Erskine May, Vol. III, Chapter XIV, pp. 188-199

Dissenters' Marriages and Burials

THE code of civil disabilities had been at length condemned: but during the protracted controversy which led to this result, many other questions affecting religious liberty demanded a solution. Further restraints upon religious worship were renounced; and the relations of the church to those beyond her communion reviewed in many forms. Meanwhile, the later history of the established churches, in each of the three kingdoms, was marked by memorable events, affecting their influence and stability.

When Catholics and dissenters had shaken off their civil disabilities, they were still exposed to grievances affecting the exercise of their religion and their domestic relations, far more galling, and savouring more of intolerance. Their marriages were announced by the publication of bans in the parish church; and solemnised at its altar, according to a ritual which they repudiated. The births of their children were without legal evidence, unless they were baptised by a [189] clergyman of the church, with a service obnoxious to their consciences; and even their dead could not obtain a Christian burial, except by the offices of the church. Even apart from religious scruples upon these matters, the enforced attendance of dissenters at the services of the church was a badge of inferiority and dependence, in the eye of the law. Nor was it without evils and embarrassments to the church herself. To perform her sacred offices for those who denied their sanctity, was no labour of love to the clergy. The marriage ceremony had sometimes provoked remonstrances; and the sacred character of all these services was impaired when addressed to unwilling ears, and used as a legal form, rather than a religious ceremony. It is strange that such grievances had not been redressed even before dissenters had been invested with civil privileges. The law had not originally designed to inflict, them: but simply assuming all the subjects of the realm to be members of the Church of England, had made no provision for exceptional cases of conscience. Yet when the oppression of the marriage law had been formerly exposed,(1) intolerant Parliaments had obstinately refused relief. It was reserved for the reformed Parliament to extend to all religious sects entire freedom of conscience, coupled with great improvements in the general law of registration. As the church alone performed the religious services incident to all baptisms, marriages, and deaths; so was she entrusted with the sole management and custody of the registers. The relief of dissenters, [190] therefore, involved a considerable interference with the privileges of the church, which demanded a judicious treatment.

Marriage Bills

The marriage law was first approached. In 1834, Lord John Russell,—to whom dissenters already owed so much,—introduced a bill to permit dissenting ministers to celebrate marriages in places of worship licensed for that purpose. It was proposed, however, to retain the accustomed publication of bans in church, or a licence. Such marriages were to be registered in the chapels where they were celebrated. There were two weak points in this measure,—of which Lord John himself was fully sensible,—the publication of bans, and the registry. These difficulties could only be completely overcome by regarding marriage, for all legal purposes, as a civil contract, accompanied by a civil registry: but he abstained from making such a proposal, in deference to the feelings of the church and other religious bodies. The bill, in such a form as this, could not be expected to satisfy dissenters; and it was laid aside. It was clear that a measure of more extensive scope would be required, to settle a question of so much delicacy.

In the next session, Sir Robert Peel, having profited by this unsuccessful experiment, offered another measure, based on different principles. Reverting to the principle of the law, prior to Lord Hardwicke's Act of 1754, which viewed marriage, for certain purposes [191] at least, as a civil contract, he proposed that dissenters objecting to the services of the church should enter into a civil contract of marriage, before a magistrate,—to be followed by such religious ceremonies elsewhere, as the parties might approve. For the publication of bans he proposed to substitute a notice to the magistrate, by whom also a certificate was to be transmitted to the clergyman of the parish for registration. The liberal spirit of this measure secured it a favourable reception: but its provisions were open to insuperable objections. To treat the marriage of members of the church as a religious ceremony, and the marriage of dissenters as a mere civil contract, apart from any religious sanction, raised an offensive distinction between the two classes of marriages. And again, the ecclesiastical registry of a civil contract, entered into by dissenters, was a very obvious anomaly. Lord John Russell expressed his own conviction that no measure would be satisfactory until a general system of civil registration could be established,—a subject to which he had already directed his attention. The progress of this bill was interrupted by the resignation of Sir R. Peel. The new ministry, having consented to its second reading, allowed it to drop: but measures were promised in the next session for the civil registry of births, marriages, and deaths, and for the marriage of dissenters.

Registration and Marriage Acts 1836

Early in the next session, Lord John Russell [192] introduced two bills to carry out these objects. The first was for the registration of births, marriages, and deaths. Its immediate purpose was to facilitate the granting of relief to dissenters: but it also contemplated other objects of state policy, of far wider operation. An accurate record of such events is important as evidence in all legal proceedings; and its statistical and scientific value cannot be too highly estimated. The existing registry being ecclesiastical took no note of births, but embraced the baptisms, marriages, and burials, which had engaged the services of the church. It was now proposed to establish a civil registration of births, marriages, and deaths, for which the officers connected with the new poor law administration afforded great facilities. The record of births and deaths was to be wholly civil; the record of marriages was to be made by the minister performing the ceremony, and transmitted to the registrar. The measure further provided for a general register office in London, and a division of the country into registration districts.

The Marriage Bill was no less comprehensive. The marriages of members of the Church of England were not affected, except by the necessary addition of a civil registry. The publication of bans, or licence, was continued, unless the parties themselves preferred giving notice to a registrar. The marriages of dissenters were allowed to be solemnised in their own chapels, registered for that purpose, after due notice to the registrar of the [193] district; while those few dissenters who desired no religious ceremony, were enabled to enter into a civil contract before the superintendent registrar.(2) Measures so comprehensive and well considered could not fail to obtain the approval of Parliament. Every religious sect was satisfied: every object of state policy attained. The church, indeed, was called upon to make sacrifices: but she made them with noble liberality. Her clergy bore their pecuniary losses without a murmur, for the sake of peace and concord. Fees were cheerfully renounced with the services to which they were incident. The concessions, so gracefully made, were such as dissenters had a just right to claim, and the true interests of the church were concerned no longer in withholding.

Burials

In baptism and marriage, the offices of the church were now confined to her own members, or to such as sought them willingly. But in death, they were still needed by those beyond her

communion. The church claimed no jurisdiction over the graves of her nonconformist brethren: but every parish burial-place was hers. The churchyard, in which many generations of churchmen slept, was no less sacred than the village church itself; yet here only could the dissenter find his last resting place. Having renounced the communion of the church while living, he was restored to it in death. The last offices of Christian burial were performed [194] over him, in consecrated ground, by the clergyman of the parish, and according to the ritual of the church. Nowhere was the painfulness of schism more deeply felt, on either side. The clergyman reluctantly performed the solemn service of his church, in presence of mourners who seemed to mock it, even in their sorrow. Nay, some of the clergy,—having scruples, not warranted by the laws of their church,—even refused Christian burial to those who had not received baptism at the hands of a priest, in holy orders. On his side the dissenter recoiled from the consecrated ground, and the offices of the church. Bitterness and discord followed him to the grave, and frowned over his ashes.

In country parishes this painful contact of the church with nonconformity was unavoidable: but in populous towns, dissenters were earnest in providing themselves with separate burial grounds, and unconsecrated parts of cemeteries.(3) And latterly they have further sought, for their own ministers, the privilege of performing the burial service in the parish churchyard, with the permission of the incumbent.(4) In Ireland ministers of all denominations have long had access to the parish burial grounds.(5) Such a concession was necessary to meet [195] the peculiar relations of the population of that country to the church: but in England, it has not hitherto found favour with the legislature.

Footnotes.

1. Supra, p. 151.
2. In 1852 the registration of chapels for all other purposes as well as marriages was transferred to the registrar-general.—15 and 16 Vict. c. 36.
3. Local Cemetery Acts, and 16 and 17 Vict. c. 134. s. 7. The Bishop of Carlisle having refused to consecrate a cemetery unless the unconsecrated part was separated by a wall, the legislature interfered to prevent so insidious a separation.—20 and 21 Vict. c. 81, s. 11.
4. Feb. 19th and April 24th, 1861 (Sir Morton Peto).
5. 5 Geo. IV c. 25.

Dissenters and the Universities

In 1834, another conflict arose between the church and dissenters, when the latter claimed to participate, with churchmen, in the benefits of those great schools of learning and orthodoxy, —the English universities. The position of dissenters was not the same in both universities. At Oxford, subscription to the thirty-nine articles had been required on matriculation, since 1581; and dissenting students had thus been wholly excluded from that university. It was a school set apart for members of the church. Cambridge had been less exclusive. It had admitted nonconformists to its studies, and originally even to its degrees. But since 1616, it had required subscription on proceeding to degrees. Dissenters, while participating in all its studies, were debarred from its honours and endowments,—its scholarships, degrees, and fellowships,—and from any share in the government of the university. From this exclusion resulted a *quasi* civil disability, for which the universities were not responsible. The inns of court admitted graduates to the bar in three years, instead of five; graduates articled to attorneys were admitted to practice after three years; the Colleges of Physicians and Surgeons admitted none but graduates as fellows. The exclusion of dissenters from universities was confined to England. Since 1793, the University of Dublin had been thrown open to Catholics and dissenters, who [196] were admitted to degrees in arts and medicine; and in the universities of Scotland there was no test to exclude dissenters.

Several petitions concerning these claims elicited full discussion in both Houses. Of these petitions, the most remarkable was signed by sixty-three members of the senate of the University of Cambridge, distinguished in science and literature, and of eminent position in the university. It prayed that dissenters should be admitted to take the degrees of bachelors, masters, or doctors in arts, law, and physic. Earl Grey, in presenting it to the House of Lords, opened the case of the dissenters in a wise and moderate speech, which was followed by a fair discussion of the conflicting rights of the church and dissenters. In the Commons, Mr. Spring Rice ably represented the case of the dissenters, which was also supported by Mr. Secretary Stanley and Lord Palmerston, on behalf of the Government; and opposed by Mr. Goulburn, Sir R. Inglis, and Sir Robert Peel. Petitions against the claims of dissenters were also discussed, particularly a counter-petition, signed by 259 resident members of the University of Cambridge.

Apart from the discussions to which these petitions gave rise, the case of the dissenters was presented in the more definite shape of a bill, introduced by Mr. George Wood.(1) Against [197] the admission of dissenters, it was argued that the religious education of the universities must either. be interfered with or else imposed upon dissenters. It would introduce religious discord and controversies, violate the statutes of the universities, and clash with the internal discipline of the different colleges. The universities were instituted for the religious teaching of the Church of England; and were corporations enjoying charters and Acts of Parliament, under which they held their authority and privileges, for that purpose. If the dissenters desired a better education for themselves, they were rich and zealous, and could found colleges of their own, to vie with Oxford and Cambridge in learning, piety, and distinction.

On the other hand, it was contended that the admission of dissenters would introduce a better feeling between that body and the church. Their exclusion was irritating and invidious. The religious education of the universities was one of learning rather than orthodoxy—and it was more probable that dissenters would become attracted to the church, than that the influence of the church and its teaching would be impaired by their presence in the universities. The experience of Cambridge proved that discipline was not interfered with by their admission to its studies; and the denial of degrees to students who had distinguished themselves was a galling disqualification, upon which churchmen ought not to insist. The example of Dublin [198] University was also relied on, whose Protestant character had not been affected, nor its discipline interfered with, by the admission of Roman Catholics. This bill being warmly espoused by the entire Liberal party, was passed by the Commons, with large majorities.(2) In the Lords, however, it was received with marked disfavour. It was strenuously opposed by the Archbishop of Canterbury, the Duke of Gloucester, the Duke of Wellington, and the Bishop of Exeter; and even the new Premier, Lord Melbourne, who supported the second reading, avowed that he did not entirely approve of the measure. In his opinion its objects might be better effected by a good understanding and a compromise between both parties, than by the force of an Act of Parliament. The bill was refused a second reading by a majority of one hundred and two.(3)

Not long afterwards, however, the just claims of dissenters to academical distinction were met, without trenching upon the church, or the ancient seats of learning,—by the foundation of the University of London,—open to students of every creed.(4) Some years later, the education, discipline, and endowments of the older universities called for the interposition of Parliament; and in considering their future regulation, the claims of dissenters were not overlooked. Provision was made for the opening [199] of halls, for their collegiate residence and discipline; and the degrees of the universities were no longer withheld from their honourable ambition.(5)

Footnotes.

1. Ayes, 185; Noes, 44. Colonel Williams having moved for an address, the bill was

ordered as an amendment to that question.

2. On second reading—Ayes, 321; Noes, 147. On third reading—Ayes, 164; Noes, 75. Hans. Deb., 3rd Ser., xxiii. 632, 635.
3. Contents, 85; Non-Contents, 187. Hans. Deb., 3rd Ser., xxv. 815.
4. London University Charters, Nov. 1836, and Dec. 1837.
5. Oxford University Act, 17 and 18 Vict. c. 81, s. 43, 44, etc.; Cambridge University Act, 19 and 20 Vict. c. 88, s. 45, etc. These degrees, however, did not entitle them to offices hitherto held by churchmen.

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