughout the Middle Ages canon law and civil law were distinct studies, in each of which separate degrees were conferred, and that Henry VIII. in 1535 suppressed the study of canon law at Cambridge, and probably also at Oxford, leaving only the Roman civil law, a knowledge of which was required for the proper exercise of the jurisdiction which the ecclesiastical courts then possessed as to wills and the administration of estates, and for cases in the Admiralty Court.

Mr. Dibdin's last chapter discusses the relations of Church and State in early times, being intended for those who may not be satisfied to abide by that Reformation settlement, which was to be adopted as a starting-point by the Ecclesiastical Courts Commission, and it comprises among other things a full analysis and review of an interesting pamphlet by Dean Church, published in 1850, and recently republished.

H. R. Droop.

Art. IV.—IRELAND FORTY YEARS AGO.

THE native-born Irish peasant, when left to himself and not unduly influenced by interested political adventurers, is kind-hearted, courteous, and obliging. Such, at all events, was his character as I knew him some forty years ago. Since then, I have been in many lands, and I have closely observed the habits and characters of the labouring classes in Europe and in