

THE RELIGIOUS QUESTION IN  
PUBLIC EDUCATION

**MORAL INSTRUCTION AND TRAINING IN SCHOOLS.** Report of an International Inquiry. Edited, on behalf of the Committee, by M. E. SADLER, C.B. In Two Volumes. Crown 8vo, 5s. net each.

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THE  
RELIGIOUS QUESTION  
IN  
PUBLIC EDUCATION

*A CRITICAL EXAMINATION OF SCHEMES REPRESENTING  
VARIOUS POINTS OF VIEW*

BY

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#### ERRATA.

The Hope-Eden Scheme was in type before its final revision at the hands of its authors, and though some corrections were made in proof the following escaped notice:—

Page 40, line 8, after "staff" insert "adequate and".

Page 41, after sub-section (d) insert—

- (e) Nothing in this Act shall derogate from the obligation in denominational schools of making provision for religious instruction according to the Trust deed (if any), nor prevent the managers of other denominational schools from making provision for religious instruction according to the denomination to which the school is attached.

And on page 56 the criticism in paragraph "The Religious Instruction Committee—taken into account" was written on the original draft of the Scheme, before "and 3" was added to "section 2" in Clause 10 (1).

## I.

### INTRODUCTION.

## I.

DURING the last two years the controversy about the place of religion in English national education has materially changed in temper and in scope. From one point of view the situation has become more grave. It is realized that the questions at stake raise ultimate issues of personal conviction and that their solution will profoundly affect the future both of the family and of the State. The French, intellectually more clear-sighted than the English, have seen this long ago. With them the struggle between the secular State and the ecclesiastical authorities seems for the present to have passed far beyond the reach of friendly compromise. In England there is perhaps still time to avert so sharp a division on points of ultimate principle, a division which is hurtful to social unity because it drives each opposing body of opinion into the attitude of no surrender, and prevents each from admitting the weak points in its own argument and

from any acknowledgment of failure. But there is danger lest, under the pressure of forces which no individual can control, we also should drift into a deadlock of conflicting principles.

From another point of view, however, the outlook in English education has in some respects greatly improved. On almost all sides there is a growing disposition to look fairly at the problem of public education as a whole, to review it in the light of national necessities, to regard purely sectional criticism as inadequate, and to consider the question of religious teaching not simply by itself but in its intimate and necessary relationships to the whole course of study and as one factor in the character-forming influences of school life. The scientific study of education, still in its infancy, but yearly growing stronger with the aid of medical research and sociological inquiry, has insensibly changed the tone of our discussions upon public education. We see things in a new light and from a new standpoint, and each great section of opinion has found reason to discard some of the presuppositions which it inherited, almost unconsciously, from an earlier state of things.

In the belief that the situation had thus changed, and in the hope (borne out by subsequent events) that his belief was shared by many others throughout the country, Mr. Athelstan Riley addressed the following letter to "The Times" and other journals on 27 March, 1909:—



Since the failure to obtain a settlement of the educational difficulty, various committees have been engaged in examining proposals for ending the strife which so seriously hampers the work of national education. The problem is exceedingly complicated, and hence while but few in the legislature itself have any clear grasp of the effect of any proposed measures, the general public have only the most rudimentary ideas on the subject.

Happily there is a lull in the educational controversy, and it seems to some of us that the opportunity should be utilized for gathering and imparting useful information. To aid the above-mentioned committees, will you allow me to ask that schemes should be sent to this address for consideration? They may be of any type—they will fall naturally into well-known categories, "German," "Facilities," "Rate-allocation," etc.—but they should be framed with the object of general fairness to parents and to religious bodies of all creeds. A careful selection of these will be published in book form, with notes for ordinary readers.

Prof. Sadler and Mr. Cyril Jackson, the Chairman of the Education Committee of the London County Council,<sup>1</sup> have consented to assist in this publication. Thus, three members of the two Committees in the late contest, i.e. the Settlement Committee on the one hand and the Religious Equality Committee on the other, will be united in a friendly endeavour to afford instructive material for the next attempt at educational legislation.

The response to Mr. Riley's invitation was immediate and encouraging. Nearly a hundred replies were received from different sources. Some of these were merely sketch suggestions; others, elaborately formulated schemes. The documents

<sup>1</sup> Chairman from March 1908 to Nov. 1910.

thus received were carefully analysed by the editors of this volume, with the help of Mr. Hardress O'Grady. The more important are now, with the permission of their authors, published for general consideration, with comments for which the editors of this volume are responsible, and in preparing some of which they have received valuable assistance from Mr. Arthur Boutwood. The latter has also prepared the Appendix upon the state of the Law with regard to religious instruction in schools.

## II.

Every great change in the intellectual outlook of Europe has been followed by educational upheaval and unrest. This was so in the twelfth and thirteenth centuries ; again at the Revival of Learning ; again at the Reformation and Counter-Reformation ; again in the course of the religious struggles of the seventeenth century ; again at the French Revolution ; and again in the social upheaval of 1848. The present crisis is more widely extended than any of its predecessors, because, through rapidity of communication, the psychological climate of the world has become in greater measure subject to simultaneous influences. The schools of all nations are now passing through a period of disquietude and reorganization. Old-established educational traditions are being examined afresh. The advance of physical science has compelled acquaintance with wide tracts of knowledge, omitted from earlier

courses of education, on the part of all who seek to be qualified to understand the theory and practice of their future employment. Evolutionary thought has changed our ideas of historical development. By disclosing the influence exerted upon man by his environment, it has modified our habit of thought as to the conditions and potentialities of human life. Thus old studies are seen from a new point of view and traditional curricula are being adjusted to freshly realized needs. Medical knowledge has impressed upon us the importance of securing the healthy development of the physical powers during childhood and youth. Consequently, educational thought and practice concern themselves more and more with questions of physical nurture. Psychology has made us sensitive to the stages of intellectual and moral development through which the mind and the character pass in the course of their growth from infancy to manhood. This sharpened insight into the psychical conditions under which they have to work is leading the teachers to make readjustments in the methods and the subject-matter of their instruction.

Under the strain of these intellectual changes, subtle and penetrating, many-sided and obscure, English education is uneasy and disturbed. There are some who in their ignorance regard England as intellectually inert. Conservative it is; indisposed to talk about the fundamental questions of conduct and belief it still continues to be; but it is

extraordinarily sensitive to changes in the spiritual atmosphere, especially as they affect the grounds of personal duty and belief. At almost every great crisis in the intellectual history of Europe, groups of Englishmen have been among the first to discern the inner meaning of the unseen forces which have challenged them to a restatement of their position. Among the intellectual and educational leaders of every epoch in modern history, Englishmen have held their place. But many of the greatest of them, convinced of the close connexion between theory and practice, have given their strength not so much to the literary presentment of new ideas as to the working out of new conceptions of duty in institutional life, and to the task of weaving the new ideals into the tested wisdom of the past.

Education, in the nature of things, is in the main a conservative tendency in national life. The great majority of schools embody in their work the intellectual presuppositions of the past generation. Consequently any great change in the intellectual atmosphere of a nation does not fully show itself in its school system until nearly fifty years later. In all countries in which national education is not strictly unified under State control (and among these the English-speaking peoples have from the first been conspicuous) individual schools are freer to respond to changes in the intellectual and spiritual outlook than is the case elsewhere. Consequently, in England, at every great crisis in thought and

belief, there have been some schools which have shown themselves quickly sensitive to the new conditions. But the great majority of schools lie in the grip of an old tradition and continue to work upon old lines long after the time is really ripe for change.

This is the case in England at the present time. With our customary methods of education, with our conventional course of study and teaching, there is much more dissatisfaction than the majority of teachers are aware. But the dissatisfaction, though deep, is still undefined in purpose. It has no effective substitute to offer in place of that with which it is discontented. In the meantime it appreciates the good points of a school system which it nevertheless desires to see fundamentally reformed. And what is true of our attitude towards questions of curricula and of teaching methods applies with equal force to our attitude towards the administrative mechanism of our school system. No one is really satisfied with the present working of the English Education Acts. All we can say is that, while inequitable in their local incidence, they do on the whole a sort of rough justice to conflicting interests and divergent convictions. But the fabric of administration is the last thing to be altered in a period of educational change. At such a period, the first signs of crisis show themselves in individual uneasiness and in sporadic attempts at reconstruction. There follows a general change in the

temper of the schools and in the outlook of the teachers, responding to the altered but unformulated demands of the public. Finally, when the old educational tradition has been undermined, rapid reform sets in and the administrative machinery of public education is roughly readjusted to the new needs of the case.

It is clear that the present structure of educational administration in England cannot long continue unaltered. Reasons of finance alone will compel some fundamental change. The old idea that education is a purely local service has long been obsolete. The responsibility of the National Exchequer in regard to it has grown. But the principles which should regulate the proportionate contributions of the Exchequer and of local funds towards the cost of national education are still obscure. It is admitted that some great readjustment between central and local expenditure is inevitable and cannot be long delayed. No such readjustment, however, will be possible without serious modification of the present Education Acts, involving changes in point of principle and reassignment of duties between the Board of Education and the local authorities.

In the meantime, however, the necessary range of educational effort is widening before our eyes. The old division between elementary and secondary education is becoming antiquated and will soon be obsolete. Before long the State may find itself compelled to extend some form of educational super-

vision over each individual during the years of adolescence. The connexion between the family and the school must be made closer if physical defects, detected in the children by medical inspection at school, are to be medically attended to at home without serious weakening of parental responsibility. The connexion between the workshop and the school, weak at present in England except so far as an already old-fashioned half-time system bears witness to the necessity of such connexion, requires to be strengthened. Thus financial and other economic forces are driving us forward toward some great educational change. Not less potent are other social forces which are rapidly obliterating many of the older class distinctions in English education and bringing secondary education into close contact with elementary. But most explosive of all is the mass of religious conviction which feels that the present Education Acts fail to recognize parental claims in regard to the religious training of the young.

Large numbers of English parents seem to prefer some form of united Biblical teaching as the kind of religious instruction which should prevail in public elementary and secondary schools attended by children from all denominations. It must be admitted, however, that in the absence of any arrangement by which parents can express a choice as to the religious teaching to be given to their children, this widespread preference for united

Biblical teaching cannot be proved to be the result of the considered judgment of the parents concerned. The State, for a variety of reasons, has not hitherto encouraged in public elementary schools any expression of parental preference as to the form of religious teaching which should be given to children. In industrial schools, it will be remembered, the expression of such a preference is obligatory upon parents; in rate-aided secondary schools and places of higher education it is permitted by statute; but in the sphere of public elementary education, the conscience clause and the recognition of denominational schools are at present the only methods by which the State differentiates between the varying religious convictions of the parents of different groups of children concerned.

On few points are opinions more acutely divided than upon the tendencies and spiritual value of undenominational religious teaching. The editors of this volume are themselves not in complete agreement in regard to it. On the one hand, they would all in the first place strongly oppose any plan which would give to undenominational teaching sole recognition in the national system of education. In existing circumstances it enjoys no such monopoly. Denominational schools, in which the religious teaching is a full expression of the faith of some religious body, coexist in the national system with council schools in which the religious teaching may



not include any "catechism or religious formulary which is distinctive of any particular denomination". This coexistence of various types of school (in some cases alternative to one another in the same district) has in some degree tended to reinforce the Christian character of the Cowper-Temple teaching. The majority of the more influential supporters of council schools have hitherto (whatever may be the case in the future) been anxious that the denominational schools should have no exclusive claim to the title of Christian schools. The fact that large numbers of the council school teachers have received their training in colleges which are either denominational or (as in the case of the colleges of the British and Foreign School Society) decidedly Christian in their undenominationalism, has also preserved definitely Christian teaching as the predominant type under the Cowper-Temple clause. But if the State withdrew its recognition and aid from all denominational schools and training colleges, and gave Cowper-Temple teaching a unique and exclusively privileged place in all schools under its inspection, the situation would be gradually changed and the prospects of definitely Christian teaching would be impaired throughout the whole system of council schools, whether elementary or secondary. Moreover, in that event, there would be forced into the council schools the children of many parents (Anglican and Roman Catholic) who at present secure in de-

nominal schools the definite type of teaching which they prefer for them, but who (if thus driven into making use of an uncongenial form of school and into taking Cowper-Temple teaching as the sole kind of religious instruction for their children, at least so far as the day school course was concerned) would raise many embarrassing questions as to the statutory limits of Cowper-Temple teaching, with the purpose of forcing the hands of the authorities either into the recognition of denominational teaching or into secularism. Undenominational teaching would then be subjected to a strain far more severe than any that it has hitherto experienced. It would have to serve as the greatest common measure of a more numerous variety of widely differing beliefs. In that case, could it long continue to identify itself with the Christian faith?

Secondly, the editors agree that undenominational teaching can never embrace the whole of an ideal religious education for a child. The sense of membership in an historic body of believers (a sense which, under favourable conditions of temperament and of intellectual affinity, deepens into a conviction of personal allegiance) is one of the privileges which religious training may impart. But, except perhaps as a general counsel for the guidance of life, such allegiance cannot be inculcated by a form of teaching which is bound to be neutral in its outlook upon different forms of religious belief.

On the other hand, one of the editors believes

that undenominational teaching given with sincerity and reverence becomes the expression of the underlying unity of all real religious experience ; and that in schools attended by children belonging to many different faiths, it is the right means of fostering a religious attitude of mind, which is one necessary factor in a liberal and character-forming education. Provided, therefore, that such undenominational teaching is supplemented by other kinds of religious instruction in accordance with parental preference, he regards its claim to a preferential place in the curriculum of council schools as valid and as justified by the fact that it has been found to help in giving spiritual unity to the school's corporate life. The other two editors agree with him in desiring that some simple act of common worship should form part of the daily work of every elementary and secondary school, but they differ from him in their judgment of the value of undenominational religious teaching as distinct from united worship. They feel that there is no safeguard in any system of non-denominational instruction for the realities of religious influence. Some of the teachers (they hold) will have no strong personal convictions ; others will have their own views (some Christian, others non-Christian), which will be unconsciously imparted through their teaching. In the case of the teachers having no strong personal convictions, there is a danger that their religious teaching will be felt by the children to be unreal ; in the case of

teachers who are strongly denominational in their religious views, there will be some likelihood of their showing a bias towards some denomination ; in the case of teachers who are in principle non-Christian, there will be a bias against Christianity itself. In short (they hold), wherever it can be shown that undenominational teaching is Christian, it is so because its teachers have been brought up in allegiance to some particular form of Christian belief. But owing to recent changes in the professional training of teachers an increasing proportion of those intending to enter the teaching profession are not receiving (so far as the day school and the training college are concerned) any denominational grounding in religious knowledge. More than this, an increasing number are receiving (again so far as the day school and the training college are concerned) no systematic religious teaching at all. And the ever more exacting claims of secular studies are continually thrusting the study of the Bible and of the Christian faith more and more into the background of the intending teacher's thoughts and work.

The basis of undenominational religious teaching has been greatly affected during the last forty years by the progress of Biblical criticism. "Simple Bible teaching," to use the expression once in common use, is no longer so easy of attainment by the comparatively unlearned as once appeared to be the case. At one time, indeed, many good men

hoped that the religious unity of the nation might be secured by encouraging undenominational Bible teaching in all schools aided by the State. This hope, never shared by those whose thought penetrated most deeply into the problem, has become fainter during the last ten years. It is clear that England, though greatly divided in religious belief, is not prepared to accept some diluted form of Christianity as its general religion. On the other hand, it is indisposed to hand over to the secularist or the humanitarian the immense influence of public education. It will only be in the last resort, and in despair of any other settlement, that the mass of English people will consent to the omission of religious worship and religious teaching from the ordinary curriculum of the State-aided schools. There is a general desire to respect the different forms of strong religious conviction. The force of the Roman Catholic claim, urged with courage and self-denial, is recognized even by those who do not themselves accept the Christian faith. The justice of the Nonconformist objection to the Anglican control of the great majority of village schools is admitted by great numbers of Churchmen who appreciate the value of the service rendered by those schools to village life. What has not yet been as generally recognized is the force of the claim made by many Church of England parents for Church teaching for their children in the areas where no Church school can be maintained.

## III.

The present system, therefore, of educational administration in England is bound sooner or later to undergo drastic change. Our present duty is to discuss, in a fair-minded way and with careful regard both to financial exigencies and to educational method, the course which educational reform should take. As a help to such consideration, a number of alternative plans of resettlement, prepared by several writers, are published in this volume.

Any plan of educational reorganization which attempts to grapple with the whole problem must have regard to three things—the question of curriculum, the question of public administration, and the question of political obligation, or, in other words, (1) to the place of the religious lesson in the course of teaching provided by the school, (2) to the degree of control which the national Government and the local education authorities should respectively exercise over the work of schools in receipt of aid from public funds, and (3) to the rights of the parent as against the State, and to the rights of the State as against the parent, in determining what a child shall learn at school.

It will be found that each of these questions is raised in every comprehensive plan for educational resettlement. With regard, however, to curriculum, administration, and political obligation, there is difference of opinion, and each scheme represents

one or other of three different views upon each of the three fundamental questions. The result is that the plans vary greatly among themselves and do not lend themselves to easy classification in sharply distinguished categories.

For example, with regard to curriculum, some of the plans approach the question of national education almost exclusively from the point of view of the religious lesson which, however widely diffused may be its influence throughout the work of the school, is nevertheless only a fraction of the course of study. Other schemes approach the question exclusively from the point of view of the secular curriculum, with or without recognition of religious teaching as an annexe to it. Thirdly, other schemes attempt a synthesis between the religious and other branches of the teaching of the school, while securing protection for liberty of conscience on the part of parent, pupil, and teacher alike. These are the schemes which approach most nearly to an ideal solution, though they suffer from the disadvantage of being more complicated than their rivals.

With regard to the question of administration, three points of view may be similarly distinguished from one another. Some schemes regard education as fundamentally a national concern, granting only so much local discretion as may be inevitable for political reasons or for administrative convenience. Conversely, other schemes regard edu-

education as fundamentally a local concern, to be regulated mainly by some form of local option, the control of the central authority being reduced to a minimum so far as financial exigencies allow. Thirdly, other schemes attempt a synthesis between national control and local variety, with a view to enforcing by means of the authority of the State a necessary minimum of educational attainment and discipline and, on the other hand, to preserving variety of organizing initiative and of educational type by the permission of a large degree of local liberty.

Again, with regard to the question of political obligation, some schemes give the prior claim to the right of the parent to determine the kind of education which his children should receive. A second group of schemes give the prior claim to the State, and subordinate parental rights to the supposed interests of the central government. A third group of schemes attempt a synthesis between the rights of the State and the rights of the parent, without overlooking the concurrent claims of the local communities, of the religious bodies and of the teachers in the schools.

These are the main lines of approach along one or other of which the authors of the different schemes advance to the consideration of their subject. It will be found that in their practical application some of the schemes involve a uniform system of State schools, State-controlled as re-



gards the secular curriculum, which forms six-sevenths of their work, but offering (under various plans of organization and with varying degrees of probable efficiency) different kinds of religious instruction according to parental choice. Other schemes, the authors of which distrust uniformity of State education, retain variety of schools under different types of management, but all set in one framework of national administration. Again, some of the schemes entrust each local education authority with the duty, or at least with the power, of supplying religious instruction according to a syllabus framed by it for the purpose. Other schemes assign to the churches or other spiritual organizations the duty of planning and supervising the respective courses of religious instruction, on the ground that this is a spiritual function which should be withheld from the control of a secular authority. Yet again, some of the plans assign to the regular teachers on the staff (or rather to those of them who are willing to undertake it) the duty of giving religious instruction as an integral part of the ordinary curriculum of the school, subject of course to the working of a conscience clause. Other plans rely upon the services of outside teachers, appointed by the religious bodies concerned, for the giving of the religious lessons, one scheme assigning a particular day in the week for religious teaching exclusively.

## IV.

The adjustment of national education to public needs and to private conviction is the most difficult question which confronts the modern State. It cannot be solved like a problem in chess. Still less can it be usefully discussed as if it were a cold problem in mathematics. It is full of history. Men approach it with many presuppositions, some of which lie beyond the probe of verbal analysis. Within each nation—more than this, within each local community—different groups of the electorate approach the problem in quite different stages of thought. This makes the psychology of the situation even more important than the politics of it. With the best will in the world, with a real desire to reach agreement, men may look at the question in quite different perspective and thus find themselves unable to take the same view of the promise and the perils of any given situation. Patience alone can help us through a controversy which, if it once becomes hopelessly embittered, endangers both the spiritual and political unity of the nation. It is hoped, therefore, that the publication of the schemes which are printed in this book may in some degree further a friendly understanding by showing, in a practical way, the number of factors and considerations which need to be taken into account in any comprehensive resettlement of the English Education Acts.

The editors of the volume are far from thinking

that they have found the key to a difficulty which has long perplexed the minds of statesmen in England and elsewhere. If they were asked, however, to disclose the view to which they themselves have been led in the course of their inquiry, they would put forward the following principles as being, in their judgment, fundamental :—

(i) Religious (including moral) instruction and training must form part of any system of national education designed to impart belief in a moral ideal as the groundwork of character.

(ii) The contents of any course of religious instruction and training which purports to be in accordance with the faith of a particular church, must be under the control of the spiritual authority of that church and not of some secular authority endeavouring to interpret it.

(iii) It is undesirable that the State should attempt to impose uniformity of religious belief or of religious instruction upon all the children in the nation by means of the system of State-controlled or State-aided education. This principle, if accepted, renders unacceptable (1) the imposition of the doctrines of one particular church to the exclusion of those of others ; (2) an attempt to enforce undenominational Christian teaching as the sole form of religious instruction eligible for aid from the State ; and (3) the enforcement, under the name of moral instruction, of humanitarianism as a substitute for Christian doctrine.

(iv) In schools which are wholly maintained from public funds, no official or financial preference should ultimately be given to one form of religious instruction as compared with others.<sup>1</sup>

(v) Subject to stringent conditions as to educational and hygienic efficiency, it is desirable that in present circumstances in England the State should allow (as alternatives to the council schools in any area populous enough to support more than one school) the continuance of denominational schools in so far as the parents of the children desire their maintenance, and that it should aid them on equal terms with other schools of the same grade

<sup>1</sup> The editors of this volume differ among themselves as to the present application of this principle. Two of them think that it should be enforced at once; one of them believes that for the present an exception should be made (where the local authority so desires) in favour of undenominational Christian teaching with continuance of the present right of withdrawal from part of such teaching, on the ground that at the present time this form of teaching is the most unifying spiritual influence which is practically available for the majority of council schools, and that, for the present, the real alternative to its preferential treatment in council schools is some form of secularism. The other two editors take a different view of the present situation and of the way in which it should be dealt with. They feel that any preferential treatment of undenominational teaching in council schools, if adopted at the next resettlement of the question, would perpetuate and stereotype a grave injustice and a serious danger to definite religion. They would, at the next step, take almost any risks rather than rivet upon State-aided elementary education in England a form of religious teaching which in their judgment has long been from the Christian point of view insecure, and would tend to become not merely increasingly insipid but more and more perilous to faith in Christian fundamentals. Thus they cannot regard it as being (even so far as it goes) a common religious teaching to which, by "facilities" or otherwise, denominational teaching can be superadded.

in national education. No system of contracting-out, which would reduce denominational schools to an inferior status and to financial impoverishment, would be wise from the point of view of public policy, or tolerable from the point of view of educational unity.

(vi) In so far as may be desired by the parents, religious and moral instruction, detached from denominational control and avoiding the distinctive formularies of any particular denomination, should be given rights equal to those granted to the different forms of denominational teaching.

(vii) In the interests of national unity it is desirable that any rupture and hostility in the relations between the State and the different religious bodies should be avoided. Our system of national education (still in many respects gravely in arrear and, like the educational systems of other countries, far behind the requirements of medical science and civic efficiency) needs to have behind it the united goodwill of those who may differ in religious conviction but who (if those convictions are respected) are prepared to act heartily together in promoting the efficiency of the training of the rising generation.

## II.

### DRAFT BILL

BY SIR THEODORE C. HOPE, K.C.S.I., C.I.E., CANTERBURY  
HOUSE OF LAYMEN, AND MR. A. F. EDEN, ST. DAVID'S  
DIOCESAN BOARD OF EDUCATION.

#### EXPLANATORY MEMORANDUM.

##### I. GENERAL PRINCIPLES.

THE Bill is based upon the fact that the nation as a whole is opposed to a secular scheme of national education, and upon the principle that, under a system of compulsory school attendance, it is the right and duty of a parent to determine what religious instruction, if any, must be given to his child.

The limitations of the "Cowper-Temple" clause in the case of "provided" schools, and of trust-deeds in the case of "voluntary" schools, are alike modified in order to carry out this principle.

The only limitations of the principle which the Bill recognizes are those of physical facts. The practical legislator cannot wholly ignore the actual conditions and past history of our system of public education, in particular that the greater number of

the elementary schools constituting that system are not owned by the State, but are either private property or are charitable foundations subject to definite and binding trusts which have, as against State interference, rights analogous to those of private property.

We must also have regard to the positive religious habits and tendencies of the nation which the past working of our educational system has disclosed. Four broad denominational classes emerge whose views and aspirations require specific treatment : the Church of England, the Free Churches, the Roman Catholic Church, and the Jewish Church. Beyond, or within these classes, may exist special minorities for whom, in some cases, exceptional treatment will be needed, and legislative proposals must be sufficiently elastic to admit of exceptions in such cases. Elasticity, indeed, must be the keynote of any legislative project for the solution of the education controversy.

The fundamental provisions of the Bill may be well described in the words of the Rt. Hon. A. Birrell, M.P., written a year after the Education Act, 1902, had been passed, and two years before he took office as Minister for Education in Sir H. Campbell-Bannerman's Government.

“There still remains the question as to the nature of the religion to be taught in all the schools. Here the parents really must, whether they like it or not, conquer their

shyness, and, making their first appearance in this ancient and horrid controversy, tell us, when they send Tom and Jane to school, whether they wish them to receive any, and, if any, what, religious instruction. There is no chance of the multiplication of strange parental religions. We are not an imaginative people. Jews, Roman Catholics, Anglicans, and Dissenters (in a lump) will usually exhaust the list. The great body of Dissenters will be found ready to accept the same broad, simple Bible-teaching which, for the most part, characterized Board School Christianity."—  
"Independent Review," October, 1903.

The draft Bill therefore recognizes that the kind of religious instruction to be given to each child must be indicated by its parents.

This is the parents' right and duty, which the State cannot justly assume, though it makes the child's attendance compulsory, and levies the cost of teaching. At most, it can only act as trustee to fulfil the parents' wishes. Children, whose parents desire religion to be omitted from the school course, must have secular teaching during the religious lessons of the others.

The State, consequently, must *provide* all forms of religious teaching, but *enforce* none.

All religious teaching must be given during school hours, for an adequate time, and as a part of



the regular course of the school. All who give it must, as a general rule, be duly qualified members of the staff who are willing to give it, because religious instruction, as a school subject, is a right, and hence must be no more left to voluntary effort than any other subject in the curriculum. Moreover, if it were so left, the children in poor and populous districts would have the worst chance of getting effective religious teaching (if any), on account of the difficulties of local means and organization; while, on the other hand, outside teachers would be regarded as intruders by the staff, and would find great difficulties in maintaining order.

The financial justice and equality arising out of the arrangements proposed will be apparent from the following considerations. The population of any given place are all, in one form or another, payers of rates and taxes. The children of the place represent the population proportionally; hence, sections of the population are represented by corresponding sections of the children. Supposing, then, that the whole cost of the schools is paid out of rates and taxes, and all parents are supplied with either the religious teaching, denominational or undenominational, which they prefer, or secular teaching in substitution, no section or denomination will pay anything for any teaching except what its own children actually receive; each will pay for what it gets and no more. There will be nothing for anyone to "resist passively" about.

## 2. SOME OBJECTIONS DEALT WITH.

In drafting the Bill care has been taken to meet, so far as possible, various practical objections to the principle upon which it is based.

(a) The general objection is sometimes taken that to allow more than one kind of religious teaching to be given in a public elementary school at the option of the parents will involve too great a disturbance of school organization ; pandenominationalism, it is said, means pandemonium. But the system is actually in operation in the Irish elementary schools, in English reformatory and industrial schools, in English poor law schools, and in German schools. It further has, as a practical scheme, the official sanction of the Board of Education ; the second Education Bill introduced in 1908 (under the auspices of Mr. Runciman, the present Minister for Education) recognized the right of parents to demand special kinds of religious instruction to be given in public elementary schools within school hours, and, by implication, admitted that such a right could be effectively exercised without injuring the efficient conduct of the schools.

In any case, where owing to special circumstances, some practical obstacle of an insuperable character is met with, clause 9 of the draft Bill provides a means by which relief may be granted from a too rigid application of general principles.

(b) The existing arrangement for religious in-

struction under the Education Acts commends itself to some just on the ground that the children are grouped for the purposes of that instruction, and that an enforced division of children, even into a few denominational classes at the parents' option, is undesirable. The provision in clause 11 of the draft Bill giving an optional power to different denominations to agree to a common syllabus and to common instruction will, it is hoped, mitigate apprehensions based on such grounds.

(c) A further objection is sometimes made to the operation of the parental principle on the ground that it casts upon local education authorities duties in respect of religious matters which they are not competent to fulfil. One of the main aims of the draft Bill is to relieve local authorities of such duties. It is indeed obvious that bodies of men appointed mainly to carry out business and financial duties ought not to be required to interfere, beyond what is necessary, with delicate matters concerning religious teaching or the religious qualifications of teachers who give such teaching. The discretion of a local education authority in respect of religious instruction is, therefore, limited by the draft Bill, so far as possible, to administration pure and simple. The authority is not required to draw up a syllabus for religious instruction, to inspect such instruction, or to examine the qualifications of teachers who give it. Those functions will all be performed by bodies representing the parents' denominations, or

by managers who will also be representative of the parents. To the local education authority will be left the administrative organization and financial control of the instruction so determined.

### 3. SOME DETAILS OF THE BILL.

The managing bodies established by the Education Act, 1902, are, in the case of voluntary and council schools alike, to be reconstituted by the admission of representatives of parents, and their powers are to be still more narrowly confined to securing the efficiency of religious instruction. The power of managers of voluntary schools under that Act to appoint and dismiss teachers is abolished, and a power of veto is substituted, to be exercised only upon grounds connected with religious teaching, and subject to a prescribed right of appeal. A similar power is given to the managers of council schools. Subject to those powers, the appointment and dismissal of teachers is a function to be exercised by the local education authority.

The Bill thus recognizes that the control of public elementary schools by the local education authority in respect of finance and secular instruction must be complete.

There is nothing in the draft Bill which necessarily destroys the existing division of schools into voluntary and council schools. But under the operation of the Bill the religious functions of a council school would be so extended that trustees

of many voluntary schools, especially of those under Church of England trusts, might consider that the religious education of the children attending them would be equally well secured if the school became a council school. The Bill therefore provides a special means whereby a transfer of such a school to a local education authority can be effected subject to due safeguards for the trusts.

#### 4. TRAINING COLLEGES.

The existence of a supply of efficient, religiously trained teachers is essential to the practical working of the scheme, and the Bill therefore contains a clause to secure denominational training colleges from administrative interference from Whitehall. It also lays down principles upon which religious instruction should be given in training colleges provided by local education authorities, namely that such instruction is to have as its aim the provision of a supply of teachers sufficient for the general religious aims of the Act.

#### 5. POSSIBLE MODIFICATIONS.

The proposed Bill has been drafted with sufficient elaboration to enable critics to understand its intended working, but, for the purpose of brevity, various purely consequential provisions have been omitted. If the Bill were actually being introduced in Parliament, the representatives of the various interests affected would no doubt suggest numerous

## 32 The Religious Question in Education

minor additions to secure their special wants. In so far as such additions did not infringe the main principle of the draft Bill, its authors, if they were in the position of a minister introducing the Bill, would not oppose them.

### A BILL TO REGULATE RELIGIOUS INSTRUCTION IN PUBLIC ELEMENTARY SCHOOLS AND TRAINING COLLEGES.

#### ARRANGEMENT OF CLAUSES.

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1.—(1) A local education authority, in the exercise of their powers under Part III. of the Education Act, 1902, shall provide, subject to the provisions of this Act, for every child attending a public elementary school in their area religious instruction in accordance with the wishes of its parent.

General  
duty of local  
education  
authority.

(2) In the execution of this Act, including the appointment and promotion of teachers, no unfair preference shall be shown to any religious denomination or to any teacher engaged in giving any particular form of religious instruction.

2.—The regulations in accordance with which a public elementary school is required to be conducted shall include the following, namely :—

Regulations  
for conduct  
of religious  
instruction  
in public  
elementary  
schools.

(1) Upon the admission of any child to a public elementary school, the parent shall state, subject as hereinafter provided, whether he desires it to receive religious instruction in the principles of—

- (a) The Church of England, or
- (b) The Nonconformist Churches, or
- (c) The Roman Catholic Church, or
- (d) The Jewish Church,

and the religious persuasion chosen by the parent (hereinafter called the parent's persuasion) shall be entered opposite the child's name in a register kept in every school for

the purpose, and religious instruction in the principles of the parent's persuasion (hereinafter called the chosen instruction) shall be given to the child according to a syllabus settled by the voluntary association representing the parent's persuasion.

- (2) The chosen instruction shall be given to the child so long as it continues to attend the school for not less than one half-hour daily upon each day when the school meets twice, or two and a half hours in each full week of the school term, at such times during any meeting of the school as are convenient.
- (3) All such chosen instruction shall be given within the hours during which children are required to attend school by the by-laws of the local education authority, and shall be recognized as part of the regular school curriculum, and, subject to the provisions hereinafter laid down with reference to teachers, shall be given by teachers being members of the regular teaching staff of the school.
- (4) The Board of Education shall, through His Majesty's Inspectors of Schools, inspect all chosen instruction in public elementary schools, but for the purpose only of satisfying themselves that the organization and discipline of the school are satisfactory during that instruction, and the inspection of



the efficiency and character of the instruction shall be conducted by the inspectors of the voluntary association representing the parent's persuasion.

The foregoing regulations shall be construed as though they were included in section 7 of the Elementary Education Act, 1870, and shall be substituted for the provisions of section 14 (2) of that Act, and section 7 (6) of the Education Act, 1902.

3.—(1) If the parent of any child attending a public elementary school, instead of choosing for his child religious instruction of one of the four classes mentioned in section 2 of this Act, chooses religious instruction of some other character (hereinafter termed exceptional instruction) including instruction in the distinctive principles of any particular Nonconformist denomination, the local authority shall provide that instruction for the child, so far as they think it is practicable to do so without interfering with the performance of their duties in respect of children for whom one of those four classes of instruction has been chosen.

Provisions  
respecting  
exceptional  
cases.

(2) If exceptional instruction is provided, it shall be given subject to the conditions and provisions applicable in the case of the said four classes of instruction.

(3) If a parent, instead of choosing any religious instruction for his child, declares that he desires his

child to receive no religious instruction at all, or at any time withdraws his child from religious instruction in pursuance of section 7 of the Elementary Education Act, 1870, the child shall not on that account be withdrawn from the school, but special secular instruction shall be provided for the child in lieu of religious instruction :

provided that such special instruction shall not be given so as to enable any child to gain any preference or advantage with respect to any school prize, scholarship or emolument over children receiving religious instruction.

(4) A parent who has chosen religious instruction of any kind for his child may at any time, by a further entry in the register, vary or modify his choice, or withdraw his child from religious instruction altogether.

4.—(1) If on account of any special circumstances it is found difficult in the case of any child to provide in the schoolhouse the religious instruction authorized by this Act, arrangements may be made for providing that instruction in some other suitable place, including any other public elementary school, and the child may be required to attend that place to receive the instruction, and while attending that instruction shall be deemed to be attending religious instruction at a public elementary school.

Power to provide instruction outside schoolhouse; attendance at church.

(2) A syllabus settled by a voluntary association under this Act may provide for the attendance of the children whose instruction it regulates at a place of religious worship on any day exclusively set apart for religious observance, or other holy day recognized, by the religious body to which the parent belongs during the times allotted in the timetable of the school for the religious instruction of those children, and attendance at such place in accordance with the syllabus shall be recognized as attendance at religious instruction at school.

5.—A local education authority, or the managers of a public elementary school in which the religious instruction of a majority of the children attending it is the same, may refuse a child admission to such school on the ground that the vacant places in the school are required for children whose parents desire them to receive that instruction, provided that suitable and accessible accommodation can be found for the child in some other public elementary school.<sup>1</sup>

6.—The by-laws of a local education authority requiring children to attend public elementary schools shall provide that the

<sup>1</sup> This clause has been objected to by critics otherwise friendly to the Bill on the ground that it would excite needless opposition. No sinister or collateral purpose attaches to the clause; it is designed to facilitate, in administrative interests, the grouping of children in different schools in urban areas; it would, it is thought, be especially useful to Roman Catholics who seek to avoid any disturbance of the homogeneous character of their schools.

times during which a child is required to attend school shall be the whole time during which the school is open to the instruction of children of a similar age, and no exemption from attendance shall be granted by the by-laws, in respect of the time during which religious instruction is given under this Act, to any child otherwise required to attend school on the days when such instruction is given.

**7.—(1)** Every public elementary school shall have a body of managers consisting of Managers. two foundation managers, two managers representative of the parents of children attending the school, and two managers representative of the local education authority.

(2) In the case of a school not provided by a local education authority the foundation managers shall be appointed subject to, and in accordance with, section 11 of the Education Act, 1902.

(3) In the case of a school provided by a local education authority the foundation managers shall be appointed by that authority, but in making any such appointment the authority shall have due regard to any majority, or, if there be no clear majority, to the largest number, of children attending the school who receive the same class of religious instruction.

(4) In the case of any public elementary school the local education authority in appointing managers representative of the authority shall have due regard

to any minority of children whose parents are otherwise unrepresented on the body of managers and who ought, in the opinion of the authority, to be represented thereon.

(5) The managers of a public elementary school shall have such powers in respect of the secular instruction given in the school and the control of expenditure required for the purpose of maintaining and keeping efficient the school as may be assigned to them by the local education authority, and shall have such powers in respect of religious instruction and of the appointment and dismissal of teachers as are provided by this Act.

(6) The Board of Education shall make regulations for the conduct of the election of managers by parents ; but before making any such regulations the draft thereof shall, as soon as may be, be laid before each House of Parliament, and if within thirty days, being days on which Parliament has sat, after the draft has been so laid before Parliament, either House resolves that the draft, or any part thereof, should not be proceeded with, no further proceedings shall be taken thereon, without prejudice to the making of any new draft order :

provided that a parent shall have one vote at any such election for each of his children attending the school.

(7) Notwithstanding anything in this section schools may be grouped under one body of managers in manner provided by section 12 of

the Education Act, 1902, as amended by this Act.

8.—The local education authority shall have the sole power of appointing and dismissing Teachers. teachers in a public elementary school, subject to the following regulations :—

- (a) The authority shall provide for every such school a teaching staff suitable for the purpose of giving chosen instruction in accordance with this Act :<sup>1</sup>
- (b) Subject to the provisions of this Act with reference to arrangements existing at its commencement, the teachers giving that instruction shall ordinarily be members of the regular teaching staff, but in special circumstances teachers, including persons giving their services voluntarily, may be employed by the authority for the special purpose of giving any particular class of chosen instruction in one or more public elementary schools :
- (c) The consent of the managers shall be required to the appointment or dismissal of a teacher, but that consent may not be refused unreasonably, and only upon the ground that a proposed appointment or dis-

<sup>1</sup>It is not intended by this provision that every teacher in a school should necessarily be qualified to give some form of religious teaching, but merely that the staff should contain sufficient teachers to enable the various forms of religious instruction demanded by the parents of the children actually attending the school to be suitably provided.

missal will not be in compliance with the requirements of this Act with reference to religious instruction :

- (d) A certificate of a voluntary association formed under this Act shall be accepted as satisfactory evidence of the qualification of a teacher holding it to give the instruction which the association is formed to supervise, and, subject to the provisions of this Act with reference to existing teachers, no teacher not so certificated may give such instruction.<sup>1</sup>

9.—(1) If the local education authority satisfy the Board of Education that owing to the small number of children needing a particular form of chosen instruction, the difficulty of getting teachers, willing and qualified to give such instruction, or any other special circumstances, it is not reasonably practicable to provide for those children that instruction as required by this Act, the Board of Education may make such order as they think necessary or proper for relieving the authority, wholly or partly, from the obligation to provide that instruction, subject to the terms and conditions contained in the order, and any such order shall have effect accordingly.

Power to  
give relief  
in cases of  
difficulty.

- (2) An order of the Board under this section

<sup>1</sup>The object of this provision is that explained in Section 2 (c) of the Explanatory Memorandum, namely, to put on some body other than the local education authority the task of investigating and determining the qualifications of teachers so far as concerns religious matters.

shall not have effect for more than one year, without prejudice to the power of a local education authority at any time to apply for a further order.

(3) The Board of Education shall report annually to Parliament any action taken by them under this section.

(4) Any action taken by the Board of Education under this section shall be a matter in respect of which the prescribed right of appeal shall lie.

**10.**—(1) A voluntary association may be formed for the area of any local education authority, or for any group of such areas, to represent any of the religious persuasions mentioned in sections 2 and 3 of this Act, in accordance with a scheme to be approved by the Board of Education, for the purpose of formulating and supervising chosen religious instruction in public elementary schools.

(2) If a scheme be submitted to the Board of Education proposing as the voluntary association any existing organization recognized by the ecclesiastical or other authority of the religious persuasion concerned as the proper organization for supervising on behalf of that persuasion religious instruction in public elementary schools, the scheme shall be approved by the Board of Education, unless there are any special circumstances justifying its rejection: provided that every scheme must provide for suitable representation on the voluntary association of the teachers employed in giving religious in-



struction under the supervision of the association.

(3) A scheme shall provide that each association shall have a responsible secretary through whom correspondence with the local education authority and the Board of Education shall be conducted.

(4) It shall be the duty of any association formed under this section to inspect and examine religious instruction given in public elementary schools in the principles of the religious persuasion it represents, and to settle the syllabus of such instruction, and to grant certificates to teachers to give that instruction or to withdraw the same.

(5) If at the commencement of this Act an association has not been formed under this section for the supervision of some particular form of religious instruction, the functions of an association in respect of that instruction shall be performed by the managers of each school, until such an association is formed for that purpose.

(6) The refusal of the Board of Education to approve a scheme under this section shall be a matter in respect of which the prescribed right of appeal shall lie.

**II.—(1)** A voluntary association may, by agreement, combine with any other such association for the purpose of the performance of any of their functions under this Act, and, in particular, may make arrangements for the use of a joint syllabus, and for the giving of instruction wholly or partly in

Agreements  
between  
associations,  
and common  
instruction.

common to the children whose instruction such associations are formed to supervise.

(2) If the parent of any such child objects to the action of a voluntary association under this section, the Board of Education, subject to the prescribed right of appeal, shall determine whether the objection is reasonable, and, if they think it is reasonable, shall require any voluntary association concerned to take such steps as may seem necessary to remedy the grievance.

**12.—(1)** A committee shall be established by Order in Council to be called the Religious Instruction committee of Board of Education. Religious Instruction Committee of Board of Education. shall advise and assist the Board in carrying out this Act.

(2) The committee shall be representative of the voluntary associations appointed under this Act, and shall consist of persons having experience in the religious education of the young, and persons qualified to represent the views of particular religious persuasions with reference to such education.

(3) Any question to be decided by the Board of Education under this Act shall be referred by them to the committee, which shall report to the Board their opinion on the question, and where the question mainly concerns the interests of one particular religious persuasion shall obtain the opinion of the representatives of that persuasion on the committee, and report it to the Board together with their opinion.

**13.**—(1) If the trustees of a public elementary school not provided by a local education authority, subject to charitable trusts, are of opinion, having regard to the rules respecting religious instruction enacted by this Act with reference to all public elementary schools, that it is unnecessary, in the interests of the objects which the school was founded to promote, to continue the school as a public elementary school not provided by a local education authority, they may by agreement with the authority make an arrangement for the use of the schoolhouse by the authority for the purpose of conducting therein a public elementary school provided by the authority, subject to such terms and conditions as to—

- (a) payment by the authority for the use of the schoolhouse,
  - (b) the use and control by the trustees of the schoolhouse out of school hours,
  - (c) the termination of the arrangement in case it should appear expedient in the interests of the trusts, and
  - (d) any other matters for which it may be desirable to make provision,
- as may be agreed upon between the trustees and the authority.

(2) For the purpose of effecting an arrangement under this section, the trustees shall serve the local education authority with an offer to treat, and shall

Transfer of  
voluntary  
schools.

give public notice of the offer in the locality, and shall afterwards also give public notice of the draft of any agreement for the transfer. No further action shall be taken in respect either of the offer or the draft until at least one month after the notice thereof has been given. A copy of any such notice shall be sent to the managers of the school.

(3) At any time before the expiration of the last of the said periods the managers of the school, or the parent of any child attending it, or any person who has contributed to its establishment or maintenance, may appeal to the Board of Education against the proposed arrangement, and, in the event of any such appeal, the arrangement shall not be made without the consent of the Board of Education.

(4) Any action by the Board of Education under this section shall be a matter in respect of which the prescribed right of appeal shall lie.

(5) The power to make an arrangement under this section shall in the case of public elementary schools be substituted for the means of transferring an elementary school to a local education authority provided by section 23 of the Elementary Education Act, 1870.

(6) No transfer shall take effect under this section except with the consent of any person whose consent is required by the trust deed to the alienation of the school.

(7) An agreement under this section shall have effect as if enacted in this Act, but may be revoked or varied by a subsequent agreement.

14.—If, in the case of any school the trusts of which have as their object the education of children in the principles of any particular church or denomination, the trustees after the passing of this Act decide, with the consent of any person whose consent is required by the trust deed to the alienation of the school, not to continue the school as a public elementary school not provided by a local education authority, or to make an arrangement for the use of the school by the authority under the foregoing provisions of this Act, the use of the schoolhouse by or on behalf of the trustees for the religious, educational, and social purposes of such church or denomination shall, for the purposes of any scheme to be made by the court, or under the Charitable Trusts Acts, 1853 to 1894, or under the Endowed Schools Acts, 1869 to 1889, have preference over any other use of it.

Saving for trusts having denominational objects.

15.—(1) If a teacher employed at the date of the commencement of this Act in a public elementary school not provided by a local education authority satisfies the authority in whose area the school is situated that he has lost employment, or been obliged to accept employment with a diminished salary, by reason of the school ceasing to be a public elementary school in conse-

Compensation to teachers.

quence of this Act, or by reason of the school becoming by virtue of an arrangement under the foregoing provisions of this Act a school provided by a local education authority, and that he has used all diligence to obtain suitable employment, he shall be entitled to be paid by the authority such an allowance as the authority think just under the circumstances, not exceeding, in cases where the teacher has suffered complete loss of employment, three times the amount of yearly salary to which he was entitled at the commencement of this Act, and in the case of a teacher who has been obliged to accept a diminished salary, not exceeding three times the amount by which his salary is diminished.

(2) Any teacher aggrieved by the decision of a local education authority with respect to his application for an allowance under this section may appeal to the Treasury, and the Treasury may proceed under this section in the same manner as the authority could have proceeded.

(3) An allowance awarded under this section by a local education authority or, on appeal, by the Treasury, shall be paid by the authority as expenses incurred by them under Part III. of the Education Act, 1902, and shall be a debt due from the authority to the teacher.

16.—(1) The conditions required to be fulfilled by a college for the training of teachers Training Colleges. in order to obtain a grant out of any moneys provided by Parliament for educational

purposes shall not contain any regulations with reference to religious instruction except such as are contained in this section or are required for the purpose of carrying out this section and shall not give any preference or advantage to any college on the ground that it is or is not provided by a local education authority.

(2) The regulations for religious instruction in the case of a college not provided by a local education authority shall be in accordance with the trust deed of the college, if any, and shall be under the control of the governing body.

(3) In the case of a college provided by a local education authority, the regulations for religious instruction shall be settled by the Board of Education in consultation with the Religious Instruction Committee, and shall contain such provisions for a course of training in religious subjects for students intending to serve in public elementary schools as, regard being had to all the circumstances of each case, including the provision made in other colleges, will best secure a supply of teachers qualified to give religious instruction in accordance with this Act in public elementary schools.

**17.**—(1) Any question arising under this Act  
Appeals. between any of the following persons or  
bodies :—

- (a) the parent of any child attending a public elementary school,
- (b) the managers of any public elementary school,

(c) a local education authority,  
 (d) a voluntary association formed under this Act,  
 (e) the governing body of any training college not provided by a local education authority, shall be determined by the Board of Education subject to the prescribed right of appeal.

(2) The prescribed right of appeal under this Act shall be an appeal in accordance with rules of Court to a judge of the King's Bench Division of the High Court of Justice to be annually appointed for the purpose of hearing appeals under this Act by the Lord Chancellor, the Master of the Rolls, and the Lord Chief Justice.

(3) An appeal from the decision of the judge so appointed on any point of law shall lie, by his leave, to the Court of Appeal.

**18.**—(1) Any child already in attendance at a Transitory provisions. public elementary school at the date of the commencement of this Act shall, for the purposes of the entry in a register of chosen instruction required by this Act to be made, be deemed to be a child admitted to the school after that date, and an entry shall be made in the register in respect of that child accordingly. Such entry may, at the option of the parent, be made at any time within six months after that date.

(2) In order to obviate undue disturbance of arrangements existing at the commencement of this Act the following provisions shall have effect :—



- (a) A local education authority shall not, at the commencement of this Act, be required to make changes in the regular teaching staff of a public elementary school in order to render it suitable for the purpose of giving chosen instruction in accordance with this Act, but shall only be required to do so as vacancies occur, and, pending the appointment of any necessary teachers upon the occurrence of such vacancies, may, as hereinbefore provided, employ for that purpose persons not being members of the regular teaching staff :
- (b) A teacher who for one year prior to the commencement of this Act has been accustomed to give religious instruction in accordance with the principles of any religious persuasion for which a voluntary association has been formed under this Act, though not holding the certificate of any such association, shall be treated as qualified to give such instruction for the purposes of this Act unless and until such an association declare him not to be qualified.
- (c) A teacher, who at the commencement of this Act is employed in a public elementary school, shall be entitled, on stating in writing to the local education authority that he has a conscientious objection to giving any religious instruction, to abstain from giving

that instruction without prejudice to his employment in the school, and shall be engaged during the time set apart for religious instruction in the secular work of the school.

**19.**—(1) “Parent,” in this Act, means the father of a child or, in the absence of the father, the mother, or, in the absence of both father and mother, the person having the legal custody or control of the child. If any question arises as to who shall be considered the parent of a child for the purposes of this Act, that question shall be determined by the Board of Education, subject to the prescribed right of appeal.

(2) The word “Instruction,” in this Act, when used with reference to religious instruction includes prayers or other devotional observances.

(3) Section 99 of the Elementary Education Act, 1870, shall have the same effect in respect of this Act as, by article 7 of the Third Schedule of the Education Act, 1902, it has in respect of that Act.

(4) The enactments mentioned in the Schedule to this Act shall be repealed to the extent specified in the third column of that Schedule.

(5) This Act shall come into force upon the first day of \_\_\_\_\_, 1911, or such later day, not being later than the first day of \_\_\_\_\_, 1912, as the Board of Education shall by order appoint, and different days may be appointed for different local education authorities.

(6) This Act may be cited as the Education (Religious Instruction) Act, 1911, and shall be construed as one with the Education Acts 1870 to 1909, and this Act and those Acts may be cited as the Education Acts 1870 to 1911.

SCHEDULE.  
ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
33 & 34 Vict., c. 75.	Elementary Education Act, 1870.	In section 7, the words in regulation (2) from "shall be either" to "meeting and" and in regulation (3) from the words "so however" to the end of the regulation; in section 14, regulation (2).
2 Edw. VII., c. 42.	Education Act, 1902.	Section 6; in section 7, the words in paragraph (a) of subsection (1) "and for the dismissal of any teacher on educational grounds," paragraph (c) of subsection (1), subsection (5), subsection (6), and all the words in subsection (7) after "Act"; in section 12, subsection (3); in the first schedule, all the words in paragraph (1) of part B. after "fit," and paragraphs (4) and (5) of part B.

COMMENTS BY THE EDITORS.

This Bill merits the serious attention of educational reformers as setting forth a complete scheme for meeting the religious difficulty now associated with elementary education. Every care is taken to remove the religious grievances of all sections of

the community, and even those of an infinitesimal number of parents in any school are not brushed aside, but provision is to be made for them as far as practicable. We may say that in this Bill we have the principle of parents' rights over the religious instruction of their children carried out to its logical conclusion. This principle is very clearly and ably set forward in the explanatory memorandum prefixed to the Bill.

The Bill virtually makes fitness and willingness to give one or other of the kinds of religious instruction desired by the parents the determinative factor in the choice of the staff, and in the requirement of future changes in the staff. Nothing can be said against this as a matter of principle, the teacher is *in loco parentis*, and in so sacred a matter as religion ought theoretically to represent the parent. But it is useless to disguise from ourselves that whilst this scheme could be carried out on a small scale without much friction, applied universally it would be a very serious change in the administrative organization of council schools, and hardly likely to be assented to by the local education authorities as it would limit their present freedom and increase the complexity of administration. Thus, it would become more difficult to grade the schools, i.e. by assigning to some more advanced or more practical work than to others. The statutory duties which it is proposed to lay upon the local education authorities would, for reasons of

economy, limit their choice of teachers, and cause them, in making appointments to the staff of any school, to consider the qualification of the candidate to give one or other desired form of religious instruction before considering his or her fitness to give the particular form of secular instruction which might in their judgment be needed in the particular school. To put the matter plainly, the Bill will be viewed with satisfaction or dislike by those respectively who attach the more importance to the religious or to the secular side of education, for whilst it proceeds on religious principles and methods which are true and just, it would not make the development of national education on its secular side an easy task. We think this must be borne in mind in estimating its chances of acceptance by the country.

The measure is based upon a principle which, if accepted, should apply to every grade of education. It is, however, limited to public elementary schools and training colleges. Having said this much on the general character and scope of the Bill, a few remarks must be made on various clauses.

It has been objected that the four categories in clause 2, though on the broad lines recognized in Germany, do not cover the whole ground, and that there are parents who would prefer for their children (so far as the work of the public elementary school is concerned) a united form of religious teaching

not distinctive of any denomination or group of denominations, but having a Christian, or at least a Biblical character (not by any means necessarily the same thing), and that these would not find their requirements met. But they would, under clause 3, have this "exceptional" instruction provided for them, "subject to the conditions and provisions applicable in the case of the said four classes of instruction". The Religious Instruction Committee of the Board of Education, however, to which (clause 12 (3)) any question to be decided by the Board of Education under the Act must stand referred, is only to represent the four religious persuasions mentioned in section 2, and might be deemed imperfectly representative of the varieties of opinion which must be taken into account. This committee has large powers, at any rate of delay, and the questions to be referred to it include many difficult matters as to the appointment and transfer of teachers, and as to the constitution and future reorganization of boards of local managers. It is not easy to suggest a method by which representatives of these non-denominationalists could be secured. But on referring to the Bill *Sine Nomine* (p. 208) it will be noticed that the author has this class of parent in view and makes an attempt to secure its representation.

*Clause 5.*—If a child were refused admission, e.g. to a Roman Catholic school on the ground that more suitable accommodation were provided else-

where, presumably the local education authorities would have to decide whether such accommodation was accessible.

*Clause 6.*—The Bill appears to propose that the “Anson by-law” should nowhere be permitted.

*Clause 7.*—The methods by which it is proposed to elect the two managers representative of the parents of children attending the school are not defined. The limitation of foundation managers to two out of six would shift the control of the non-provided schools from the trustees to the elected bodies. This is no doubt intended but needs pointing out. On the other hand, the managers in provided schools have not at present any special connexion with religious education, and are appointed for wholly different purposes. There might have to be a separate clause for London where two-thirds of the managers in provided schools are appointed by the borough councils. The extent of the repeal of the Education Act, 1902, so far as it refers to this clause is not made clear.

*Clause 8.*—Though we understand that the Association of Church Teachers has approved the Bill, this clause would be certainly opposed by such bodies as the National Union of Teachers and their political sympathizers as imposing “tests,” for the teachers would be expected to get certificates of fitness from the different denominational associations. But there is no getting away from the fact that if the State decides that religion, no matter of what

kind or kinds, is to be part of education, the teachers giving it must be qualified for this as for other parts of their work. This fact is too often evaded, but sooner or later the legislature must face it. The arrangements of the Bill would remove the main grievance of Nonconformist teachers that they are debarred from the headships of Church schools. The local education authorities would keep a creed register of the teaching staff (as in parts of Germany), so that vacancies might be filled, not only with a specialist in arithmetic or science, but with a teacher qualified to give the particular religious teaching needed. It would be complicated and inconvenient but not administratively impossible.

*Clause 9* seems to be inviting trouble. There would be very great temptation to stretch it to cover, let us say, a Welsh revolt.

*Clause 10.*—In most cases existing diocesan organizations or Free Church councils would be constituted as the "Voluntary Associations," but the inclusion of a few representatives of the teachers is a very wise provision.

*Clause 12.*—There is unfortunately no great confidence in the fairness of the Board of Education, and the establishment of a permanent central committee to deal with difficulties arising under the Act would probably be welcomed.

*Clause 13.*—The facilities for transferring existing buildings would be largely used as the managers of



non-provided schools would be deprived of real power. The provision that rent should be paid for them would be opposed by those who consider that the buildings were erected for educational purposes primarily, and should be at the disposal of the community free of charge, and there is nothing to show that the rent would be used for any school purposes (subsection 5). It should be noted that section 19 of 1870 is also used to cover the acquisition of schools by the local education authorities. Clause 13 as a whole applies only to non-provided *trust* schools, not to privately owned schools. The substitution in section 5 looks like a general repeal of section 23 of the Elementary Education Act of 1870, but should not this section be retained in force for privately owned non-provided schools?

*Clause 14.*—Could not this clause be so arranged as to make schemes unnecessary?

*Clause 16.*—The principle that teachers should receive instruction in religious as well as secular subjects in the training colleges is a very important one, and a necessary corollary of the assumption of the Bill that religion is one of the normal parts of education. The practice of turning out teachers from training colleges established by local authorities without such instruction, and then employing them to handle the Holy Scriptures in the provided schools and give teaching therefrom to the children without any inquiry as to their fitness and capabili-

ties, is a great weakness in the present position of religious education in our State schools.

Two examples of schools worked more or less on the lines of this Bill may be found in what is practically a provided school, i.e. Drury Lane Day Industrial School, which has been so conducted for the last seventeen years, first under the old London School Board and then under the London County Council, and, secondly, in the Non-Provided Church School at Oakham. As we said at the beginning, there is nothing to prevent the scrupulously fair and logical provisions of this Bill being carried into effect by local education authorities on a small scale. It is when these provisions are universally applied over the entire system of elementary education that the difficulties we foresee will have to be faced.

### III.

## PROPOSALS FOR EDUCATION BILL.

BY MR. GEORGE ACKROYD AND MR. ARTHUR T. PERKINS  
(YORK HOUSE OF LAYMEN).

### EXPLANATORY MEMORANDUM.

THE intention of the present Bill is to afford relief to persons who hold conscientious objections to contributing through the elementary education rate any part of the expense of maintaining denominational religious education, and to give to those who desire it an opportunity to support denominational schools. It is proposed to do this by providing that every occupier of premises in respect of which such a rate is made may, by completing and signing a form of declaration, allocate the rate paid on the premises in his occupation to provided or non-provided schools, and that the rate so allocated shall be expended accordingly.

A large part of the rate will remain unallocated, and with regard to this part it is obvious that no consciences can reasonably be offended whether it be applied to provided or to non-provided schools. This unallocated rate affords the opportunity of

removing many of the difficulties which might occur.

There will be available in any area for the provision and maintenance of provided schools the amount of rate allocated to provided schools *plus* the amount of the unallocated rate.

There will be available in any area for the maintenance of non-provided schools the amount of rate allocated to non-provided schools *plus* the amount of the unallocated rate.

Difficulty will arise in two cases only :—

- (a) where the amount allocated to provided schools is greater than the amount required for such schools, and where consequently the amount allocated for non-provided schools, taken together with the amount unallocated, is insufficient for the maintenance of the non-provided schools.
  - (b) where the amount allocated to non-provided schools is greater than the amount required for such schools, and where consequently the amount allocated for provided schools taken together with the amount unallocated is insufficient for the provision and maintenance of the provided schools.
- (a) It is proposed to meet the former difficulty by providing that in such cases the number of non-provided schools maintained shall be reduced as far as may be necessary. Machinery is provided for the selection of the

schools to be closed, with an appeal to the Board of Education.

- (b) The latter difficulty is to be met by the local education authority taking steps to ascertain the wishes of the parents as to the religious education to be provided, and maintaining, and, if necessary, providing accommodation for, denominational religious instruction (notwithstanding the "Cowper-Temple" clause), or affording facilities for the giving of such instruction in school hours, for children whose parents desire it.

Provision is made for carrying forward an excess of allocated rate in any year, so as to be expended in a following year, and for the mutual transfer between local education authorities of sums allocated.

With regard to single school districts provision is made—

- (a) for facilities in provided schools within school hours for denominational instruction for children whose parents desire it.
- (b) for facilities in non-provided schools within school hours for religious instruction differing from that given in the school for children whose parents desire it.

This last clause (clause 8) is not a fundamental part of a Bill for the allocation of the elementary education rate. It is inserted merely as an example of what might be done towards meeting the peculiar difficulties of single school areas.

## 64 The Religious Question in Education

### A BILL TO PROVIDE FOR ALLOCATION OF RATES APPLICABLE TO THE PURPOSES OF ELEMENTARY EDUCATION.

#### ARRANGEMENT OF CLAUSES.

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Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same as follows:—

1.—It shall be lawful for any person whose name appears on the rate book as in occupation of any premises in respect of which any rate is made any part of which is applicable for the purposes of Part III. of the Education Act, 1902, to allocate in the

Power to allocate rate applicable to elementary education.

manner hereinafter provided to schools provided by the local education authority, or to schools not provided by the local education authority, such part of any rate made in respect of such premises as is applicable for the purposes aforesaid, and it shall be the duty of every local education authority within whose area any such allocation has been made to comply with the provisions relating to the expenditure of any such rate hereinafter contained.

2.—After the            day of            and before the            day of            in the Declaration year 19    , and in every fifth year there- of allocation. after or at such shorter intervals as the local education authority may decide upon, the overseers of the poor shall serve or cause to be served with every demand made by them or on their behalf for any such rate as aforesaid, and shall on application provide free of charge to any person who is not assessed to such rate or who has not received such form but whose name appears on the rate book as in occupation of any premises in respect of which any such rate is made, a form of declaration in accordance with either of the forms set out in the Schedule hereto, or in such other form as may be sanctioned by the Local Government Board, in which shall be inserted the name of the occupier and the number of the assessment.

3.—(1) A person whose name appears on the rate book as in occupation of any such premises

as aforesaid, and who receives such a form as aforesaid, may at any time before the 31st day of July next following the receipt thereof return the said form filled in and signed in accordance with the directions therein contained to the overseers by whom such form was supplied, and such overseers shall cause an entry to be made in a separate column or columns in the rate book of the effect of each such declaration so returned to them, giving the rateable value of the premises and indicating whether such form is marked in favour of provided or of non-provided schools in accordance with the declaration contained therein.

(2) The overseers of each parish or district within the area of a local education authority shall, as soon as may be after the said 31st day of July and before the next ensuing 30th day of August, make a return to the local education authority as to the declarations which have been so returned to them showing the total amount of rateable value set out in declarations made in favour of schools provided by the local education authority and the total amount of rateable value set out in declarations made in favour of schools not so provided.

(3) These returns shall be submitted by the local education authority to the auditor appointed for the area of the said authority pursuant to the District Auditors Act, 1879, and such auditor shall, after taking such steps as he may think necessary to



verify the said returns, give to the local education authority not later than the 31st December next ensuing after the submission of such report, a certificate showing the number of declarations returned by occupiers of premises within the area of the local education authority made in favour of schools provided by the local education authority, and the total amount of the rateable value of the premises in respect of which such declarations are made and the number of such declarations made in favour of schools not so provided and the total amount of rateable value of the premises in respect of which such declarations are made and also the amount of the rateable value of the whole of the premises within the area of the said authority in respect of which no such declarations have been made.

(4) The said certificate shall be published in not less than two newspapers circulating in the area of the local education authority and shall continue in force until another certificate shall have been given under the provisions of this section.

4.—(1) In any financial year of any local education authority commencing later than the day of \_\_\_\_\_, 19\_\_\_\_, the expenditure of the local education authority out of rates for the purposes of Part III. of the Education Act, 1902, upon the whole of the schools provided by the local education authority shall not save as is hereinafter provided exceed the amount calculated to be produced by

Allocation made to be regarded in expenditure of proceeds of rate.

the precept or precepts issued to meet such expenditure during that year in respect of premises of the total rateable value certified in the said certificate to have been allocated to schools provided by the local education authority, together with the amount calculated to be so produced in respect of premises of the total rateable value certified in the said certificate to have been unallocated.

(2) The expenditure of the local education authority in any year out of rates for the purposes of Part III. of the Education Act, 1902, upon the whole of the schools maintained but not provided by the local education authority shall not exceed the amount calculated to be produced by the precept or precepts issued to meet such expenditure during that year in respect of premises of the total rateable value certified in the said certificate to have been allocated to schools not provided by the local education authority, together with the amount calculated to be so produced in respect of premises of the total rateable value certified in the said certificate to have been unallocated.

**5.—(1)** If a local education authority shall at any time be of opinion that the sum calculated to be produced by any precept or precepts to be issued in the next ensuing financial year for a rate or rates to be levied for the purposes of Part III. of the Education Act, 1902, on premises of the rateable value certified in the said certificate to

Excess of  
allocation  
for provided  
schools ;  
closing of  
non-provided  
schools ;  
appeal.

have been allocated to schools provided by the local education authority will exceed the sum required out of rates in respect of schools so provided, the local education authority shall issue to the correspondent of every school not provided by them within their area or to some association or associations of voluntary schools having authority to receive such notice on their behalf a notice stating such excess and requiring the managers of such schools within a time not less than one month to be stated in such notice to select which school or schools within their area shall cease to be maintained by the local education authority.

(2) If at the expiration of such time from the delivery of such notice the managers of such schools or an association or associations authorized to act on their behalf have selected which school or schools shall cease to be maintained, the local education authority at the expiration of one year from the expiration of the said time shall cease to maintain the school or schools so selected.

(3) If no such selection has been made by the managers or by an association or associations authorized to act on their behalf, or to the extent to which the cost of maintenance of the school or schools so selected falls short of the said excess so stated, the local education authority to such an extent as may be required to meet such excess shall select which school or schools shall, having regard to educational efficiency and economy of the

rates and to the wishes of the parents, cease to be maintained as schools not provided by them, and shall give to the correspondent of each such school a notice that at the expiration of twelve months the local education authority will cease to maintain it.

(4) Within one calendar month of the receipt of such notice the managers of the school to which it relates or any association authorized to act on their behalf may appeal to the Board of Education either on the ground that the sum so calculated to be produced by the precept or precepts so to be issued will not exceed the sum required out of rates in respect of schools so provided or on the ground that the proposal in such notice is not required for the purpose of meeting such excess, or on the ground that having regard to educational efficiency, economy of the rates, and the wishes of the parents, some other school or schools should be selected.

(5) The Board of Education shall, after holding a public inquiry, determine whether such school shall or shall not cease to be maintained, and on the hearing of such appeal shall assume, unless and until evidence to the contrary is adduced, that the expenditure per head of average attendance out of rates in the schools provided by the local education authority, and in schools not so provided throughout their area, will be equal to the average expenditure per head of average attendance out of rates in

such schools so provided and not so provided respectively in the last complete financial year, and that the number of children in average attendance in such schools will be equal to the average attendance in such schools in the said last financial year, and that the precept or precepts for rates for the purposes of Part III. of the Education Act, 1902, will produce the same amount or amounts as the amount or amounts produced in the last preceding financial year.

(6) At the expiration of the said period of twelve months the local education authority, if no such appeal is brought, or if on the hearing of such appeal the Board of Education determine that the school so selected shall cease to be maintained, shall cease to maintain the said school so selected.

6.—(1) If a local education authority shall at any time be of opinion that the sum calculated to be produced by any precept or precepts to be issued in the next ensuing financial year for a rate or rates to be levied for the purposes of Part III. of the Education Act, 1902, in respect of premises of the rateable value certified in the said certificate to have been allocated to schools not provided by the local education authority will exceed the sum required in respect of schools maintained but not provided by the local education authority, the local education authority shall take such steps as appear to them to be necessary to

Excess of allocation for non-provided schools; provision of or of facilities for denominational instruction.

ascertain the wishes of parents of children attending schools provided by them as to the religious character of the education to be given to such children, and shall to the extent of such excess maintain an additional school or schools not provided by them, or if and so far as an additional school or schools not provided by them is or are not available within their area for the purpose shall provide and maintain to the extent of such excess with such addition thereto from the unallocated rate as may be deemed by the local education authority to be necessary school accommodation in which religious teaching of a denominational character shall be permitted to be given.

(2) In schools so provided and to the extent of such excess maintained, the local education authority shall, notwithstanding anything contained in section 14 of the Elementary Education Act, 1870, provide religious instruction of a denominational character to children whose parents desire them to receive such instruction, and shall, when they do not provide such religious instruction, afford facilities for the giving of such instruction on the school premises in school hours, so far as is reasonably practicable, to any organization which is approved by the local education authority as representative of any denomination or denominations to which children attending the school belong. Expenditure upon schools so provided or maintained shall be deemed for the purposes of section 4 of this Act to be ex-

penditure upon schools not provided by the local education authority.

7.—(1) In every financial statement made by a local education authority pursuant to section 18 of the Education Act, 1902, there shall be included a statement in a form to be prescribed by the Local Government Board showing the amount of the excess, if any, of the money allocated pursuant to the provisions hereinbefore contained over the expenditure actually incurred in the financial year in respect of schools provided and not provided by the local education authority respectively.

Carrying forward or exchange of balances of allocated rates.

(2) The local education authority may either carry forward such excess to be expended in the ensuing year in accordance with the allocation declared in respect of it in the maintenance of schools provided or not provided by the local education authority as the case may be, or may pay to another local education authority any sum not exceeding the amount of such excess in exchange for an equal sum of money which has been allocated for use in respect of schools not provided or provided by the local education authority as the case may be, and may on the completion of such exchange apply the sum so received by them in discharge of expenses incurred in respect of schools not provided or provided by them in accordance with the declarations made in respect of such sum so received by them.

8.—In every parish or group of parishes which Single school areas. is served by not more than one public elementary school the following provisions shall have effect in respect of the school by which such parish or parishes are served.

(a) If the school is a school provided by the local education authority, the local education authority shall, notwithstanding anything contained in section 14 of the Elementary Education Act, 1870, afford facilities in the schoolhouse during a period of not less than half an hour within school hours on not less than three days in each week, during which the school is open, for religious teaching of a denominational character to be given to children whose parents desire that they shall receive it.

(b) The teachers on the school staff may be employed but shall not be compelled to give such teaching, and when they are so employed the expenditure incurred in respect of the salary of any teachers so employed shall be deemed to be expenditure in respect of a school not provided by the local education authority.

(c) When such teaching is given by any person other than a teacher on the school staff, the person or persons giving such instruction must be approved for the purpose by the local education authority, provided that when the local education authority refuse to approve any person nominated by the parents of more than (ten) children attending any school, the parents nominating such person may



appeal against such refusal to the Board of Education, and thereupon the Board of Education shall determine whether such person shall or shall not be approved for such purpose.

(*d*) If the school is a school not provided by the local education authority the managers of the school shall afford facilities in the schoolhouse during a period of not less than half an hour within school hours on not less than three days in each week, such half hour being on each occasion a part of the time set apart for religious instruction, for religious teaching of a character other than that which is provided in the ordinary curriculum of the school to be given to children whose parents desire that they shall receive it.

(*e*) The teachers on the school staff may be employed to give, but shall not be compelled to give, such teaching, and when they are so employed the expenditure incurred in respect of the salary of any teacher so employed shall be deemed to be expenditure in respect of the school unless the religious teaching so given does not contravene the provisions of section 14 of the Elementary Education Act, 1870, in which case it shall be deemed to be expenditure in respect of a school provided by the local education authority.

(*f*) Where such teaching is given by any person other than a teacher on the school staff the person or persons giving such instruction must be approved for the purpose by the managers, provided that

when the managers refuse to approve any person nominated by the parent of a child attending the school such parent may appeal against such refusal to the Board of Education.

9.—This Act may be cited as the Elementary Education (Allocation of Rates) Act,  
Short title. 191 .

## SCHEDULE.

Form of Declaration. No. of Assessment——

Allocation of rate made for the purposes of Part III. of the Education Act, 1902, in the area of the  
(*fill in name of local education authority for such purposes*).

I, A. B., being the person whose name appears in the occupiers' column of the Rate Book for the  
(*fill in name of parish or place within which the premises are situate*), as occupier of  
(*fill in description and rateable value of property as they appear in the rate book*), hereby declare that I am in occupation of the said premises, and that I desire such part of the rates levied in respect of such premises as is applicable for the purposes of Part III. of the Education Act, 1902, to be applied wholly to

\* Cross out the part of the Declaration which is not desired.

- |   |  |
|---|--|
| { | * Schools provided by the local education authority.     |
|   | * Schools not provided by the local education authority. |

(Signed) A. B.

(This form may be signed by the person named



From the earliest application of public monies to education these funds have been bestowed on the schools of various churches and denominations, but these funds were provided by *taxation*. The Education Act of 1902 first devoted rates to the upkeep of denominational as well as undenominational elementary schools,<sup>1</sup> and the resistance to this Act took the shape of "Passive Resistance" on the part of many Nonconformists, i.e. the refusal to pay their educational rate except under distress. The reply of Churchmen and other denominationalists that (1) there can be no difference in principle between rates and taxes, (2) that, as all denominations join in paying rates, all should share in them, and (3) that a far larger proportion of the rates go to the undenominational teaching which many of them dislike and fear as much as the Nonconformist dislikes Church or Roman Catholic teaching, has produced no political effect. By allocation of rates, therefore, it is proposed to remove the grievance of the Nonconformists in the most unanswerable manner. It is no doubt a very attractive proposal, and because of its political character the scheme has been viewed with favour by many politicians. But this makes it the more necessary to point out the administrative difficulties which lie in its path. The fundamental objection that it is a step towards an individualism of an extreme and anti-social kind

<sup>1</sup> But in industrial schools, etc., rates have long been devoted to denominational teaching.

leading to administrative anarchy is perhaps too philosophical a thesis for discussion in these pages.

We propose in the first instance to print the exhaustive criticism of the principle of rate allocation by Sir Theodore Hope, K.C.S.I., C.I.E., which first appeared in the "School Guardian" of 8 August, 1908, and which seems to us to be generally applicable to all the schemes which we have yet seen, including the one now before us.

"SIR THEODORE HOPE'S CRITICISM OF RATE  
ALLOCATION.

"1. This may be taken to mean the earmarking by individual ratepayers of their elementary education rate for application only to schools giving a specified kind of religious teaching.

"2. Such allocation may have either of two objects in view, namely:—

"(a) The mere liberation of the conscience of the individual ratepayer, by the employment of his money in giving a particular kind of religious teaching—say Anglican, Undenominational, Roman, etc.—which alone he favours, or

"(b) The constitution of a basis for the authorities on which to provide in all public schools religious teaching in accordance with the wishes of the ratepayers, as indicated by the allocation.

"3. The first sort of allocation presents comparatively little difficulty in the case of persons on whom rate-demand notes are served. A blank

column or a detachable declaration might be provided in the note in which the payer could enter his allocation. The amount would be credited in a special account, and applied to any school or schools in the local or county area which were of the type indicated. Financially, this would make no difference, because the necessary schools would be provided in any case. In the case of persons not directly rated, all the difficulties would arise which will be indicated presently in respect of the second sort of allocation, but strong conscientious scruples might be satisfied by allowing any individual who felt such to allocate if he claimed to do so, and could show what amount of rate he indirectly paid.

“4. The second sort of allocation needs precise and general application, because upon it would depend the extent and nature of the provision to be made by the local education authority for the several types of religious teaching, and also the changes in the proportions of such provision required in obedience to the variations from time to time occurring in the allocation. In considering this, two questions arise :—

“(a) Can allocation be, in practice, obtained from the bulk of the rate-payers—direct and indirect—and

“(b) If obtainable, would it enable religious teaching according to the wishes of parents to be provided?

“For the examination of these questions infor-

mation has been sought from the appropriate departments of the London County Council and of the Town Clerk of the borough of Kensington, which has in all cases been most kindly and effectively rendered. It is obvious that in small rural areas difficulties of all kinds will be less than in towns and cities, but in the latter the task is much more formidable, and as London comprises the city and twenty-eight metropolitan boroughs, each with its distinct rating organization, they may appropriately be used as typical.

"5. *Practicability* may be considered first. It has already been said (paragraph 3) that it is quite possible to issue demand notes comprising a declaration for the allocation to persons simply paying their own rates. But this would produce far too limited an allocation. There are also the compound tenants, whose rates are recovered through the landlord; the 'inclusive' tenants, whose rates are not assessed separately, but lumped up in the landlord's rate; and the 'lodgers,' who also are similarly dealt with because their landlord lives on the premises. To serve separate declaration forms on these would be a very formidable task. Even if served and returned, it would be next to impossible to fix even an approximate rate in each case, for rents may vary from week to week, tenants come and go; moreover, the transient wishes of such individuals could afford no reliable basis for religious inferences; and, finally, those who know

this class of persons best think that they mostly would never return the declarations, either because they thought anything connected with rates was their landlord's affair, or from pressure of other cares and indifference. It may be added that these 'declarations' would in all cases involve great trouble and no trifling expense, and that landlords would not undertake them without compensation.

"6. The magnitude of the proposed undertaking will appear from the following abstract of a return showing the number of separate properties and their rateable value in every parish in the London area, divided as up to £20 inclusive, which is the limit of the compounding system.

	Number of Properties.		Rateable Value.		1908 Estimated.	
	1896.	Per cent.	1901.	Per cent.	Properties.	Values.
Properties not exceeding £20 rateable value	309,567	44	4,092,861	10·29	356,850	4,545,000
Properties exceeding £20 rateable value	393,552	56	35,676,208	89·71	436,150	39,794,825
	660,768	100	39,769,069	100	793,000	44,339,825

"The contrast between number and value is remarkable, but it is intensified in individual parishes. In some parishes, again, the large number of small properties is counterbalanced as to rateable value by a few high assessments. There are also parishes in which the number of small properties is trifling.



It should be noted, also, that many of the 'properties' contain several lodgers or inclusive tenants. The following table shows this condition in two of the districts of the Borough of Kensington.

District.	Number of Dwelling Houses.	Number let in Tenements.	Number of Tenements.
No. 1	2,638	617	2,400
No. 2	2,534	1,028	4,250

In these two districts alone there are thus 10,177 separate individuals to be dealt with. The following quotation from a letter of the Town Clerk of Kensington will fittingly conclude this paragraph.

“In the case of compounded rates or tenements let on the inclusive system I think it extremely doubtful whether in the large majority of cases the forms would ever reach the tenants. With my personal knowledge of very large areas of tenement properties I am satisfied that the number of forms that would be returned to the rate-collector would be infinitesimal. Further, I may express the opinion that when the effect of the scheme became known very few forms would be returned by the better class of rate-payers, although a “passive resister” who now pays the rate under protest might consider his conscience cleared by filling in such a form of declaration. I fear that the publication of the unsatisfactory figures which I anticipate as the result of the operation would show the futility of the scheme, so that the same would become a dead

letter. I may add that my collector of No. 2 district, who has had thirteen years' official experience as a rate-collector at Blackburn and six years at Shoreditch before coming to Kensington, endorses to the full the view which I have ventured to put forward that the scheme propounded would be found absolutely unworkable in practice.'

"7. The results of allocation, supposing it were started and carried out as far as its own unavoidable limitations would allow—that is, more fully in small rural areas, less and less so as the towns and cities were of larger size—may next be considered.

"(a) Looking first on the financial side, though it is true that the cost of each school could be furnished by its local education authority, such statistics are often, especially in the greater areas, not readily accessible, and would need special compilation. To establish for every school a *pro forma* Dr. and Cr. account, into which the allocations would be worked *so as to become a guide* to the administrative branch in their provision of religious teaching, and justify increases or reductions in the establishment, would be an intricate and laborious task. Allowance would be needed, for instance, to meet the varying cost of schools of similar size in different localities. Frequent alterations in type of school are also difficult and to be deprecated; besides which, the more incomplete the allocation, the less real basis would there be for making any.

"(b) Annual allocations could not take effect

until the following school year, perhaps not before a new allocation was in progress. A triennial or quinquennial allocation, on the other hand, would give no *continuous* evidence of wishes. In both cases, a premium on local agitation and electioneering methods would be held out. In short, from spasmodic 'stocktaking' no *bona fide* and reliable results are likely to be obtained.

“(c) Such results are, moreover, not to be expected from *any* pecuniary test. The mere sum allocated proves no religious preference on the part of the body of rate-payers. It may arise merely by a minority being richer than a majority. We have seen that in London 44 per cent of rateable properties are in value of only £20 and under, but the rates paid on them are only 10 per cent of the whole. The bulk of the classes using the public elementary school are consequently in the least valuable properties. Hence, in allocation their weight would be light, *though their claim numerically might be heavy*: the upper classes, who make little or no use of the schools, might have an undue preponderance.

“(d) The parents, as such, would be nowhere, whereas they have rights, which ought to be respected effectively in *all* cases.

“8. In conclusion, the preceding investigations may be thus summarized:—

“A. Rate allocation as a relief to individual consciences may be put in operation with no serious

difficulty, but it will have no *administrative* effects.

“B. Rate allocation as a basis for the provision of religious instruction in accordance with the wishes of the rate-payers is not practicable because—

“(a) The difficulties of obtaining allocation from all rate-payers are (except in small areas) practically insurmountable. The objections to acting when, through such difficulties or *per incuriam*, only a small proportion of rate-payers allocate are obvious. No process not practically reaching all can honestly be accepted as the voice of the rate-payers or the parents.

“(b) Supposing a tolerably general allocation to be attempted, the administrative difficulties of working it so as to secure the object in view are extreme.

“(c) Rate allocation can never justify the inference that a certain class of religious teaching does or does not commend itself to the people in a locality for their school. In fact, it is not a standard at all in relation to religious preferences, and has no foundation to warrant inferences from it in that sphere. From the point of view of equality and equity it is not only unnecessary but misleading.

“Some other method of adapting religious instruction to the several wishes of those parents who desire it for their children is much to be desired. Without such, no permanent settlement of the education question can be expected.”

Having selected the Ackroyd-Perkins Bill as

being in our judgment the best considered of all the rate allocation schemes before us, we now proceed to a few special criticisms of its provisions.

*Clause 2.*—It appears from the Schedule mentioned in this clause that non-provided schools are dealt with as if they were all of one denomination, and, indeed, this policy is carried into effect throughout the Bill.

*Clause 5.*—This clause shows the difficulty which will arise through thus dealing with the non-provided schools as a single entity. What prospect is there of the managers or associations of different denominational schools within an area agreeing as to which school shall cease to be maintained? And can the views of the local education authority or the Board of Education as to educational efficiency and economy of the rates and to the wishes of the parents be wholly relied upon when they have to determine a struggle between rival denominations as to whose school is to go? In any case the clause seems singularly provocative of strife.

*Clause 7.*—This clause contemplates the establishment of a kind of clearing-house in London in order that the excess of rates allocated for either provided or non-provided schools may be utilized for the same class of schools in the area of another local authority. This is not so simple a proceeding as it looks. Many months will probably elapse before the surpluses and deficits could be known and the transfers carried out.

*Clause 8.*—This clause is, as the promoters of the scheme point out in their explanatory memorandum, apart from the main scope of an allocation of rates bill. It goes upon lines common to many other schemes, but it must be pointed out that the difficulty here provided for is not limited to “Single-school areas”; it is to be found in all “One-kind-of-school areas,” and the clause should in fairness be applicable to both.

## IV.

### EXPLANATORY MEMORANDUM TO DRAFT BILL TO AMEND THE EDUCATION ACTS, 1870 to 1903.

BY DR. P. V. SMITH.

THE object of this proposal is to introduce into our present system of elementary education the principles of religious equality and parental rights or duties, in as few clauses as practicable, so as to ensure the least possible resistance in respect of Parliamentary obstruction and expenditure of time.

Clause 1 makes the giving of religious instruction, to children who are not withdrawn from it by their parents, obligatory in every public elementary school ; as proposed by the Government Education Bill of 1906, clause 1.

Clause 2 provides that in every such school, if a reasonable number of parents require it and their children cannot conveniently attend some other school in which it is normally given, special religious instruction shall be provided, other than that normally given in the school ; notwithstanding, in the case of a provided school, the Cowper-Temple Clause, and, in the case of a non-provided school, the requirements of the trust deed. But

the local education authority is not to be put to any additional expense by the provision of such special religious instruction. (The principle of this clause was recognized in the Bill of 1906, clause 3 (2).)

Clause 3 enforces the obligation of attendance during religious instruction, except (i) where the child is attending some religious observance or religious instruction elsewhere, and (ii) where the child is withdrawn from religious instruction, in which case it must attend to receive some secular, or, it might be well to prescribe, some moral instruction. (See Bill of 1906, clause 8.)

Clause 4 provides for inspection, in religious instruction, but not at the expense of the local education authority. (See Bill of 1906, clause 7.)

Clause 5 relieves teachers from the obligation of giving religious instruction or of subscribing to any religious creed or attending or abstaining from attending any Sunday school or place of religious worship. (See Bill of 1906, clause 9 (2).) But if willing and fit, they may give religious instruction in their school. On the other hand religious instruction may, and where there is no teacher on the staff willing and fit to give it, shall be given by some other specially authorized person, but at no additional expense to the local education authority.

Clause 6 is intended to meet the scruples of passive resisters in reference to non-provided schools. For that purpose a local education



authority is empowered, but not required, to keep an annual account in respect of every non-provided school, maintained by them, in which (a) the school is to be debited with (i) the expenditure of the local education authority on repairs, and (ii) ten per cent of the salaries paid to the teachers who give religious instruction according to the trust deed of the school ;<sup>1</sup> and (b) the school is to be credited (i) with one year's interest at 3 per cent on the capital sum which the local education authority would have had to spend if they had originally provided the schoolhouse (exclusive of the teacher's house), and on the amount spent by the managers in improvements required by the local education authority, and (ii) with rent for any rooms required by the local education authority for educational purposes out of school hours. Where an account is so kept, and it appears that on a five years' average there is a balance against the school, the local education authority may require the balance to be paid to them by the managers, and may cease to maintain the school unless it is so paid.

Clause 7 provides for an appeal to the Board of Education, and in matters involving a question of law, to the High Court of Justice.

<sup>1</sup>The amount deducted by the West Riding of Yorkshire County Council before the proceedings which were finally decided in the House of Lords on Dec. 14, 1906 (*Att.-Gen. v. West Riding County Council* [1907], Law Rep. App. Ca. 29).

## EDUCATION ACTS AMENDMENT BILL.

## ARRANGEMENT OF CLAUSES.

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## A BILL INTITULED AN ACT TO AMEND THE EDUCATION ACTS, 1870 to 1903.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:—

1.—On and after the 1st day of January, 19 , a school shall not be recognized as a public elementary school unless some portion of the school hours of every day is set apart for the purpose of the religious instruction of those children who are not withdrawn by their parents from religious instruction.

No schools recognized as public elementary schools unless provision is made for religious instruction.

2.—(1) In any public elementary school notwithstanding any trust deed or enactment regulating the religious instruction in the school, if the parents of a reasonable number of children attending the school require that their children shall receive some form of religious instruction of a different character from that which, but for this section, they would receive in the school, then, unless such children can conveniently attend some other public elementary school in which religious instruction of the character required by the parents is given, such arrangements as may be practicable shall be made for the reception by such children of that religious instruction instead of the religious instruction which but for this section they would have received in the school, at the same time and under the same conditions as they would have received that instruction.

Provision of special religious instruction where required by parents.

(2) No additional expense incurred in any public elementary school by the giving of religious instruction of a character other than that which but for this section would be given therein shall be paid by the local education authority.

3.—The obligation of a parent to cause his child to attend school shall, notwithstanding any by-law, include an obligation to cause the child to attend at the school-house during the portion of the school hours allotted to instruction in religious subjects:

Attendance during time allotted to religious instruction. [Bill of 1906, clause 8.]

Provided that—

- (a) A parent or child shall not be subject to any penalty or disability on account of the child not being caused to attend at the schoolhouse during any time so allotted, if the parent has caused the child to attend during that time some religious observance or instruction in religious subjects elsewhere ; and
- (b) during the portion of the school hours so allotted, some form of secular instruction shall be provided for children who are withdrawn by their parents from religious instruction in the school.

4.—(1) The local education authority may afford such opportunities as they think fit for the inspection of any religious instruction given in any public elementary school provided by them by a person not being one of His Majesty's inspectors.

Inspection  
of religious  
instruction.  
[Bill of 1906,  
clause 7.]

(2) Where in any public elementary school religious instruction of a character required by the parents under section 2 of this Act is ordinarily received by not less than thirty children, reasonable opportunities shall, if required by or on behalf of persons responsible for the provision of such religious instruction, be afforded for the inspection of such religious instruction.

(3) No expense incurred in conducting any inspection of religious instruction in a public elementary school shall be paid by the local education authority.

5.—(1) A teacher seeking employment or employed in a public elementary school (otherwise than as a teacher of religious subjects only) shall not be required as part of his duties as teacher to give any religious instruction, and shall not be required as a condition of his appointment to subscribe to any religious creed or to attend or abstain from attending any Sunday school or place of religious worship.

Provisions as to teachers. [Bill of 1906, clause 9 (2).]

(2) A teacher in a public elementary school may give any religious instruction authorized to be given therein if he is willing and is deemed by the authority or persons responsible for such instruction to be fit so to do.

(3) Religious instruction in a public elementary school may, and where there is no teacher willing and deemed fit to give the same, shall be given by some person or persons willing to give the same and specially authorized by the local education authority so to do. Provided that no additional expense shall be incurred by the local education authority by reason of the employment of such person or persons in giving such instruction.

6.—(1) As from any first day of January inclusive after the passing of this Act a local education authority may, if they think fit, in respect of any public elementary school maintained but not provided by them, keep for the purposes of this section only

Accounts of certain expenses of non-provided schools.

an annual account in which the following entries shall be made :—

- (i) The school shall in each year be debited—
  - (a) With the amount expended during the year by the local education authority in making good damage due to fair wear and tear in the use of any room in the schoolhouse for the purpose of a public elementary school ; and
  - (b) With the amount of 10 per cent of the salaries paid by them to each of the teachers in the school during such portion of the year as such teacher gives religious instruction in the school otherwise than under section 2 of this Act.
- (ii) The school shall in each year be credited—
  - (a) With such sum as will represent one year's interest at the rate of three pounds per cent per annum on the amount agreed upon between the local education authority and the managers of the school, or, in case of their failing to agree respecting the same, fixed by the Board of Education as the capital sum which would have been expended by the local education authority if, at the time when the Education Act, 1902, or the Education Act, 1903, came into operation with respect to the school, they had provided the schoolhouse, exclusive of the teacher's dwelling house (if any) as the same existed at that time ; and

(b) With such sum as will represent one year's interest at the rate of three pounds per cent per annum on such sums as the managers of the school have, since the time when the Education Act, 1902, or the Education Act, 1903, came into operation [Act of 1902, with respect to the school, and before the commencement of the year, expended out of funds provided by them in making alterations and improvements in the buildings of the school required by the local education authority ; but not with any sums expended by the managers in keeping the school-house in good repair ; and

(c) With such amount for rent in respect of any room in the schoolhouse used during the year by the local education authority out of school hours free of charge for any educational purpose as is agreed upon between the local education authority and the managers of the school, or, in case of their failing to agree respecting the same, is fixed by the Board of Education. [Act of 1902, § 7 (1) (d).] [Act of 1902, § 7 (1) (e).]

(2) Every such account shall at all reasonable times be open to the inspection of the managers of the school to which it refers and of all rate-payers in the area of the local education authority, and one copy thereof shall be supplied to such managers free of charge and copies thereof shall be supplied to such rate-payers on payment of one shilling per copy.

(3) If at the close of any year it appears that in the case of any school the balance on the aggregate of the aforesaid debits and credits during that and the preceding four years is adverse to the school, the local education authority may, if they think fit, give notice to the managers that unless the amount of such adverse balance is paid to them within three months after such notice then on or at any time after the expiration of six months from the end of such three months they will cease to maintain the school.

(4) If the amount of the adverse balance is paid pursuant to such notice it shall be credited to the school as for the year then last closed.

(5) If the same is not so paid, the local authority may in accordance with the notice cease to maintain the school.

**7.—**(1) Any question arising under this Act shall be determined in the first instance by the local education authority.

Decisions of  
questions  
under the  
Act.

(2) Any person aggrieved by the decision or action of a local education authority under this Act may appeal in reference thereto to the Board of Education, whose determination in the matter shall be final. Except that in a matter involving a question of law, an appeal shall be made therefrom to the High Court of Justice.

**8.—**Unless the context otherwise requires, expressions in this Act shall have the same meaning as in the Education Acts, 1870 to 1903.

Interpreta-  
tion.



9.—(1) This Act may be cited as the Education Act, 19 ; and the Education Acts, 1870 Short title to 1903, and this Act may be cited as the and extent. Education Acts, 1870 to 19 .

(2) This Act shall not extend to Scotland or Ireland.

#### COMMENTS BY THE EDITORS.

This Bill makes the provision for religious instruction (subject to a conscience clause) obligatory in all public elementary schools. Facilities for special forms of religious teaching, to be provided in the school buildings and within the hours of compulsory attendance in accordance with the voluntarily expressed desires of the parents of the children concerned, are required to be given in council schools, should it not be possible for the children, by attending some other public elementary school in the neighbourhood, to receive the religious teaching desired. Similarly in non-provided schools, forms of religious teaching desired by the parents would have to be given, notwithstanding the trust deed, in cases in which the children were not able to obtain the preferred religious teaching by attending another public elementary school in the neighbourhood. The Bill thus involves the repeal of the Cowper-Temple clause in the case of council schools, and waives any restrictive trust deed which might otherwise forbid in a non-provided school the alternative form or forms of religious

teaching desired by the parents in behalf of their children. The by-laws would be required in all cases to allow a parent to cause his child to receive religious instruction elsewhere than at the school during the portion of the school hours allotted to instruction in religious subjects. In any school in which special religious teaching is given to a group of not less than thirty children, inspection of that teaching by a representative of the persons responsible for providing it is to be permitted (but not paid for) by the local education authority. Every teacher is free to give special religious instruction, but his qualification for doing so must be approved by the persons responsible for providing it. No teacher, however, in any public elementary school (council or non-provided) is required to give any religious instruction (unless he is employed for that purpose only), nor is to be required, as a condition of his appointment, to subscribe to any religious creed. Outside teachers may be appointed to give special religious teaching, but no additional expense may be thereby imposed upon the local education authority.

The appointment of inspectors of any special form of religious teaching, and the authorization of a teacher on the staff to give such teaching, are entrusted by the Bill to "the persons responsible for the provision of such teaching". It is apparently assumed that in these cases the special religious teaching would be provided by some organization

acting under the authority of the denomination concerned. But here this scheme is little more than an outline. Here, as elsewhere, much of the administrative machinery is left to chance, or, probably, to rules to be drawn up by the Board of Education.

The plan of facilities proposed in this Bill seems to be workable. But the scheme is open to two serious criticisms: (1) The financial arrangements suggested in it are cumbrous and complicated. These, however, are permissive and do not appear to be essential to the scheme. (2) The future of the non-provided schools would be made precarious by the acceptance of the Bill. Section 5 declares that any teacher employed or seeking employment in a council *or non-provided* school shall not be required to give any religious instruction, or, as a condition of employment, to subscribe to any religious creed. Thus the Bill, while leaving as at present the appointment and dismissal of teachers in a non-provided school to the foundation managers, would withdraw from the latter their right of imposing a denominational qualification upon the teaching staff. This would place the managers of non-provided schools in a false position, and would lead either to administrative friction and embarrassment or to evasion of the law through private arrangement. A comparison of this Bill with *Sine Nomine* suggests that the two Bills would probably work out to very similar results.

*Clause 2.*—(1) Facilities are to be given for denominational instruction in both provided and non-provided schools. In point of management the latter are to remain as at present. If religious instruction different to that normally given in the school is demanded by a reasonable number of parents it is apparently intended that it shall be given daily instead of the normal type. It is possible that the teaching staff in non-provided schools would not volunteer to give the teaching different to that normally given, but if outside persons have to be introduced it will be difficult to arrange for their *daily* attendance. In section 2 (2) there is no definition of what is meant by the reasonable number of children. In many non-provided schools, however, the teachers give non-denominational teaching to those children whose parents desire them to be excused from denominational instruction. The arrangement generally made in these cases is that the religious teaching on certain days in the week should be non-denominational.

(2) This can hardly mean that no payment may be made by the local education authority for lighting, heating, etc.

*Clause 3.*—If the child attends religious classes elsewhere than in the school the local education authority must make arrangements for the accurate marking of registers; it would not be easy to prevent children dropping in a few minutes late unless the register was called as in school before the lesson.

It seems desirable that the conditions regulating attendance at any such alternative form of religious instruction given outside the school buildings should be subject to the approval of the local education authority.

*Clause 4.—(2)* If there are less than thirty children no arrangements for inspection are made.

*Clause 5.—(2)* No definition is given of the persons responsible for sanctioning a teacher as fit to give religious instruction. Some such definition is *an absolute necessity*. Though the local education authority might be responsible for Cowper-Temple teaching, could they be equally so for special teaching?

*Clause 6.—*This is a permissive section, the adoption of which is left to the decision of the local education authority. It is difficult to estimate the financial effect of the debit and credit account. Where the scale of the local education authority is high, 10 per cent of the salaries of the teachers might be a large sum. The persons paying for the religious teaching would be tempted to employ the lowest paid teachers on the staff and to exclude the head teacher and trained assistants. If the managers of the non-provided schools retain the appointment of the teachers as at present, they might try to avoid appointing the best qualified teachers if they were paid salaries on a higher scale.

In view of existing and probable political conditions, there is a good deal to be said for this pro-

posal to recognize varieties of religious teaching in certain council schools and in certain non-provided schools, without setting up either a creed register or machinery for parents' committees. But it is improbable that clause 6 would meet the scruples of passive resisters. It does not touch what seems to be the central principle of their objection. The fact that a certain proportion of the teacher's time is given to denominational teaching does not constitute the real distinction between a non-provided and a provided school. The Bill would be more likely to find acceptance if clause 6 were omitted.

## V.

### SCHEME FOR PARENTS' COMMITTEES.

BY HAKLUYT EGERTON.

#### INTRODUCTORY MEMORANDUM.

A.—(1) The Bill was drafted in order to furnish Churchmen with a constructive policy. It represents primarily an attempt to embody a principle—not an estimate of parliamentary possibilities.

(2) The Bill neither prescribes nor prohibits the use of a creed register. A very large number of people would—reasonably or unreasonably—regard such a register as an unwarrantable inquisition. It seems desirable to exclude (as far as possible) secondary grounds of controversy.

(3) The right claimed is ultimately a civic right of individuals, not a denominational right. The denominational right sometimes (and rightly) asserted rests upon that civic right, and has political validity only because it is thus grounded.

The right to determine the character of a child's religious education is primarily a parental right, and can pertain to the State only subordinately and by inference from parents. If the State

be unwilling to accept the moral limitations this implies, the right should be exercised by the parents themselves.

Any suitable plan would be welcomed for strengthening the parents' committees—e.g. by federation, and behind those committees there must be the vigilant helpfulness of the denominations.

(4) The Bill ignores possibilities that seemed to the draughtsman to be merely theoretical.

Therefore,

(a) it does not limit facilities by a minimum number of either parents or children,

(b) it proposes that the only facilities in non-provided schools shall be facilities for Cowper-Temple teaching.

To the question—Would you provide exceptional teaching for *one* child? the answer would be—Yes. Doubtless, with a little goodwill, the rights of even the smallest minority could be fully recognized. The question, however, seems to be purely and merely academic. If facilities were desired, they would (no doubt), in every case, be desired for *several* children.

(5) Do Roman Catholic or Jewish children attend Church or Nonconformist schools? Do Church or Nonconformist children attend Roman Catholic or Jewish schools? Do Church children attend Nonconformist schools?

If such exceptional cases exist, it would be easy



to amend the Bill so as to provide for them. For practical reasons, however, it seems highly desirable to exclude from Church schools the multitudinous forms of Nonconformist doctrine. Facilities will be generally practicable only if Nonconformists be willing to accept some form of common teaching.

B.—The draft is based upon Mr. Balfour's Act of 1902, and proposes merely to secure larger and better facilities for religious instruction.

It presupposes :—

- (1) That the right to define the religious instruction to be given to a child is primarily a parental right.
- (2) That the national system of education should afford full and unpenalized opportunity for the exercise of that parental right.

The validity of these presuppositions can be demonstrated.

*Clause 1.*—It is generally contended by Nonconformists, and is admitted by many Churchmen, that the great preponderance of Church schools in one-school areas places Nonconformists in those areas at a religious disadvantage. In a large number of country parishes they are too few either to provide schools of their own or to obtain the provision of council schools under section 8 of Mr. Balfour's Act.

The Draft proposes to afford facilities for Cowper-Temple teaching in non-provided schools and for denominational teaching in council schools. These

two facilities should be inseparable. For the Church, it is no less important to open council schools to Church teaching than to preserve the existing Church schools.

The facilities in non-provided schools would be merely for Cowper-Temple teaching. The difficulty which arises out of the predominance of Church schools in certain districts is one that is felt only (or almost only) by Nonconformists, and it would probably be removed by facilities for the common instruction known as Cowper-Temple teaching. It does not seem necessary to provide facilities for the several kinds of Nonconformist teaching. The principal Nonconformist bodies are attaching less and less importance to the differences which keep them apart from one another, and seem willing to accept Cowper-Temple teaching as a common instruction suitable for elementary schools.

*Head Teacher.*—The head teacher is designated because, of all the persons connected with a school, he is the most widely known and most easily accessible.

*Immediately communicated.*—In the absence of this or some similar provision, managers and local authorities might plead ignorance, and argue that they were under no obligation to comply with desires of which they had no official knowledge.

*Elsewhere.*—This would permit children designated for exceptional religious instruction to receive that instruction in Church. In some

“council-school areas,” instruction in Church might be the most convenient way of using the facilities for the Church training of Church children.

The primary purpose of the proposed Bill is to create facilities for exceptional religious instruction. The permission entailed by the word “elsewhere” would not extend to children other than those designated to receive such instruction. Church schools already provide Church teaching—or teaching that should be Church teaching—as part of their ordinary curriculum, and the Ascension-Day Judgment seems to give a right to attend Church on the red-letter days. A proposal to give a general permission to receive instruction in Church would go beyond the range of the Bill's primary purpose, and would introduce a new subject of debate. There seems to be no urgent need that would justify the burdening of the Bill with such a proposal.

Probably the proposed permission would do much to break down that departmental opposition which found expression in Circular 512.

*Clause 2.*—Proposals have been made for admitting parents' committees to share in the general work of school-management, and some appear to think that the principle of “parental rights” requires this to be done. Such an argument would ignore the very important distinction between a fundamental principle of policy and a method of administration.

Unfortunately, most parents are ignorant and indifferent, and, were parents' committees constituted for the general work of school management, they would (from the first) fail to receive both that popular support which alone could make them genuinely representative and that popular criticism which alone keeps representative bodies properly vigilant. Such support cannot be given, such criticism cannot exist, unless there be in the constituent bodies an active and intelligent interest. In the absence of such interest, the parents' committees would probably be inefficient and would certainly be non-representative—they would be parents' committees only in name.

There seems, however, to be no objection to constituting parents' committees for the limited purposes defined in the draft. The constituents of such committees would be parents who had already taken the trouble to express a desire, and this expression of a desire would presuppose a certain degree of interest. One might not unreasonably hope that this presupposed interest (if properly fostered and enlightened) would suffice to make the committees genuinely representative and to keep them healthily vigilant.

*Not Members of the Electing Body.*—It seems unwise to restrict the choice of the constituent parents to their own number. In some villages it would be impossible (or hardly possible) to constitute an efficient committee out of the con-

stituent body. A committee would not cease to be genuinely a parents' committee if one or more of its members were chosen from outside the body of electors.

*Clause 3.—(2)* This does not profess to abolish "tests," but it would give full protection to a teacher's conscience. If teachers are to give religious instruction, there *must* be some sufficient test of their ability to give it.

*Clause 5.—Not on the Teaching Staff.*—For instance, the local priest or Nonconformist minister. As the religious instruction of children is part of the cure of souls, one may reasonably hope that a priest would give his services gratuitously.

*Clause 6.—Shall not Charge.*—It seems necessary to say this, because a direction that the local authority defray the cost would not (by itself) unmistakably deprive them of the power to make a charge.

*Clause 7.*—If a non-exempted voluntary school failed to comply with the prescribed provisions, that school would cease to be "grant-earning" and would not be entitled to maintenance by the local authority.

If a non-exempted council school failed to comply with the prescribed provisions, that school would not be deemed to be a public elementary school, and, if the local authority continued to maintain it, that authority would be liable to surcharge.

This section provides safeguards against a "revolt" of the local authorities.

If (in any case of non-compliance) the local authority be declared to be in default, it will be automatically superseded in the management of the school by a new temporary authority which will have full and exclusive powers, and will receive all necessary monies (and not merely the parliamentary grants) from the Board of Education.

The school, if efficiently conducted as a public elementary school (or as near thereto as possible), will (for every purpose but one) be deemed to be a public elementary school.

This provision is necessary in order to prevent difficult questions as to the *status* of the school while it is under the temporary authority.

A school under a temporary authority would not be deemed to be a public elementary school within the meaning or for the purposes of section 14 of the Act of 1870. This exception, taken in connexion with section 7 (c) of the draft, would enable the Board of Education to proceed by mandamus against the defaulting authority in order to compel it to do its duty towards the school wherein the default had occurred—i.e. to maintain the school as a public elementary school. The mandamus would (one may presume) issue, but the local authority would not be able to obey until it had obtained a restoration of the powers, etc., transferred to the temporary authority. To obtain this restoration the local

authority would have to give assurances that would permit the Court to rescind the declaration of default. Thus, mandamus to enforce section 14 (1870) would be a forceful means of dealing with a revolt of the Councils against giving facilities for exceptional religious instruction.

Non-compliance *not* due to the default of the local authority would be punished by loss of status—the school wherein the default occurred would cease to be a public elementary school. The consequences of this have been indicated in the earlier comment on section 7 of the draft.

Compliance could be enforced by mandamus (section 8).

The High Court seems to be a much more suitable judge of alleged default than the Board of Education. The question is one that should be decided by a judicial body rather than by one that is primarily administrative.

*Clause 9.*—There is, unfortunately, a tendency in some quarters to minimize the importance of trust-deeds. The enactment of the proposed clause would involve a clear recognition by the legislature that the restrictions in trust-deeds—until removed or relaxed by some competent authority—are veritably binding restrictions.

*Clause 10.*—Roman Catholics would not accept a policy of mere facilities. This clause is intended to secure their adhesion to the proposed Bill, but it is not limited to their schools.

*Education given in the School.*—These words direct attention, not to the mere letter of the trust-deed, but to the way in which the provisions of the trust-deed are carried out—to the education actually given in the school. The word “education” is used because it has a meaning wider than “instruction”. Regard is to be had, not merely to the *instruction*, but to that *religious education* which is the result, in part (indeed), of instruction, but in part also of all those other agencies and influences which help to form character and evoke sentiment.

No Church of England school has a trust-deed which requires it to be what is ordinarily called an “atmosphere-school”. But if a Church school be in fact such a school, it would be entitled to exemption. The statute, by directing attention primarily to *education* and not to trusts, would exclude the adverse contention that the trusts could still be sufficiently fulfilled even if the school ceased to be an “atmosphere-school”.

*A Complete Return.*—It is not improbable that there would be a tendency to restrict the exemption to Roman Catholic and Jewish schools.

This provision is intended to counteract such a tendency.

*Wherever any Exemption.*—It is not inconceivable that, were no safeguards provided, exemptions would sometimes be withdrawn on merely political grounds—merely in deference to some political opinion momentarily influential.



This provision is intended to prevent such withdrawals.

*Clause 12.*—The definition of “trust-deed” is adapted from Mr. Balfour’s Act.

It will be noticed that the proposed Bill does not contain any provisions either for the transfer of schools to the local education authorities or for amending section 6 (Management of Schools) of the Act of 1902.

A BILL TO AMEND THE LAW RELATING  
TO ELEMENTARY EDUCATION IN ENGLAND AND WALES.

1.—(1) In every public elementary school which is not (within the meaning of this Act) an exempted school, sufficient and suitable provision shall be made by the local education authority and sufficient and suitable facilities shall be given during school hours for imparting exceptional religious instruction to those children (if any) whose parents shall have expressed to the head teacher of the school a desire that such instruction be given to their children. The said desire may be expressed at any time by letter or otherwise, and, when expressed, shall be immediately communicated by the head teacher to the managers of the school and by them to the local education authority and the parents’ committee constituted under this Act. The children concerning whom such a desire has been expressed shall always be permitted (if the parents’ committee so desire)

to receive religious instruction during school hours elsewhere than in the schoolhouse of their school.

(2) In public elementary schools maintained but not provided by the local education authority the exceptional religious instruction (if given) shall be religious instruction in accordance with section 14 of the Elementary Education Act, 1870, and no other.

(3) In public elementary schools provided and maintained by the local education authority the exceptional religious instruction (if given) shall be of the kind or kinds designated by the parents who express a desire that such instruction be given to their children.

(4) No child shall be permitted to receive exceptional religious instruction unless his parent shall have expressed a desire that he receive such instruction, and no child shall be permitted to receive any exceptional religious instruction which is not of the kind expressly desired for him by his parent.

2.—(1) For each non-exempted public elementary school in which (under the provisions of this Act) exceptional religious instruction is given or desired to be given, there shall be (in addition to the managers) a parents' committee consisting of not less than two nor more than five persons elected by the parents who shall have expressed a desire that such teaching be given, and (subject to the provisions of this Act) it shall be the duty of that committee to provide and maintain (in accordance

with the provisions of this Act) the exceptional religious instruction given or desired to be given in the school.

(2) In each case the parents' committee shall be constituted and elected in accordance with the regulations hereinafter mentioned.

(3) As soon as possible after the passing of the Act, and (if necessary) from time to time afterwards, the Board of Education shall issue sufficient general regulations providing (subject to the provisions of this Act) for the constitution and election of parents' committees. These regulations shall provide and secure *inter alia*—

- (a) That each committee shall be elected annually;
- (b) That women shall, in every case, be eligible to the committee;
- (c) That where more than one kind of exceptional religious teaching is desired, the committee shall, equitably and effectively, represent each kind desired;
- (d) That, in every case, persons who are not members of the electing body shall be eligible to the committee.

Any regulation made under the provisions of this section by the Board of Education may be rescinded or amended by the said Board. It shall be competent for the Board of Education at any time (upon application from or on behalf of parents interested) to make original or amending regulations under

this sub-section applicable only in a specified school or in specified schools.

3.—The facilities for exceptional religious instruction shall in each case be from time to time determined by agreement between the managers of the school and the parents' committee. Within the limits of the facilities thus determined, the parents' committee shall have complete control of the exceptional religious instruction and of the arrangements for giving that instruction.

4.—(1) For the purpose of giving exceptional religious instruction the parents' committee shall (subject to the provisions of this Act) have the services of the teaching staff of the school to whatever extent that committee requires.

(2) In the appointment of a teacher or teachers to a public elementary school, wherein exceptional religious instruction is given or desired, provision (satisfactory to the parents' committee of the school) shall be made (after consultation with that committee) for the giving of that instruction. No teacher in a public elementary school shall be prevented or prohibited by the local education authority or the managers from giving exceptional religious instruction, if he be willing to give such instruction and if his services be required by the parents' committee of the school in which he serves, but no teacher shall be required to give such instruction unless he be willing to do so.

5.—The parents' committee of a public elementary

school may appoint any person or persons not on the teaching staff of the school to give or take part in giving exceptional religious instruction in the school, or to examine the exceptional religious instruction given in the school, and every person so appointed shall (in virtue of his appointment, but subject to the control of the parents' committee) have full power to enter and use the school premises for the purpose or purposes for which he has been appointed. A local education authority shall not make any payment for the services of any person or persons appointed under this section.

6.—The whole direct and incidental cost of the exceptional religious instruction given (under this Act) in the schoolhouse of a public elementary school and of the examination (if any) of that instruction (except the cost, if any, of services obtained under section 5 of this Act) shall be defrayed without charge by the local education authority. That authority shall not make any charge for or in connexion with the provision or examination of that instruction, or for the use of the school premises for the purpose of giving or examining or otherwise in connexion with that instruction, or in respect of any expenses (such as the expense of firing and light) incidentally incurred in the course of or in connexion with that instruction or the examination thereof. The local education authority shall supply, without charge, whatever furniture, apparatus, books and other materials shall

be reasonably required by the parents' committee for the purpose of giving exceptional religious instruction in the schoolhouse, or of examining the exceptional religious instruction there given.

7.—(a) No non-exempted school in which the foregoing provisions of this Act are not fully complied with shall (except as hereinafter provided in this section) be deemed to be a public elementary school within the meaning or for the purposes of either the Elementary Education Act, 1870, or section 7 of the Education Act, 1902, and no parliamentary grant shall be paid in respect of any such school.

(b) If in any case it appears either to the parents' committee of the school concerned or to the Board of Education that the foregoing provisions of this Act have not been complied with, application may be made to the High Court of Justice by or on behalf of the parents' committee or (without prejudice to their right to take any other proceedings) by the Board of Education for a declaration that the failure to comply with the said provisions is due to the default of the local education authority. If such declaration be granted by the Court, then immediately, and for so long as the local education authority continues in default, all the powers, rights, and duties of the local education authority (except the power to raise money by loan or taxation) shall (to the extent necessary for carrying on the school efficiently as a public elementary school (or as

nearly as possible in conformity with the law relating to public elementary schools) and in compliance with the provisions of this Act) be exclusively possessed by a temporary authority which, if the school in question be a school not provided by the local education authority, shall consist of the managers for the time being of the school, and, if the school in question be a school provided by the local education authority, shall consist of the parents' committee for the time being of the school. So long as the local education authority continues in default the Board of Education shall from time to time advance to the temporary authority whatever sums are necessary for carrying on the school as aforesaid, and the school (if efficiently carried on as in this subsection aforesaid) shall be deemed to be a public elementary school, but not within the meaning or for the purposes of section 14 of the Elementary Education Act, 1870. After a local education authority has been declared by the Court to be in default the Board of Education shall immediately defray any expenses incurred (prior to the declaration of default, and through the default of the local education authority) by the managers or parents' committee of the school in question.

Any sums advanced under this subsection by the Board of Education shall be a debt due to the Crown from the local education authority, and without prejudice to any other remedy, may be deducted

from any sums payable to that authority on account of parliamentary grants.

A local education authority which has been declared by the Court to be in default shall be deemed to continue in default until the declaration of default has been rescinded by the Court.

Any costs incurred by a parents' committee or temporary authority in connexion with an application to or proceedings before the Court under this subsection shall (unless the Court otherwise order) be borne by the Crown. Any question brought before the Court under this subsection shall be decided summarily without pleadings.

(c) Nothing in this Act shall relieve a local education authority from the obligation to maintain as a public elementary school every elementary school provided by it, and, any declaration of default or transfer of powers, rights, and duties to a temporary authority notwithstanding, this obligation may be enforced by mandamus.

8.—Compliance with the provisions of this Act may be enforced by mandamus at the instance of either the Board of Education or the parents' committee of the school immediately concerned. The costs incurred by a parents' committee in any application to or proceedings before the Court under this section shall (unless the Court otherwise order) be borne by the Crown.

9.—It shall be lawful for the trustees of a public elementary school maintained but not pro-



vided by a local education authority to permit the school buildings of the school to be used for the purpose of giving exceptional religious instruction and for other purposes connected with that instruction, and it shall be lawful for the managers of such a school to give the facilities prescribed by this Act.

**10.**—(1) If, at any time, it be shown, to the satisfaction of the Board of Education, by either the trustees or managers of a public elementary school not provided by the local education authority that in that school compliance with the foregoing provisions of this Act would adversely affect the religious efficiency of the religious education given in the school, the Board of Education shall exempt that school from the said provisions.

(2) A complete return showing the names and denominational character of the schools exempted under this section shall be annually made by the Board of Education to each House of Parliament.

(3) Any exemption granted under this section may be terminated by the Board of Education at any time after five years from the date of the exemption if the Board be satisfied that, in that particular case, the statutory ground of exemption no longer exists.

Whenever any exemption is terminated under this subsection the Board of Education shall immediately place before each House of Parliament a complete statement of the circumstances of the

case, of the correspondence and other representations (if any) relating thereto, and of the considerations which led the Board to terminate the exemption.

**11.**—Any question arising under this Act (except questions concerning which application may under section 7 (*b*) of this Act be made to the Court for a declaration of default) shall be determined by the Board of Education, but that Board shall not entertain any question relating to the character of the exceptional religious instruction given in a school.

**12.**—In this Act

The word “parent” has the meaning given to it by section 3 of the Elementary Education Act, 1870.

The term “trust-deed” includes any instrument regulating the trusts or management of a school.

The expression “exempted school” means a school exempted under section 10 of this Act.

The word “non-exempted” means not exempted under section 10 of this Act.

**13.**—This Act may be referred to as The Elementary Education (Religious Instruction) Act, 1909.

#### COMMENTS BY THE EDITORS.

This is the most carefully drafted of the schemes

which endeavour to solve the religious difficulty by the establishment of *parents' committees*.

The principle of the election of committees by parents in order to exercise thereby some supervision over their children's education, especially in matters touching religion, is unexceptionable, and it is one which commands a very general acceptance. Clearly the rate-payers' control, now, saving the supremacy of the Board of Education, extended over the whole field, should not go beyond finance; they can have no moral right to dictate the amount or nature of the instruction in the school, much less the kind of religious teaching to be given to the children. The administrative difficulties involved in carrying out this principle are, however, very great, and it is these which have led other educational reformers to propose the alternative, i.e. that by creed registers, or some other way of making known their wishes, the parents should indicate the kind of religious instruction they desire, and leave independent committees, central or otherwise, of the different religious bodies to supply or supervise it (see the Hope-Eden, *Sine Nomine* schemes and others). It is certainly very much to be desired that the sense of parental responsibility should be encouraged, and the interest of parents in the education of their children evoked, and that some means should be found to enable them to express their wishes effectively.

We now proceed to more detailed comments on

this Bill, which from the skill and learning shown in its preparation will certainly receive exceptional notice from all educational experts.

The Bill does not attempt to meet the alleged grievance that in many thousands of parishes Nonconformists, as such, are disqualified from appointment to the head teacherships. And under clause 10 (especially as interpreted in the Introductory Memorandum) the Board of Education might exempt schools, even in single school parishes, from the operation of the Bill as set forth in clause 1.

*Clause 1.*—In non-provided schools where parents desire different religious instruction from the normal type given in the school they would only be able to obtain, under section 2, Cowper-Temple teaching. Whereas, under section 3, in provided schools the various kind of denominational teaching asked for by the parents may be given. This admittedly creates an anomaly: e.g. a Wesleyan child in a Church of England school or a Church child in a Roman Catholic school can only receive Cowper-Temple teaching if the parents desire it to be excepted from the normal instruction, whereas in a provided school the Wesleyan child might receive Wesleyan and the Church child Church teaching. It is possible that Nonconformists would not strongly object, and on the other hand the school managers would find it much easier than to provide for various kinds of special teaching. The defence for this anomaly is, of course, that the Bill is designed

to interfere as little as possible with the existing dual system and takes the last development of the educational position, i.e. the Act of 1902, as a basis. Denominational schools are therefore not bought out but retained as part of the system, and in this case it is fair that the denominational "atmosphere" in schools denominationally built should be respected as far as may be ; this would not apply to the provided schools, built out of the rates and having no special "atmosphere" to disturb.

*Clause 2, section 3.*—In provided schools it is suggested that a parents' committee consisting of not more than five persons could equitably and effectively represent several kinds of exceptional religious teaching. This clause 3 really contains the crux of the whole scheme, and the practicability of the election of effectively representative parents' committees in cases where varieties of religious teaching were demanded should be demonstrated. The machinery for the annual election would be very complicated. Let us take an admittedly extreme case. Supposing 300 children in a school are divided into 100 Church of England, 30 Jewish, 50 Wesleyans, 20 Roman Catholics and 100 of various Nonconformist denominations, who might or might not be willing to combine, how should the five members be elected? Is it proposed to establish some form of proportional representation? No doubt the parents of children in provided schools would ordinarily fall into fewer categories, e.g. Church and Nonconformists of

different types, with occasional admixtures of a large number of Jews or a small number of Roman Catholics (these having generally their own schools), but rarely if ever both together in large towns ; even so the problem is sufficiently complicated. The constitution and election of these parents' committees is placed in the hands of the Board of Education, but we think that some draft regulations should be provided showing how the Board is to give effect to the clause. Again, when the committee has been formed how will it decide as to the teaching to be given? Will it decide by a bare majority? Will the whole body of representatives decide for each section? All these points need clearing up.

*Clause 4.*—The teaching staff are to be at liberty to give exceptional religious teaching, and, if they are willing to do so, the cost of their salaries is to be defrayed by the local education authority. In order to enable teachers to be secured who will volunteer, the parents' committee are to be consulted before they are appointed. From an administrative point of view this would be a difficult and lengthy process. It would imply that the parents' committees should have some knowledge of the religious convictions of the candidates for appointment.

*Clause 5.*—The parents' committee would be responsible for the payment of persons not on the teaching staff. This requirement would be most burdensome on the smallest minority, for in this case it would almost certainly be impossible to get

a teacher on the staff willing to teach. Further, there might be no room in the school available for the small minorities, and the heating and cleaning of rooms outside the school might have to be paid for as well as a salary fund for the teacher. This financial difficulty is one of the reasons which lead the authors of other schemes to place their confidence in central committees or associations operating over and drawing support from wide areas instead of local school committees.

*Clause 10.*—This is intended to preserve schools where all the parents desire a special type of teaching, but unless there were other schools in the neighbourhood exceptions would not often be made by the Board of Education if there was a considerable minority of children in the school whose parents did not desire the special type. It would be chiefly useful in large towns and is probably drafted with that objective.

In the Introductory Memorandum the author of the Bill disclaims any attempt to estimate the parliamentary possibilities of his scheme. But for our purposes the likelihood of any such plan as this becoming law should be referred to. The election of parents' committees and the entrusting to those committees such large rights of consultation and of appeal with regard to the appointment of teachers would undoubtedly add to the friction and difficulty of administration. This, and the proposed powers for putting the local education authorities in default,

would set the great majority of those authorities in opposition to the Bill. They would be reinforced by the majority of the teachers, easily aroused against what are called "tests," and they would be supported by much Nonconformist objection. This opposition would, we think, make the passing of the Bill in its present form extremely unlikely. But the argument for having representatives of the parents is so strong that it is highly probable that some such representation will be proposed the next time a Government is responsible for an Act amending the present law. The possibilities and difficulties connected with the application of the principle of direct parental control may be estimated by a careful examination of Mr. Hakluyt Egerton's Bill.



## VI.

### DRAFT EDUCATION BILL.

DRAWN UP AT A SERIES OF CONFERENCES OF LIBERAL MEMBERS OF EDUCATION AUTHORITIES HELD AT THE INVITATION OF THE NATIONAL EDUCATION ASSOCIATION.

#### INTRODUCTION.

THE first Education Act, that of 1870, secured that every child in the nation should be taught the three R's (reading, writing, and arithmetic) in their elementary stages. The next Education Act must secure that every child shall receive a sufficient amount of suitable education. This can only be done at the expense of the rate-payers or taxpayers; and public money must be under public management and control.

The principle of a complete national system maintained and managed by national and local authorities is accepted by all parties as a matter of proved necessity. But it is resisted in detail by many interests and influences. The next Education Act should be so framed as to firmly and finally overcome this opposition.

A complete public system does not exclude private and voluntary provision. Public parks have not done away with private gardens ; public picture galleries and libraries do not make private collections unnecessary ; public tramways have only increased the taste for private means of locomotion. Public schools will increase the opportunities of beneficial private enterprise in education.

#### THE COMPULSORY PROVISION OF HIGHER EDUCATION.

The Act of 1870 enabled local authorities to supply education so long as it was "elementary," whatever that may mean, and supply it to "children," whatever that may mean. The Act of 1902 enables local authorities to supply education which is "other than elementary," and there is no limit on the age or status of the scholars. Thus the whole field of every form of education of every sort of individual is covered by a machinery of local government.

This is a firm foundation on which to build a national system. Now that every area has a local authority empowered to deal with all grades of education, the first provision of a new Act should make the powers and duties equal in regard to all departments of the work.

The present law sets up a fanciful distinction between "elementary" and "other than elementary". If a school charges less than 9d. a week it

is "elementary"; if it charges more than 9d. a week it is "not elementary". If you teach science and art and the classics to a child under fifteen it is elementary. If you teach the alphabet to a grown-up man it is not elementary. If the school meets in the daytime it may be elementary, but if the same school and the same scholars do the same work in the evening, it ceases to be elementary.

The public authority has serious powers and duties on the "elementary" side of this fanciful boundary, but it has very little power, no definite duty, and hardly any available funds for work on the other side.

As regards "elementary" education, the authority must ascertain the needs of its districts and must supply all deficiencies by providing schools which are sufficient in number, suitable in curriculum, adequate in staff and equipment, efficient in result, and, above all, in fees and in management suitable and available for all who desire to attend.

These were the principles of 1870 and were applied to the work of the authorities which were then set up. When the work of the public authorities was extended over a wider field, the powers and duties should have been extended also; the first clause of the new Bill should read:—

"(1) The powers and duties of the local education authority to secure throughout their area adequate and suitable accommodation and instruction in public elementary schools shall extend to

the training of teachers, the provision of technical and secondary instruction, and to all grades of education."

#### PUBLIC MANAGEMENT OF AIDED SCHOOLS.

Much of the work for which the public authority is ultimately responsible, is now done by schools and colleges and other institutions which are not under public management, but are in many cases largely maintained by subsidies from the local rates or from Parliament. This system of subsidizing private institutions with public money leads to extravagance and inefficiency.

It is a system which is found to be unworkable, and intolerable in all other departments of municipal work. For example, the London County Council considered the suggestion "impertinent" that it should subsidize the old steamboat company instead of providing new boats of its own. The Council would not improve the water supply of London by subsidizing the water companies, or the tramway system by subsidizing the tramway companies.

But schools are apparently held to be less than tramways, and education need not be so efficient as steamboats, and the system of subsidizing private institutions has become so established that probably it cannot be abolished at a stroke. The Technical Instruction Act of 1889, however, established, or rather suggested, as a compromise, that public management should be introduced *in proportion* to

public aid. The logic of this plan is more apparent than real, but in practice it automatically makes for progress without friction. The clause in the Act of 1889 was repealed by the Act of 1902, but it might well be re-enacted in an improved form, and the second clause of a new Education Bill should read :—

“(2) When any elementary or secondary school, college, or other institution receives aid from the local rates or from money provided by Parliament, the local authority shall be represented on the governing body or committee of management in such proportion as will, as nearly as may be, correspond to the proportion which the aid received from both these sources and the fees, if any, of the scholars, bear to the contribution towards maintenance made from all other sources.”

#### LEASE OR PURCHASE OF SCHOOL BUILDINGS.

A system of public management, increasing in proportion with public aid, might tend gradually towards the entire maintenance and the entire management passing into the hands of the public authority. The public would thereupon find itself managing an institution and occupying a building, either or both of which were still controlled by trust-deeds or proprietary rights. These vested interests might hinder developments, giving to private persons or some outside authority a control over the curriculum, a veto on the class or sex or age of

scholars, a limitation on the fees charged, a right of visitation or supervision, or a joint occupation of the building.

The moral basis of some of these private rights and privileges would disappear when the whole cost of maintaining the institution became a public charge; others would have a substantial moral basis so long as the school or college was carried on in premises governed by a trust or private ownership.

It would be a serious matter to end these powers in any manner savouring of confiscation. But the public authority, finding itself maintaining and managing an institution impressed with an unsuitable character because the work was carried on in particular premises, should be entitled either to purchase the premises, and so buy out the power of interference, or to free itself from the old restrictions by removing the institution to new premises provided by itself.

The next clause of a new Education Act might, therefore, read as follows:—

“(3) i. When an education authority is or becomes responsible for the entire cost of maintenance of any school, college, or other institution, it shall be entitled to take over the buildings and premises by agreement for lease or purchase, and thereupon all rights and powers reserved to, belonging to, or claimed by any person or persons other than the education authority in the management of the school, shall cease.

“ii. If the education authority decide not to make a lease or purchase, they shall be free to leave the old buildings and to establish and continue the school or college, in unbroken succession, in other buildings provided by themselves, and the school or college shall thereupon be vested solely in the education authority and subject to all the conditions of a school provided by the education authority notwithstanding anything in any instrument of trust.”

#### LOCAL EDUCATION AUTHORITIES.

If the public is to administer education through local administrative authorities, it is of first importance that the authorities shall effectively represent the public concerned. This raises questions of area and method of election.

As regards area, there is no reason why the areas of educational administration should not be the ordinary areas of municipal government—boroughs and county districts. The Local Government Acts of 1889 and 1894 simplified local government by abolishing separate areas for different purposes, and dividing the country into areas intended to be, as far as possible, suitable for all purposes. The Acts also provided machinery for a readjustment of boundaries, etc., wherever changes of population, duties, etc., made it desirable. It is of national importance that these areas of local self-government shall be respected and made the

areas for all purposes, so that a genuine local life and unity and patriotism shall be developed. To the theorist at a distance, some of the existing areas may seem to be unnecessarily large and others unnecessarily small, but do not doubt that there are good local reasons for the size of each one. The disfranchisement for educational purposes of certain towns and districts in the Act of 1902, because they seemed to be abnormally small, was a cowardly blow struck at the principle of local self-government in its weakest spot. The fanciful distinction between towns over 10,000 and towns under 10,000 and districts under 20,000 and districts over 20,000 must be abolished. Respect the independence of each municipality, whatever its size, but give these municipalities power to combine for united action for any specified purpose. As for the county councils, their function is not to destroy the municipalities within their areas, but to cherish and strengthen and guide them, and especially to take the initiative in organizing joint action amongst them. Powers to combine are preserved in section 52 of the Act of 1870, and powers of the Board of Education to compel authorities to unite or to contribute to a joint school were in sections 40 to 51. Power could also be given to the Board of Education to enforce any scheme of combination if supported by a large majority of the authorities concerned. The first clause dealing with the authority in a new Education Act should, therefore, provide :—



“(4) There shall be an education authority separately elected in each municipal borough or county district. Any two or more education authorities may combine for joint action for any of the purposes of the Education Acts, and the Board of Education shall have power to direct such combination or to direct authorities to contribute proportionately to schools or institutions used in common.”

As regards method of election, the Act of 1902 largely followed the Act of 1870 in putting the administration of education into the hands of a body separate from the ordinary municipal council. It is true that the Act destroyed the school boards, and when these were being attacked there was much denunciation of *ad hoc* authorities ; but when the Government came to legislate, it was revealed that their objection was not to a *separate* body, but to direct popular election. They desired an *ad hoc* body, but not an *ad hoc* election. They wanted a body first nominated by vested “interests,” and then made as separate and independent of the municipal councils as possible. The “education committees” were, however, robbed of much independence by amendments made to the Bill in Parliament, but still the Act recognizes the possibility, and suggests the desirability of the so-called “committee” having power and dignity to a large extent separate and independent of the nominal authority.

The existing “committees” might, with very little disturbance of existing arrangements, be made the

basis of a more democratic system. Whether they should become independent bodies, or to what extent they should directly represent the rate-payers or be subordinate to the municipal councils, is a matter which might be decided by local option. It is already obvious that in practice the committees are becoming more and more independent of the municipal councils. The serious element in this is that the control of the electorate is weakening and power is passing into the hands of nominated and co-opted members who cannot be made responsible to the electors.

The presence of these added members on equal footing with members who are responsible to the electorate is opposed to all sound principles of local self-government. If the system of co-optation were abolished, the council could be given either an optional or compulsory power to replace the co-opted members by representatives of the rate-payers directly elected for the purpose.

The committees would thus consist partly of members directly elected and partly of members elected by the councils from amongst its own members. The exact proportion of directly and indirectly elected members on each committee might, for the present, be decided locally. Some councils may be willing to perform all the duties, others to throw the responsibility on other shoulders. The ultimate decision would rest with the rate-payers in each district if a clause in the Bill provided :—

“(5) An education authority other than the education authority of an administrative county, shall consist of members directly elected for this purpose by the rate-payers of the area for which the authority is formed, provided that the local municipal council of the area for which the education authority is elected may also appoint members of the council to be members of the education authority to a number not exceeding one-fourth of the total.

“Any education authority shall have the power of levying a rate for any of the purposes of the Education Acts.”

#### NO TESTS FOR PUBLIC OFFICE.

One further point with regard to the constitution of administrative bodies requires legislation. The electors ought to be free to elect whomsoever they think suitable to represent them. Many good men are excluded from municipal councils because they happen not to be registered electors. There is no such test for a member of Parliament. Half the nation are excluded because they happen to be women. And many good managers are forbidden to take part in the management of some school or other because they happen to be Catholics, or Protestants, or Nonconformists. None of these restrictions existed under the Act of 1870. In educational affairs they are practically new disqualifications imposed by the Act of 1902. The following clause would sweep them away:—

“(6) No person shall be disqualified by reason

of sex or religious creed or residence for being appointed or elected on any body of managers, committee, or education authority."

#### PROVISION OF SUITABLE SCHOOLS.

The Act of 1870 provided that the local authority should have both the right and the duty of providing all new schools, and if an exception was made the consent of the local authority had to be obtained. The Act of 1902 in sections 8 and 9 allows "ten rate-payers" to claim that a school not provided by the authority is more "suitable," and it leaves the Board of Education to decide the question after consulting the parents. This is not a matter to be decided by a few persons who happen to be temporarily in the position of "parents" of scholars. It is a matter of permanent public interest to be decided by the whole body of local electors acting through their local authority, and the principle of 1870 should be again established, and the clauses of 1902 repealed. Any new Education Bill must contain a clause to the following effect:—

"(7) The local education authority shall provide whatever schools it deems to be necessary for the proper supply of education in its district; and sections eight and nine of the Education Act of 1902 are hereby repealed."

#### INSPECTION OF NON-AIDED SCHOOLS.

It will be noticed that existing proprietary schools and others which do not obtain support from public

funds are left untouched by the above scheme. It is well known that the children and the nation suffer much from inefficient private and other schools. Every educational institution should be brought under some inspection and supervision, and power should be given to the public authority to prohibit unqualified teachers and unsuitable buildings. Perhaps, for the present, it would suffice to enact part of clause 12 of the Education Bill of 1896, in the following form, substituting "shall" for "may":—

"(8) The education authority shall—

"(a) Make inquiries with respect to the sanitary condition of the school buildings (including boarding houses) of any school within their district ; and

"(b) Make inquiries with respect to the education given by any school within their district (except a school which, in the opinion of the Board of Education, is of a non-local character) ; and

"(c) Take such measures as they think fit for giving information to the public with respect to the result of such inquiries."

#### TRANSFER OF SCHOOLS.

All the foregoing provisions might alarm some existing institutions unwilling to receive public aid accompanied by proportionate public management, or fearing the enlarged powers of providing schools, given to the public authority. It would be only

right to give these institutions the power to call upon the municipality to take over their schools at a fair price. This is not uncommon in connexion with other extensions of municipal enterprise ; and a clause which was agreed to by a conference of private school-masters and others when the question was before Parliament some years ago, might be inserted in a new Bill. It reads as follows :—

“(9) The managers of any existing school recognized by the Board of Education as suitable in situation and premises for permanent use in connexion with the supply of education in the district, may call on the local education authority before they take any steps to provide further school provision, to take over their school ; and the Board of Education shall fix to what extent the building and premises are suitable for permanent use, and should the local education authority and the managers not agree as to price, shall determine what price should be paid ; and in fixing the price they shall have regard to the value of the premises to the local education authority, and shall not have regard to any profits of the schools.”

#### TESTS FOR TEACHERS.

To secure an adequate supply of good teachers it is essential to abolish the theological test which deprives the State of the services of a large number of competent instructors and degrades the teaching profession. Although it is possible that a better

form of words could be suggested, it is simplest for the moment to take the words used in the Act of 1902 and apply them in a compulsory and comprehensive form, as follows :—

“(10) In all schools, colleges, or institutions aided or maintained by contributions from the local rate or money provided by Parliament, teachers shall be appointed without reference to religious creed or denomination.”

#### PUBLICITY.

The value of publicity is apparently not appreciated to-day. It is the only sure foundation of public control. Section 87 of the Act of 1870 made every act, almost every thought of the school boards public property, and to this they owe their magnificent record of purity and efficiency in administration. Section 87 was repealed by the Act of 1902. It made every document accessible, subject only to an appeal to a Court of Summary Jurisdiction. And this access to books and documents rendered it futile to exclude the press or public from meetings of the authority. It is desirable that section 87 of 1870 should be re-enacted as follows :—

“(11) Every rate-payer in a school district may at all reasonable times, without payment, inspect and take copies and extracts from all books and documents belonging to or under the control of the education authority of such district.

“Any person who hinders a rate-payer from so

inspecting or taking copies of or extracts from any book or document, or demands a fee for allowing him to do so, shall be liable on summary conviction to a penalty not exceeding five pounds for each offence."

Many minor details might have to be considered if a bill were before Parliament, but the clauses already sketched cover in broad outline the whole plan of legislation required. The key-note is genuine and complete popular control through the machinery of democratic local self-government. This has been the mainspring of national progress through all the centuries of English history. The popular election and, still more, the possibility of popular dismissal of our governors in both national and local affairs is the chief influence creating a strenuous regard for the public good. The enemies of popular education—the education of the populace—are many and powerful. The experience of centuries has shown that no real progress has been made unless the driving force of genuine popular control was applied. The recurring election, with its appeal to public opinion, its call to those in power to justify their acts, its opportunity to reformers to state their ideals and press them effectively, is the one great curb to reactionary and selfish interests, the one great spur and instrument for progress.

#### INSTRUCTION—RELIGIOUS AND SECULAR.

Nothing has been said about the curriculum, for that is not a matter to be fixed by statute. Local



freedom and initiative, wisely stimulated by the central board, is the best provision.

Every interest presses upon education authorities some subject which should be taught or should not be taught. Social prejudices are undying and the "classes" have very definite views as to the proper limits to the instruction of the "masses". Commercial interests, claiming a rather sordid technicality in education, are always active. The military reformers clamour that the schools shall be made feeders and bulwarks of the army, and they recently succeeded in substituting purely military drill for a more educational and beneficial system of physical exercises. The Churches clamour that the schools shall be made feeders and bulwarks of their sectarian organizations, and they have too often succeeded, at the cost of efficiency, progress, and freedom. Social reformers, from the temperance advocate to the anti-vaccinationist and the flag-waving "League of Empire" ist, are always hammering on the school door, hoping to use the national provision for education for their sectional aims.

Genuine popular control is the true conciliator of all these contending interests. Open public controversy in the machinery of local self-government is sometimes condemned, but it is a sound and wholesome process of forming public opinion and making it effective. The bitter fights of school board elections never penetrated to the schools except as a persistent stimulus to efficiency, sensitively and

strenuously guided towards freedom and progress.

#### HIGHER INSTRUCTION OF THE INDUSTRIAL CLASSES.

One more point should be mentioned. Objection may be taken to the uncompromising destruction of the statutory barriers between what is called "secondary" and "elementary" education. To many the field of "secondary" education is a very precious enclosure in which popular control and municipal management would be disastrous. But these when they speak of "secondary education" are thinking of a few choice schools and a few cloistered colleges together sheltering a few hundred cultured scholars. But the education which Parliament has called "other than elementary" is a very different matter. It covers the instruction, after fifteen years of age, of practically all the children of the industrial and commercial classes, the technical training of our tradesmen who lay at our feet the products of the world, of the teachers, who are to train the next generation, of the skilled artisans, the foremen clerks and commercial travellers who must carry our commerce to all countries, the agriculturists and the miners who apply science to tearing the wealth from mother earth, the navigators, engineers, seamen, and fishermen, who reap the harvest of the sea, nay, even the special training of girls for the domestic duties which must devolve on the vast majority of women.

The higher education, above the three R's, of all these millions is not to be governed by alarmist visions of a democratic desecration of Eton and Harrow, Oxford and Cambridge. Numerically, these institutions are unimportant—all the students of all the great secondary schools and all the Universities could be hidden in a few of the thousands of institutions for the higher education of the nation which exist or are needed. Those alarmists may be reassured. Genuine *democratic public control*, with power to provide schools, colleges, and institutions for the urgent needs of the nation, would treat the old secondary schools with even exaggerated awe and the most tender respect: they have nothing to fear. But nothing less than genuine, unfettered, democratic public control of national education will suffice to provide the nation with the instruction and the training it needs to maintain its commercial position in the markets of the world, and its empire in the sacred field of civilization and international progress.

#### DRAFT EDUCATION BILL.

1.—The powers and duties of a local education authority to secure throughout their area the provision of adequate and suitable accommodation and instruction in public elementary schools shall extend to the provision of technical and secondary instruction, and to all grades of education.

The Com-  
pulsory Pro-  
vision of  
Higher  
Education.

2.—When any elementary or secondary school, college, or other institution receives aid from the local rates or from money provided by Parliament, the local authority shall be represented on the governing body or committee of management in such proportion as will, as nearly as may be, correspond to the proportion which the aid received from both of these sources and the fees, if any, of the scholars, bear to the contribution towards maintenance made from all other sources. Provided that no school may be aided by public money unless the governing body contain a majority of governors appointed by local representative bodies.

3.—(1) When an education authority is or becomes responsible for the entire cost of maintenance of any school, college or other institution, it shall be entitled to take over the buildings and premises if held in trust, and if not in trust then by agreement for lease or purchase, and thereupon all rights and powers reserved to, belonging to, or claimed by any person or persons other than the education authority in the management of the school, shall cease.

(2) If the education authority decide not to make a lease or purchase, they shall be free to leave the old buildings and to establish and continue the school or college, in unbroken succession, in other buildings provided by themselves, and the school or college shall thereupon be vested solely in the

education authority and subject to all the conditions of a school provided by the education authority notwithstanding anything in any instrument of trust.

4.—There shall be an education authority separately elected in each municipal borough or county district, urban or rural. Any two or more education authorities may combine for joint action for any of the purposes of the Education Acts, and the Board of Education shall have power on the suggestion of the county education authority to direct such combination or to direct authorities to contribute proportionately to schools or institutions used in common.

Local  
Education  
Authorities.

5.—An education authority other than the education authority of an administrative county, shall consist of members directly elected for this purpose by the rate-payers of the area for which the authority is formed, provided that the local municipal council of the area for which the education authority is elected may also appoint members of the council to be members of the education authority to a number not exceeding one-fourth of the total.

Any education authority shall have the power of levying a rate for any of the purposes of the Education Acts.

6.—No person shall be disqualified by reason of sex or religious creed or residence for being appointed or elected on any education authority or on any body of

No Tests  
for Public  
Office.

managers or committee controlling the provision of education aided by public money.

**7.**—The local education authority shall provide whatever schools and institutions it deems to be necessary for the proper supply of education in its district ; and sections eight and nine of the Education Act of 1902 are hereby repealed.

**8.**—The Education Authority shall:—

(a) Make inquiries with respect to the sanitary condition of the school buildings (including boarding houses) of any school within their district ; and

Inspection  
of Non-  
aided  
Schools.

(b) Make inquiries with respect to the education given by any school within their district (except a school which, in the opinion of the Board of Education, is of a non-local character) ; and

(c) Take such measures as they think fit for giving information to the public with respect to the result of such inquiries.

**9.**—The managers of any existing school recognized by the Board of Education as suitable in situation and premises for permanent use in connexion with the supply of education other than elementary in the district may call on the local education authority before they take any steps to provide further school provision, to take over their school ; and the Board of Educa-

Protection  
of private  
interests.

tion shall fix to what extent the building and premises are suitable for permanent use, and should the local education authority and the managers not agree as to price, shall determine what price should be paid; and in fixing the price they shall have regard to the value of the premises to the local education authority, and shall not have regard to any profits of the schools.

10.—In all schools, colleges, or institutions aided or maintained by contributions from the local rate or money provided by Parliament, teachers shall be appointed without reference to religious creed or denomination. Tests for Teachers.

11.—Every rate-payer in a school district may at all reasonable times, without payment, inspect and take copies and extracts from all books and documents belonging to or under the control of the education authority of such district. Publicity. Any person who hinders a rate-payer from so inspecting or taking copies of or extracts from any book or document, or demands a fee for allowing him to do so, shall be liable on summary conviction to a penalty not exceeding five pounds for each offence. Provided that the education authority may refuse to disclose any particular document if they can satisfy a court of summary jurisdiction that the demand for it is unreasonable.

12.—The power to provide instruction in public elementary schools shall include the instruction of scholars in day schools up to the end of the

school year in which the scholar reaches the age of sixteen; and instruction in evening continuation schools of scholars of all ages in schools carried on in accordance with a code for such schools laid yearly before Parliament by the Board of Education; and shall also include the obligation of suitably training and preparing pupil teachers up to the date of their entering a training college or becoming assistant teachers; and shall include the power to aid by scholarships or bursaries the instruction of scholars beyond the age or standard of compulsory attendance.

#### COMMENTS BY THE EDITORS.

It is a characteristic feature of this Bill that it deals with the whole range of education, and not simply with elementary schools. This is a merit in the scheme so far as it calls attention to the fact that the application of any principle of resettlement to elementary education will probably involve a later, if not immediate, extension of the principle to secondary schools and training colleges. On the other hand it is clear that this Bill, if it became law, would extend the controversy as to religious education from elementary to secondary schools.

That this controversy would be an exceedingly bitter one is clear from the revolutionary character of the Bill. Religious education of any kind is not even mentioned. It is left entirely to the discretion



of the local education authority to give any or none, and if any to decide its character. It gives no right to parents to have religious instruction given in the schools if the rate-payers' representatives cannot agree on any form of instruction, and by a bare majority decide to have none. And, indeed, it might in some cases be better that they should so decide, for no security is given for its character and efficiency. As no school coming under this universal State system may have its teachers appointed with any reference to their religious beliefs, all non-provided schools and training colleges together with all secondary schools receiving any contributions from rates or taxes, whether Church, Roman Catholic, Jewish, etc., would cease to exist as denominational institutions. Nothing of a denominational kind would be left but "existing proprietary schools and others which do not obtain support from public funds," and these are all brought by clause 8 under the inspection of the local education authority, which would be free to publish the results of its inquiries into their educational work, on the ground that "as it is well known that the children and the nation suffer much from inefficient private and other schools, every educational institution should be brought under some inspection and supervision". Thus "democratic public control" is to deal with the individual parent and helpless minorities, much as the French Government is now carrying out the principles of the great Revolution in the sphere of

education. It is almost impossible to conceive that Englishmen would submit to a tyranny which is forcing some French parents who can afford it to send their children out of their country in order that they may be educated in accordance with their own ideals, and not those of a majority of the French democracy.

*Clause 1.*—Imposes upon the local education authority the compulsory provision of higher education within its area. The introductory memorandum to the Bill fails to point out that the Education Act of 1870 (by sections 6 and 8-13) imposed upon the Education Department the duty of determining in the first place with respect to every school district, the amount of public school accommodation required for such district. A school board, with the duty of supplying such deficiency, was required to be formed only in cases where there was an insufficient amount of public school accommodation, and in which such deficiency was not supplied within a certain time by other agencies. The Act of 1870 also gave the rate-payers and school managers in the district who might feel aggrieved by the first decision of the Education Department, the right of appeal to the Department against such first decision. In the present draft Bill no such initiative on the part of the central authority is proposed, and no right of appeal against the decision of the local education authority is granted to aggrieved persons in the district.

Again, it is much more difficult to decide in technical, secondary, and higher education than it is in elementary, what is sufficient and suitable provision for a given district.

*Clause 2.*—No representation on the management, apparently, is to be given to those who have provided the buildings, as the ground for representation is to be voluntary contributions for *maintenance*. The proportion of these to rates and grants would always be small except in a few richly endowed schools, and practically this clause would destroy all the present voluntary management. Fees are counted as belonging to the same category as rates and grants though they are surely not public money, and should be classed as contributions from the parents entitling *them* to a share in the management. Secondary schools are included in the operation of this clause. The use of the buildings in the hands of the trustees might be taken away even if some voluntary subscriptions to maintenance are given, and the terms of the trusts are ignored, for the management will be transferred to the local education authority or to a committee with a majority appointed by that authority.

*Clause 3, section 1.*—When the local education authority becomes responsible for the entire cost of the maintenance of a school, its buildings can be taken over by the local education authority (subject apparently to the provisions of clause 8 as

mentioned below) in spite of trusts, or bought if the ownership is private. No right is recognized in trustees to carry out the terms of their trust. (Section 2.) The local education authority can refuse to maintain any school in an existing building, and may provide a new one and remove the children to it. The provision that "the school or college shall thereupon be vested solely in the education authority" is very obscure. A *new* building on a *new* site would vest in the authority without any statutory provision. On the other hand, in spite of the drastic way in which the Bill treats private rights and trusts, it seems natural to suppose that the section is not intended to give the power of annexing, but merely the hardly less oppressive power of opening a rival school close by and compelling the scholars to migrate. But then there is the difficulty that the vesting provision would be unnecessary in such a case, and also that instruments of trust are mentioned which could only apply to the old schools.

*Clauses 4 and 5.*—The principle of election of the local education authorities *ad hoc* instead of the present system of statutory committees of councils is reverted to in these clauses, with a curious exception for administrative counties. There is a provision enabling local municipal councils to nominate from among themselves a number not exceeding one-fourth of the total of the education authority which would thus consist of three-fourths directly elected

for educational qualifications, and one-fourth elected for other work. The serious thing is the reversion not only to *ad hoc* authorities, but to the old tiny town school boards which were so little qualified to govern the schools. The power of combination would probably not be used by the smallest just because they were the narrowest and most jealous of their neighbours.

*Clause 9.*—Under this clause, entitled “Protection of private interests,” if the local education authority proposed to provide a school for education other than elementary, the managers of an existing school may ask the authority to take over their premises if suitable for permanent use, or, rather, may call upon them to do so. The Board of Education have to fix the price in case of disagreement, and apparently in the case of schools owned by individuals or associations no money is to be given for the goodwill of the school, but only the bare value of the premises to the authority. A school is usually built up by the energy and through the character of an individual, and this individualist contribution to national education is an asset not to be lightly thrown away.

## VII.

### THE SCHEME OF THE JOINT CHURCH COMMITTEES (HOUSES OF LAY- MEN AND OTHERS).

FOR THE SETTLEMENT OF THE EDUCATION  
QUESTION ON THE BASIS OF THE RIGHT  
OF THE PARENT AND THE EQUAL TREAT-  
MENT OF ALL DENOMINATIONS.

THE following scheme—drawn up with a view to its being hereafter made the foundation of a Bill—has been prepared by the joint efforts of a Committee of the House of Laymen of the Province of Canterbury (which for the most part of its proceedings was in consultation with a similar Committee from the Province of York), a specially representative sub-Committee of the National Society, and a Committee of representative Birmingham and Manchester Churchmen sitting in Birmingham.

The scheme is based on the principle that, *where education is compulsory, the religious difficulty can only be met by leaving the solution in the hands of*

*the parents. It is not proposed to destroy what is known as the dual system—that is to say, the concurrent existence of voluntary and council schools. But within that framework, whether the schools be voluntary or council, and whether they be attached to a particular denomination or not, the scheme provides that all parents of whatever persuasion shall be treated alike and shall be asked to state the form of religious instruction they require for their children, and that, unless the parents requiring any particular form are a very small number, it shall be the duty of the school authorities to make provision for such instruction accordingly, and of the denominational authorities to see that this instruction is of the proper standard and the teachers competent to give it.*

Though it is made incumbent upon the education authorities and managers to do their best to co-operate with the scheme by appointing suitable teachers, *in the council schools no teacher is to be compelled to give any form of religious education and no teacher is to suffer pecuniarily whether he does or no.* If for this reason or for any other there is no teacher available, recourse must be had to outside assistance. Lastly, in order to get rid of the intolerable bickering with the education authorities and the Board of Education as to the meaning of the Education Acts, an appeal is given to the High Court on all questions of law.

## THE SCHEME.

*School Register—Provision of Religious Teaching  
as desired by Parents—Syllabus.*

*Clause 1.*—(1) The parents or guardians of children attending any elementary school shall on first admission signify by entry in a school register provided for such purpose, alterable on reasonable notice, what kind of religious education, if any, they wish their children to receive, and it shall be the duty of the local education authority in the case of provided schools, and of the board of managers in the case of non-provided schools, to provide during school hours for the giving of religious instruction in accordance with the requirements of parents or guardians, provided always that such provision shall not be obligatory in the case of less than twelve children in any school department, provided also that there are not sufficient vacancies in any school giving the kind of religious instruction required within one mile in rural districts, or half a mile in urban districts, measured according to the nearest road from the children's residences.

(2) Where the number of children requiring a particular kind of religious instruction is less than twelve, the local education authority or the managers may nevertheless, if they think fit, provide such religious instruction, and if not must give adequate opportunity for such instruction, during the time set



apart for religious instruction, either within or without the school buildings.

(3) The religious instruction shall be given under a syllabus prepared by the representative organization concerned.

*Observance of Trust Deeds and Denominational Ties—Appointment of Teachers—Hours for Religious Teaching—Inspection—Attendance at Schoolhouse during Religious Teaching Hour compulsory.*

*Clause 2.*—(1) Nothing in this Act shall derogate from the obligation in non-provided schools of making provision for religious instruction according to the trust-deed (if any), nor prevent the managers of other non-provided schools from making provision for religious instruction according to the denomination to which the school is attached, and in either case teachers on the regular staff shall be appointed accordingly.

(2) Subject to the above provision, qualified teachers who are willing to give the kind of religious instruction required shall, so far as possible, be appointed on the staff both in provided and non-provided schools, but no such teacher shall be compelled to give the religious instruction.

In default of there being sufficient teachers on the staff who possess the qualification prescribed by the regulations made in that behalf by the representative organization concerned, this organization may

appoint a person or persons from outside to give such religious instruction.

(3) The religious instruction shall be given for a clear half-hour daily or an equivalent time in each week and shall be given at the opening of the school, unless the local education authority or the managers in order to enable the religious lesson to be given by the same teacher in various schools on the same day, or under special circumstances, fix any other time during school hours.

(4) During the time of religious instruction the school shall be open to inspection by the organization under whose syllabus such religious instruction is being given, subject to regulations to be approved by the Board of Education.

(5) The obligation of a parent or guardian to cause a child to attend school shall, notwithstanding any by-law, include an obligation to cause such child to attend at the schoolhouse during the portion of the school hours allotted to religious instruction, provided that a parent or guardian shall not be subject to any penalty for not causing his child to attend the schoolhouse during the time allotted to religious instruction if he shows to the satisfaction of the Court that he has caused his child during such time to attend some form of religious instruction elsewhere.

*Definition of term "Organization".*

*Clause 3.*—“Organization” means an organization for religious instruction approved by the Board of

Education for the area of any local education authority or for a specified area approved by the Board of Education and shall be representative either of any particular religious denomination or group of denominations, or for such time as no representative organization has been formed shall be appointed by the local education authority itself.

*Control of Religious Teaching by Organizations through Local Education Authority or Board of Managers.*

*Clause 4.*—An organization may, subject to regulations to be approved by the Board of Education, make provision for the inspection of religious instruction, and may make representations to the local education authority or the board of managers, if the religious instruction is in their opinion unsatisfactory. It shall be the duty of the local education authority or the board of managers to consider such representations, and to take such action thereon as may be necessary to comply with the provisions of this Act in the giving of religious education.

*Treatment of Teachers to be Impartial—Contributions by Local Education Authority towards Religious Teaching from outside to be Non-preferential.*

*Clause 5.*—(1) All teachers on the staff in public elementary schools in the area of the same local education authority shall have the same right to

compensation and shall be paid salaries according to the same scale, and shall be paid neither more nor less, and have neither more nor less claim to promotion whether they give or abstain from giving any form of religious instruction.

(2) Either in provided or non-provided schools the local education authority may contribute towards the expenses of teachers of religious instruction not on the regular staff.

Provided that in all such dealings with teachers not on the regular staff, no preferential treatment shall be given to any one kind of religious teaching as against another.

*Powers of Denominational Schools to reserve Accommodation.*

*Clause 6.*—No denominational school shall be compelled to receive children whose parents require them to receive religious instruction other than that of the denomination to which the school is attached where it can be shown that the number of children of school age whose parents desire them to attend the school within the next school year, and who belong to the denomination of the school in question, will occupy all the available accommodation.

*Powers of Trustees and Owners to enlarge and improve Non-Provided Schools.*

*Clause 7.*—Whenever it can be shown that increased accommodation is required in any non-

provided school for children of parents belonging to the denomination to which the school is attached, the trustees or owners of such school shall, subject to conformity with the building regulations of the Board of Education, be allowed to increase and improve the accommodation of such school.

*Recognition of Voluntary Schools and establishment of Provided Schools on cause being shown by Parents.*

*Clause 8.*—(1) If the parents of not less than fifty children in any rural district or 100 children in an urban district desire a school of a specified denominational type and can show that there is no such school with available accommodation within two miles of their places of residence if in a rural district, or one mile in an urban district, measured by the nearest road, a school of this type, erected by private contributions, shall receive recognition as a public elementary school.

(2) In cases where the parents of a similar number of children desire a provided school, on the ground that no such school is available within two miles of their places of residence if in a rural district, or one mile in an urban district, measured by the nearest road, they may appeal to the Board of Education, and the Board shall, after holding a public inquiry, determine whether having regard to the provisions of section 9 of the Education Act, 1902, such school is necessary, and in the event of

the Board so deciding the provisions of section 16 of the same Act shall apply.

*Reversion of condemned Denominational Schools to their Denominations.*

*Clause 9.*—Where a denominational school is condemned by the Board of Education as no longer to be used as an elementary school, such school shall revert to the denomination for denominational purposes.

*Administration of Trusts of disused Denominational Schools for purposes of the Denomination concerned.*

*Clause 10.*—Where any school held under trust and connected with a religious denomination ceases to be used for public elementary school purposes, it shall be the duty of the trustees to continue to administer the trust as nearly as may be for the purposes prescribed in the trust-deed so far as these are any longer required, and in any case for some religious, social, or educational purpose of the denomination to which the school is attached.

*Rights of Organizations and Parents to appeal:*

(1) *from Local Education Authority or Board of Managers to Board of Education:*

(2) *from Board of Education to High Court.*

*Clause 11.*—Any organization which has made a representation to the local education authority or to the board of managers under clause 4 hereof, and

any number (not less than five) of parents or guardians of children attending any particular school, shall have a right of appeal to the Board of Education on the ground that the local education authority or the managers have not complied with the provisions of this Act in the giving of religious instruction. On such appeal the Board of Education shall give such directions as are in their opinion necessary to ensure compliance with the provisions of this Act by the local education authority or the managers.

An appeal shall lie from the Board of Education to the High Court of Justice in any matter involving a question of law.

#### COMMENTS BY THE EDITORS.

This scheme contemplates the maintenance of the dual system, i.e. non-provided schools alongside of the provided. Like *Sine Nomine* it recognizes the unsuitability of the local authority for dealing with religious questions, and therefore endeavours to remove religious teaching from its purview, but the teaching is to be given, as far as possible, by the regular teachers in both provided and non-provided schools.

The scheme derives its significance from the fact that it is the joint work of several important bodies of Churchmen, such as the National Society, and representatives of Church educationists in the Midlands and in the North of England, working in connexion with committees appointed by both the

Canterbury and York Houses of Laymen. On 6 July, 1910, it was submitted to the Canterbury House in the form of a report, when the following resolution was passed :—

“That the Report of the Committee on Education be received and adopted, and that it be an instruction to the committee to prepare a draft bill on the general lines thereof, after due consideration of existing schemes, founded on the recognition of religious equality and parents’ rights. But this House desires to place it upon record that no settlement of the education question will be satisfactory which does not secure full opportunity for the training of teachers qualified to meet the religious requirements of the parents, in accordance with the recommendations of this report.”

The scheme, therefore, merits attention as having behind it a considerable mass of Churchmen, and in particular, lay Churchmen, and as representing something of a compromise between two main schools of Church opinion—those who would abandon the system of Church schools for full opportunities for Church teaching in provided schools, and those who would maintain the existing Church schools at all costs as being the only satisfactory guarantee for such teaching. A scheme produced under these conditions cannot be compared to advantage with those which are the work of individuals, and to its genesis is to be attributed a certain obscurity and inconsequence in some of its



provisions. Nevertheless, in spite of its having passed through the hands of several distinct committees, it is a fairly consistent whole and affords a valuable indication of the direction in which the minds of some of the Church's foremost educationists are moving.

*Clause 1.*—The scheme does not contain a schedule showing the form of the proposed school register in which parents would be required to signify the kind of religious education, if any, which they desire their children to receive. Would religious instruction under the Cowper-Temple clause be one of the normal types offered to the choice of the parents? (See clause 3.)

*Section 2.*—The proposed appointment of teachers according to their qualification and willingness to give some form of religious instruction (denominational or otherwise) desired by the parents would no doubt be attacked as involving "tests for teachers". We have already discussed this in our note on the Hope-Eden scheme. (See page 58.)

*Clause 2, section 1.*—In many cases it is difficult to say that a non-provided school is attached to any particular denomination.

*Section 2.*—The local education authority is put under a statutory obligation by section 2 to appoint, as far as possible, both in provided and non-provided schools qualified teachers willing to give the kind of religious instruction required. As the scheme stands, the authority, in selecting a candidate for a

vacant post would naturally ascertain his willingness to give the kind of religious instruction for which there would not otherwise be provision on the staff, although after appointment the teacher could not be compelled to give such religious instruction. If both the authority and the teacher fail, and there is pointedly no statutory obligation on either, then the representative organization concerned is to appoint a teacher from outside, so that in some way the parental demand may be satisfied. This system of outside teachers would be disliked by all concerned with the management and discipline of the school, and the promoters of the scheme, no doubt, trust to this dislike to prevent the introduction of the alternative.

*Section 5.*—Is this intended to cover religious services in Church? If so the word “observance” should be added. Attendance at worship is doubtless *education*, but would a court hold it to be *instruction*?

*Clause 3.*—This clause has been altered for the better since the scheme was presented to the Canterbury House of Laymen, and now avoids the danger of the scheme being wrecked by it from the promoters’ point of view. The original provision that an organization might be appointed by the local education authority itself was designed to provide for the case of parents demanding un-denominational instruction for the superintendence of which no other organization might exist. But

this might easily have led to the establishment of Cowper-Templeism as the official religious teaching in provided schools, given by the regular teachers under the authority of, and according to a syllabus prepared by the Local Education Authority.

*Clause 4 (and 10).*—If there is any serious possibility of administrative friction, clauses 4 and 10 should be more detailed and should show how the representations of the organization are to be carried out.

*Clauses 7 and 8.*—The scheme as it stands does not repeal section 9 of the Education Act of 1902, but proceedings under the scheme would not be governed by that section. It is noteworthy that Churchmen and other denominationalists would have the cost of building thrown upon them when parents desired accommodation of this type, whereas the undenominationalists would get the building provided for them out of the rates. This inequality of treatment we understand to be deliberately accepted by the authors of the scheme as their contribution to a final settlement.

*Clause 10.*—The scheme contains in this clause that appeal past the Board of Education to the High Court of Justice which seems desirable in order to protect the administration of the Education Acts as far as possible from political influences.

## VIII.

# THE EDUCATIONAL SETTLEMENT COMMITTEE'S SCHEME.<sup>1</sup>

## OUTLINE OF A PLAN OF RE-SETTLEMENT IN ENGLISH ELEMENTARY EDUCATION.

### INTRODUCTORY NOTE.

THE aim of the following proposals is to secure :—

1.—A national system of educational organization under public control.

2.—Religious teaching as an integral part of school life (subject always to the right of withdrawal under the conscience clause), and adequate opportunities for such teaching in all schools and training colleges under public control.

3.—Administrative arrangements favourable to sincerity and reality in such religious teaching with full respect for various forms of conscientious belief among parents and teachers alike.

4.—The removal of the grievances which exist in

<sup>1</sup> A Bill, based upon this scheme and approved by the Educational Settlement Committee, was introduced by Mr. T. E. Harvey, M.P. (one of the Honorary Secretaries of the Committee) and others into the House of Commons on 12 July, 1911, and has been printed as a Parliamentary paper.

areas in which there can be no effective choice of schools.

5.—The recognition (where the parents so desire) of denominational schools or other alternative schools in districts where an effective choice of schools can be given.

6.—Avoidance, so far as is compatible with the above objects, of religious division within the school.

SECTION I.—REMOVAL OF THE GRIEVANCE IN AREAS WHERE THERE IS, AND CAN BE, NO EFFECTIVE CHOICE OF SCHOOLS, BY MEANS OF THE EXTENDED APPLICATION OF THE PRINCIPLE OF PUBLIC CONTROL IN ELEMENTARY EDUCATION.

I.

(i) Access to an elementary school under public management to be brought by the local education authority within the reach of every child.

(ii) In any area in which the interests of efficiency in secular education preclude the recognition of more than one elementary school, that school to be one provided by the local education authority. In such areas, after the expiration of two years from a day to be appointed by the Act [with a further extension if desired by the local authority and approved by the Board of Education], no grants from public money to be paid to any elementary school not provided by the local education authority. In order to meet the needs of the transitional period which would immediately follow the

passing of the Act, grants from public funds (central and local) to be continued to all existing non-provided schools for such period not exceeding two years after the passing of the Act as may be required for the completion of the necessary negotiations between the local education authority and the trustees or owners of the schools. On the application of the local education authority this period may be prolonged with the consent of the Board of Education for such further time as may be necessary for the provision of new school buildings.

(iii) The local education authority to decide in the case of each area whether the interests of efficiency in secular education allow the recognition of more than one school in an elementary school area.

(iv) The local education authority to be free, after considering the distribution of the population of the district, to group together two or more adjacent parishes, or parts of parishes, as forming one educational area for the purposes of elementary education.

(v) Any decision of the local education authority, under (iii) or (iv) above, to be subject to an appeal either to the Board of Education or to a special temporary commission appointed by Parliament.

## 2.

(i) The terms as to the transfer (on lease or otherwise) to the local education authority of the buildings and premises of non-provided schools now existing

or hereafter to be erected, to be left to negotiation and settlement between the trustees or owners of the schools and the local education authority concerned. But every such arrangement to be subject to the approval of the Board of Education, and to be so framed as to enable the local education authority to provide, should it so desire, religious instruction in accordance with section 14 (2) of the Elementary Education Act, 1870.

(ii) In any area in which the interests of efficiency in secular education preclude the recognition of alternative schools, the local education authority to be required, in the case of any school which may by transfer under the Act become a council school, to provide accommodation in the schoolhouse for the giving of religious instruction of a type in accordance with the provisions of the trust-deed of the school so transferred (or, in the absence of a trust-deed, in accordance with the previous practice of the school) for any child whose parent may desire such special religious instruction. Accommodation to be provided during the first clear half-hour of the morning meeting (or at such other time during school hours as may be found convenient) on any or all school days in each week, so far as may be required for the purpose of the regular provision of such special religious instruction. The expense, if any, of such special religious instruction (other than any expenses incidental to the use of the school building) to be defrayed from voluntary sources.

In the judgment of some of the members of the committee, a similar privilege might fairly be granted in the case of other denominational schools which have been transferred by lease to the local education authority since the year 1895, when the growing expense of education began to throw upon many school managers a strain which compelled them, often with extreme reluctance, to transfer the buildings for use by the local authority.

SECTION II.—PROPOSALS FOR THE IMPROVEMENT  
OF THE RELIGIOUS INSTRUCTION IN COUNCIL  
SCHOOLS.

1. *General.*

(i) It shall be the duty of every local education authority either itself to provide religious instruction in all council schools for all children whose parents desire it, or in default of such provision, to afford full opportunity for any voluntary organization (approved for the purpose by the Board of Education) to give religious instruction within the recognized hours of school attendance, as explained in subsections (ii) and (iii) below.

(ii) The school-attendance by-laws of every local education authority shall be so framed as to allow a parent to withdraw his child from part or from the whole of the religious instruction given in any public elementary school in order to receive some other form of religious or moral instruction outside the school buildings during the time assigned to religious



instruction in the school time-table. The conditions regulating attendance at any such alternative form of religious instruction to be subject to the approval of the local education authority.

(iii) In all council schools (whether the local education authority itself provides religious instruction or not), the period set apart for religious instruction in the school time-table to extend to at least a clear half-hour on every school day (and preferably at each morning meeting) for children who have reached the class corresponding to Standard III, or for an equivalent period in each week. For younger children, arrangements suitable to their age to be made.

(iv) A child withdrawn by its parent under the conscience clause from the religious instruction, if any, provided by the local education authority, and not receiving in lieu thereof some other form of religious or moral instruction under arrangements approved by the local education authority, to be required to be in attendance at school during the time set apart for religious instruction in order to receive instruction in other subjects.

(v) H.M. Inspectors to be permitted to ascertain by a study of the curriculum (if requested to do so by the local education authority in the case of a council school, or by the managers in the case of an alternative school) to what extent the course of religious teaching includes moral instruction in the subjects prescribed by the Code of Regulations for the time being in force.

This recommendation is designed to facilitate a closer connexion between the moral instruction (now required by Article 3 of the Code "to form an important part of the curriculum of every elementary school") and the course of religious instruction in the school. The course of moral instruction comes under the supervision of H.M. Inspector. The latter, however, does not inspect the religious teaching and might (under Section 7 (3) of the Elementary Education Act, 1870) decline to take any cognizance of it. It is desirable that the local education authority and the managers of alternative schools should have the right of showing to H.M. Inspector's satisfaction that the requirements of the Code in regard to moral instruction are met wholly or in part in the course of religious instruction.

(vi) For the purpose of assisting the local education authority in the provision and superintendence of this religious instruction, a Religious Instruction Committee (including persons of experience in the religious education of the young) to be appointed by the local education authority under a scheme drawn up by the authority and approved by the Board of Education—the persons chosen to serve on such a committee not necessarily to be members of the local education authority.

NOTE.—Such a committee would be able to render valuable service to the local education authority in connexion with the religious instruction given in the schools. It would naturally be charged with the duty of framing or revising the syllabus of the religious teaching which the local education authority might provide in schools under its control. The committee might also assist the local education authority by making arrangements for the voluntary training of teachers for the work of giving religious instruction, and might help the teachers

by the loan of books and by the organization of special courses of study.

2. *In cases in which the Local Authority itself provides Religious Instruction.*

Religious instruction, where provided by the local education authority, to consist (subject to the right of parents to withdraw their children from any part or from the whole of it) of instruction in the Bible and in the principles of the Christian religion and to include instruction in personal and civic duty. But in the case of council schools largely attended by Jewish children, the arrangements already made under the existing law to be continued.

3. *In cases in which the Local Authority may decide not itself to provide Religious Instruction.*

In case the local education authority decides, in respect of any elementary school or district under its control, that it will not itself provide this religious instruction, it shall permit voluntary arrangements to be made for the giving and superintendence of religious instruction by any organizations (being representative of one or more denominations or of an association of teachers) which are approved by the Board of Education for the area of the local education authority concerned. But, in permitting such voluntary arrangements, the local education authority shall show no unfair preference to any religious denomination.

The religious instruction thus arranged shall be given at such times as may be found convenient within the hours of compulsory school attendance, and (as far as is practicable) the school buildings shall be made available for this purpose. But the expenses, if any, incurred in connexion with it, shall be defrayed from voluntary sources.

4. *Opportunities for Voluntary Study of Religious Subjects in all Training Colleges.*

All local education authorities and governing bodies of training colleges to provide opportunities for those preparing themselves for the teaching profession to qualify themselves (if they so desire) by study and training for the work of giving religious instruction in schools.

It is not suggested that the local education authority or governing body should necessarily itself provide instruction in these subjects. Approved organizations might be allowed to do this, if the local education authority so preferred.

SECTION III.—DIVERSITY OF TYPE AMONG ELEMENTARY SCHOOLS IN DISTRICTS WHERE CHOICE OF SCHOOLS CAN BE ALLOWED WITHOUT DETRIMENT TO THE EFFICIENCY OF INSTRUCTION IN SECULAR SUBJECTS.

1.—Where choice of elementary schools is possible without detriment to the efficiency of the instruction given in secular subjects, it is desirable on educational grounds to permit variety of type in accordance with parental preference, provided that all the

schools are required to comply with an equal standard of efficiency and to submit themselves to Government inspection.

In any area, therefore, where alternative elementary schools can thus be sanctioned for children of similar age, the local education authority should be required, in meeting the educational needs of the district, to have regard to the wishes of the parents of the children of school age in the district, as to the type of school which they would prefer their children to attend.

But the recognition and maintenance of any alternative school or schools in a district should be conditional upon there being accommodation in a council school conveniently accessible to every child in that district whose parents desire him to attend such a school.

2.—The following procedure is suggested as a convenient means of dealing in each of these areas with three questions likely to arise at different stages after the passing of the Act, viz. :—

- (a) Which of the denominational schools existing in the area at the time of the passing of the Act should continue to be recognized as grant-earning schools with a view to meeting, with the greatest educational efficiency, the preferences of the different groups of parents concerned?
- (b) How should a desire for the recognition of additional alternative (i.e. "non-provided")

schools in the area be brought under the consideration of the local education authority, and on what conditions should the local education authority be required to grant this recognition?

- (c) What steps should the local education authority be required to take before withdrawing recognition from any alternative (i.e. "non-provided") school, the continuance of which, though sanctioned after the passing of the Act, might subsequently be deemed unnecessary owing to the movements of the population or for other causes?

(a) *Continued Recognition of Existing Denominational Schools.*—Immediately after the passing of the Act, the local education authority to frame a scheme showing which of the existing denominational schools in its area it proposes to continue to recognize as grant-earning alternative schools. In this scheme the local education authority to arrange that sufficient accommodation is secured in alternative schools within reach of those children whose parents desire it. In case it has to decide which school or schools out of several schools belonging to one denomination shall cease to receive grants from public money, the local education authority should be required to negotiate not with the managers of the individual schools but with an association approved by the Board of Education as representing the group of schools concerned, and to make provision for the

protection of displaced teachers from financial loss. Its scheme for the recognition of different types of elementary school accommodation within the area should be published by the local education authority and submitted by it for approval to the Board of Education. The latter should be bound to consider any representations made in regard to it by residents in the district, and should, after such local inquiry as it might deem necessary, determine any questions in dispute.

(b) *Recognition of New Alternative Schools.*—

Any memorial for the recognition of a new alternative school, signed by the parents of not less than sixty children of school age in the school district concerned, should be taken into consideration by the local education authority. If, on inquiry, it should be found by the local education authority that the parents of not less than 150 children of school age, belonging to one denomination in that school district, desire their children to attend a public elementary school of a type other than that provided by the local education authority, and if suitable buildings and premises are provided (or undertaken to be provided) for the purpose out of funds derived from voluntary sources, the local education authority to be required (subject to the approval of the Board of Education) to recognize and maintain such a school, so long as its continued recognition and maintenance are in accordance with the wishes of the parents of a number of children sufficient to enable the school in question

to be carried on with due efficiency and without imposing upon the local rates a cost exceeding the average cost of maintaining a school of similar size in the same district. In case, in such circumstances, the local education authority should refuse to grant recognition to a new alternative school, an appeal to lie to the Board of Education.

(c) *Withdrawal of Recognition from an Alternative (i.e. Non-provided School).*—If at any time, owing to a decline in the number of children attending the school, or for other reasons affecting its educational efficiency, the local education authority should deem it desirable to withdraw recognition and maintenance from an alternative school in its district, it should be required to give to the managers of the school twelve months' notice of its intention, and to frame and publish a scheme showing how it proposes to meet the educational means of those children in that part of its district whose parents prefer for them an alternative school of the given type, and how to protect the displaced teachers from financial loss. Parents of children of school age in the district immediately concerned should, if dissatisfied with the proposals made by the local education authority, have a right of appeal to the Board of Education. The latter, after such local inquiry as it may consider necessary, to have the power to determine the question in dispute.

3.—The teachers in all alternative schools shall be paid salaries according to the same scale as



that in force for the council schools in the same area.

4.—Any alternative school thus maintained by a local education authority to be deemed to be a public elementary school for all purposes of the Elementary Education Acts, and its scholars and teachers to enjoy all the rights and opportunities (e.g. access to scholarship competitions, admission to special classes, etc.) which are given to scholars and teachers in the council schools in the same area.

5.—Apart from damage done by fair wear and tear in the use of the rooms and furniture for the purposes of an elementary school, the schoolhouse and premises of any alternative school to be provided and kept in structural repair by funds derived from voluntary sources.

6.—On the body of managers of every alternative (i.e. non-provided) school, the foundation managers should be in a majority.

7.—In the case of alternative schools it is necessary to secure that the teachers are in harmony with the distinctive character of the school. Either therefore (1) the appointment of the teachers should (as at present) lie with the managers, the local authority retaining its existing right of veto on educational grounds, with the further provision that any appointment made by the managers should only be confirmed by the local education authority after due consideration of the educational needs of the district, and not merely of the exigencies of the

particular school, or (2) the actual appointment of the teacher should be made by the local education authority, with the proviso that the local authority should consult the managers before making the appointment and should subsequently obtain their assent to a proposed appointment before the latter is confirmed.

#### SECTION IV.—RELIGIOUS FREEDOM FOR TEACHERS.

1.—In all schools provided by the local education authority (which, it will be remembered, will form the vast majority of the schools throughout the country) no teacher employed or seeking employment in the school to be compelled as a condition of his employment to subscribe to any religious creed, or to belong or not to belong to any specified religious denomination, or to attend or abstain from attending any Sunday school or place of religious worship, or (except in the case of a teacher employed to give religious instruction only) to give any religious instruction.

NOTE.—This resolution is designed to secure that throughout the whole system of schools provided by the local education authorities the whole career of teaching both as regards first appointment and subsequent promotions shall be effectively opened to all persons otherwise qualified, without consideration of their belonging or not belonging to any specified religious denomination, or signifying their assent to any religious creed. The committee believe that such freedom to the teacher in council schools from religious subscriptions and tests will conduce to the best interests of religious teaching in the schools,

and most effectively promote reality and sincerity in the religious instruction. But the committee do not intend thereby to derogate from the right and duty of the local education authority to make inquiries in such manner as they think best in order to assure themselves of the character of those whom they appoint as teachers in their schools.

2.—In council schools (including transferred denominational schools), head teachers (other than those already holding that office) should not be free to give in the school religious instruction other than that provided by the local education authority.

In view of the special administrative responsibilities attached to the head teacher's position, this proviso is necessary, especially in the case of transferred denominational schools in the villages, in order to safeguard the neutrality of the school (while at the same time promoting the unity of its religious life) at a time of administrative transition.

3.—Assistant teachers in council schools (including transferred denominational schools) should be free to offer themselves for any part of the religious instruction which may be arranged for children attending the school, but it should be within the discretion of the local education authority to make other arrangements, if thought desirable on account of the risk of provoking religious controversy in any particular school or district.

4.—In alternative schools the managers (among whom the foundation managers would in all cases be in a majority) should be allowed to assure themselves, in the case of any candidate for appointment to the staff, that he or she is in sympathy with the

principles upon which the work of the school in question is carried on.

[For the appointment of teachers in non-provided schools, see section 3 (7), above. For appeals in case of dismissal, see section 6, below].

5.—All teachers, whether engaged in council schools or in alternative schools, to be paid by the local education authority neither more nor less whether they do or do not give religious instruction.

[To this a minor exception would be made in the special (though doubtless rare) case of a teacher being appointed by the local education authority to give religious instruction only.]

6.—On educational grounds it is desirable that there should be variety of type among training colleges; some being residential, others non-residential; some denominational, others non-denominational.

It is desirable that the Board of Education should take into consideration the advisability of permitting, under reasonable conditions, but only with the consent of the authorities of the college concerned, the establishment of non-denominational hostels in connexion with some denominational colleges, and, vice versa, of denominational hostels in connexion with some non-denominational colleges.

#### SECTION V.—APPEALS TO THE HIGH COURT.

In all questions of law there should be an appeal from the Board of Education to the High Court of Justice.

SECTION VI.—APPEALS IN CASE OF DISMISSAL.

It is desirable that a Court of Appeal should be established at the Board of Education to investigate and determine any cases of dispute in regard to the alleged unjustifiable dismissal of a teacher in a public elementary school. Such a Court of Appeal might conveniently consist of a permanent legal member with two assessors (to be appointed from time to time with special regard to the nature of the case), one assessor possessing experience as a teacher and one possessing experience in local educational administration.

SECTION VII.—THE NEED FOR EARLY INQUIRY AND REPORT AS TO THE PRESENT ACCESSIBILITY OF COUNCIL SCHOOL ACCOMMODATION, ESPECIALLY IN RURAL DISTRICTS.

In preparation for an extension of public control in elementary education in all areas, urban and rural, in which at present children have not the opportunity of attending an elementary school provided by the local education, it is desirable that each local education authority should now be requested by the Board of Education to submit a scheme, including a map of the districts concerned, showing where it would be necessary to have council schools in order to bring an elementary school under public management within the reach of every child. These

schemes should be published as soon as possible as a Parliamentary paper.

COMMENTS BY TWO OF THE EDITORS.<sup>1</sup>

The Educational Settlement Committee was hastily formed at the end of 1908 primarily in support of Mr. Runciman's Bill. That Bill, it will be remembered, was dropped, as, after the vote of the Representative Church Council, it became evident that, far from being accepted as a compromise, it would meet with the most determined opposition from the supporters of denominational education. After the disappearance of the Bill the committee was continued, it was strengthened by the addition of other members drawn from a wide educational circle representing different forms of educational experience, and it undertook to consider, at leisure, proposals for a settlement of the religious difficulty. The result is the scheme before us, which was published in July, 1910. A scheme with so strong a body of educational experts behind it merits the most careful examination and consideration.

That the scheme should have met with a chorus of disapproval from opposite quarters could not have been wholly disappointing to its promoters, for their obvious reply would be that opposite criticisms

<sup>1</sup> In this case two only of the editors are responsible for the comments which follow. Professor Sadler's close connexion with the preparation of this scheme made this course necessary, as he wished to leave his colleagues freedom in criticizing proposals to which he himself adheres.

but increase the strength of a middle position. And there can be no doubt that in England anything which can be described as a compromise starts with much public feeling in its favour. We are racially inclined to leave abstract principles on one side and to conduct our public affairs by a deliberate system of balance and check between opposing sides and contending parties.

To quote some of the criticisms: Dr. Clifford wrote in his article, "Towards Educational Righteousness," in the "Nineteenth Century," October, 1910, that this "scheme which replaces the civic ideal of education by the denominational, continues and aggravates ecclesiastical tests for teachers, forces the Protestant to pay for Romanism, and gives much mischievous dominance to parents in State education, must in its total effect be indescribably hurtful at once to education and religion".

On the other hand, the "Guardian," in a leading article, 3 June, 1910, while commenting with approval on some of the proposals of the scheme, said: "We are constrained to say frankly that the Church of England cannot accept the proffered solution. In any compromise there must be sacrifices, and the Church is, we are persuaded, ready to make real sacrifices if it can help the nation by doing so. But we are called upon to surrender every school in a single school area, with no compensation whatever with the exception of an annual rent. Undenominational instruction is to be given in

those schools at the public expense ; but if we desire to give our own religious teaching to our own children in these schools, we are to pay for it. . . . In one very important respect the plan is less favourable than Mr. Runciman's Bill, which conceded the right of entry to the council schools. All that this plan gives is permission to take our children out of the council schools into some other place during school hours, and there to give them that definite religious instruction which we claim the right to impart under less onerous and inconvenient conditions. This instruction could be given within the (council) school only when the local education authority did not itself provide religious teaching by syllabus. If the right of entry was a good offer eighteen months ago it ought to be a good offer now. . . . We ask for that admission as of right, and every year as it passes makes its acquisition of greater importance to us."

A Bill drafted under auspices of the Northern Counties Educational League will have prepared the public for their attitude towards the Education Settlement Committee's Scheme. They, like Dr. Clifford, represent those who are opposed to any recognition of denominational schools or the inclusion of denominational teaching in public schools ; "religious liberty," in their view, means either secular education or religious (? humanitarian) teaching of a rigidly undenominational type. They submit the scheme to the following detailed criticism :—



“The Executive Committee of the Northern Counties Education League desires to express its warm appreciation of the efforts of the Educational Settlement Committee to find a means of securing educational peace. The Executive of the League is in cordial agreement with the Settlement Committee both in this desire and in the recognition of certain principles as being essential to its realization. Among these principles, frankly recognized by the Settlement Committee, and heartily approved by this Executive, are the following, viz. :—

- “ I. To secure a national system of educational organization under public control.
- “ II. To secure ‘that an elementary school under public management should be accessible to every child’.
- “ III. To remove ‘the grievances which exist in areas in which there can be no effective choice of schools’.
- “ IV. ‘To safeguard the religious freedom of the teacher.’
- “ V. To secure that the cost of special religious instruction be defrayed from voluntary sources.

“ I. A NATIONAL SYSTEM UNDER PUBLIC CONTROL.

“ Instead of ‘a national system under public control,’ the dual system is maintained and private control conceded in many thousands of publicly supported schools. The plan provided that ‘on

the body of managers of every alternative (i.e. non-provided) school the foundation managers should be in a majority'.

"This means not 'public' but sectarian 'control'. Further, the thoroughness of this sectarian control is safeguarded by the concession that the appointment of teachers in these alternative schools 'should (as at present) lie with the managers,' or should be subject to 'their assent'. With the foundation managers in a majority and the appointment of the teachers in their hands or subject to their assent, 'public control,' in these schools, cannot exist.

#### "II. SCHOOLS UNDER PUBLIC MANAGEMENT TO BE ACCESSIBLE TO 'EVERY CHILD'.

"In the working out of the details of the plan, this general principle is conditioned and narrowed down in a manner which, in many cases, would make it ineffective. The qualifying words are 'whose parents desire him to attend such a school'. The distinction is vital. Instead of making it a statutory obligation on the education authority to provide the school, it leaves the parent to demand it and to face the consequent local pressure and prejudice. This executive holds that if the State enforces attendance at school it is bound to provide that type of school at which alone, according to the plan of the Settlement Committee, attendance can be enforced.

"It must further be noted that while there are

elaborate provisions for securing a denominational school wherever the parents of 150 children can be got to ask for it, there seems to be no plan, such as even Mr. Balfour's Act of 1902 provides for an impartial inquiry to ascertain whether in any locality a council school or a denominational school is most needed.<sup>1</sup> This probably would lead to a multiplication of small denominational schools to the exclusion of council schools.

### “ III. SINGLE SCHOOL AREAS.

“ On examination of the plan it does not appear that it proposes to convert all denominational schools in existing single school areas, into council schools under public control. On the contrary, the education authority may ‘group together two or more adjacent parishes or parts of parishes,’ with the result that the grouped parishes might become a plural school area. In such a contingency there is no obligation on the education authority to provide a single council school, except upon the appeal of a parent, who would have to bear the odium of inflicting on the local area one-half or possibly three-fourths of the cost of erecting the school. This, apart from the possible inconvenience which might result from a re-arrangement of areas, would probably render nugatory the concession to the admitted grievances of the rural areas.

<sup>1</sup> This criticism is due to a misunderstanding. The provisions of the Education Act, 1902, are in this matter left untouched by the scheme.

“In the areas that escape this proposed reconstruction and remain single school areas, there would be a right of entry in all transferred schools, but limited to one denomination. The education authority is required ‘to provide accommodation in the schoolhouse for the giving of religious instruction of a type in accordance with the provisions of the trust-deed . . . or previous practice of the school . . . on any or all school days in each week’. This denominational instruction might continue to be given by the present teachers, and there might be no alternative unsectarian religious instruction. In the latter case the right of entry would become general, although it is very doubtful whether in many cases it could be exercised. Thus, the daily life of the school would go on much as at present, except that the community would pay a rent for the transferred schools although the community, and not the trustees, were bearing the entire expense of the educational trust, and in many cases grants of public money were made towards the cost of their erection.

“(This executive notes with approval that the plan abandons all the elaborate proposals hitherto made for the compulsory transfer of school property, and frankly leaves the matter to voluntary arrangement. At the same time the Government should undertake responsibility for the major part of the interest on building loans. No measure would do more to ease the situation in a practical manner

and also remove the difficulties in necessitous areas and meet the now clamorous demands from local education authorities for additional money grants.)

#### “IV. RELIGIOUS FREEDOM OF THE TEACHERS.

“This principle is abandoned in the case of applicants for posts in the thousands of alternative schools which would continue to exist. Teachers would be appointed by or subject to the assent of denominational managers, who would be allowed ‘to assure themselves’ . . . that the applicants were ‘in sympathy with the principles upon which the work of the school in question is carried on’. This means religious tests for public servants whose salaries would be wholly provided from public funds. In council schools, head teachers (already in office) and assistant teachers in perpetuity would ‘be free to offer themselves for any part of the religious instruction which may be arranged,’ including, in single school areas, ‘denominational instruction,’ and this, notwithstanding the risks which the committee themselves set forth on pages 38-9 as attendant on any such option. Under these conditions religious freedom would not exist in the alternative schools, and it would be gravely imperilled in the council schools.

“ (The plan lowers the status of the local education authority by the creation of a new non-elective committee. It abolishes the present right of the

public (acting through its elected representatives) to give or withhold religious instruction in its own schools. It makes religious instruction compulsory in every school and, in practice, it would abolish the Cowper-Temple clause, introduce religious division, and sectarianize the council schools.)

#### "V. VOLUNTARY PAYMENT FOR DENOMINATIONAL INSTRUCTION.

"Denominational instruction would be given by the teachers in the alternative schools, and might be so given by teachers in council schools. The full salaries of all these teachers would be paid from public funds. Moreover, the schools in which this denominational instruction is given would be wholly maintained, including maintenance of the buildings (section 7 (1) (d) of the Act of 1902, 'Wear and Tear' clause), from the rates and taxes of the country.

"An examination of the details of the plan disappoints the hopes founded on its declared aims. The plan must be judged by what it says, and not by what may have been in the minds of its authors."

Finally, Mr. D. C. Lathbury, in reply to the Rev. J. H. Shakespeare, a member of the Educational Settlement Committee, writes as follows in the "Contemporary Review" (February, 1911):—

"Mr. Shakespeare defines the object of the Temple-Cowper clause in terms to which I can take no exception. 'It pleases the layman,' he says,

'because it would keep out of our schools the divisive elements of our faith.' Mr. Shakespeare, and probably others of the Nonconformist clergy, share this desire, on the ground that 'the religion which unites, and not that which divided, the children will alone do them any good'. If Mr. Shakespeare is right in this view he is quite justified in excluding from our elementary schools the elements of which he is speaking. For that they have the effect he attributes to them is beyond denial. They have divided Christians almost from the first. They seem likely to go on dividing them for a period to which we cannot as yet assign an end. What is it that has given them this sad pre-eminence? The fact that they are also the elements which are best worth fighting for. It is they that have sent uncounted millions to the stake and the gibbet. It is they that have been the source of all that is most heroic in Christian history and most admirable in Christian practice.

"And what is it that Mr. Shakespeare would substitute for these divisive elements? It is 'the simple truths, the sweet and noble examples, the lofty ideals, and, above all, the records of the life and ministry of our Lord'. How then, does he propose to deal with the life and ministry of our Lord without bringing in a divisive element? Of all the matters which now separate Christians from one another, I know none comparable with that involved in the question : Who was Jesus Christ? Beyond

all others, therefore, this must be kept out of the schools. Yet if it be kept out how are the life and ministry of our Lord to be brought home to children? If Jesus Christ be not God, the very best interpretation I can put upon the narratives of the four Gospels is that they record for us the dreams of a noble but deluded enthusiast. That, I say, is the best interpretation I can put upon them, and there are some of His recorded sayings which I should find it difficult to reconcile even with this theory. It may be that Mr. Shakespeare does not include the Godhead of Jesus Christ among the elements which divide Christians, and that this dogma is included in his conception of Cowper-Temple teaching. In that case I gladly acknowledge that Mr. Shakespeare's Cowper-Templeism is a better thing than I have supposed it to be. But I have seen no evidence—I do not believe that there exists any evidence—that this theory of un-denominationalism is held by anyone except himself, or that he could publicly proclaim it without making Cowper-Templeism as unpopular as it is now popular."

Having set forth the rival criticisms of the scheme, we may be allowed to offer a few considerations of our own.

It is a matter of sincere congratulation that men and women of very diverse views should have agreed both to the maintenance of religious education in our public elementary schools, and to a greater re-



spect for the wishes of parents than is at present afforded by the meagre right of withdrawal from religious teaching under the provisions of the conscience clause. Thus, in districts where there is a choice of schools the arrangements for the recognition of denominational schools according to the parental demand and their maintenance do not appear to us to be open to reasonable criticism. The proposals with regard to training colleges are wholly admirable, and show not only a real determination on the part of the promoters of the scheme to maintain religious instruction as an integral part of education, but that they are fully alive to the danger of the existing state of things. We have already noticed in our introduction the gravity of the present position by which thousands of teachers are passing into our public elementary schools utterly unfitted to handle the Bible or to give religious instruction of any kind to the children. And we have also commented upon the pressing necessity of adequate training of the teachers if the Bible is to be the textbook of religious instruction when old hard-and-fast conceptions have become fluid under the pressure of modern Biblical criticism. For our young teachers, unless they have had the advantage of careful training by competent religious guides, are now quite at a loss how to present Scripture histories, especially those of the Old Testament, which are the mainstay of most syllabuses, to the mind of the child. It is, indeed, just the undogmatic part of

the Bible which has become so extraordinarily difficult to handle, that "simple teaching" which has been transformed into what the ordinary reader finds so perplexing a tangle of history and allegory.

We proceed to indicate certain lines of criticism which the promoters of the scheme will have to face.

Why is undenominational instruction maintained in the position of unapproachable supremacy? All rate-payers are to be forced to contribute to it, and to it alone, whether they conscientiously approve of it or not. For this and this alone is to be provided by the local authority, and that the provided or council schools should be the normal type is of the essence of the scheme. The reply of the promoters of the scheme would be that the injustice must be inflicted to avoid greater evils, e.g. the secularization of public education. But a lasting settlement cannot be founded upon a patent injustice. Opportunities for denominational instruction in council schools in towns and other choice-of-schools areas is not allowed (though there is a concession of some value that a child withdrawn under the conscience clause can be wholly removed from the school and instructed elsewhere during the times set apart for religious instruction), and this can be defended on the ground that by admitting denominational schools in these areas the parental demand is thereby sufficiently satisfied. But on what ground can the distinction

be defended which in one-kind-of-school areas allows voluntary denominational instruction in transferred council schools, but not in non-transferred? And why should only one type be admitted, that of the trust-deed? This is a concession to trustees and property, not to parents and consciences. Lastly, the undenominational religious instruction is to be in "the principles of the Christian religion," and much stress is laid upon this "united Christian teaching". But it is this very union of the most diverse elements which makes its Christian character so difficult of attainment. For the only religious element in the country specifically excluded is the Jewish, and excluded only so far as that the Biblical teaching is not to be of a nature acceptable to Jewish parents. But there are many Unitarians and others who could not unite with orthodox Christians. As we have pointed out elsewhere, it is the union of diverse elements amongst the teachers and managers which is the real difficulty in the way of making undenominational teaching Christian; syllabuses and text-books are of comparative unimportance. The teachers, as there are to be no "religious tests," the managers, being the local education authority elected for all purposes save their attitude towards religion, and even the Religious Instruction Committee, specially set up under this scheme (for it is appointed by the authority and cannot rise above its source), must always be hopelessly divided upon the very ele-

ments of religion. Will not this united teaching tend to be diverse in every class and every school, and can anybody, least of all the parents, ever be sure that the teaching in any particular case will be true to the principles of the Christian religion? All this seems self-evident and beyond controversy.

It will be gathered from our notes that we desire the attention of the promoters of this scheme and of its opponents on the denominational side to be concentrated on this one point, i.e. the privileged and official position of undenominational teaching and the security under it for the principles of the Christian religion, to which we have no reason to doubt its authors attach the highest importance. The scheme, whilst conceding to the Roman Catholics all they now demand, would compel very great concessions on the part of Churchmen, in fact, nothing short of a revolution in the system of Church schools throughout the country. We do not associate ourselves with those who are utterly opposed to such a concession, indeed we think it inevitable in the interests of a permanent educational settlement. But we would ask with some confidence whether such a generous concession—the practical abandonment of the entire educational system of the Church of England, begun before the State occupied itself with education, and built up at so great an expenditure of time and money—should not be met by the fullest provision for Church teaching in all the State schools on the parental demand.

It is very interesting to compare this scheme of the Educational Settlement Committee with that which goes by the name of *Sine Nomine*. Both may be described as "steps towards educational peace," and this comparison will show how far educational reformers, who are evidently fully competent to give due weight to political and administrative considerations, are able to march together towards the desired end.

## IX.

### “*SINE NOMINE*”

#### INTRODUCTION.

THIS scheme takes religious instruction entirely out of the hands of the local education authorities and school managers and entrusts it to statutory committees. “Cowper-Templeism” is no longer admitted, and large facilities for denominational teaching are given in all council schools. In each non-provided school the religious teaching must be of the kind prescribed by or a kind consistent with the trust-deed of the school, and in such a school no facilities are given for any other kind of religious instruction.

#### EXPOSITORY NOTES.

1.—The several kinds of religious instruction are classified under five defined categories, viz. Church of England, Roman Catholic, Free Church, Jewish, and Unassociated.

2.—Parents will be invited to specify the kinds (if any) of religious instruction which they severally desire their children to receive, and each expressed

desire will be entered under its appropriate category in a register provided for the purpose. Such register would be a permanent part of the equipment of each council school, but no such register would be needed in any non-provided school after a preliminary period of preparation. (See note 9.)

3.—(a) In the area of each local education authority a statutory committee will be appointed for each category of religious instruction therein desired.

(b) Each statutory committee will be appointed by or under the direction of a central representative body—e.g. The National Society.

4.—It will be the duty of each statutory committee to provide, maintain, and inspect the religious instruction for which it is constituted in every provided and non-provided school (within its area) wherein that kind of instruction is desired.

5.—It will no longer be permissible for any local education authority to provide religious instruction of any kind, but each authority will be empowered to permit or direct each or any meeting or any meetings of any school provided by it to be opened and closed or opened or closed with some common act of praise and worship or of praise or worship.

6.—(a) Each statutory committee is given the right to use (free of charge) the school premises, furniture, equipment (so far as it is suitable), and (for certain specified purposes) the teaching staff of every school (whether

provided or non-provided) wherein it has to provide religious instruction. This right is limited to the whole of one morning in each and every week during which the school is open for secular instruction.

- (b) All costs of wear and tear, lighting, warming, cleaning, and repairing incidental to the use of the school premises, school furniture, and school equipment for the purpose of giving or inspecting religious instruction will be defrayed by the local education authority. No other part of the cost of that instruction will be borne by that authority.

7.—All the scholars and teachers of a public elementary school in which religious instruction is provided will be required to attend school during the whole of the time appropriated to that instruction. During that time the children who do not receive religious instruction will receive secular instruction. No teacher will be *required*, but every teacher will be *permitted*, to give religious instruction.

Discipline during religious instruction is to be maintained by members of the school staff.

8.—Each existing non-provided school will continue to be maintained by its local education authority, but only

- (1) If there be a provided school reasonably accessible by the children for whom the religious instruction given in the school is not desired.



- (2) If the Board of Education has been satisfied that the parents of at least 60 per cent of the children whose names were (on 31 December, 1911, or some later date within the preparatory period) entered in the attendance register of the school have desired their children to receive religious instruction of the kind prescribed by the trust-deed of the school or of a kind consistent with the trust-deed,<sup>1</sup>
- (3) If and for as long as the Local Statutory Committee for the desired kind of religious instruction consents to the maintenance of the school as a non-provided school.
- (4) So long as certain other conditions — the principal of which are those contained in section 7 (1) of the Education Act, 1902— are complied with.

9.—The religious instruction given in a non-provided school maintained by a local education authority must be consistent with the trust-deed of the school, shall be of the kind which the Board of Education has been satisfied that the parents of at least 60 per cent of the children whose names are entered in the attendance register of the school have desired their children to receive and shall be

<sup>1</sup> It will be noticed that this is a *preliminary* condition—not a *continuing* one. The “denominational percentage” will be ascertained once for all, and a subsequent decrease of that percentage will not, by itself, disqualify a school for maintenance by the local education authority.

under the control of the Local Statutory Committee for the desired kind of religious instruction.

There is no provision of "facilities" in non-provided schools. In no non-provided school will more than one kind of religious instruction be given. This limitation makes a creed register unnecessary in those schools, except for certain preliminary purposes during a defined preparatory period.

10.—Each statutory committee is empowered to provide religious instruction elsewhere than in the schoolhouse of a public elementary school.

11.—The trustees or owners of a non-provided school are empowered to lease their school premises to the local education authority for any period of not less than five years.

Each lease granted in virtue of this provision—

- (1) Must exempt the lessors from all liability for repairs or improvements and for wear and tear of the school furniture and equipment.
- (2) Must be in consideration of an annual rent based—regard being had to the amount of the building grant (if any)—upon the value of the school site and the cost, state of repair and suitability of the school buildings.
- (3) Must reserve and secure to the trustees or owners (as the case may be) the exclusive right to use the school premises on every Saturday afternoon and evening, on not less than one other evening in each week, during the whole of every Sunday, and of

not fewer than ten other days in each year.

12.—The trustees of school premises leased to a local education authority will, during the times reserved to them by the lease, have full power to use the premises or permit the premises to be used (with or without charge) for any religious, moral, philanthropic, or educational purposes.

13.—The rent of a leased school and any sums received by the trustees of such a school for the "out of hours" use thereof are made available for defraying the expenses of and incidental to the "out of hours" use of the premises. The balance remaining after defraying those expenses is to be paid by the trustees to the statutory committee or some one of the statutory committees for the administrative area in which the school is situated, and is made applicable for the general purposes of that committee.

The statutory committees will also receive a generously defined part of the income arising from educational endowments.

14.—Provision is made—based upon section 8 of the Education Act, 1902—for the recognition of new non-provided schools.

#### -THE ELEMENTARY EDUCATION (RELIGIOUS INSTRUCTION) BILL, 1911.

1.—(1) After 31 March, 1912, each local education authority shall maintain and keep efficient as a public elementary school each existing

non-provided school within its area which is necessary, and shall have the control of all expenditure required for that purpose, other than expenditure for which under this or any other Act provision is to be made otherwise than by the local education authority, but only

- (a) If (after proper effect has been given to section 14 of this Act) there be a provided school reasonably accessible by the children for whom the religious instruction given in the school is not desired.
- (b) If the Board of Education has been satisfied that the parents of at least 60 per cent of the children whose names were (on 31 December, 1911, or on some later date specified by the Board of Education and not later than the 31 March, 1912) entered in the attendance register of the school have desired their children to receive religious instruction of the kind prescribed by the trust-deed of the school or of a kind consistent with the trust-deed.
- (c) If and for as long as the Local Statutory Committee for the desired kind of religious instruction consents to the maintenance of the school as a non-provided school.
- (d) So long as the conditions and provisions contained in section 7 (1) of the Education Act, 1902, and in section 14 of this Act are complied with.

(2) If any question arises under this section between the local education authority and the managers of a school not provided by the authority, that question shall be determined by the Board of Education.

(3) After 31 March, 1912, the religious instruction given in a non-provided school shall be consistent with the trust-deed of the school, shall be provided, maintained, and inspected by a statutory committee in accordance with the provisions of this Act, and (if the school be an existing non-provided school) shall be of the kind which the Board of Education has been satisfied that the parents of at least 60 per cent of the children whose names were (on 31 December, 1911, or some later date specified by the Board of Education and not later than 31 March, 1912) entered in the attendance register of the school have desired their children to receive. Provided that nothing in this Act shall affect any provision in a trust-deed for reference to the bishop or superior ecclesiastical or other denominational authority as far as such provision gives to the bishop or authority the power of deciding whether the character of the religious instruction is, or is not, in accordance with the provisions of the trust-deed.

2.—(1) At any time after the passing of this Act the owners or trustees of any elementary school not provided by a local education authority may grant to the local education authority, and the local education authority may accept, a lease of the school premises (for any period of not less than five years)

for the purposes of public elementary education, but no such lease shall be valid and effectual unless it be in accordance with the provisions of this section.

(2) Every lease under this section shall be granted without any liability to the lessors for repairs or improvements or for wear and tear of the school furniture or equipment and in consideration of an annual rent to be determined as in this section provided, and shall reserve and secure to the trustees or owners (as the case may be) the exclusive right to use the school premises on every Saturday afternoon and evening, on not less than one other evening in each week, during the whole of every Sunday and of not fewer than ten other days in each year.

(3) No lease of any school premises held upon charitable trusts shall be granted under this section without the written consent of a majority of the managers of the school or (if the school be a public elementary school) without the written consent of a majority of the foundation managers.

(4) The rent to be paid in consideration of the lease of a school under this section shall be determined by arrangement between the local education authority and the owners or trustees (as the case may be) of the school, but in each case regard shall be had to the value of the school site and the cost, state of repair, and suitability of the school buildings, and also to the amount of the building grant (if any) made in respect of the school.

If in any case the owners or trustees of a school and the local education authority fail to agree, they may jointly or severally appoint arbitrators. In each case the arbitrators so appointed shall have full power to determine the rent to be paid for the school premises and (before proceeding to arbitration) shall appoint an umpire with similar powers to whom (if the arbitrators fail to agree) the case shall be referred. In each case the decision of the arbitrators or umpire (as the case may be) shall be final. Neither the Board of Education nor any person employed by that Board may act as arbitrator or umpire. In each case the costs of the arbitration shall be borne by either one or both of the parties to the arbitration, according to the direction of the arbitrators or (if the case has been referred to the umpire) of the umpire.

3.—After 31 March, 1912, no religious instruction of any kind shall be provided by any local education authority in any public elementary school provided by it, but each local education authority may permit or direct each or any meeting or any meetings of any such school to be opened and closed or opened or closed with some common act of praise and worship or of praise or worship, and each local education authority shall permit each and every such school to be used in accordance with this Act, for the purpose of giving any one or more of the several kinds of religious instruction comprised within the following categories: namely, Church

of England, Roman Catholic, Free Church, Jewish, Unassociated.

The Church of England category shall comprise religious and moral instruction in accordance with the doctrines and usages of the Church of England and instruction in the history of the Christian religion in accordance with the principles of the Church of England.

The Roman Catholic category shall comprise religious and moral instruction in accordance with the doctrines and usages of the Roman Catholic Church and instruction in the history of the Christian religion in accordance with the principles of that Church.

The Free Church category shall comprise Free Church instruction and denominational instruction (including instruction in the history of the Christian religion) according to the doctrines, usages, and principles of any of the denominations from time to time represented by the National Council of Evangelical Free Churches.

The Jewish category shall comprise religious and moral instruction in accordance with the doctrines and usages of the Jewish religion and instruction in the history of the Jewish religion in accordance with the principles of that religion.

The Unassociated category shall comprise every kind of denominational or undenominational instruction not comprised within the categories defined in the preceding paragraphs of this section.



4.—(1) After the passing of this Act each public elementary school, other than a non-provided school which becomes a public elementary school after 31 March, 1912, shall be provided (by the local education authority for the area in which the school is situated) with a suitable register wherein shall be shown (under the categories specified in section 3 of this Act) the kinds, if any, of religious instruction which the parents of the children whose names are entered in the attendance register of the school severally desire their respective children to receive.

(2) Every parent of a child whose name is entered in the attendance register of a public elementary school on 1 June, 1911, shall, immediately after that date, and every parent of a child who, after that date but before 1 April, 1912, becomes a scholar in a public elementary school or who, after 31 March, 1912, becomes a scholar in a provided school shall, on the date on which his child becomes a scholar, be desired (by or by direction of the local education authority for the area in which his child's school is situated) to state what kind (if any) of religious instruction he desires his child to receive, and his desire (when expressed) shall be registered forthwith (by the head teacher of his child's school) under the appropriate category in the register prescribed by this section.

(3) Any parent of a child in attendance at a public elementary school, if he have not previously expressed a desire that his child receive some

specified kind of religious instruction may, at any time before 1 April, 1912, or (if his child's school be a provided school) may at any time, express such a desire to the head teacher of his child's school, and his desire (when expressed) shall be registered forthwith (by the head teacher) under the appropriate category in the register prescribed by this section.

(4) After 31 March, 1912, each child in attendance at a public elementary school provided by a local education authority shall receive the religious instruction (if any) desired for him under this section, but no such child shall receive any kind of religious instruction under this subsection except the kind desired for him, under this section, by his parent. As far as practicable, each local education authority shall arrange that each child for whom some specified kind of religious instruction is desired shall attend at the school wherein that kind of instruction can be most conveniently given. To facilitate such arrangements a local education authority may provide means for the free conveyance of children to and from or to or from school.

(5) The register prescribed by this section may be examined from time to time at any reasonable hour by any person or committee or body of persons or association of persons interested therein, or by any member of any such committee, body or association, or by the secretary of any such committee, body or association.

(6) No desire shall be registered under this section in any existing non-provided school after 31 March, 1912.

(7) Each local education authority shall from time to time take whatever steps are necessary for properly carrying out the directions of this section.

5.—(1) After 30 September, 1911, there shall always be in each administrative area a separate statutory committee for each of the categories of religious instruction represented by :—

(a) The separate kinds of religious instruction from time to time desired to be given (under section 4 of this Act) in the provided schools within the area, and

(b) The kind or kinds of religious instruction from time to time given (or lawfully intended to be given) in the non-provided schools within the area.

(2) Each statutory committee for instruction comprised in the Church of England category shall be constituted, and the members thereof shall from time to time be appointed by or under the direction of the National Society for Promoting the Education of the Poor in the Principles of the Established Church throughout England and Wales.

Each statutory committee for instruction comprised in the Roman Catholic category shall be constituted, and the members thereof shall from time to time be appointed by or under the direction of the Catholic Poor School Committee.

Each statutory committee for instruction comprised in the Free Church category shall be constituted, and the members thereof shall from time to time be appointed by or under the direction of the National Council of the Evangelical Churches.

Each statutory committee for instruction comprised in the Jewish category shall be constituted, and the members thereof shall from time to time be appointed by or under the direction of the Jewish Religious Education Board.

Each statutory committee for instruction comprised in the Unassociated category shall be constituted, and the members thereof shall from time to time be appointed by or under the direction of the British and Foreign School Society.

**6.**—Each statutory committee shall be a body corporate for the purpose of receiving and holding monies, stock, shares and securities, upon trust or otherwise, for the purposes or for any of the purposes for which it is constituted and appointed, and for any purpose or purposes connected with those purposes or any of them, and shall have full power so to receive and hold monies, stock, shares and securities.

**7.**—(1) Each statutory committee shall provide, maintain, and inspect religious instruction of the kind or kinds comprised within the category for which it is constituted in each and every provided school within its area wherein religious instruction of that kind or any of those kinds is desired under

section 4 of this Act, and in every non-provided school within its area wherein religious instruction of that kind or any of those kinds is given or is desired (by the managers of the school) to be given under the provisions of a trust-deed, and, for the proper discharge of these duties, each statutory committee shall have the right to use (free of charge) the school premises, the furniture, the equipment (so far as the same is suitable) and (for the purposes mentioned in section 8 (3) of this Act) the teaching staff of every such school, whether it be a provided or a non-provided school, for the whole of one morning in each and every week during which that school is open for secular instruction.

(2) (a) In each provided school wherein religious instruction is desired not more than one morning in any week shall be set apart for that instruction, and (subject to the provisions contained in the next paragraph of this Act) the morning for that instruction shall in each case be chosen and set apart by agreement between the local education authority for the area within which the school is situated and the statutory committee or (if the religious instruction desired in the school be not comprised within any one category) the several statutory committees concerned with that instruction.

(b) Whenever a statutory committee so desires, the local education authority for the area for

which that committee is constituted shall, by agreement with that statutory committee, or, if there be more than one statutory committee constituted for its area, by agreement with all the committees so constituted, divide those of the public elementary schools within its area in which religious instruction is desired under section 4 of this Act or is given (or is desired to be given) under the provisions of a trust-deed into groups convenient for the giving of that instruction, and by a similar agreement shall assign one morning in each week to each group thus formed, and the morning thus assigned to a group shall be the morning set apart for religious instruction in all the schools comprised in that group. By a similar agreement any arrangement made under this clause may at any time be altered. Any arrangement made under this clause shall be re-considered whenever any of the parties thereto so desire.

(c) Each local education authority shall from time to time take whatever steps are necessary for giving effect to the provisions of this subsection.

(3) Any statutory committee may, at any time after 31 March, 1912, provide religious instruction elsewhere than in the schoolhouse of a public elementary school, but—

- (a) Only for children for whom, under this Act, it has to provide religious instruction ;
- (b) Only, in each case, of the kind which, by this Act, it is empowered to provide for the children for whom that external provision is intended, and
- (c) Only during the time set apart for religious instruction in the school or schools to which the children for whom that external provision is intended belong.

Each of the children for whom such external provision is made (whether attending at a provided or a non-provided school) shall, after attending in the schoolhouse of his school, attend wherever the instruction intended for him is provided.

(4) The provisions of any trust-deed notwithstanding each kind of religious instruction provided under this Act by a statutory committee shall consist of religious and moral instruction and of instruction in history connected therewith. Church of England instruction shall consist of religious and moral instruction in accordance with the Prayer Book and of instruction in the history of the Christian religion in accordance with the principles of the Prayer Book. Free Church instruction shall consist of religious and moral instruction in accordance with the Free Church Catechism and of instruction in the history of the Christian religion in accordance with the principles of the Evangelical Free Churches. Each other kind of denominational instruction shall

always be in accordance with the doctrines, usages, and principles of its denomination. Except in the case of Jewish instruction and non-denominational instruction comprised within the Unassociated category, the instruction in history, given under this subsection, shall always be instruction in the history of the Christian religion.

8.—(1) Each local education authority and the managers of each non-provided school shall afford full facilities in accordance with this Act for the giving and inspecting of religious instruction under this Act and for the storing and use of any books, maps, and other apparatus or school equipment provided by a statutory committee in and for the discharge of its duties under this Act. On each morning appropriated to religious instruction under this Act in a public elementary school the local education authority or (if the school be a non-provided school) the managers shall provide the school-premises suitably lighted, warmed, and cleaned according to circumstances. All costs of wear and tear, lighting, warming, cleaning and repairing incidental to the use of the school premises, the school furniture, and the school-equipment for the purpose of giving or inspecting religious instruction under this Act shall be defrayed by the local education authority. Except as provided in this Act, no part of the cost of that instruction shall be borne by the local education authority.

(2) Each inspector and teacher appointed by a



statutory committee shall have, but not exclusively, all the rights and powers of using the premises, furniture and equipment of any and every public elementary school which, in virtue of this section, are possessed by the statutory committee by which he is appointed. For the purposes of this subsection each member of a statutory committee and the secretary of a statutory committee shall be deemed to be an inspector appointed by that committee.

(3) The society, committee, council, or board by which or under the direction of which any statutory committee is constituted and appointed shall have full power to inspect the religious instruction in any school in which such instruction is provided by that committee, and each inspector appointed by that society, committee, council, or board shall possess (but not exclusively), in every administrative area, the rights and powers possessed (in virtue of this section) by an inspector appointed by a statutory committee, and shall have a prior right to exercise those rights and powers or any of them.

9.—(1) All the scholars and teachers of a public elementary school wherein religious instruction is provided shall be required to attend school during the whole of the time appropriated to that instruction. During that time the children who do not receive religious instruction shall receive secular instruction. All by-laws which determine the time during which a child is to attend school shall be construed

as requiring attendance in accordance with this section. Attendance under this Act at religious instruction provided by a statutory committee elsewhere than in the school-house of a public elementary school shall be deemed to be attendance at school.

(2) No teacher in a public elementary school may be required to give religious instruction in a public elementary school or to attend at religious instruction given elsewhere than in the school-house of his school, but any such teacher who desires to give religious instruction in the school in which he serves or desires (for the purpose of maintaining discipline or taking part in instruction) to attend with children of his school at religious instruction provided for those children (under section 8 (3) of this Act) elsewhere than in the school-house of their school shall (if the statutory committee concerned approve) be permitted to do so without detriment to his position or prospects.

(3) In each public elementary school wherein religious instruction is provided, the children for whom that instruction is provided shall, on each morning on which that instruction is to be given, be assembled (conveniently for receiving that instruction) by or by direction of the head teacher, and discipline among the children receiving religious instruction shall be maintained by members of the school staff. The managers of the school shall make all necessary arrangements for giving effect to this subsection.

(4) Every existing and future agreement between a teacher and a local education authority shall be construed as including an obligation upon the teacher to comply with this section and to perform whatever duties he may from time to time be required to perform thereunder.

10.—(1) In every case in which (at any time after 31 March, 1912) the income arising from a charitable endowment is wholly or in part applicable, or may be wholly or in part applied, or during the preceding twelve months has been wholly or in part properly applied, in or towards the provision, maintenance, or encouragement of religious instruction in any school which is a public elementary school, that income or that part of the income which is so applicable or may be so applied or has been properly so applied shall (from and after the date on which the benefited school becomes a public elementary school complying with the provisions of this Act and for so long as it continues to be such a school) be paid to the statutory committee which, in the administrative area in which the benefited school is situate, is empowered to provide the kind of religious instruction intended to be provided, maintained, or encouraged by the endowment.

(2) In every case in which (at any time after 31 March, 1912) income arising from a charitable endowment (other than school premises) is applicable or may be applied or is properly applied for

the benefit of a teacher or teachers in a school which is a public elementary school, or in or towards the payment of the salary of a teacher or the salaries of teachers in such a school, or in or towards the provision, maintenance, or encouragement (in any such school) of education which includes or may include religious instruction, the income which is so applicable or may be or is so applied shall be deemed to be applicable in part in or towards the provision, maintenance, and encouragement of religious instruction. The Board of Education shall determine the part that is so applicable and (after having paid due regard to the nature of the trusts and the past application of the income) shall decide to what kind of religious instruction the part so determined is applicable, and the part so determined shall be dealt with in accordance with that decision of the Board and the first subsection of this section.

(3) All monies received under this section by a statutory committee shall be devoted by that committee to the general purposes of that committee, but the application of all monies received under this section by a statutory committee for Free Church instruction, or a statutory committee for unassociated instruction, shall be determined as far as possible by the denominational character (if any) of the charitable trusts wherewith those monies are impressed.

11.—In any case in which school premises held upon charitable trusts have been leased under this

Act to the local education authority, the trustees of the premises shall, during the times reserved to them by the lease, have full power to use the premises or to permit the premises to be used (with or without charge) for any religious, moral, philanthropic, or educational purposes.

**12.**—All money received (under section 11 of this Act or under a lease granted under this Act) by the trustees of the school premises of a public elementary school shall be deemed to be income arising from an endowment held upon non-educational charitable trusts, and shall be applied, in the first place, in defraying the expenses of and incidental to the use of the school premises by or by permission of the trustees. The balance remaining after defraying these expenses shall be paid by the trustees to the statutory committee or to some one of the statutory committees for the administrative area in which the school is situate, and shall be applied by that committee towards the general purposes of the committee.

**13.**—After the passing of this Act each appointment of a teacher to a non-provided school shall, subject to the provisions of the Education Act, 1902, be made by the managers of the school from a list of suitable and properly qualified candidates furnished by the local education authority for the area within which the school is situated, and it shall be the duty of that authority to furnish the managers with such a list.

**14.**—If any parents who reside in a district served by a non-provided school desire that their children shall not receive the religious instruction given in that school, the local education authority for the area within which the school is situated shall, if it be practicable and desirable, provide means for the free conveyance of those children to and from or to or from some other provided or non-provided school or schools.

**15.**—One of the conditions required to be fulfilled by an elementary school in order to obtain a Parliamentary grant shall be that it complies with the provisions of this Act. After 31 March, 1912, no Parliamentary grant shall be paid in respect of any elementary school not provided by a local education authority unless it be maintained under this Act by such an authority.

**16.**—(1) Whenever, after 31 March, 1912, a local education authority proposes to provide a new public elementary school, it shall give public notice of its intention to do so, and the managers of any existing school, or any statutory committee or statutory committees for the area of that local authority, or any ten rate-payers in the district for which it is proposed to provide the school, may (within three months after the notice is given) appeal to the Board of Education on the ground that the proposed school is not required, or that a school not provided by the local education authority would better meet the wants of the district than the school

proposed to be provided, and any school built in contravention of the decision of the Board of Education on such appeal shall be treated as unnecessary.

(2) Whenever, after 31 March, 1912, any persons, other than a local education authority, propose to provide a new public elementary school for the purpose of giving (*inter alia*) some specified kind of religious instruction they shall give public notice of their intention to do so, and the local education authority for the area wherever it is proposed to provide the school, or the Local Statutory Committee (if there be such a committee) for the category comprising the kind of religious instruction which it is proposed to give, or any ten rate-payers in the district for which it is proposed to provide the school, may (within three months after the notice is given) appeal to the Board of Education on the ground that the proposed school is not desired, or that (after proper effect has been given to section 14 of this Act) there would not be any provided school reasonably accessible by the children for whom the religious instruction proposed to be given in the proposed school would not be desired, or that a school provided by the local education authority would better meet the wants of the district than the school proposed to be provided, and any school built in contravention of the decision of the Board of Education on such appeal shall be treated as unnecessary.

Each school provided under a decision of the Board of Education given under this subsection shall be maintained and kept efficient as a public elementary school by the local education authority, and that authority shall have the control of all expenditure required for that purpose other than expenditure for which under this or any other Act provision is to be made otherwise than by the local education authority, but in each case the duty and control of the local education authority shall continue only so long as the conditions and provisions contained in section 7 (1) of the Education Act, 1902, and section 15 of this Act are complied with, and the Local Statutory Committee for the kind of religious instruction provided by the school consents to the maintenance of the school as a non-provided public elementary school.

(3) If, in the opinion of the Board of Education, any enlargement of a public elementary school is such as to amount to the provision of a new school, that enlargement shall be so treated for the purposes of this section.

**17.**—In this Act—

The term “existing non-provided school” means an elementary school which, having been (prior to 1 April, 1912) a public elementary school not provided by a local education authority, exists as such a school on that date ;



The term “provided school” means a public elementary school provided by a local education authority ;

The term “non-provided school” means a public elementary school not provided by a local education authority ;

The term “parent” has the meaning assigned to it in section 3 of the Elementary Education Act, 1870 ;

The term “school premises” includes the teacher’s dwelling-house, and the playground (if any) and the offices and all premises belonging to a school ;

The term “administrative area” means an area for which there is, under the Education Act, 1902, a separate local education authority other than a minor local authority ;

The term “trust-deed” includes any instrument bequeathing the trusts or management of a school.

**18.**—(1) Section 23 of the Elementary Education Act, 1870, is repealed.

(2) The enactments mentioned in the schedule to this Act are repealed from 31 March, 1912, to the extent specified in the third column of that schedule.

**19.**—This Act may be cited as the Elementary Education (Religious Instruction) Act, 1910.

## SCHEDULE.

## ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
33 & 34 Vict., c. 75. 2 Edw. VII., c. 42.	The Elementary Education Act, 1870. The Education Act, 1902.	In section 14, the regulation numbered (2). In section 7, the whole of subsections (3), (4), and (6). The whole of section 8.

## COMMENTS BY THE EDITORS.

This scheme is deserving of the close attention of educational reformers. It faces the present situation with boldness and attempts the task of satisfying the almost irreconcilable demands of those parties now engaged in the educational struggle. Thus it appeases the strict denominationalists by placing all forms of religious instruction on a basis of absolute equality, whilst it concedes to the opposite party a provided school publicly controlled within the reach of all children whose parents desire it. Its tendency, indeed, is to supplant the non-provided or denominational schools by provided schools and to unify the system of national education, whilst allowing exceptions where there is a strong parental demand for an "atmosphere school". Again, it appeals to that large and powerful section of the public who take but little interest in the religious question, by divorcing the religious instruction from the ordinary curriculum, and removing it from the

jurisdiction of all popularly elected bodies, so that it can no longer be a subject of contention at elections.<sup>1</sup> Whilst objection to this divorce can be raised on the score of principle—and we think this is an objection which should have serious weight—there is no doubt that it is an expedient likely to attract considerable political support, and the authors of the scheme would probably reply that we have arrived at so involved an educational tangle that something must be sacrificed by the supporters of religious education in order to save the country from pure secularism. In connexion with this we may note the novel provision that all religious instruction shall be confined to one morning a week, so that on four days out of five no religious question could possibly arise. Finally, parental choice is fully recognized, the provision and superintendence of religious instruction is entrusted to those bodies who may be supposed to be the most competent to give it, and the regular teachers of the school are left absolutely free and removed, as to their appointments, from anything that can be deemed a "religious test". We now proceed to certain detailed criticisms.

*Clause 1.* —This safeguards the Roman Catholic schools and concedes that to which the Roman religion attaches vital importance. (See p. 253.)

<sup>1</sup> It avoids that divided control between local authorities and denominational authorities which, in many schemes, threatens not only the peaceful working of the educational system but the efficiency of the denominational teaching itself.

*Clause 3.*—This, of course, is one of the vital clauses of the Bill. The “Unassociated” category is apparently intended to cover something more “undenominational” than the instruction the Free Church Council as representative of the great Nonconformist bodies might be likely to impart. It is wide enough to include both such Nonconformist bodies as do not adhere to the Free Church Council, as e.g. Quakers and Unitarians, and also all those, whether attached to some Church or denomination or not, who desire a strictly undenominational and “non-credal” instruction.

Although the authors of this scheme have taken great pains to cover the whole sectional ground, e.g. by even providing two kinds of undenominationalism, we think that there are large minorities who might be provided for without destroying that simplicity which is one of this Bill’s chief merits. In Western Australia, for instance, where facilities are afforded in the schools, the Salvation Army, who do not join with the combined Free Churches, are given a category of their own.

The limits of the religious instruction to be given under this are very wide. This would enable the morning’s work to be varied so as to keep the children’s attention.

*Clause 5.*—It will be objected that there is no connexion between these statutory committees and local life. No doubt there is an advantage in having a *direct* constitutional connexion between each public

elementary school and the local community or group whose needs it subserves. But the removal of the control of the religious teaching from individuals in the locality, often ignorant and incapable, to large central bodies competent to draw up proper syllabuses and to arrange for the necessary inspection would be a more than counterbalancing advantage. Of course the central body could delegate its authority as it pleased, but the work of the local education authority would be simplified by having to deal with only a single statutory committee for each category.

It is difficult to find a suitable body to take charge of the "Unassociated" instruction. It may be questioned by some critics whether the British and Foreign School Society, assuming it to be prepared to undertake this responsibility, is the right one for the purpose, but its traditional principles are consistent with such a new development of its work.

*Clause 7, section 2.*—One morning a week represents approximately the total time now set apart each day for religious instruction. The somewhat elaborate provisions of this section are apparently intended to simplify the task of the statutory committee, e.g. by enabling them to employ a staff of qualified teachers to go round to different schools in a given area on different days.

*Clause 9, section 3.*—Would this section, read in connexion with clause 7, section 3, make it obligatory for teachers, if so required by the statutory committee, to attend religious instruction when

given to the children in some building other than the school, e.g. a church? Objections would be raised to this.

The authors of this scheme do not seem to have provided for any appeal against a decision of the Board of Education.

In conclusion, this scheme makes a demand on the Church of England for a considerable sacrifice of her traditional educational policy. But if her members, abandoning a conservative attitude, of which the dangers are becoming more and more evident, were to throw their energies and their financial resources into working such a system as the Bill provides, we think they would not be losers by the exchange. No doubt the Bill could be considerably improved in detail, but of all the schemes which have come under our notice we feel bound to say that it is not the least successful in combining religious instruction, founded on the firm basis of parental responsibility, with what is administratively practicable and politically possible.

## X.

# EDUCATION (CONDITIONS OF GRANT) BILL.

PRESENTED BY MR. MASSIE, SUPPORTED BY MR. BURT, MR. BURNES, MR. GORDON HARVEY, MR. HAY MORGAN, MR. ROGERS, AND SIR GEORGE WHITE.

### MEMORANDUM.

THE object of this Bill is to attach by statute certain conditions to the grant of public money in aid of national education.

There are on the statute book a few conditions attaching to grants in aid of public elementary schools, but no statutory conditions whatever are attached to the grants for secondary schools, training colleges, evening schools, preparatory schools, and other institutions.

The present practice is that the House of Commons annually places large sums of money in the hands of the Board of Education, and the Board offers grants to various authorities and institutions on certain conditions. These conditions are ever changing: they are issued annually in the form of codes, minutes, and regulations, and fill hundreds of closely printed pages, and they include, side by side, the most important political principles and the most minute administrative detail.

The Bill is based on this distinction between principle and detail. It takes current regulations made by the Board of Education for secondary schools, and in so far as they enlarge popular control and religious liberty it proposes to make them permanent statutory enactments, while still leaving administrative details to be dealt with by departmental regulations.

The Bill further proposes to apply these conditions to all schools and institutions receiving public money. It thus secures uniformity in matters of important principle. Incidentally it offers a considered compromise on the vexed question of the control and management of denominational elementary schools.

A BILL TO REGULATE THE CONDITIONS ON WHICH PUBLIC MONEY MAY BE APPLIED IN AID OF EDUCATION IN ENGLAND AND WALES; AND FOR OTHER PURPOSES INCIDENTAL THERETO.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

I.—When the Board of Education, out of money provided by Parliament, aids the supply of education by grants in aid of the cost incurred for this purpose by a local authority or by the governing body of a school, or when a local authority out of the local rate supplies or aids the supply of educa-

Conditions on which public money may be granted in aid of education.



tion, such public money, whether from a parliamentary grant or from a local rate as aforesaid, shall be paid in respect of any school only so long as the following conditions are complied with :—

(1) The governing body of the school, where it is not a local education authority or a committee of a local education authority, must contain a majority of representative governors : Provided that if any authority or constituency abstains from exercising or fails to exercise any power of appointment or election exercisable by it, and by reason only of such abstention or failure the governing body does not contain a majority of representative governors, the school may nevertheless be regarded as complying with this section. In this subsection—

- (a) “ Representative governor ” means a member appointed on the governing body by a local authority or by a popular constituency, and any person who is a member of the governing body by virtue of his office as a Member of Parliament, mayor, chairman, vice-chairman, or member of any local authority, or as chairman or vice-chairman of a popular constituency ;
- (b) “ Local authority ” includes the council of any county, borough, urban or rural district or parish, any committee constituted under sec-

tion 17 of the Education Act, 1902, and any board of guardians ;

(c) " Popular constituency " includes any parish meeting or vestry, and the rate-payers of any parish.

(2) The instrument under which the school is governed, whether in the form of a trust-deed, scheme, charter, Act of Parliament, statutes, regulations, or minutes—

(a) Must not require any members of the teaching staff to belong, or not to belong, to any particular denomination ;

(b) Must not require a majority of the governing body, whether in virtue of their tenure of any other office or otherwise, to belong or not to belong, to any particular religious denomination ;

(c) Must not provide for the appointment of a majority of the governing body by any person or persons, who, or by any body the majority of whom, are required, whether in virtue of their tenure of any other office or otherwise, to belong, or not to belong, to any particular religious denomination.

(3)—(a) No catechism or formulary distinctive of any particular religious denomination may be taught in the school except as provided by this subsection ;

(b) If the instrument under which the school is governed requires, or does not prohibit, the

giving in the school of religious instruction distinctive of any particular denomination, the governing body may provide such instruction for any pupil upon the written request of the parent or guardian of the pupil.

A record must be kept of all such requests ;

- (c) In a school where such instruction is given, regulations must be made by the governing body such as will secure observance of provisions (a), (b), and (c) of this subsection to the satisfaction of the Board of Education, and a copy of such regulations must be given to the parent or guardian of every pupil ;
- (d) Such instruction, if given, must be provided from funds other than grants made by the Board of Education or any local authority.

2.—No minute of the Board of Education prescribing further conditions on which public money may be applied in aid of education shall be deemed to be in force until it has lain for not less than thirty parliamentary days on the table of the House of Commons and been approved by a resolution of that House.

Approval of House of Commons required for minutes prescribing further conditions.

3.—For the purpose of this Act the expression “school” shall mean any school, college, hostel, or institution in which education is provided.

Definition.

4.—This Act shall not extend to Scotland or Ireland and may be cited as the Education Act, 1909.

Extent of Act and short title.

## COMMENTS BY THE EDITORS.

This Bill is of a far-reaching character. It has regard not only to elementary schools but to every grade of educational institution, including the training colleges. It is short and simple, but by the "Conditions of Grant" it entirely changes the whole system of State-aided education, and no denominational school, college, or other institution could be conducted on denominational lines, however emphatic its trust-deed, without forfeiting all assistance from public monies, whether from grants or rates. Both Government and teaching staff would be undenominationalized, and except under clause 1, 3 (*b*) the only kind of religious teaching allowed within the walls would be Cowper-Templeism. No doubt it enlarges "popular control," but it is difficult to understand the claim that it enlarges "religious liberty," and it is a measure which would certainly meet with the determined opposition of Churchmen, Roman Catholics, Jews, and all the supporters of definite and distinctive religious teaching, who, it must be remembered, are both tax-payers and rate-payers themselves. It is perhaps worth pointing out in this place that "popular control" and "religious liberty" are incompatible when a majority, whether of managers, rate-payers, or others, are allowed to dictate the form and kind of religious teaching minorities, or even individuals, are to receive. But they might

become compatible where, as in some of the other schemes here discussed, popular control over the schools does not extend into the sphere of religion, and where the consciences of parents have statutory recognition and protection. Furthermore, it is often forgotten that the forcible association of managers or teachers of different religious beliefs, under the plea of "public control" in the first case and "no tests for teachers" in the second, is what makes denominational teaching and, in the end, even the barest form of Christian teaching impossible, for the eventual standard can only be the common denomination of the religious conceptions of the community at large. This is the chief indictment brought by denominationalists against "undenominational" teaching, which this scheme, like that adopted at conferences held by the National Education Association (see p. 131), seeks to make the one, State-endowed form.

*Clause 1, section 1.*—This entirely alters the management of non-provided schools, as the controlling majority of the managers will be in some way popularly elected. It should be stated that every secondary school, training college, preparatory school, etc., which receives grants from the Board of Education, is required under this section to have a governing body, the majority of which are appointed by local authorities and are not required to belong to any particular religious denomination.

*Section 2.*—Teachers are not to be appointed on

any denominational or other religious ground. This also applies to other schools as above.

*Section 3.*—(a) Apparently Cowper-Temple teaching is to be paid for out of rates and taxes.

(b) This as it stands would enable Baptists, for example, to have Baptist teaching in a Church or Roman Catholic school or other institution originally founded for a particular religious training, if it were not prohibited in the trust-deed, but not in the common or provided school. This can hardly be intended. The word “may” leaves everything to the discretion of the managers, a majority of whom are to be appointed on an undenominational basis. Supposing a dissenting majority of managers over a Church school said: “We *may* give Church teaching in response to a parental demand, but we will not,” what would happen? On the other hand, could they give Cowper-Temple teaching in a Church school even if it were demanded? It is not “instruction distinctive of any particular denomination”. The provision as to payment under (d) would probably lead to teachers in non-provided schools being paid lower salaries than in provided, for when given any distinctive teaching, e.g. Church teaching in a Church school, would have to be paid for separately by the managers. The object of this section is hardly disguised, i.e. to make denominational teaching in all schools built for the purpose almost impossible, but the machinery by which this is done raises several difficult questions. Appar-

ently this section is not intended to be limited in its effect to elementary schools. By section 4 of the Education Act, 1902, a local education authority may at the request of parents of scholars (at such times and under such conditions as the authority thinks desirable) allow any religious instruction (i.e. other than that under the Cowper-Temple clause) to be given in any institution other than elementary, i.e. in any council secondary school, training college, or hostel, but not at the cost of authority, provided that no unfair preference is shown to any religious denomination. Thus the existing law gives considerable freedom to the local education authorities to allow varieties of religious instruction in their institutions for higher education, in accordance with the parents' wishes. It is evidently intended by this section to curtail this freedom.

*Clause 2.*—The Board of Education will be restrained in future from altering conditions of grants without the express sanction of the House of Commons. This is one of the most interesting points in the Bill. The encroachments of the administrative departments have been very much in evidence of late, and a mischievous tendency has developed by which the legislative action of one political party has been modified by the administrative action of the opposite party. This is particularly mischievous in the sphere of national education, which should not be rendered the battleground of politics. (We

cannot help remarking that by the memorandum attached to the Bill it is on these very departmental acts or "current regulations" now sought to be restrained, that the Bill itself is founded.) But the making of grants is so complicated a business that the need of referring any change in the detailed regulation to the approval of the House of Commons might be found obstructive to educational convenience and injurious to the elasticity of departmental arrangements.



## XI.

### THE CLAIMS OF THE ROMAN CATHOLICS.

AS SET FORTH OFFICIALLY BY THE ENGLISH  
ROMAN CATHOLIC HIERARCHY AND EM-  
BODIED IN THE ARCHBISHOP OF WEST-  
MINSTER'S LENTEN PASTORAL, 1906.

“No question of public interest demands our constant and earnest prayer more than this most vital one, that the Holy Spirit of God may so guide the legislature of the country that no injustice may be done to our Catholic schools.

“Our position is well known, so well known, indeed, that to some it may seem useless to insist again upon it. We ourselves have set it forth on more than one occasion, and notably at the Catholic Conferences held at Birmingham in 1904, and at Blackburn in 1905.

“. . . We are prepared to further in every way a lasting settlement of the education difficulty, in so far as we can do so consistently with those sacred principles which we can never surrender, because they belong to God, and are not ours to give. It

is those principles which we must again declare to-day.

“We claim that, because they are equal in all things to their fellow-countrymen, as rate-payers, as citizens, as subjects of the same Sovereign, as sharing all the privileges and burdens of the same nationality, Catholic parents possess the right in justice ‘to have their children educated in the elementary schools of the country in conformity with their conscientious religious convictions’. Primary education is by law compulsory, and free from cost to the parent. It must not in its compulsion, or by the threat of abolishing its freedom from cost, violate the conscience of any. We are told that there are many English parents, the large majority, it is alleged, of the nation, who are well content with what is called ‘simple Bible teaching,’ imparted during a portion of school hours, as part of the school curriculum, without reference to the actual belief of the teacher who conveys it. Some there are who would think it necessary that this teaching should be supplemented by more definite instruction on the Sunday, or at some other convenient time, outside the school curriculum. Many, however, would be satisfied with the teaching given in the school, and would regard it as conveying, in connexion with the secular subjects taught, an education in conformity with their conscientious religious convictions. On this account, because such teaching is regarded as satisfying the average

Englishman, we understand that it is now suggested that it should be imposed by statute on all the public elementary schools in the country ; in other words, that it should be permanently established and endowed. In the eyes of Catholics this would be the establishment and endowment of Protestantism in its simplest form, and would constitute an education not in conformity with, but in direct antagonism to, their conscientious religious convictions. Such an arrangement, if left to stand alone, will certainly not effect a permanent settlement of the question at issue. We have no desire to interfere with the right of parents to have such a system of education if it satisfies them. We can have none of it ; and although we are a minority, we have the same right to due consideration of our conscientious wishes as the majority to whom satisfaction will thus be given.

“What, then, is our claim ? A Catholic education, and not a Protestant education, whether the latter be expressed in its simplest or in its most highly developed terms. A Catholic education implies three things : Catholic schools, Catholic teachers, effective Catholic oversight of all that pertains to religious teaching and influence.

“First, *Catholic Schools*, that is, schools in which, as in a Catholic home, all the surroundings shall be such as to keep alive the religious influence, which is an essential part of Catholic life and practice ; where, in a word, there can be no doubt at first

sight, even to the casual visitor, that the school is intended for and frequented by Catholic children. We desire the presence of none others in our Catholic schools ; we have no wish to proselytize little children. When they are found in our schools, they are there, either because we are compelled to receive them by law, or because they have been placed there by the deliberate choice of their parents. While we never disguise our longing to bring home the teaching of the Catholic Church to the people of England, and to obtain their acceptance of it, such preaching is addressed to the adult, not to the child, and we desire that the religious teaching of our schools should be for those alone whose parents deliberately choose it for them.

“ Secondly, *Catholic Teachers*. To a very large extent teachers, in dealing with children of the class needing elementary schools, have to take the place of parents. As we have said elsewhere : ‘ Circumstances are such at the present day that many parents are unable from want of time or lack of capacity, and too often from neglect and indifference, to provide adequately for the education of their children ’. And Catholic parents, however neglectful or indifferent they may be, when they place their children at a Catholic school, do so in the hope and with the conviction, that their children will receive therein the Catholic education which they are themselves unable to impart ; in other words, that the

teacher will truly stand to these children *in loco parentis catholici*. No one but a Catholic can hold such a place.

“Thirdly, *effective Catholic oversight of all that pertains to religious teaching and influence*. Only those who are representatives of the Catholic Church can give to Catholic parents the assurance which they need and rightly ask, that the teachers to whom they entrust their children are Catholics not merely in name, but in deed, and that their teaching and influence are in accordance with the principles of the Catholic Church. No non-Catholics, however well intentioned, no public authorities, however well disposed, are competent to pronounce a satisfying judgment on this matter, which is essentially beyond their purview.

“This, in a few words, is our most just claim. The late Government endeavoured to meet the position by enacting that four out of the six managers of our schools should represent the trustees, and that these six managers should appoint the teachers. This arrangement was not in every respect a satisfactory one. If the present ministry can find a better and more satisfactory guarantee, we shall have no hesitation in accepting it. But our claim will always stand, and, until it is adequately and fairly met, there can be no final settlement of the education question. We may repeat here what we said at Birmingham in September, 1904 :—

“Where, then, is the solution of the education difficulty to be found? Some will tell you that we are tending to the complete secularization of all public elementary schools. I trust that this is not the case, for such a policy would not only be a calamity to the nation as a whole, but it would most certainly not be a solution of the difficulty which confronts us. Rather it would intensify still more the crying injustice of which we have already so much reason to complain. The lesson of passive resistance has been taught very prominently of late. But what, I ask you, would its most acute recent developments be in comparison with the resistance, both active and passive, which—if the Christianity of England is worth anything at all—would at once be aroused if Christian parents were to be forced to send their children to schools which their conscience abhorred? Compulsory education in secularized schools would most certainly not end the difficulty.’

“To find a solution I go back to the words of Cardinal Manning, written in 1882 :—

“... If the Government may tax the whole people for education, *the whole people have a right to share in the beneficial use of such taxation.* An education rate raised from the whole people ought to be returned to the whole people, in a form or in forms of education of which all may partake. If any one form of education can be found in which all the people are content to share, let it be adopted ;

if no one such form be possible, let there be as many varieties of form as can with reason be admitted. No one form of religious education would satisfy Catholics, Anglicans, Nonconformists, and unbelievers. No form whatsoever of merely secular instruction will satisfy the great majority, who believe that education without religion is impossible. Therefore if no one form can be found to satisfy all, *many and various forms of education ought to be equally admitted, and equally allowed to stand on the same ground before the law.*'

"In other words, an equitable solution is to be found not in ignoring, but in recognizing to the full, the religious differences of the country. . . . With regard to the provision of elementary schools, let all Englishmen alike stand on an equal footing before the law, and let all alike have, under reasonable conditions, schools properly built and fully equipped at the public cost—to which all alike contribute—but of a character to which they can send their children without any injury being done to their conscientious religious convictions. I say *under reasonable conditions*, because where very few children of one religious belief are to be found, it would be obviously impossible to provide an efficient school for them, and it would be necessary that their own pastor, priest, or clergyman should see that adequate provision is made for the religious instruction of the very small minority. But in all large centres where a number of children too great for

individual religious care out of school is to be found, I maintain that for such children schools should be provided and maintained at the public cost, wherein they shall receive an education in accordance with the religious convictions of their parents, at the hands of teachers who are recognized as fit and capable for their task by the religious body to which they belong.

“This is our full claim. If, in answer, we are told that our fellow-tax-payers and rate-payers are to receive an education not at variance with their conscientious convictions, at the cost of the nation, while we must continue to pay, as heretofore, an additional tax for the privilege of educational religious freedom, and must help the nation to provide sites and buildings and teachers for our schools, we shall be prepared, to the extent of our power, to continue the struggles of the past, rather than sacrifice our children; but let no man venture to say, then, that even-handed justice has been done to all alike. Quite recently we were glad to raise our voice publicly on behalf of the Jews of Russia. What was our plea? ‘That all should have equal rights before the law, and that no one should be placed in an inferior position on account of his conscientious religious convictions.’ On behalf of the Catholics of England we make the same plea, on the same grounds, to our ministry to-day, pledged as they are by their whole history and by those liberal principles which they profess, to see justice



done to all, and to abolish all religious disabilities.

“ Let them take heed and be warned by the past. A powerful party has been exposed to obloquy and disaster because it was thought by some to violate conscientious claims. We catholics have no quarrel with any political party ; we desire none. If a quarrel comes, it will be because it has been forced upon us. But if our claims are disregarded, if our appeal for consideration is set aside, let no one imagine that a final settlement has been reached. We shall be bound in conscience to use to the uttermost every legitimate means of resistance which we possess. We shall cry out unceasingly against the injustice which has been committed. And most assuredly a day will come, when the eternal principles of justice will rise up, and overthrow, and destroy, those who disregard them now, and who venture to ride roughshod over the conscientious convictions of those who regard definite religious teaching as an essential part of education. For, although on this occasion, speaking as we are to our own flock, we allude only to our Catholic schools, we do not forget that there are others who attach the same importance as we do to religious education. Taking into account the exceptional sacrifices which we have made, we might, perhaps, claim special consideration. We have not done so ; we have no thought of doing so.

“ What we ask for ourselves we ask for all those

who claim it on the same grounds. Our demand is that all Christian parents should have it in their power to find in the elementary schools of the country an education in conformity with their conscientious convictions, without let or hindrance or disability of any kind; and that the privileges now conferred on those who attach no importance to definite religious teaching should be finally abolished.

"We are warned by some that, if we press our claims too far, we shall drive the country, from sheer desperation, into the deplorable system of purely secular schools. God forbid! But what does this warning mean? Surely nothing less than that there are some who are so intolerant, so rabid in their intolerance, so hostile to any religious influence except that of their own small surroundings, that they are prepared to jeopardize the Christianity of the country, in order to cry victory over those to whom they are opposed. Upon them, then, be the odium, on them all the responsibility of the accomplishment of the threat which they utter so loudly. In the eyes neither of God nor of man shall we have any guilt, who, most readily granting to others that which they can conscientiously accept, ask a like concession for ourselves. Of such threats we need take no account: the judgment which they evoke will fall upon those who utter them. But we most earnestly pray that no such calamity may come upon our country. . . ."

## COMMENTS BY THE EDITORS.

The Roman Catholic position is put very clearly by this Pastoral Letter of Archbishop Bourne, and we may go further and say that the case for denominational religious education as a whole has rarely been put forth in more impressive or persuasive language.

The Roman authorities have always refused to make themselves responsible for any detailed scheme—the nearest to an official scheme is that of the Salford Diocesan School Association, which, though a mere sketch, we here subjoin—and prefer to make their demands, leaving to the Government of the day the task of meeting these in any educational legislation they may initiate. It is not too much to say that the Roman Catholic Church in England with its strong support of the parents, mostly Irish, of the children in its elementary schools, has exercised during the past ten years, if not a determining influence on attempts of educational legislation, at least an influence out of all proportion to its numbers. This is of course largely, but not wholly, due to the exigencies of the present political situation. For the most determined undenominationalists hesitate before taking action which might produce a parental strike on a large scale, whilst, on the other hand, the Protestant prejudices of the Nonconformists, if not the general feeling of justice in the country, prevents special terms being

conceded to Roman Catholics, at any rate by name. Anglicans and Romans have common interests, but, except as regards numbers, the latter have conspicuous advantages. Their ecclesiastical authorities, being appointed by a central power outside the country, speak with an unanimity and persistency impossible to an episcopate nominated by different political parties ; and, secondly, they speak for a small and compact body of adherents unlike the Anglican Bishops who, theoretically at least, assume a responsibility towards the whole nation so that it often becomes difficult to determine the limits of membership of the Church of England. And, indeed, all National Churches, even those in communion with Rome, are to some extent weakened in their action by the enormous fringe of nominal adherents. All this must be remembered in considering the Roman Catholic demands and the political force behind them.

It will be seen that the Roman Catholics would not be content with a "right of entry" or "facilities"; they insist upon separate schools, and are quite indifferent as to what goes on in the provided or council schools. This is because their population, largely of Irish descent, lies mainly in the towns, where they have been able to set up their own non-provided schools: the maintenance of these schools, with adequate opportunities of extension, satisfies them. But the case would be wholly different if, as they assuredly hope, they were to make such a

large impression upon the English people as to spread into the country or "one-kind-of-school" districts. Then they would be driven to the same position as their Anglican brethren, i.e. whilst preferring their own "atmosphere" schools in towns and wherever possible, they would have to make such provision as was practicable in the common or provided schools. And it is to be noted that this provision for denominational teaching in the common schools is accepted in other countries, such as Germany, by the Roman Catholic Church.<sup>1</sup>

The only other point in this Pastoral to be noticed is the insistence of the Roman authorities on what is called "tests for teachers".

<sup>1</sup> "The Volksschulen (in Prussia) are denominational, i.e. Evangelical, Catholic, Jewish, or mixed. Mixed (paritatische or simultane) schools are those in which the separate religious instruction of minorities is provided for by the employment of teachers of different denominations. . . . The Regierungen have to regard the religion of the place in the appointment of the teacher, and the religious instruction of small minorities is provided for. If ten or fifteen children in a school are of a recognized religion other than that which is taught in it, the locality has to provide for their separate instruction, either by bringing a teacher to them or sending them to a teacher" ("Board of Education, Special Reports on Educational Subjects," Vol. IX, 1902, p. 306).

"The same care is taken in Saxony as in Prussia to protect religious minorities" (Ibid. p. 338).

"There is, it is true, a religious difficulty (in Rhineland), but it is generally met by the community providing a separate school for each different sect, and thus a small village may have two small schools, one a Catholic and the other a Protestant. This is the rule, but in some towns visited, for example, Crefeld and Cologne, we found a novel and, to us, surprising method of solving the difficulty. Under one roof, and in the same block, with separate teachers and textbooks, were two complete and independent schools, one a seven class Protestant school, and the other a fourteen class Catholic school, living in peace and concord with one another" (Ibid. p. 407).

Finally, we may quote, as completing this statement, from the Declaration of the Roman Bishops in 1894.

“Catholic parents cannot in conscience accept or approve for their children a system of education in which secular instruction is wholly divorced from education in their religion.

“The only system of religious education which Catholic parents can accept for their children is that given under the authority and direction of the Catholic Church.”

## XII.

### THE MANCHESTER EDUCATION CONCORDAT, OR, THE SALFORD (ROMAN CATHOLIC) DIOCESAN SCHOOL ASSOCIATION DRAFT SCHEME.

THE following draft scheme was submitted to the Manchester Concordat Committee as a reasonable scheme when a Liberal and Nonconformist Government was in power, and when Nonconformists were in an ideal position to get good terms by negotiation. Such a strong position will hardly ever recur, and an opportunity was lost, owing to the wild ideas of conquest of extreme Nonconformists stimulated by the impossible character of the four Liberal Bills.

The scheme is brought forth again at a time when similar attempts on Catholic and Church schools cannot be made. Catholic ideas of justice and fair play do not depend on the political complexion of the House of Commons, and what was just or reasonable then is just and reasonable now.

If Nonconformists might reasonably expect consideration when their friends were in power, they

ought to get reasonable consideration when no longer in power. The only reason why Nonconformists did not succeed in having their grievances redressed, was, the measures proposed inflicted worse grievances on Catholics and Churchmen.

The accompanying scheme is incomplete in detail, particularly with regard to the machinery for bringing into being the joint-managers elected by parents, but it effectively does one thing—it emancipates the Nonconformist children from Church of England influence—which is already done as far as law can do it by the conscience clause—and places the *whole* religious schooling of such children under Nonconformist influence. Further, it tolerates no act of aggression either on the Churchman's school or the Churchman's child.

The scheme does distinctly contemplate making nearly all the existing schools in single school areas available, since failure to agree would involve a heavy *local* rate to provide the new school.

The scheme is offered in its entirety and is based on concessions all round.

It is of urgent importance to all—to the Catholic whose anxieties are unbroken by the constant danger arising from unsettled opinion; to the Churchman who cannot indefinitely maintain the monopoly of the single school area; to the Nonconformist whose child will be emancipated on these lines and who will not be emancipated at all if the Nonconformist means that the emancipation



of his child involves the enslavement of other people's children.

Why could not a Royal Commission be appointed to work out this settlement and let the report be finally considered by the Catholic Bishops, the Church of England, and the Free Church Council for such final adjustment as would meet all reasonable requirements of these bodies?

*Resolution I.*—Denominations which have built schools for denominational education, if these schools are no longer used for such education, have a right to retain them for denominational purposes on refunding any building grants from the State; and in calculating the amount of such refund due regard shall be had to the depreciated value of such grant owing to use.

[NOTE.—The object of this resolution is simply to (a) reaffirm the 7th Commandment (Anglican 6th); (b) to affirm the principle that a school built by the aid of a Government building grant years ago has not the same property value now owing to use and deterioration that it had years ago. The argument that the *interest* on the sum entitles the Government to the *full* amount changes the nature of the transaction between the Government and the school builders—the transaction was a building *grant*, not a *loan* with or without interest.]

*Resolution II.*—The principle of equity embodied in Resolution I regarding schools built by denominations is hereby affirmed regarding all forms of school property, whether such schools be private ownership schools, family trust estate schools, etc.,

(i.e.) they shall revert to the owners if they cease to be carried on according to the terms and conditions under which they were founded.

[NOTE.—The aim of this resolution is in substance to do for all other owners, etc., of schools what Resolution I does for denominations, simply to declare that the owners, etc., are the owners—the 7th Commandment over again.]

*Resolution III.* (The Religious Question in Urban Areas).—That with the view of relieving parents and children where either a denominational, or an undenominational monopoly exists, or both together to the exclusion of any other type of denominational school, adequate provision should be made in existing schools by a joint system of teaching management and control meeting the wishes of groups of parents; or as an alternative, where the managers of an existing denominational school so prefer, a system of separate schools should be set up to meet the requirements of such parents, provided that at least the parents of fifty children demand such a school.

[NOTE.—This resolution contemplates various cases of difficulty which ought to be redressed. In Macclesfield and Preston, for example, you have a denominational monopoly where there are no other schools, and there, all undenominationalists, broadly speaking all Nonconformists, are rate-payers to a type of school they do not like, and pay for a type of religion which they do not want, while not receiving the type of religion they do want for their money. In Birmingham and elsewhere you have an undenominational monopoly supported by denominationalist money. This resolution aims at freeing from this grievance.

Again, an arrangement *can* be made whereby the building of another school may be obviated, but in such way as not to force the owners of a denominational school. The joint management, etc., means that parents of a group of children other than those belonging to the denomination who own the school may elect a manager who shall have charge of the religious instruction to be given by a member of the staff to be appointed with qualifications for that duty. In a word, say in a Church school, it means an undenominational manager and an undenominational teacher for undenominational children during religious instruction, or a greater proportion according to numbers; but such managers shall have no control over the religious instruction of the children of the denomination to which the school belongs.]

*Resolution IV.*—With the view of freeing parents and scholars, the capital by which such schools should be set up may be provided (a) by the Exchequer, and when a school is so provided it shall be vested in the Board of Education as national property. (b) By part grants in aid of building, when the school shall be held in trust for educational purposes by those providing the school. (c) By private effort, when the school belongs to those who build it to hold as private property or on a wide trust, or as they choose to hold it.

*Resolution V.*—Single school areas shall be dealt with on the lines of Resolutions III and IV, by the joint system if such can be arranged; by the separate system if such joint arrangement fails; but where the children are so few that a second school is educationally impossible, then facilities shall be afforded in the school or elsewhere to the parents

of the children other than those to whom the school belongs for such religious instruction as they desire for their children, provided always that fifty children shall be sufficient for a separate school ; and Resolution IV as to capital shall apply.

[NOTE.—By *area* is here meant not any existing unit of area—such as district or parish—but simply a place where there is only one school within reasonable distance of children bound to attend school.]

*Resolution VI.*—Jews. That in areas where a sufficient number of Jewish children may be found—sufficient for a class or part of a class—a suitable teacher shall be provided to meet the requirements of such children according to the wish of their parents ; meeting the parents' wishes on the religious side, and the local education authority's wishes on the secular instruction side ; and that such children have the special care and protection of local education authority and teachers.

*Resolution VII.*—With the view of restraining the local education authority from inadequately maintaining a school, the Board of Education shall, on cause shown, be empowered to pay over direct to the managers of an inadequately maintained school such a sum as, in the opinion of the Board, is necessary to maintain the school, such sum to be deducted from the grants due to that authority ; or some summary measure shall be devised to compel the adequate discharge of statutory duties of administrative bodies.

*Resolution VIII.*—That no differentiation in the allocation of Government grants be made on religious ground in secondary schools, provided that the Board of Education be represented on the board of governors, and that no representation be granted to local education authority as such unless on the grounds of financial assistance provided by the local education authority. But such public representation shall have no control over the expense of religious instruction unless such religious instruction is carried on out of public funds, provided always that a secondary school shall be provided by the local education authority where the parents of a sufficient number of secondary scholars demand it, and shall be conducted in accordance with the wishes of the parents.

[NOTE.—Existing and future denominational secondary schools must not be penalized, and secondary schools, where necessary, must be provided by local education authority, according to requirements of parents.]

*Resolution IX.*—Denominational training colleges shall be free from all restrictions placed on them on religious grounds, and such colleges may be enlarged and new colleges may be set up according to denominational requirements; and undenominational colleges shall be provided from Exchequer funds equal to the demand for the new undenominational elementary schools contemplated under Resolutions III and IV, such undenominational colleges to have a conscience clause, to allow of

affiliated hostels, and, as far as possible, to be worked in connexion with an existing University.

#### SOME PRINCIPLES.

1.—Since God has permitted the unity of religious belief in England to be shattered into some 300 scheduled religions and 3000 unscheduled, there are three policies open :—

- (a) Live and let live.
- (b) Fight dog, fight bear.
- (c) Return to religious unity where it was broken off.

2.—It is *not* the duty of Parliament to help the Nonconformist to absorb the Churchman, or the Churchman to absorb the Nonconformist, or either to absorb the Catholic, but when they pay their money to educate *all* and injure *none*.

3.—If liberty, economy, and efficiency have to ride the same educational horse, two must necessarily sit behind—liberty has first place in this scheme. As to economy this country has more money than sense. £250,000,000 spent on “Liberty” in South Africa would give a great deal of liberty to mere Englishmen at home. As to efficiency we have it not; and we shall never have it as long as the noblest ideal of educational efficiency continues lost. *Initium Sapientiæ Timor Domini.*

#### COMMENTS BY THE EDITORS.

This scheme derives its importance from two facts; it is a complete scheme put forward by Roman

Catholics (under the guidance of Monsignor Tynan), who are ordinarily content with merely formulating their demands, and, secondly, it has met with a favourable reception at the hands of educationists of various denominations and types in the North of England. It is obviously a mere sketch of a legislative measure, largely dependent on details which are not filled up. No attempt has been made to cast it into the form of a Bill, the authors thinking that its general scope would be better understood by the bare resolutions. This is no doubt true, yet on the other hand we think that the drafting of a Bill on the lines of these resolutions would disclose certain difficulties which would have to be met, and which might compel a reconsideration of the scheme.

The scheme deals not only with elementary schools but also with secondary schools and training colleges. Its general object is to maintain denominational schools and the "dual system" whilst making all possible provision for parental wishes in schools of different types. A register of parents' wishes would be kept and met, not by what are usually known as "facilities," but by appointing a special manager and teacher to give the special form of instruction required by any group of parents, and when "such joint arrangement fails" and the parents of fifty children require it, by building a separate school. Apparently only four categories are contemplated: Roman Catholic, Church, Undenominational, Jewish. These no doubt practically cover

the ground and their adoption would relieve the chief grievances of the existing system. But it would seem wise to make some provision for those Nonconformists and others who under a new system might not be content as they now are with undenominationalism (see the Hope-Eden scheme) In Resolutions III and V we have the bare outlines of the plan. No details are given as to how the special teachers are to be appointed and dismissed, or as to the relations between the local education authority and the special managers ; without these details it is impossible to judge of the practicability of the scheme. Nor is it clear as to whether "the managers of an existing denominational school" are to have the power to refuse to open their doors to alien religious teaching and so force the establishment of a costly system of separate schools for fifty children and upwards. Jews are dealt with by themselves in Resolution VI in a slightly different manner, the reason for which is obscure.

The remaining resolutions are chiefly concerned with finance and are drafted on equitable lines.



### XIII.

## THE JEWISH POSITION AS ARRIVED AT BY A COMMITTEE APPOINTED IN 1908.

### SUGGESTIONS FOR INSERTION IN NEW EDUCA- TION BILL.

JEWISH schools not to be differentiated from other schools, i.e. to be under the control of local education authority in the same way as all schools. No contracting out.

1.—In schools which are non-provided Jewish schools at the passing of this Act, in lieu of the instruction given by the local authority under subsection 2 of section 14 of the Elementary Education Act, 1870, instruction in Hebrew and the Jewish religion shall be given as part of the ordinary school curriculum to the children of Jewish parents.

2.—Of the teachers employed in such schools such a number shall be duly qualified persons of the Jewish persuasion as shall be sufficient to secure that the instruction in Hebrew and the Jewish religion is adequate. In the event of its being impracticable to employ as teachers in the school

sufficient persons of the Jewish persuasion to give such instruction, it shall be the duty of the education authority to engage duly qualified persons of the Jewish persuasion who shall not be teachers in the school to give instruction in such subjects.

3.—In the case of such non-provided Jewish schools the head teacher shall so far as practicable be of the Jewish persuasion.

4.—Any teacher who at the time of the passing of this Act has been employed to teach the said subjects in a non-provided school shall be deemed to be competent to give instruction therein.

5.—With regard to persons who have not been so employed the local authority shall accept the certificate granted by any recognized Jewish educational body or authority as evidence that a person is competent to give such instruction.

6.—The course of instruction in the said subjects shall be in accordance with a code to be approved of by such Jewish educational body or authority as aforesaid.

7.—Examinations in the said subjects shall be held not less than twice a year by examiners to be nominated by such Jewish educational body or authority as aforesaid. Such examiners shall report to the local authority and to such body or authority as aforesaid.

8.—It shall not be incumbent upon the local authority to defray the cost of the said examinations.

9.—In case of schools which at the time of the

passing of this Act are provided schools and in which more than 50 per cent (?) of the children are of Jewish parentage, the local authority shall make provision for the instruction in Hebrew and the Jewish religion of the Jewish children in the same manner as they are required to do in the case of Jewish non-provided schools, except that if it shall be necessary to engage as teachers to give such instruction persons other than such Jewish teachers as are ordinarily employed in the school it shall not be incumbent on the local authority to pay for the employment of such extra teachers, but the cost of engaging the same may be borne by or on behalf of the parents.

10.—Where instruction is provided by the local authority for Jewish children in accordance with subsection 2 of section 14 of the Elementary Education Act, 1870, it shall be the duty of the local authority to ensure that such instruction is given in accordance with the Code allowed under Article 200 (section 2) of the Schools Management Code of the London County Council,<sup>1</sup> or any similar code approved of by such Jewish educational body or authority as aforesaid.

11.—In the case of any school which was at the passing of this Act a non-provided school it shall be the duty of the local authority to allow the school-house to be used for the purpose of giving religious instruction of the character given therein at the time

<sup>1</sup> See note on p. 279.

of the passing of this Act on Saturdays and Sundays, and at such other times on weekdays not forming part of the time devoted to the ordinary instruction in the school as may be found necessary or desirable to supplement the religious instruction given in the school hours. The schoolhouse shall be properly warmed, cleaned, and lighted for the purpose of such instruction by the local authority, who may charge the persons whom they authorize to superintend such instruction a sufficient sum in order to cover the cost of such warming, cleaning, and lighting, but may make no further charge.

12.—In the case of schools of which 25 per cent of the children are of Jewish parentage one manager at least shall be of the Jewish faith, and in case of schools of which 70 per cent or more of the children are of Jewish parentage two managers shall be of the Jewish faith.

13.—All endowments and other property held in trust for the purposes of any school transferred under the provisions of this Act to a local education authority shall be held in trust and applied for the provision of religious instruction in such school of the character given in such school previous to the transfer, and if such endowments or other property are more than sufficient for such purpose the surplus shall be applied in giving instruction according to the tenets of the same denomination in other public elementary schools maintained by the same authority, but so that such instruction

shall be in accordance with the provisions of this Act.

This clause shall not apply to any endowment or other property which under the trusts or other provisions affecting the same must not be applied for the purpose of giving denominational instruction.

NOTE.

The following paragraph on the subject of the syllabus of religious instruction for Jewish children appears in the "London School Board Minutes" of 7 May, 1896 :—

" This syllabus was originally prepared by a Sub-Committee on the Religious Instruction of Jewish Children, and was subsequently, after amendment by the Scripture Knowledge Sub-Committee, submitted by the latter Sub-Committee to the School Management Committee, who, however, have not adopted it."

The "Minute" of 7 May, 1896, already referred to, mentions that a memorial was sent to the Board of Jewish residents in Kensington for facilities for the instruction of children in the Jewish faith at schools in the district other than the Bayswater Jewish School.

The Board decided that the memorialists should be informed that in all schools where there are enough scholars of the Jewish faith to form a class, arrangements should be made for their instruction. It was also decided "that the (attached) syllabus is

one which is allowed under Article 200, section 2 (now 80), of the School Management Code”.

The following Syllabus is one which is allowed under Article 200 (now 80), section 2, of the School Management Code (B.M. 7, 5, 96, pp. 1552 and 1582), but is not authoritatively issued (S.M.C. 12,397, p. 554).

FOR A SEVEN CLASS SENIOR SCHOOL.

*Class I.*

Learn Deuteronomy vi. verses 4-9, and Psalm xxiii.

A few simple stories from Genesis.

Simple lessons from boyhood and youth of Samuel and David.

Hebrew—Letters and vowel points.

*Class II.*

Repeat Deuteronomy vi. verses 4-9; Psalm xxiii.

Learn the Ten Commandments, and Psalm c.

Simple stories from Exodus.

Reading by teacher with explanations from Genesis xxxvii., xxxix.-L. i.e. Life of Joseph.

Hebrew—Reading words of one or two syllables.

*Class III.*

Repeat Deuteronomy vi. verses 4-9; Psalm xxiii., c., and the Ten Commandments.

Learn Psalm xv.

Lessons from the Pentateuch, with special reference to the lives of Abraham, Isaac, Jacob and Joseph, with the practical lessons to be derived therefrom.

Hebrew reading and translation of Deuteronomy vi. verses 4-9, or reading by teacher to children, from the following chapters of Genesis xii.-xxviii.

*Class IV.*

Repeat Deuteronomy vi. verses 4-9; Psalms xv., xxiii., c., and the Ten Commandments.

Learn Deuteronomy xi. verses 13-21.

Lessons from the Pentateuch, with special reference to life of Moses, with practical lessons to be derived therefrom, together with the teaching of the law of Moses with reference to the "Poor," "Stranger," "Fatherless," "Widow," "Parents" and "Children".

Hebrew reading and translation of Deuteronomy vi. verses 4-9, and the Ten Commandments; or readings by teacher from Exodus i.-xx.

*Class V.*

Repeat Deuteronomy vi. verses 4-9; xi. verses 13-21; Psalms xv., xxiii., c., and the Ten Commandments.

Learn Psalms cxlv. and cxlvi.

Learn the following Proverbs to illustrate the duty of (a) Truthfulness: Proverbs xii. verses 17, 18, 19, and 22; xiv. verse 25; xix. verse 22; xxvi. verse 28, and xxviii. verse 13; (b) Temperance: Proverbs xxiii. verses 20 and 21.

Lessons on Joshua, Judges, Ruth, 1 Samuel.

Hebrew translation of Deuteronomy xi. verses 13-21, and Psalms xv., xxiii.; or readings by teacher from Ruth, and 1 Samuel xvi.-xxx1.

*Class VI.*

Repeat Deuteronomy vi. verses 4-9; xi. verses 13-21; Psalms xv., xxiii., c., cxlv., cxlvi., the Ten Commandments, and the following Proverbs to illustrate the duty of (a) Truthfulness: Proverbs xii. verses 17, 18, 19, and 22; xiv. verse 25; xix. verse 22; xxvi. verse 28, and xxviii. verse 13; (b) Temperance: Proverbs xxiii. verses 20, 21.

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Learn Psalm CL.

Lessons on 2 Samuel, and 1 and 2 Kings.

Hebrew translations of Psalms CIII., CXXI., CXLV., CXLVI., and CL.; or readings by teacher from 1 Kings.

### *Class VII.*

Repeat Deuteronomy VI. verses 4-9; XI. verses 13-21; Psalms XV., XXIII., C., CXLV., CXLVI., CL., the Ten Commandments, and the following Proverbs to illustrate the duty of (a) Truthfulness: Proverbs XII. verses 17, 18, 19, and 22; XIV. verse 25; XIX. verse 22; XXVI. verse 28, and XXVIII. verse 13; (b) Temperance: Proverbs XXIII. verses 20, 21.

Learn Psalm CIII.

General Knowledge of Old Testament History from Genesis to Kings.

Hebrew translation of Leviticus XIX. verses 1-4, and 9-18; Psalms XXIV., XXV., CXIII., CXIV., CXVIII.; or readings by teacher from Isaiah I.-II. to verse 5; XI., XII., XL., LV., LVIII., and Jonah, and Proverbs X.-XV.

R. BLAIR,

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### COMMENTS BY THE EDITORS.

The Jewish proposals, like those of the Roman Catholic Bishops, are concerned solely with the denomination. They represent probably the minimum with which the Jews will be content in the event of a re-opening of the education question.

But it is hardly conceivable that the legislature will make exceptions in the cases of these two



bodies and allow them more favourable terms than the professors of other faiths. Therefore, in dealing with the Jewish position, we must consider the suggestions as going beyond the immediate scope proposed by those responsible for them and being applicable generally.

*Clauses 1-8* apply to the Jewish non-provided schools. They appear to indicate the essential conditions to any such legislative scheme for placing these schools under the entire control of the local education authority as is proposed by the group of educational reformers whose views are represented broadly by two schemes printed and discussed elsewhere in this book, i.e. that of the National Education Association and the Condition of Grant Bill. They contemplate the appointment of a sufficient number of Jewish teachers in every such school by the local education authority; evidently, like the Christian authors of several schemes in this book, the Jews are not afraid of imposing "tests for teachers" in denominational schools or for the giving of denominational teaching in council schools, and consider them necessary.

*Clause 9.*—In *transferred* Jewish schools (it is apparently contemplated that there will be some difference between the *status* of these and the schools referred to in the preceding clauses) the teachers are not to be so strictly appointed on account of their religion (though it is assumed that *some* will "ordinarily" be Jews), and in the case of teachers

being brought in from outside to complete the number required, these are not to be paid for out of public monies.

*Clause 10* refers to provided schools. The School Management Code of the London County Council is referred to. This, whilst keeping to the strict letter of the Cowper-Temple clause, provides denominational instruction for Jewish children ; an anomaly inherited from the old London School Board. The Code was submitted in the first instance for the approval of the Jewish authorities and it is proposed to give these authorities the same privilege in the future.

This well illustrates the difficulties of a local education authority. They hesitate to overthrow the undenominational theory by which they are bound, by formally authorizing a special teaching for the Jews, and yet in practice it is found impossible to impose undenominationalism upon them. The departure from the undenominational syllabus is therefore tacitly admitted, and as Jewish teachers are appointed (again tacitly, and without any rule to this effect) to schools containing a certain proportion of Jewish children the Jews are satisfied. For a Jewish teacher will naturally explain the Old Testament denominationally. As we have already pointed out, it is the *teacher* that really matters in religious education, not catechisms and syllabuses.

*Clause 12.*—This postulates something in the

nature of a creed register (as otherwise the percentage of the Jewish children could not be accurately ascertained), a reform insisted upon in other schemes. A "test for managers" is an unusual proposal for provided schools. The scheme does not say how these denominational managers are to be appointed, but probably they would be nominated by the central Jewish authorities of the area, and not elected by the parents.

From this scheme the reader may gather the difficulty of the educational problem. The Jews, whilst accepting "popular control," could hardly be content with less security for the faith of their children. But Nonconformists who "passively resist" the payment of their educational rates on the ground that some of the money thus raised will go to Christian teaching with which they are out of sympathy, as the Anglican or the Roman, will hardly withdraw their protest if so opposite a teaching as the Jewish is, through these provisions, on the rates. Again, as we have already said, it is hardly conceivable that Christian bodies should be refused privileges conferred by the legislature on the Jews. Much, indeed, that we have said on the Roman Catholic demands is equally applicable to the Jewish.



## APPENDIX I.

### A MEMORANDUM ON THE LAW RELATING TO RELIGIOUS EDUCATION.

#### PRELIMINARY.

EIGHTY years have not yet elapsed since the English Government first took part in the work of elementary education. The Parliament of 1833 voted £20,000 towards the erection of school-houses. Prior to that vote, however, not a little had been done by voluntary agencies to bring elementary education within reach of the new population for which the old township and charity schools of reformation and pre-reformation days made no provision. This had been chiefly the work of the Society for Promoting Christian Knowledge (founded in 1698), the British and Foreign School Society (founded in 1808 under the name of the Royal Lancasterian Institution), and the National Society (founded in 1811). The schools founded by or with the help of these Societies were entirely *voluntary*. Each was founded and maintained by monies voluntarily contributed out of private purses: the State gave nothing. Not, as we have seen, until 1833 did the State become a partner in the work. At first it attempted to do no more than assist voluntary effort, and, although (after the appointment of the Committee of Council on Education in 1839) it gradually assumed more and more control over the education to which it contributed, its policy (for thirty-seven years) was distinctively a policy of *assistance*—not a policy of *provision*.

## I. THE EDUCATION ACT, 1870.

The year 1870, however, saw the commencement of a new policy. The legislation of that year gave us—

- (1) Local authorities (at first called school boards) providing and maintaining schools out of public monies,
- (2) The conscience clause,
- (3) The "Cowper-Temple" clause, and
- (4) Public elementary schools of two kinds—(a) those provided by the local authorities and (b) those otherwise provided.

Because the changes then made were the commencement of controversy, it is necessary to explain them at some length. We will begin with the "Cowper-Temple" clause.

*The "Cowper-Temple" Clause.*—Between 1833 and 1870 religious instruction was universally given in the schools variously assisted by the State. Not only was it *given*, but—during a considerable part if not the whole of that time—it was *required to be given*. In 1853 the Committee of Council expressly refused to make the grants "applicable to schools exclusively secular," and in an official memorandum of 1856 we find the elementary system of that day described as "a vast denominational system, which fully established popular education on a religious basis". This universality of religious instruction was pre-supposed by the authors of the Act of 1870, and *nowhere in that Act is religious instruction prescribed*. This omission made (and still makes) it possible for a local authority to abstain from providing religious instruction in its schools. Although, however, the Act did not *prescribe* religious instruction, it contained an important clause *regulating* religious instruction. Section 14 (2) provides that "no religious catechism or religious formulary which is distinctive of any particular denomination" shall be taught in a school provided by a local authority. This is the famous "Cowper-Temple" clause,

and from 1870 up to the present moment it has regulated the religious instruction given in the schools which were at first called "board schools" but are now called "council schools".

Distinguished names may be cited in support of the opinion that this clause means no more than it says—that it excludes *denominational documents* but not *denominational doctrines*.<sup>1</sup> If this opinion were valid, it would follow that a local authority might provide and maintain any form of denominational instruction in its own schools, provided only that it did not permit any denominational catechism or formulary to be used in

<sup>1</sup> Mr. Gladstone ("Correspondence on Church and Religion," II, 127-9; Morley's "Life," II, 306); Dr. Dale ("Life," p. 280).

"Whilst the Bill was under discussion in Parliament, the friends of distinctive religious teaching were assured by those who, as they understood, were speaking with authority that all that was aimed at by the clause was the exclusion of the *ipsissima verba* of the Catechism, and that the teachers in board schools would be at perfect liberty to instruct the scholars under their care in all that the Catechism contained. This understanding of the clause received a strong confirmation in what was said by Lord Salisbury at a meeting in Limehouse Town Hall on 21 March, 1895. He said: 'I remember the debates on that clause well, and those who proposed it never professed to intend that it should do more than it professed to do—that is, to remove formularies from the teaching of the board schools. They never intended that doctrines should be prevented from being taught in those schools.'" ("Elementary Education," by Dean Gregory, p. 129.)

The "Hansard" report of the speech delivered by Mr. Cowper-Temple in the course of the famous debate on 30 June, 1870, contains the following passage:—

"The exclusion of catechisms and formularies left the opinions and faith of the teacher untouched, and dealt only with lesson books which bore upon their title page plain indications of their origin." ("Hansard's Parliamentary Debates," Third Series, Vol. 202, 1276-7.)

Mr. Cowper-Temple spoke in opposition to an amendment, moved by Mr. Jacob Bright, which aimed directly at the exclusion of denominational *teaching*.

"In any such school in which the Holy Scriptures shall be read and taught, the teaching shall not be used or directed in favour of or against the distinctive tenets of any religious denomination." ("Hansard," Third Series, Vol. 202, 1271.)

the course of that instruction. It seems hardly credible, however, that Parliament, when it excluded *documents*, intended to admit *doctrines*, and the administration of the Act has consistently presupposed that Parliament intended to exclude *both*.<sup>1</sup> This presupposition has been confirmed by the Law Officers of the Crown.<sup>2</sup>

*The Conscience Clause.*—"The Conscience Clause" is the name generally given to certain "Regulations for Conduct of Public Elementary School" which are prescribed by section 7 of the Act of 1870.

"(1) It shall not be required, as a condition of any child being admitted into or continuing in the school, that he shall attend or abstain from attending any Sunday school, or any place of religious worship, or that he shall attend any religious observance or any instruction in religious subjects in the school or elsewhere, from which observance or instruction he may be withdrawn by his parent, or that he shall, if withdrawn by his parent, attend the school on any day exclusively set apart for religious observance by the religious body to which his parent belongs :<sup>3</sup>

<sup>1</sup> Cp., however, the evidence of Mr. Patrick Cumin, Secretary to the Committee of Council on Education, given before the Royal Commission appointed in 1886. "If a man being impressed with the importance of a denominational view were to give a lecture upon the subject, I am not aware that he would bring himself within the prohibition of the 14th section." (Drury's "Manual of Education," p. 281.)

<sup>2</sup> "The Law of Public Education in England and Wales," G. Edwardes Jones and J. C. G. Sykes, p. 207. (Edition 1903.)

<sup>3</sup> By section 74 of the Act of 1870 school boards were empowered to make By-Laws for the purpose of "determining the time during which children are" to attend school.

The power thus given is limited by the following proviso:—

" . . . No such by-law shall prevent the withdrawal of any child from any religious observance or instruction in religious subjects, or shall require any child to attend school on any day exclusively



“(2) The time or time during which any religious observance is practised or instruction in religious subjects is given at any meeting of the school shall be either at the beginning or at the end or at the beginning and the end of such meeting,<sup>1</sup> and shall be inserted in a time-table to be approved by the Education Department, and to be kept permanently and conspicuously affixed in every schoolroom; and any scholar may be withdrawn by his parent from such observance or instruction without forfeiting any of the other benefits of the school.”

It will be noticed that the power to withdraw given by subsection 2 merely permits a child to be withdrawn from some observance or instruction: it does *not* exempt a child from attendance at school while that observance is practised or that instruction given.

Subsection 1, however, unmistakably gives power to withdraw a child from school—but only on a day “exclusively set apart for religious observance by the religious body to which his parent belongs”. How should these limiting words be construed? Do they denote a day *wholly devoted* to religious observance? It may be that Judaism has such days, but none of the holy-days recognized by the Church of England or by the Church of Rome are days of this character. The question became important when the Board of Education issued Circular 512. In some parishes it had for long been the practice, and in other parishes it had recently become a practice, to take

set apart for religious observance by the religious body to which his parent belongs. . . .”

This proviso is now binding upon the local education authorities who—by virtue of Mr. Balfour’s Act of 1902—have succeeded to the powers and duties of the school boards.

<sup>1</sup>On a day set apart for inspection of the religious teaching in a public elementary school not provided by a local authority, “any religious observance may be practised, and any instruction in religious subjects given at any time during the meeting of the school”. (Elementary Education Act, 1870, section 76.)

children from school to church on Ascension Day—one of the red-letter days of the Church of England. Circular 512 in effect prohibited this. The reasons alleged for this prohibition were not generally convincing, and the prohibition itself aroused no small indignation among churchmen. It seemed difficult or impossible to bring Circular 512 before the courts, but many felt that the practice prohibited by the circular was sufficiently protected by the conscience clause. At last the question came before the courts. Certain parents were fined by the Barnsley magistrates for “neglecting to send their children to the Darfield Mixed School” on Ascension Day. The matter was carried on appeal to the Divisional Court, and by a judgment delivered on 10 April, 1907 (*Bell v. Graham*), the appeal was allowed and the convictions were quashed.<sup>1</sup>

*Public Elementary School.*—Section 7 of the Act of 1870 created and defined a new category—the category “public elementary school”. Elsewhere,<sup>2</sup> by an argument which is too long to reproduce and cannot conveniently be abridged, I have shown—and the demonstration is not affected by anything that has happened since it was given—that this category is *purely secular*. A public elementary school does not and cannot, *as such*, provide religious instruction. If religious instruction be provided in a school which is a public elementary school, that provision contributes nothing to the *status* of the school as a public elementary school. If no religious instruction

<sup>1</sup> The effect of the judgment seems to be that all the days appointed to be observed as holy-days by section 1 of 5 and 6 Edward VI, c. iii. (“An Act for the Keeping Holidays and Fasting Days”) are days “exclusively set apart for religious observance” within the meaning of the conscience clause.

The days therein appointed to be so observed are “all Sundays in the year” and twenty-seven other days.

The judgment has been published in a penny pamphlet by The Church Schools Emergency League.

<sup>2</sup> In “The Maintenance of Denominational Teaching under the Education Act, 1902”. (George Allen & Sons.)

be given in such a school, the absence of it does not impair the *status* of the school as a public elementary school.

The Act of 1870 established what has since been known as the "dual system". It gave us (as I have said) public elementary schools of two kinds :—

"(a) those provided by the local authorities, and

"(b) those otherwise provided".

Schools of the first kind were maintained out of the Parliamentary grant and the rates. Schools of the second kind received grants, but they did not receive anything from the rates. Schools of the first kind were subject to "the Cowper-Temple clause," and the religious instruction given in them was undenominational; schools of the second kind were exempt from "the Cowper-Temple clause," and only in those schools was denominational teaching permitted to be given. Religious instruction was given in most schools, but, whereas "Cowper-Temple teaching" was wholly supported out of public monies, the denominational schools had "to make ends meet" by voluntary subscriptions. The increasing demands, by the authorities in Whitehall, for larger and better buildings, and modern equipment, made it more and more difficult to raise sufficient money to maintain denominational schools "efficiently," and complaints of the "intolerable strain" thus occasioned were a principal cause of the passing of Mr. Balfour's Education Act of 1902.<sup>1</sup>

## II. THE EDUCATION ACT OF 1902.

Mr. Balfour's Education Act of 1902 made important changes in the position of denominational schools,—changes which went far towards destroying the dual system except within the sphere of religious instruction. The local authorities became

<sup>1</sup> There is a well-informed account of the transition from the Act of 1870 to the Act of 1902 in Mr. Snead-Cox's "Life of Cardinal Vaughan," Vol. II. Cp. Drury's "Manual of Education," pp. 119, 120, 161.

responsible for the maintenance of *all* public elementary schools—whether provided by them or not—and, although (to safeguard denominational teaching) the schools not provided by those authorities had specially constituted bodies of managers, the powers of those managers, outside certain defined matters connected with religious instruction, were hardly greater than those possessed by the entirely subordinate managing bodies of the provided schools. A strict construction of the Act would warrant an assertion that, in non-provided schools, the power of management still (in ordinary circumstances) remains with the managers of those schools, but the provision that the local education authorities are to have control of expenditure,<sup>1</sup> and the obligation on the managers of each non-provided school to carry out the directions of the local education authorities “as to” secular instruction<sup>2</sup> and to make whatever structural alterations and improvements are reasonably required by that authority,<sup>3</sup> have made the local education authorities effectively masters of the situation. Outside certain defined particulars, the managers of the non-provided schools are scarcely less the servants of those authorities than are the managers of the provided schools.

The “intolerable strain” was relieved by placing denominational schools “on the rates,” and we may fairly say that, in return for this relief, the denominational schools surrendered most of the independence they had previously possessed. The supremacy of the local education authorities was, however,

<sup>1</sup> Of *all* expenditure, other than expenditure for which, under the Act, provision is to be made by the managers. See section 7 (1).

<sup>2</sup> Section 7 (1) (a). From the decision in the Marston case (*Blencowe v. Northamptonshire County Council*, 1907, 1 Ch. 504-28, “The Times,” 2 and 14 Feb. 1907) it seems clear that the courts would not be disposed to place a narrow construction upon those vague and crudely-chosen words “as to”. But cp. the Garforth case (*Wilford and others v. West Riding of Yorkshire County Council*) reported in “The Times,” 30 Jan. 1 and 3 Feb. 1908.

<sup>3</sup> Section 7 (1) (d).

not unlimited. It stopped short (or was intended to stop short) where denominational teaching began. The denominational schools retained their denominational character, and this character was safeguarded (or was intended to be safeguarded) by

- (1) Certain provisions regulating the appointment and dismissal of teachers ;<sup>1</sup>
- (2) The presence on each managing body of certain denominational managers (foundation managers) ;<sup>2</sup>
- (3) A plain provision that the religious instruction given in every such school should be under the control of the managers.<sup>3</sup>

I have said that the Act of 1902 placed denominational schools "on the rates". This change was brought about by the opening words of section 7 :—

"The local education authority shall maintain and keep efficient all public elementary schools within their area which are necessary. . . ."

<sup>1</sup> Section 7 (1) (c) and section 7 (7).

<sup>2</sup> Sections 6 (2) and 11.

<sup>3</sup> Section 7 (6) :—

"Religious instruction given in a public elementary school not provided by the local education authority shall, as regards its character, be in accordance with the provisions (if any) of the trust deed relating thereto, and shall be under the control of the managers: Provided that nothing in this subsection shall affect any provision in a trust deed for reference to the bishop or superior ecclesiastical or other denominational authority so far as such provision gives to the bishop or authority the power of deciding whether the character of the religious instruction is or is not in accordance with the provisions of the trust deed."

This is the famous "Kenyon-Slaney clause". It excludes denominational teaching from the control of the local authorities, but it destroyed what was ordinarily called "the one man system," but should more appropriately have been termed "the distinctively ecclesiastical system"—the system, namely, which placed the religious instruction in a church school under the control of the parish priest. It has been said that this clause was passed chiefly "through the influence" of the then Duke of Devonshire. ("Lord Beaconsfield and other Tory Memories," T. E. Kebbel, pp. 119-20.)

These words were at once interpreted in a way which threw upon the local education authorities the cost of maintaining the religious teaching given in non-provided schools. To many of us that interpretation seemed to go beyond the intention of the Act. We deemed it incredible that a mandate to maintain and keep efficient a public elementary school could create a duty to maintain and keep efficient something which was outside the functions (outside the statutory definition) of a public elementary school—something which did not directly contribute anything either to the distinctive character or the distinctive efficiency of a public elementary school. In my book, "The Maintenance of Denominational Teaching," I dealt with the question at some length, and, after a wide survey and careful scrutiny of the Education Acts, reached the conclusion—which still seems to me a valid inference—that the Act of 1902 *neither obliges nor permits* the local education authorities to maintain religious teaching in non-provided schools.<sup>1</sup> The matter came before the courts in the celebrated West Riding case.<sup>2</sup> The Divisional Court sustained the accepted interpretation of the Act;<sup>3</sup> the Court of Appeal reversed that decision;<sup>4</sup> the House of Lords confirmed the finding of the Divisional Court.<sup>5</sup>

At the present moment, then, "Cowper-Temple teaching" and denominational teaching are both "on the rates". There remains, however, this difference:—the buildings in which "Cowper-Temple teaching" is given are provided and maintained by the local authorities out of public monies; the buildings in which denominational teaching is given have been provided chiefly and are now provided and maintained entirely by voluntary gifts and subscriptions. The "intolerable strain"

<sup>1</sup> Cp. Mr. Balfour's short but striking speeches on Mr. Alfred Hutton's Amendment. "Hansard's Parliamentary Debates," 4th Series, Vol. CXIII, pp. 187-90.

<sup>2</sup> *Attorney-General and Board of Education and County Council of the West Riding of Yorkshire, ex parte Grewside.*

<sup>3</sup> "The Times," 30 May, 1906.

<sup>4</sup> "The Times," 9 August, 1906.

<sup>5</sup> (1907) A. C. 29-44. "The Times," 15 December, 1906.

has been relieved, but the two parts of the dual system are not equally supported out of public monies. The school buildings of the "voluntary" or "non-provided" part of the system—buildings which represent many millions of private money—are used by the local education authorities free of charge, and the cost of repairs, enlargements, alterations, and improvements has to be defrayed out of private pockets.

Probably the position of the non-provided schools would be more secure if the financial responsibilities left with the managers of those schools had been otherwise defined. It was chiefly the cost of "alterations and improvements" that occasioned the "strain" that was found "intolerable" before 1902. That cost has still to be defrayed out of private pockets, and it has not ceased to be destructively onerous.

The unwillingness of certain local authorities to discharge the statutory obligations towards non-provided schools led to the passing of the Defaulting Authorities Act (4 Edw. VII, c. 18), but that Act has not yet been enforced.

*New Schools.*—By section 18 of the Elementary Education Act, 1870, school boards were required to provide such additional school accommodation as was in their opinion necessary in order to supply a sufficient amount of such accommodation for their district.<sup>1</sup>

There was nothing in that section to prohibit or prevent the supply of additional school accommodation by voluntary effort, and we know that a very large amount of such accommodation has been so provided since 1870. An opinion arose, however, that the *statutory duty* of the school boards to provide additional school accommodation gave to those boards a *prior right* to provide such accommodation,<sup>2</sup> and this opinion not in-

<sup>1</sup> The Education Act of 1902 (3rd schedule, 6) substitutes "in the opinion of the Board of Education" for "in their opinion".

<sup>2</sup> See "The Law of Public Education" (Edwardes Jones and Sykes), p. 72. (Edition 1903.) Cp. Mr. Patrick Cumin's evidence before the Royal Commission of 1886; Drury's "Manual of Education," p. 306.

frequently hampered the promoters of denominational schools. Clearly, so long as this opinion ruled, the "Cowper-Temple system" of the local authorities (school boards) had larger opportunity for extension than "the denominational system". Section 8 of the Act of 1902 is a not ineffectual attempt to secure equality of opportunity.<sup>1</sup>

### III. THE EXTENSION OF UNDENOMI- NATIONALISM.

By The Technical Instruction Act of 1889 local authorities were empowered "to supply or aid the supply of technical or manual instruction". Among the conditions prescribed by the Act were the following :—

"(b) It shall not be required, as a condition of any scholar being admitted into or continuing in any school aided out of the local rate, and receiving technical or manual instruction under this Act, that he shall attend at or abstain from attending any Sunday school or any place of religious worship, or that he shall attend any religious observance or any instruction in religious subjects in the school or elsewhere: Provided that in any school, the erection of which has been aided under

<sup>1</sup>" 8.—(1) Where the local education authority or any other persons propose to provide a new public elementary school, they shall give public notice of their intention to do so, and the managers of any existing school, or the local education authority (where they are not themselves the persons proposing to provide the school), or any ten rate-payers in the area for which it is proposed to provide the school, may, within three months after the notice is given, appeal to the Board of Education on the ground that the proposed school is not required, or that a school provided by the local education authority, or not so provided, as the case may be, is better suited to meet the wants of the district than the school proposed to be provided, and any school built in contravention of the decision of the Board of Education on such appeal shall be treated as unnecessary."

Section 9 directs the Board of Education, when determining "whether a school is necessary or not," to "have regard to the wishes of parents as to the education of their children".



this Act, it shall not be required, as a condition of any scholar being admitted into or continuing in such school, that he shall attend at or abstain from attending any Sunday school or any place of religious worship, or that he shall attend any religious observance or any instruction in religious subjects in the school or elsewhere ;

- “(c) No religious catechism or religious formulary, which is distinctive of any religious denomination, shall be taught in any school aided out of the local rate, to a scholar attending only for the purposes of technical or manual instruction under this Act, and the times for prayer or religious worship, or for any lesson or series of lessons on a religious subject, shall be conveniently arranged for the purpose of allowing the withdrawal of such scholar therefrom.”

This Act was repealed by the Education Act, 1902, and the London Education Act, 1903. Section 2 of the first-mentioned Act gives local authorities power “to supply or aid the supply of education other than elementary,” and section 4 makes the exercise of that power subject to the following conditions :—

- “(1) A council, in the application of money under this Part of this Act, shall not require that any particular form of religious instruction or worship or any religious catechism or formulary which is distinctive of any particular denomination shall or shall not be taught, used, or practised in any school, college, or hostel aided but not provided by the council, and no pupil shall, on the ground of religious belief, be excluded from or placed in an inferior position in any school, college, or hostel provided by the council, and no catechism or formulary distinctive of any particular religious denomination shall be taught in any school, college, or hostel so provided, *except in cases where the council, at the request of parents*

*of scholars, at such times and under such conditions as the council think desirable, allow any religious instruction to be given in the school, college, or hostel, otherwise than at the cost of the council: Provided that in the exercise of this power no unfair preference shall be shown to any religious denomination.*

“(2) In a school or college receiving a grant from, or maintained by, a council under this Part of this Act,

“(a) A scholar attending as a day or evening scholar shall not be required, as a condition of being admitted into or remaining in the school or college, to attend or abstain from attending any Sunday-school, place of religious worship, religious observance, or instruction in religious subjects in the school or college or elsewhere; and

“(b) The time for religious worship or for any lesson on a religious subject shall be conveniently arranged for the purpose of allowing the withdrawal of any such scholar therefrom.”

This enactment virtually extends the conscience clause and the Cowper-Temple clause from elementary education to “education other than elementary,” but the words in italics constitute an exception which our discussions have made important. These words are virtually a statutory recognition—the first within the Education Acts—of the much-debated principle of “facilities”.

### THE ENDOWED SCHOOLS ACTS.

Turn now to the Endowed Schools Acts.

Prior to the passing of these Acts the claims of Dissenters “to enjoy the educational privileges afforded by grammar schools,” often came before the Court of Chancery. The decisions, we are told, “varied a good deal,”<sup>1</sup> but the Court seemed not in-

<sup>1</sup> Phillimore’s “Ecclesiastical Law,” Vol. II, p. 2048, edition 1873.

disposed to regard the claims of Dissenters benevolently—at least, where there was usage in their favour, and the trusts did not expressly confine the benefits of a school to members of the Church of England.<sup>1</sup> It was held, also, that the Lord Chancellor, as visitor on behalf of the Crown, could “grant greater facilities for the exemption of children of Dissenters from particular branches of religious teaching than the Court”.<sup>2</sup>

The old law relating to grammar schools has, however, been made practically obsolete by the legislation of the last half-century.<sup>3</sup>

Section 1 of the Endowed Schools Act, 1860, imposed upon “the trustees or governors of every Endowed School” a conditional obligation to admit “to the benefits of the school the children of parents not in communion with the church, sect, or denomination” with which the school was connected by its trusts. Sections 15 and 16 of the Act of 1869 contain elaborate conscience clauses for day schools and boarding schools. By section 19 certain schools and endowments are excepted from the provisions of sections 15 and 16,<sup>4</sup> but the exception does not extend to “the provisions for the exemption of day

<sup>1</sup> “The Law of Charities and Mortmain, being the Fourth Edition of Tudor’s Charitable Trusts,” p. 637.

<sup>2</sup> *Ibid.* p. 638.

<sup>3</sup> “The Endowed Schools Acts introduced a new principle in regard to provisions for religious instruction which was virtually the converse of the old principle of the Court of Chancery.”

“General Introduction to the Return (H.C. 178; 1906) made in compliance with an Order of the House of Commons, dated 23 February, 1906,” p. 45, section 87.

<sup>4</sup> “19.— A scheme relating to

“(1) any school which is maintained out of the endowment of any cathedral or collegiate church, or forms part of the foundation of any cathedral or collegiate church; or

“(2) any educational endowment the scholars of which are . . . required by the express terms of the instrument of foundation or the statutes or regulations made by the founder or under his authority, in his lifetime or within fifty years after his death (which terms have been observed down to the commencement of this Act) to learn or to be instructed according to the

scholars from attending prayer or religious worship, or lessons on a religious subject, when such exemption has been claimed on their behalf".

"The most frequent provision for religious instruction occurring in schemes made under the Endowed Schools Acts for foundations not falling within section 19 of the Endowed Schools Act, 1869, is that religious instruction in accordance with the principles of the Christian Faith shall be given under regulations to be framed from time to time by the governors, with the additional provision, after 1875, that no alteration in such regulations should take effect until the expiration of not less than one year after notice of the alteration had been given. The insertion of this provision was required by section 11 of the Endowed Schools Act, 1873."<sup>1</sup>

In schemes established before 1870 a clause frequently occurs requiring the children to attend the school on Sundays, and also to attend divine service in the parish church, at least once on every Sunday. After 1860 this requirement was qualified (in the majority of cases) by a conscience clause. "A provision for attendance at church is extremely rare in the case of schemes established after 1870."<sup>2</sup>

#### THE WELSH INTERMEDIATE EDUCATION ACT, 1889.

Section 4 of the Welsh Intermediate Education Act, 1889, combines the Endowed Schools conscience clause with a "Cowper-Temple" provision.

doctrines or formularies of any particular church, sect, or denomination

is excepted from the foregoing provisions. . . ."

It seems clear that the Court would construe these excepting words very strictly. ("The Law of Public Education." Edwardes Jones and Sykes, p. 422, edition 1903. "The Law of Charities and Mortmain," 1906, pp. 702-3.)

<sup>1</sup> "General Introduction to the Return (H.C. 178; 1906) made in compliance with an Order of the House of Commons, dated 23 February, 1906," p. 46, section 88.

<sup>2</sup> Ibid. pp. 46-7, section 91.

- “(3) Where a scheme under this Act does not relate to a school maintained out of the endowment, or forming part of the foundation, of any cathedral or collegiate church, or where a scheme under this Act does not relate to any other educational endowment which by section 19 of the Endowed Schools Act, 1869, is excepted from the foregoing provisions of that Act therein mentioned, such scheme shall, in addition to the provisions of section 15 of the said Act, provide that no religious catechism or religious formulary which is distinctive of any particular denomination shall be taught to a scholar attending as a day scholar at the school established or regulated by the scheme, and that the times for prayer or religious worship or for any lesson or series of lessons on a religious subject shall be conveniently arranged for the purpose of allowing the withdrawal of a day scholar therefrom in accordance with the said section 15.”

#### REGULATIONS FOR SECONDARY SCHOOLS.

The payment of grants to secondary schools is governed by Regulations issued from time to time by the Board of Education.

The regulations issued in the year 1909<sup>1</sup> contain the following provisions :—

- “5. (a) No catechism or formulary distinctive of any particular religious denomination may be taught in the school except as provided by this article.
- “(b) If the instrument under which the school is governed requires, or does not prohibit, the giving in the school of religious instruction distinctive of any particular denomination, the governing body may provide such

<sup>1</sup>“Regulations for Secondary Schools (in force from 1 August, 1909) in England, excluding Wales and Monmouthshire,” 1909, Cd. 4691.

instruction for any pupil upon the written request of the parent or guardian of the pupil. A record must be kept of all such requests.

- “(c) In a school where such instruction is given, regulations must be made by the governing body such as will secure observance of provisions (a), (b), and (c) of this article to the satisfaction of the Board, and a copy of such regulations must be given to the parent or guardian of every pupil.
- “(d) Such instruction, if given, must be provided from funds other than grants made by the Board of Education or any local authority.
- “23. The instrument under which the school is governed (whether in the form of a trust-deed, scheme, charter, Act of Parliament, statutes, regulations, or minutes):—
- “(a) must not require any members of the teaching staff to belong, or not to belong, to any particular denomination;
- “(b) must not require a majority of the governing body (whether in virtue of their tenure of any other office or otherwise) to belong, or not to belong, to any particular religious denomination;
- “(c) must not provide for the appointment of a majority of the governing body by any person or persons who, or by any body the majority of whom, are required (whether in virtue of their tenure of any office or otherwise) to belong, or not to belong, to any particular denomination.”

#### TRAINING COLLEGES.

“The Regulations for 1907 embody important changes of two kinds which are designed to secure that candidates shall

not in future be debarred from access to training colleges by denominational restrictions.

"In the first place, it is provided that admission to all training colleges and hostels shall in and after 1908 be regulated by certain provisions which are set out in detail in section 8 of the Regulations. . . .

"In the second place, it is provided that after 1 August, 1907, no institution not already recognized as a training college will be so recognized unless it complies with certain conditions as to freedom from denominational restrictions or requirements which are set out in sections 7 (g) and 7 (h), and that after the same date no institution not already recognized as a hostel will be so recognized unless it both complies with these conditions and is also connected with a training college which complies with these conditions." <sup>1</sup>

*Section 7 (g, h).*—“(g) After 1 August, 1907, no institution not already recognized as a training college or hostel will be so recognized unless it is either provided by a local education authority or is conducted by a body of governors acting under and in accordance with a scheme, or other written instrument or body of regulations, approved by the Board. The instrument under which a training college or hostel is governed—

- “(i) must not require any members of the teaching staff to belong or not to belong to any particular religious denomination ;
- “(ii) must not require a majority of the governing body (whether in virtue of their tenure of any other office or otherwise) to belong or not to belong to any particular religious denomination ;
- “(iii) must not provide for the appointment of a majority of the governing body by any person

<sup>1</sup> Regulations for the Training of Teachers and for the Examination of Students in Training Colleges,” 1907, Cd. 3597, page v.

or persons who, or by any body the majority of whom, are required (whether in virtue of their tenure of any other office or otherwise) to belong, or not to belong, to any particular religious denomination.

“(4) After 1 August, 1907, no institution not already recognized as a training college or hostel will be so recognized unless the following conditions are observed :—

“(i) No catechism or formulary distinctive of any particular religious denomination may be taught in the college or hostel, except in cases where the parent or guardian of any student requests the governors in writing to provide for the student religious instruction in the doctrines, catechism, or formularies distinctive of any particular denomination. In such cases, the governors may, if they think fit, and if the instrument under which the college or hostel is governed requires or does not prohibit the giving of such instruction in the college or hostel, comply with such request and provide such instruction accordingly out of funds other than grants made by the Board of Education or any local authority ;

“(ii) In colleges or hostels where such instruction is given the governors must make regulations as soon as practicable to secure observance of the provisions of this section. A copy of such regulations must be given to the parent or guardian of each student.

“(iii) Records must be kept of all requests made to the governors in respect of religious instruction under (i) of this section.”

*Section 8.*—“(d) In no circumstances may the application of a candidate be rejected on the ground of religious



faith or by reason of his refusal to undertake to attend or abstain from attending any place of religious observance, or instruction in religious subjects in the college or elsewhere; nor on the ground of social antecedents or the like."

Under sections 2 and 22 (3) of the Education Act, 1902, certain of the local education authorities have provided and maintain training colleges, and—in conformity with section 4 (1) of that Act<sup>1</sup>—entrance to those colleges is not restricted by any denominational "test". Section 4 (1) makes religious training in those colleges undenominational.<sup>2</sup> It does not, however, make religious training *compulsory*, and we know that in some cases *no religious training* was provided.

In the year 1909 the Board of Education called attention to this, and virtually required the defect to be remedied. I quote two sentences and one article from the Training College Code issued on 1st July of that year.

The sentences are from the Prefatory Memorandum :—

"It is true that it does not form part of the duties imposed on the Board by Parliament to lay down any requirements as to the giving of religious instruction in elementary schools. But the Board must recognize that religious instruction of one kind or another is at present actually given in by far the greater number of public elementary schools, whether provided by local education authorities or not, and they believe that local education authorities in general will concur with them in thinking it desirable to make provision for the training of students for this side of their work."

The Article is that numbered 56 :—

<sup>1</sup> See p. 299 of this Memorandum.

<sup>2</sup> By virtually bringing it within "the Cowper-Temple clause".

- “ 56.—(a) Such colleges as do not already provide for the training of students in the giving of religious instruction (whether distinctive of any particular denomination or not) shall provide a course of training which shall prepare students to give such<sup>1</sup> instruction in and explanations of the Bible as are suited to the capacities of children.
- “(b) Attendance at religious instruction or training in religious teaching will not be one of the conditions required to enable a student to qualify for recognition by the Board as certificated teacher, but any student who has attended a course of religious instruction or training in religious teaching will be entitled to a statement certifying the fact of his attendance.
- “(c) In the case of colleges to which Article 56 (a) applies, the Board will require to be satisfied that adequate time is provided in the time-table of the college for a course of training in accordance with that article, and the Board’s inspector in reporting to the Board as to whether the students receive due instruction in the art of teaching will take into account the provision made for their training in the work of giving religious instruction in accordance with Article 56 (a).”

The State, then, not content with providing and maintaining “Cowper-Templeism” in the schools—undertook to train up teachers to be “Cowper-Temple” teachers. Did not this amount to an effective “establishment” of undenominationalism?

Those Regulations mark the farthest extension of the principle of State-undenominationalism, but (in deference to adverse criticisms in the House of Commons) they were speedily withdrawn.

<sup>1</sup>The Prefatory Memorandum inserts “undenominational” before “instruction”.

## IV. REFORMATORY AND INDUSTRIAL SCHOOLS.

Thus far we have seen an increasing tendency to make "Cowper-Templeism" the established religion of the State within the sphere of education.

In reformatory and industrial schools, however,<sup>1</sup> the State has frankly accepted denominationalism—denominationalism supported by "parents' rights".<sup>2</sup>

(1) *The Reformatory Schools Act, 1866* :—

"14. In choosing a certified reformatory school, the Court . . . shall endeavour to ascertain the religious persuasion to which the youthful offender belongs, and, so far as is possible, a selection shall be made of a school conducted in accordance with the religious persuasion to which the youthful offender appears to the Court . . . to belong. . . .

"16. The parent . . . of any youthful offender sent or about to be sent to a certified reformatory school which is not conducted in accordance with the religious persuasion to which the offender belongs, may apply to the Court . . . to send or remove such offender to a certified reformatory school conducted in ac-

<sup>1</sup>And not only in these. See the Elementary Education (Deaf and Dumb Children) Act of 1893, and the Elementary Education (Defective and Epileptic Children) Act of 1899. In a footnote on pp. 310-311 I have quoted from those Acts the sections which relate to religious instruction.

<sup>2</sup>"Reformatories and industrial schools are not necessarily, or even generally, denominational schools, but Parliament has recognized the justice of exclusive resort to denominational schools in all cases where parents desire it for their children, who are compulsorily separated from their homes for a term of years" ("Report of the Departmental Committee on Reformatories and Industrial Schools" (30 Oct. 1896), p. 130).

The quotations from the Statutes will show that this paragraph is an under-statement. In our reformatories and industrial schools, denominationalism does not depend exclusively or chiefly on expressed "parental desire". The State has defined and accepted for itself a primary obligation to ascertain "the religious persuasion",

cordance with the offender's religious persuasion, and the Court . . . shall, upon proof of such offender's religious persuasion, comply with the request of the applicant. . . ."

Similar provisions are to be found in The Industrial Schools Act, 1866.

(2) Both the Reformatory Schools Act of 1866 and the Industrial Schools Act of the same year permit pastoral visitation.

*Reformatory Schools Act.*—"It shall be lawful, upon the representation of the parent . . . of any offender detained in any such school, for a minister of the religious persuasion of such offender, at certain fixed hours of the day, which shall be fixed by the Secretary of State for the purpose, to visit such school for the purpose of affording religious assistance to such offender, and also for the purpose of instructing such offender in the principles of his religion."<sup>1</sup>

*Industrial Schools Act.*—"25. A minister of the religious persuasion specified in the order of detention as that to which the child appears to the justices or magistrate to belong may visit the child at the school on such days and at such times as are from time to time fixed by regulations made by the Secretary of State for the purpose of instructing him in religion."<sup>2</sup>

<sup>1</sup>This forms part of section 14.

<sup>2</sup>In the Elementary Education (Blind and Deaf Children) Act, 1893, we find the following "Provisions as to Religious Instruction":—

"8. (1) If and so far as the school which a child is required in pursuance of this Act to attend is not a public elementary school, it must, in all matters relating to the religious instruction and observances of the child, be conducted in accordance with the rules applying to industrial schools, except that references in the Industrial Schools Act, 1866, and the rules made under it to the Secretary of State shall be construed as references to the Education Department; and any school authority may provide and maintain for the purposes of this Act a school so conducted,

(3) *The General Rules and Regulations for Industrial Schools*<sup>1</sup> :—

“4. Each day shall be begun and ended with simple family worship, consisting of prayer and praise to God, and the reading of Scripture. The religious instruction shall be governed by the following rule :—

“The ordinary religious instruction and observances shall consist of prayers and hymns and reading from the Bible, with such explanations and instructions in the principles of religion and morality as are suited to the capacity of children; and in the selection of such prayers and hymns, and in explanations and instructions from the Bible, no attempt shall be made to

“ (2) Every rule made under this section shall be forthwith laid before both Houses of Parliament.

“ (3) In selecting a school under this Act the school authority shall be guided by the rules laid down in the Industrial Schools Act, 1866, and if a child is boarded out in pursuance of this Act, the school authority shall, if possible, arrange for the boarding out being with a person belonging to the religious persuasion of the child's parent.

“ (4) Where a child is required in pursuance of this Act to attend any school, the child shall not be compelled to receive religious instruction contrary to the wishes of the parent, and shall, so far as practicable, have facilities for receiving religious instruction and attending religious services conducted in accordance with the parents' persuasion, which shall be duly registered on the child's admission to the school.”

These provisions are adopted and applied to another class of schools by section 12 of the Elementary Education (Defective and Epileptic Children) Act, 1899 :—

“ 12. The provisions regulating religious instruction in certified schools for defective and epileptic children shall be the same as those enacted by section 8 of the Elementary Education (Blind and Deaf Children) Act, 1893.”

<sup>1</sup> “These rules are not in themselves operative; but they are model rules which indicate what is necessary to managers who prepare a code of rules for their school and submit it to the Secretary of State for his approval” (“Report of the Departmental Committee on Reformatories and Industrial Schools,” p. 197).

attach children to, or to detach them from, any particular denomination.

"No child should be required to attend any religious instruction or observance, or should be taught the catechism or tenets of any religion to which his parents or guardians object, or other than that to which he is stated in the order of detention to belong. With regard to children who are specified in the order of detention as belonging to any particular religious persuasion, the managers shall, so far as practicable, make arrangements that such children shall, during the times set apart for religious instruction, attend religious instruction or observances conducted by ministers of such persuasions or by such responsible teachers of the school or other persons as are delegated by such ministers with the approval of the managers.

"On Sunday the inmates shall, if possible, attend public worship at some convenient church or chapel, provided that no boy or girl shall be taken to any church or chapel to which his parents or guardians object on the ground that its religious services are not in accordance with the religious persuasion of the child or with that to which he is stated in the order of detention to belong."

This rule is repeated in the Rules and Regulations for the establishment of a certified truant industrial school.<sup>1</sup> There is a similar but shorter rule in the Rules and Regulations for Reformatory Schools.<sup>2</sup>

## V. THE CHARITABLE TRUSTS ACTS.

Most non-provided schools are charities and are subject to the Charitable Trusts Acts. The primary administration of

<sup>1</sup>"Report of the Departmental Committee on Reformatories and Industrial Schools," Appendix IV, p. 197.

<sup>2</sup>Ibid. Appendix IV, p. 193.

those Acts formerly rested solely or chiefly with the Charity Commissioners, but, by Orders in Council made under the Board of Education Act of 1899,<sup>1</sup> the jurisdiction over endowments which are solely educational was transferred from the Charity Commissioners to the Board of Education.<sup>2</sup>

To give a comprehensive survey of the law relating to charitable trusts would carry us far beyond the scope of this Memorandum: for my present purpose it is not necessary to do more than deal very briefly with a few points that seem important.

(1) The first Charitable Trusts Act (1853) contains the following provision:—

“46. Nothing herein contained shall diminish or detract from any right or privilege which by any rule or practice of the Court of Chancery, or by the construction of law, now subsists for the preference or exclusive or special benefit of the Church of England, or the members of the same Church, in settling any scheme for the regulation of any charity, or in the appointment or removal of trustees, or generally in the application or management of any charity.”

“Tudor” comments thus:—

“This section would prevent persons not members of the Church of England from being appointed trustees of a Church of England School: *re* Burnham National Schools (1873), 17 Eq. 247; but see *Newsome v. Flowers* (1861), 30 B. 461.”<sup>3</sup>

(2) There is a limited power of appeal from orders made under the Charitable Trusts Acts to the Chancery Division of

<sup>1</sup> These Orders may be found in “The Law of Public Education” (Edwardes Jones and Sykes), pp. 396, 399, 401, edition 1903.

<sup>2</sup> See footnote<sup>1</sup>, p. 314.

<sup>3</sup> “The Law of Charities and Mortmain, being the Fourth Edition of Tudor’s Charitable Trusts,” p. 547.

the High Court (see The Charitable Trusts Act, 1860, section 8, and The Charitable Trusts Act, 1869, section 10).

Owing to the existence of this power of appeal, those Acts do not empower either the Charity Commissioners or the Board of Education to deal arbitrarily with charitable trusts, for this power, limited though it be, suffices to subordinate their work under those Acts to that authoritative conception which is described sometimes as "the doctrine" and sometimes as "the principle" of *cy près*.<sup>1</sup>

Boyle tells us that this conception is "derived exclusively" from the Justinian Code.<sup>2</sup>

Lord Chief Justice Wilmot (1709-92) is more precise: he refers us to the sections *De Usu et Usufruct. Legatorum* (*Dig. Lib. 33, tit. 2, sections 16, 17*)<sup>3</sup> :—

"xvi. *Modestinus libro IX. Responsorum. Legatum civitate relictum est, ut ex redditibus quotannis in ea civitate memorie conservandæ defuncti gratia spectaculum celebretur, quod illic celebrari non licet. Quæro: quid de legato existimes? Modestinus respondit:—cum testator spectaculum edi voluerit in civitate, sed tale, quod ibi*

<sup>1</sup> This subordination is inferred also from section 2 of the Charitable Trusts Act, 1860. It should be remembered, however, that the powers of the Board of Education in charity matters are not confined to those transferred to it from the Charity Commissioners. Under section 75 of the Elementary Education Act, 1870, the Board has (in certain cases) a power which is additional to, and independent of, those transferred powers. The power conferred by that section does not seem to be in any way connected with the Court of Chancery: one may reasonably suppose, therefore, that the Board's exercise of that power is not limited by the doctrine of *cy près*.

It is said, too, that section 78 of that Act (1870) now gives the Board an *independent initiative* in framing schemes ("The Law of Public Education," Edwardes Jones and Sykes, p. 251, edition 1903; "The Law of Charities and Mortmain, being the Fourth Edition of Tudor's Charitable Trusts," p. 752).

<sup>2</sup> "A Practical Treatise on the Law of Charities," Wm. R. A. Boyle (1837), preface.

<sup>3</sup> Wilmot's "Notes of Opinions and Judgments Delivered in Different Courts" (1804), pp. 53, 54.



celebrari non licet, iniquum esse, hanc quantitatem, quam in spectaculum defunctus destinaverit, lucro heredum cedere: igitur adhibitis heredibus et primoribus civitatis dispiciendum est, in quam rem converti debeat fidei commissum, ut memoria testatoris alio et licito genere celebretur.

“ xvii. *Scævola libro III. Responsorum.* Quidam prædia rei publicæ legavit, de quorum reditu quotannis ludos edi voluit, et adiecit: *quæ legata peto decuriones et rogo, ne in aliam speciem aut alios usus convertere velitis*; respublica per quadrennium continuum ludos non edidit. Quæro: an redditus, quos quadrennio respublica percipit, heredibus restituere debeat, vel compensare in aliam speciem legati ex eodem testamento? Respondit et invitis heredibus possessione adprehensa perceptos fructus restituendos esse, et non erogatum secundum defuncti voluntatem in alia quæ deberentur compensari.”<sup>1</sup>

In the “Encyclopædia of the Laws of England” the “*cy près doctrine*” is described as the “principle of applying property as nearly as possible according to the donor’s intentions, when

<sup>1</sup> This quotation is from Beck’s edition of the “Corpus Juris Civilis” (p. 442). In Mommsen’s edition, see Vol. I, p. 461.

In his interesting book, “*Liberté de Conscience et Liberté de Science*,” Signor Luzzatti, Professor at the University of Rome, gives a short account of the recent Scottish Churches case and of the decision of the House of Lord therein. Upon that decision he comments as follows:—

“D’après cette étrange interprétation, un legs d’un ancien testateur romain pour un autel ardent en faveur de Jupiter n’aurait pu s’éteindre ni être détourné à d’autres usages; par hommage à la volonté des testateurs, elle aurait dû encore durer après la fin du paganisme!” (p. 259).

One hardly knows what to say about this. It is difficult to believe either—

- (1) that Signor Luzzatti is unaware of the Justinian articles and the doctrine of *cy près*, or
- (2) that he supposes the House of Lords to have ignored or set aside that doctrine.

those intentions cannot be exactly carried out".<sup>1</sup> There is more than *this* to be said concerning it, but a few authoritative quotations will be a convenient substitute for much discussion.

"The King as *parens patriæ* has a general superintendence of all charities, which he exercises by the Lord Chancellor."<sup>2</sup> "As *parens patriæ* he affords a peculiar protection to several classes of persons or objects who are incapacitated from adequately protecting themselves."<sup>3</sup>

"By the constitution of the laws of England the King has an original right, *pro bono publico*, to superintend the care and management of charities, . . . and that right is exercised by the King in his High Court of Chancery, forming in fact part of its original jurisdiction."<sup>4</sup>

"In the exercise of its *nobile officium* it"—the Court—"in certain cases, where the precise mode of carrying out the testator's purposes becomes impracticable, fulfils them in some other mode as nearly akin as possible—*cy près*, in the terminology of the English law."<sup>5</sup>

"To the general maxims of construction applicable to wills, viz. *Benignè faciendæ sunt interpretationes et verba intentioni debent inservire*, the doctrine of *cy près* is at once referable. According to this doctrine, which proceeds upon the principle of carrying into effect as far and as nearly as possible the intention of the testator, if there be a general and also a particular intention apparent in the will, and the particular intention cannot take effect, the words shall be so construed as to

<sup>1</sup> "Encyclopædia of the Laws of England" (Renton and Robertson), Vol. II, p. 686 (2nd edition).

<sup>2</sup> "The Law Dictionary," Giles Jacob (new edition by T. E. Tomlins, 1797), Vol. I, article "Charitable Uses".

<sup>3</sup> "A Practical Treatise on the Law of Charities," by W. R. A. Boyle, (1837), p. 12.

<sup>4</sup> *Ibid.*

<sup>5</sup> "Principles of the Laws of Scotland," John Erskine (19th edition, by John Rankine, 1895), p. 509.

give effect to the general intention. . . . Where a bequest is made for charitable purposes, with which a literal compliance becomes inexpedient or impracticable . . . a Court of Equity will apply the doctrine of *cy près*, and will endeavour substantially and as nearly as possible to carry into effect the intention of the testator."<sup>1</sup>

"It is a rule with respect to all charities that the intention of the donor, so far as it is practicable and legal, shall be strictly observed. . . . But where it is incapable of being literally acted upon, or its literal performance would be unreasonable, a decree will be made for its execution *cy près*, that is, in some method conformable to the general object, and adhering as closely as possible to the specific design of the donor."<sup>2</sup>

". . . the Court will not decree the execution of the trust of a charity in a manner different from that intended, except in so far as they see that the intention cannot be executed literally, but another mode may be adopted consistent with the donor's general intention so as to execute it, though not in mode yet in substance."<sup>3</sup>

"The end towards which the charitable trusts were originally directed should be kept in view, but the means for attaining that end may be varied from time to time.

"You look to the charity which is intended to be created,

<sup>1</sup> "Selection of Legal Maxims Classified and Illustrated," Herbert Broom (4th edition, 1864), p. 545.

<sup>2</sup> Mr. Sergeant Stephen's "New Commentaries on the Laws of England" (6th edition, 1868), Vol. III, pp. 199, 200.

<sup>3</sup> The Master of the Rolls in *Attorney-General v. Boulton* (11 July, 1794), 2 Vesey Jr. 387-8. "The Law of Charitable Uses as laid down and Digested by George Duke, Esq., in 1676" (Bridgman's edition, 1805), p. 547; "Commentaries on Equity Jurisprudence," Hon. Mr. Justice Story, LL.D. (1st English edition by W. E. Grigsby, 1884), section 1176.

and you distinguish between it and the means which are directed for its accomplishment. Now the means necessarily vary from age to age."<sup>1</sup>

"The duties of the Court in matters of charity are perfectly clear and distinct. It is not its duty to direct charity property to be employed in such manner as it thinks will be most beneficial for public purposes, but to carry into effect the intentions expressed by the founders, so far as those intentions are not inconsistent with any existing law. The authorities show this very distinctly, that the Court cannot vary and modify existing charity trusts so as to meet its own views with regard to what it may think most beneficial and for the general advantage of the public; . . . but this Court will see that the trusts are properly administered, and that the directions and intentions of the founder are duly carried into effect."<sup>2</sup>

NOTE.—In "The Law of Charities and Mortmain" there is a section entitled "*Statutory Cy Près Application*".<sup>3</sup> In this section the editors enumerate several cases in which Parliament has sanctioned the appropriation of charitable endowments to purposes *not* closely akin to those defined by the original trusts of those endowments, and they unmistakably think that Parliament has thereby widened the conception of *cy près*. Similarly,

<sup>1</sup> Lord Westbury in *Clephane v. Lord Provost of Edinburgh* (1869), 1 H.L. Sc. 417, 421 ("The Law of Charities and Mortmain, being the Fourth Edition of Tudor's Charitable Trusts," p. 202).

<sup>2</sup> The Master of the Rolls in *Attorney-General v. Boucherett* (1858), 25 B. 118-119 ("The Law of Charities and Mortmain, being the Fourth Edition of Tudor's Charitable Trusts," p. 145).

Cp. Lord Eldon's judgment (1826) in *Attorney-General v. Earl of Mansfield*, 2 Russ. 520—quoted by Boyle ("Practical Treatise on the Law of Charities"), p. 162.

Cp. also the judgment of the Court of Appeal in the Weir Hospital case ("Times," 8 June, 1910).

<sup>3</sup> "The Law of Charities and Mortmain, being the Fourth Edition of Tudor's Charitable Trusts," p. 219.

the Commissioners who signed the "Majority Report" of the Poor Law Commission tell us that "under the Endowed Schools Act the *cy près* method was pushed very far indeed, and that, not with a view to the expansion of particular charities for the better fulfilment of the objects for which they were established, but with a view to the application of the charities to a new purpose altogether".<sup>1</sup>

Now, it seems clear that a statutory appropriation of charitable endowments to this or that foreign purpose would widen the doctrine of *cy près* only if the legislative power were bound by that conception. Can it reasonably be maintained that the legislative power is thus bound. I venture to think that it cannot be. Probably the juriconsults of Justinian's day would have upheld such an opinion, but many things have happened since they rested from their labours. For one thing, the Modern State has arisen, and we have learnt from Sir Henry Maine that the Modern State differs in important particulars from the States of antiquity. The principal difference is that constituted by the emergence of a *free legislative power*—a sovereign power which accepts no limitations except those which from moment to moment it defines for itself. Through this autonomous power the ultimate freedom of the State becomes effectual in reform.

Now, if the legislative power be an expression of the State's ultimate and sovereign freedom, that power is not bound by the doctrine of *cy près*. For the Courts that doctrine is an *obligatory rule*: for the legislative power it is, at most, a *non-obligatory propriety*—the definition of a custom which, although laudable, is *not binding*.

Because Parliament is *not* bound by the doctrine of *cy près*,

<sup>1</sup>" Report of the Royal Commission on the Poor Laws and Relief of Distress," p. 461, paragraph 49. Under section 30 of the Endowed Schools Act, 1869, non-educational charities of certain specified kinds may be diverted to educational purposes.

it is temerarious to assume that Parliamentary appropriations of charitable endowments illustrate that doctrine.<sup>1</sup>

(3) An opinion has prevailed that the trusts ordinarily described as "National Society Trusts," are trusts for two separable although conjoined purposes—one religious and the other secular—and that the religious purpose, if not secondary, is the less important. In accordance with this opinion it has been thought proper, when dealing with monies produced by the sale of school premises held upon such trusts, to appropriate the larger part of those monies to secular purposes.

On the other hand, it has been earnestly contended that National Society Trusts should not be dissected in this manner—that they are trusts, not for secular instruction *plus* a certain kind of religious teaching, but for education of a certain indivisible and religious kind.<sup>2</sup> This contention has been largely confirmed by the judgment delivered by Mr. Justice Swinfen Eady in "the Caerphilly case".<sup>3</sup>

<sup>1</sup> On 6 June, 1834, Lord Eldon—then Lord Chancellor—took part in a debate in the House of Lords on the Irish Church Commission. The next day he wrote an account of the debate to Lady F. J. Bankes, and his letter suggests that he, too, believed the principles of equity to be binding on the legislature no less than on the Courts. ("The Public and Private Life of Lord Chancellor Eldon," Vol. III, p. 226.) His letter, however, goes beyond his speech—or, at least, beyond the reports of his speech given in "Hansard" and "The Times". His biography, indeed, contains a short quotation (Vol. III, pp. 226, 227)—whether from a report or a summary is not apparent—which is in close agreement with his letter, but the source of the quotation is not mentioned, and the quotation itself is not supported by the reports which I have examined.

<sup>2</sup> Reasons for such a contention are set forth in my "Plea for Church Schools" (George Allen & Sons). Cp. "The Withdrawal of Schools: Notes on the Trust-deeds of Voluntary Schools," pp. 107-11. (James Verity, The Electric Press, Middleton, Manchester.)

As long ago as 1840, Dean Hook had contended that "the object of the National Society is *not* to provide for the general education of the people, but to provide a *particular kind of education*,"—apparently, education "on the principles of the Church". ("The Life and Letters of Walter Farquhar Hook," by W. R. W. Stephens, Vol. I, pp. 459, 460.)

<sup>3</sup> Reported in "The Times" of 20 March, 1908.

(4) A very large number of non-provided schools—outside the Metropolitan area, by far the greater number—are held in virtue of conveyances made under the School Sites Acts.

The first and principal of those Acts was passed in 1841. It is entitled, "An Act to afford further Facilities for the Conveyance and Endowment of Sites for Schools," and it opens with the preamble that "it is expedient that greater facilities should be given for the erection of schools and buildings for the purposes of education".

The intention thus disclosed is an intention to assist "Education," but the facilities actually given are facilities for the education of the poor—"for the education of poor persons".

The School Sites Act of 1853, however, extends the provisions of the earlier School Sites Acts "to cases of such schools" as are therein after specified; "(that is to say), schools or colleges for the religious or educational training of the sons of yeomen or tradesmen or others, or for the theological training of candidates for Holy orders. . . ."

For our present purpose the most important enactments in this series of statutes are sections 2, 3, 4, and 6 of the Act of 1841.

Section 2 empowers—

"Any person, being seised in fee simple, fee tail, or for life, of and in any manor or lands of freehold, copyhold, or customary tenure, and having the beneficial interest therein," to "grant, convey, or enfranchise by way of gift, sale, or exchange, in fee simple, or for a term of years, any quantity not exceeding one acre of such land, as a site for a school for the education of poor persons, or for the residence of the schoolmaster or schoolmistress, or otherwise for the purposes of the education of such poor persons in religious and useful knowledge;"

and it concludes with the following most important proviso:—

"Upon the said land so granted as aforesaid, or any part thereof, ceasing to be used for the purposes in this Act

mentioned, the same shall thereupon immediately revert to and become a portion of the said estate held in fee simple or otherwise, or of any manor or land as aforesaid, as fully to all intents and purposes as if this Act had not been passed, anything herein contained to the contrary notwithstanding."

Section 3 authorizes the Chancellor and Council of the Duchy of Lancaster—

"To grant, convey, or enfranchise, to or in favour of the trustee or trustees of any existing or intended school," lands and hereditaments belonging to the Crown in right of the said duchy, for the "purposes" of the Act.

Section 4 conferred a similar power upon any two of the principal officers of the Duchy of Cornwall.<sup>1</sup>

Section 6 provides—

"That it shall be lawful for any corporation, ecclesiastical or lay, whether sole or aggregate, and for any officers, justices of the peace, trustees, or commissioners, holding land for public, ecclesiastical, parochial, charitable, or other purposes or objects, . . . to grant, convey, or enfranchise, for the purposes of the Act, such quantity of land as aforesaid in any manner vested in such corporation, officers, justices, trustees, or commissioners."

Sections 3 and 4 contain "reverter clauses" substantially identical with the "reverter clause" in section 2, but section 6 contains no such clause.<sup>2</sup>

A "reverter clause" is to be found also in the Duchy of Cornwall Management Act, 1863 (26 & 27 Vict., c. 49, s. 36), but the reversion is conditionally to take place *not* when the granted property is no longer used for *the purposes of the*

<sup>1</sup> This section was repealed by the Statute Law Revision Act, 1874.

<sup>2</sup> "The Withdrawal of Schools: Notes on the Trust-deeds of Voluntary Schools" (Hakluyt Egerton), pp. 113-5 (published by James Verity, The Electric Press, Middleton, Manchester).



*Act*, but when it ceases to be used for *the purpose of the grant*, or is used for some other purpose.

When school premises held upon charitable trusts, but *not* held in virtue of a grant under an Act which contains a "reverter clause," can no longer be used in the manner and for the purpose defined by its trusts, the Board of Education can sell the premises and apply the proceeds of the sale to some charitable purpose akin to the purpose defined by the trusts of the disused premises. Clearly, however, a disused school-house held upon charitable trusts in virtue of a grant under sections 2 or 3 of the School Sites Act, 1841, or the Duchy of Cornwall Management Act, 1863, cannot be dealt with in this way. The "reverter clause" precludes a sale.<sup>1</sup> One would have supposed

<sup>1</sup>Except under section XIV of the School Sites Act, 1841.

"XIV. And be it enacted, that when any land or building shall have been or shall be given or acquired under the provisions of the said first-recited Act or this Act, or shall be held in trust for the purposes aforesaid, and it shall be deemed advisable to sell or exchange the same for any other more convenient or eligible site, it shall be lawful for the trustees in whom the legal estate in the said land or building shall be vested, by the direction or with the consent of the managers and directors of the said school, if any such there be, to sell or exchange the said land or building, or part thereof, for other land or building suitable to the purposes of their trust, and to receive on any exchange any sum of money by way of effecting an equality of exchange, and to apply the money arising from such sale or given on such exchange in the purchase of another site, or in the improvement of other premises used or to be used for the purposes of such trust; provided that where the land shall have been given by an ecclesiastical corporation sole the consent of the Bishop of the Diocese shall be required to be given to such sale or exchange before the same shall take place: Provided also, that where a portion of any parliamentary grant shall have been or shall be applied towards the erection of any school, no sale or exchange thereof shall take place without the consent of the Secretary of State for the Home Department for the time being."

(The Duchy of Cornwall Management Act (1863) does not confer power to sell.)

that if—in the case of a disused school held under the Schools Sites Acts—the trusts defined by the Instrument of Grant were narrower than those defined by the enabling Act or Acts, a scheme could be made providing for a *cy près* use of the premises within the range of the purposes defined by that Act.<sup>1</sup> The Board of Education appears to have thought so:—

“It is clear, however, that reverter is not necessarily occasioned by disuse for the special purposes of the trust, where they are narrower than the purposes of the Act.”<sup>2</sup>

Mr. Justice Warrington, however, has surprised some of us by a judgment which seems to make this opinion untenable. I transcribe the most important passages:—

“The Act specifies three purposes for which land may be granted. First, a school for the education of poor persons; secondly, for the residence of the schoolmaster or schoolmistress; and, thirdly, otherwise for the purpose of the education of such poor persons in religious and useful knowledge. The grantor may select his own purpose from amongst those three; and the operation

Apparently, a sale could take place under section 14 only if the money produced by it could be applied, in one or other of two alternative ways, *for the purposes of the Trust*—applied, that is, “in the purchase of another site, or in the improvement of other premises used or to be used for the purposes of such trust”.

Unless this condition could be satisfied, no sale could properly be authorized. In most cases, I imagine, it would not be possible to satisfy this condition.

<sup>1</sup> Apparently, such a course could not be adopted if the disused school were held under the Duchy of Cornwall Management Act of 1863, for the “reverter clause” of that Act would operate as soon as the school ceased to be used for *the purpose of the grant* under which it was held. The Board could not, by scheme, create a new purpose, within *the purposes of the Act*.

<sup>2</sup> “General Introduction to the Return (H.C. 178, 1906) made in compliance with an Order of the House of Commons, dated 23 February, 1906,” p. 17.

This is a very valuable document. For an independent discussion of certain points, see “The Withdrawal of Schools”.

of the Act is to give force and effect to his grant, even if he be only a limited owner. Can it be the true construction of the Act that, though the land ceases to be used for the purposes expressed in the grant, yet, nevertheless, if it is used for one or more of the other purposes of the Act mentioned, the reverter will not take place? I cannot take this view. I think you must read 'the purposes in the Act mentioned' as meaning such of those purposes as are applicable to the case in question—namely the purposes to which the land was devoted by the grantor."<sup>1</sup>

"I think you must read"—unfortunately the learned Judge did not say *why* he thought so.

(5) The Board of Education tells us that the Law of Mortmain and Charitable Uses "abounds with pitfalls, into which the persons responsible for the preparation and completion of school deeds have fallen in large numbers".<sup>2</sup> If a trust-deed be void through failure to comply with that law, it is void both as a conveyance of property and a declaration of trust. In such a case it would probably be found that the trustees had acquired a possessory title by lapse of time, and that they held

<sup>1</sup> *Attorney-General v. Shadwell and others*. "The Times," 16 Nov. 1909; "The Church Times," 19 Nov. 1909.

<sup>2</sup> "A General Introduction to the Return" (H.C. 178, 1906), p. 19, section 39.

Fortunately, section 23 (5) of the Education Act, 1902, reads as follows:—

"(5) The Mortmain and Charitable Uses Act, 1888, and so much of the Mortmain and Charitable Uses Act, 1891, as requires that land assured by Will shall be sold within one year from the death of the testator, shall not apply to any assurance, within the meaning of the said Act of 1888, of land for the purpose of a schoolhouse for an elementary school."

There is a very interesting account of the "Statutes of Mortmain" in "The History of the Society of Jesus in North America, Colonial and Federal," by Thomas Hughes, S.J., Vol. I, Appendix C, pp. 578-616.

the property upon the trusts defined by the purpose or purposes for which the property had actually been used—not, be it observed, upon the trusts defined by the invalid trust-deed.<sup>1</sup>

(6) A very important judgment was delivered by Mr. Justice Joyce on 28 November, 1909.<sup>2</sup>

The Wesleyan Methodist Chapel in South Street, Wandsworth, is held upon the trusts of the model deed.

“Section 36 of the model deed provided that upon a sale of premises subject to its trusts the ‘trustees and trustee for the time being, acting in the trusts of these presents, shall apply the money which shall arise from every such sale as aforesaid, so far as the same money will extend, to the discharge of all the incumbrances, liabilities, and responsibilities, whether personal or otherwise, lawfully contracted or occasioned by virtue of these presents, or in the due execution of the trusts thereof, or of any of them; and subject thereto, either for or toward promoting the preaching of the Gospel amongst the said people called Methodists, in the circuit in which the said chapel, or place of religious worship, shall, for the time being, be situated, or, for the purpose of procuring a larger, or more conveniently or eligibly situated piece of ground, and chapel, or place of religious worship, and premises, in the place or stead of the said piece of ground, chapel, or place of religious worship, hereditaments, and premises so sold and disposed of, to be settled upon the same trusts, and to and for the same ends, intents, and purposes, and with, under, and subject to the same powers, provisos, and declarations, as are in and by these presents expressed and contained, or such of them as shall be then subsisting, or capable of taking effect.’”

In the year 1906 the trustees acquired another piece of land “contiguous to that already held by them”. This additional piece was conveyed to the trustees upon the trusts of the model

<sup>1</sup> Cp. the “General Introduction,” p. 19, section 37.

<sup>2</sup> *In re Wesleyan Methodist Chapel in South Street, Wandsworth*, 1909, 1 Ch. 454-59.

deed, and they claimed to be registered<sup>1</sup> (without any restrictions) as proprietors thereof.

It was admitted that the new property was held "on the same trusts as the chapel, or like trusts," and was "in respect of situation, so connected with, or held, or used in connexion with such chapel that it could not conveniently be separated therefrom".

The judge ruled that "so long as the chapel be registered as a place of meeting for religious worship, or *bona fide* used as such, the restriction upon selling imposed by section 29 of the Charitable Trusts Act, 1855, does not apply to affect either the site of the chapel or the piece of land recently acquired". He then continued as follows :—

"The chapel trustees contend that independently of this they would be entitled, and without any consent of the Charity Commissioners, if so minded, to sell and dispose of this piece of land, as well as the site of the chapel, inasmuch as the proceeds of sale may legally be applied and expended as income for the maintenance or purposes of the charity, and that there is not here any endowment within the meaning of that term in the Act,<sup>2</sup> that is subject to the jurisdiction of the Charity Commissioners. I am of opinion that this contention of the chapel trustees is well founded, having regard to the decisions of the Court of Appeal which I have mentioned."<sup>3</sup>

It was therefore held that the trustees were "entitled to be registered as absolute owners" of the additional piece of land without any restrictions.

The critical point, it will be observed, is not the power to sell, but the power (given alternatively by the trust-deed) to spend the net proceeds of the sale "as income".

<sup>1</sup> Under the Land Transfer Acts, 1875 and 1897.

<sup>2</sup> In section 62 of The Charitable Trusts Act, 1853.

<sup>3</sup> *In re Clergy Orphan Corporation*, 1894, 3<sup>1</sup> Ch. 145; *in re Church Army*, 1906, W.N. 73; 94 *Law Times*, 559.

Now we find such a power in the model trust-deeds for Wesleyan schools, and also in Roman Catholic trust-deeds.<sup>1</sup> I quote the enabling clause of the Wesleyan deed of 1848:—<sup>2</sup>

“And it is hereby declared that it shall and may be lawful to and for the trustees or trustee for the time being of these presents with the consent of the said yearly Conference, such consent to be testified in writing under the hand of the president for the time being of the said yearly Conference, at any time or times hereafter absolutely to sell and dispose of the same hereditaments and premises hereby appointed, granted, and released, or of such part or parts of the same respecting which such consent in writing as aforesaid shall be given, either by public sale or private contract, and either altogether or in parcels and either at one and the same time, or at different times, for the best price or prices in money that can be reasonably obtained for the same, and well and effectually to convey and assure the hereditaments and premises so sold to the purchaser or purchasers thereof, his, her, or their heirs and assigns, or as he, she, or they shall direct: and the hereditaments and premises so sold and conveyed, and assured as aforesaid, shall thenceforth be held and enjoyed by the purchaser or purchasers thereof, his, her, or their heirs and assigns, freed and absolutely discharged from these presents, and from the trusts hereby declared and every of them: and the trustees and trustee for the time being acting in the trusts of these presents, shall apply the money which shall arise from every such sale as aforesaid, so far as the same money will extend, to the discharge of all the incumbrances, liabilities, and responsibilities, whether personal or otherwise, lawfully contracted or occasioned by virtue of these presents, or in the due execution of

<sup>1</sup> But not, or very rarely, in the trust-deeds of Church schools.

<sup>2</sup> There is a similar clause in the model deed of 1849.

the trusts thereof, or any of them; and subject thereto, either for the purpose of building or procuring a larger or more conveniently or eligibly situated schoolhouse, or schoolhouses, schoolroom or schoolrooms, and premises in the place or stead of the said hereditaments and premises so sold and disposed of, to be settled upon the same trusts, and to and for the same ends, intents, and purposes, and with, under, and subject to the same powers, provisoes, and declarations as are in and by these presents expressed and contained, or such of them as shall be then subsisting, or capable of taking effect, or for or towards the promotion of religious and general educational purposes amongst the said people called Wesleyan Methodists, in the Circuit in which the said premises hereby granted and released shall for the time being be situated as the said trustees or trustee for the time being of these presents, and the said superintendent minister for the time being, or the major part of them, shall think best."

The Kemerton (Roman Catholic) model deed—executed in 1851—is evidently based upon the Wesleyan deed and confers a similar power.<sup>1</sup>

The "Chadwick" (Hexham and Newcastle) deed (1867) confers power to sell, and declares that the net proceeds of the sale "shall be applied in such manner being for the promotion of the Roman Catholic religion or for the education of Roman Catholics as the bishop shall in his absolute discretion direct, and the same or any part thereof may at the discretion of the bishop be applied wholly or partially as income in aid of the voluntary subscriptions for the support of the churches, schools, cemeteries, and burial places aforesaid or either of them and not necessarily as capital, and in particular

<sup>1</sup> See "Precedents of Trust-Deeds" issued as a Parliamentary Paper in 1902, Cd. 1337.

the same may be applied in any manner in which annual or other voluntary subscriptions or contributions for the support of the said churches, schools, cemeteries, and burial places or either of them might be applied".<sup>1</sup>

Power to sell is given also by two Roman Catholic model deeds (A and B), which, we are told, "were framed directly in consequence of the exigencies of the Education Act, 1902."<sup>2</sup> Each of those deeds confers a power to apply the proceeds of sale "as income".

"*Model A.*—5. And further that the monies to arise or to be received in respect of any such sale . . . (after payment of expenses) shall both as to capital and income be applied at any time or times in such manner being for the education of Roman Catholics or the erection, enlargement, improvement, maintenance, or support of any elementary Roman Catholic school or schools or for the promotion of the Roman Catholic religion as the trustees shall, with the consent of the bishop, determine, and the same or any part thereof may in like manner be applied wholly or partially as capital or income in aid of the voluntary subscriptions for the benefit or support of the said school or schools or for any such other charitable purposes as aforesaid, and in particular the same may be applied in any such manner in which annual or other voluntary subscriptions or contributions might be applied."<sup>3</sup>

"*Model B.*—5. And further that the monies to arise or be received in respect of any such sale . . . (after payment of expenses) shall both as to capital and income be applied at any time or times in such manner being for the education of Roman Catholics or the promotion

<sup>1</sup> "General Introduction to the Return H.C. 178, 1906) made in compliance with an Order of the House of Commons, dated 23 February, 1906," pp. 96-7.

<sup>2</sup> *Ibid.* p. 27.

<sup>3</sup> *Ibid.* p. 91.



of the Roman Catholic religion or the erection, enlargement, improvement, maintenance, or support of any elementary Roman Catholic school or schools or for such other purposes as the trustees in their discretion shall think fit, and the same or any part thereof may in like manner be applied wholly or partially as capital or income in aid of the voluntary subscriptions for the support of the said school or schools or for such other charitable purposes as aforesaid, and in particular the same may be applied in any manner in which such annual or other voluntary subscriptions or contributions might be applied."<sup>1</sup>

In each of these cases the power conferred seems to be essentially identical with that conferred by the trust-deed of the chapel in South Street. It follows, therefore, that, in no case governed by any one of these deeds—or by any deed which confers the same power—"have we any endowment within the meaning of that term in the Act which is subject to the jurisdiction of" either the Charity Commissioners or the Board of Education.

Apparently, Mr. Justice Joyce's judgment goes far towards placing most, if not all, Wesleyan and Roman Catholic schools beyond the Charitable Trusts Jurisdiction of the Board of Education.<sup>2</sup>

<sup>1</sup>"General Introduction to the Return (H.C. 178, 1906) made in compliance with an Order of the House of Commons, dated 23 February, 1906," p. 93.

<sup>2</sup>But probably not beyond section 75 of the Elementary Education Act, 1870 (see p. 314, footnote, 1), nor beyond the prohibitory proviso in section 14 of the School Sites Act, 1841, or the similar provisions of the School Grants Act, 1855.

(For that proviso and those provisions, see "The Withdrawal of Schools," pp. 117, 118. James Verity, The Electric Press, Middleton, Manchester.)

When considering the effect of Mr. Justice Joyce's judgment, careful regard should be paid to *In re Gilchrist Educational Trust* (1895, 1 Ch. 367).

## VI. THE ENDOWED SCHOOLS ACTS AND THE WELSH INTERMEDIATE EDUCATION ACTS.

Under these Acts, the appeal against a proposed scheme is not to the Chancery Division of the High Court but to His Majesty in Council and to Parliament.

The scheme-making power given by those Acts is not limited by the doctrine of *cy près*.

## VII. ETHICAL INSTRUCTION.

The authors of the Elementary Education Act, 1870, were careful to confine the parliamentary grant for elementary education to secular purposes.

“97. The conditions required to be fulfilled by an elementary school in order to obtain an annual parliamentary grant shall be those contained in the minutes of the Education Department in force for the time being, and shall amongst other matters provide that :—

“(1) Such grant shall not be made in respect of any instruction in religious subjects . . . but such conditions shall not require that the school shall be in connexion with a religious denomination, or that religious instruction shall be given in the school, and shall not give any preference or advantage to any school on the ground that it is or is not provided by a school board.”

The Elementary Schools Code now in force contains the following regulation :—<sup>1</sup>

“Moral Instruction should form an important part of every elementary school curriculum. Such instruction may either (i) be incidental, occasional, and given as fitting opportunity arises in the ordinary routine of lessons, or (ii) be given systematically and as a course of graduated instruction.

<sup>1</sup> It forms part of Article 2.

- “The subject of this instruction, whether given by the methods indicated in (i) or in (ii) above, should be on such points as courage; truthfulness; cleanliness of mind, body, and speech; the love of fair play; gentleness to the weaker; humanity to animals; temperance; self-denial, love of one's country, and respect for beauty in nature and in art.
- “The teaching should be brought home to the children by reference to their actual surroundings in town or country, and should be illustrated as vividly as possible by stories, poems, quotations, proverbs, and examples drawn from history and biography.
- “The object of such instruction being the formation of character and habits of life and thought, an appeal should be made to the feelings and the personalities of the children. Unless the natural moral responsiveness of the child is stirred, no moral instruction is likely to be fruitful.”

No one pretends that this article contravenes the Act of 1870. The Act, indeed, excludes *religious* instruction from the Code, and the Code prescribes *moral* instruction, but the instruction excluded and the instruction prescribed are not identical. Yet it seems not improbable—and, if the “secular solution” were ever adopted, it would become *probable*—that the instruction given under this Article will develop towards what may fairly be called “a new kind of religion”. Those who are most prominently working to build up a general system of ethical instruction are well aware that such instruction to be effective, must appeal to the imagination and emotions and must have some ground and support—some “sanction,” as we say—outside the words of the teacher and the mind of the scholar. From pure ethical teaching to a glorified “civism” or a vague humanitarianism backed by a vaguer theism the transition is easy and alluring. Were it once made (under shelter of the Code), the resultant phantasy would be an “established religion”

in every public elementary school, and would be provided and maintained entirely out of public monies.

HAKLUYT EGERTON.

*Postscript.*—When these pages were passing through the press, the Report of the Departmental Committee on Endowments for Elementary Education appeared.

The Report appears to recommend, *inter alia*—

1. That the local education authorities should exercise all the jurisdiction of the Board of Education under the Charitable Trusts Acts and the Endowed Schools Acts :

2. That the following classes of charities should be exempted from the control of local education authorities and should remain as at present under the direct control of the Board—(a) Endowments or parts of endowments held for solely religious education or solely for the purpose of a denomination ; (b) the sites and buildings of non-provided schools and of disused non-provided schools ; (c) non-local charities, subject to a power to be vested in the Board to apportion the charities between the various areas interested, or to vest the control of the charities in a joint committee containing representatives of more than one local education authority ; and (d) charities which the Board regards as unsuitable for transfer :

3. That, with the object of defining the purposes to which educational endowments may be applied, a list of purposes should be included in a schedule to the Act dealing with the matter, and that the Board of Education should have power by Order to be laid before Parliament to make additions to or omissions from the list :

4. That in order to facilitate the treatment of cases as to which there is no disagreement, the Local Education Authority should be empowered to consent in writing, without a formal scheme, to the application by the trustees (from time to time and subject to such conditions and limitations as the local education authority thinks proper) of their endowments to any one or more of the authorized purposes :

5. That, after the local education authority have sealed a scheme, a period of one month should elapse during which the trustees, the parish meeting or parish council, or any ten adult inhabitants of the area of benefit should have power to appeal to the Board against the provisions of the scheme, and that (on an appeal) the Board should have power either to confirm the scheme, to confirm the scheme with modification, or to refuse to confirm the scheme :

6. That the local education authority should have power, subject to an appeal to the Board, to make a scheme apportioning a denominational endowment between its religious and secular purposes :

7. That "for the purposes of apportionment," there should be "a statutory definition of denominational trusts" :

8. That section 13 of the Education Act, 1902, be "everywhere repealed".

These recommendations will not be unanimously welcomed.

(a) It seems clear that, whatever possibility theoretically remained opened, the doctrine of *cy près* would (for all practical purposes) be superseded by the scheduled "list of purposes". Speaking with rough but sufficient accuracy, we may say that the recommendations would substitute an *administrative* process for a *judicial* process. Mr. Birrell attempted to do this in 1906, but he had to withdraw his proposals.

(b) Churchmen would not willingly submit their denominational endowments to apportionment by the local education authorities. Unfortunately, not every local authority could be reasonably trusted to apportion scrupulously between "religious" and "secular" purposes.

It is noteworthy that one member of the committee—Mr. W. C. Bridgeman, M.P.—abstained from signing the Report chiefly because the division of "denominational endowments into two separate portions, religious and secular, would, in his opinion, be, in most cases, a complete violation of the founder's intentions".<sup>1</sup>

<sup>1</sup> Cp. p. 320

(c) The repeal of section 13 would not improbably bring about or facilitate the diversion to other purposes of trust monies which are now paid to managers of non-provided schools for "managers' purposes".

HAKLUYT EGERTON.

## APPENDIX II.

### MEMORANDUM BY THE PRINCIPAL OF A TRAINING COLLEGE.

*Regulation* "(d) (i) In the selection of candidates for half the number of places which will be vacant in 1909, the authorities of a college may not reject, or invite the withdrawal of the application of any candidate, not belonging to the denomination of the college, on the ground of religious faith or by reason of his refusal to undertake to attend or abstain from attending any place of religious worship, or any religious observance, or instruction in religious subjects in the college or elsewhere, nor may they require any candidate, not belonging to the denomination of the college, to enter for any examination in religious knowledge."

With regard to the above regulation, it must be noted that—

1. The Church colleges, acting through a representative council appointed by them, have only submitted under protest and with the following reservations—
  - (a) That candidates not members of their own communion shall be lodged in an annexe recognized by the board, so as not to break the terms of the trust-deed of the college, and that such students shall be counted as resident students.
  - (b) They have declared plainly that, did the number of such students at all approximate to 50 per cent, it would be impossible to submit to the

regulation, as it would destroy the whole character of the foundation of the colleges.

2. They have repeated what is known as the Church's Offer, viz. to provide annexes in connexion with their colleges, for undenominational students, up to say 10 per cent of the number for which the college is recognized; such students to share in every advantage of the intellectual and social activities of the college without being required to take part in the provision for religious instruction and worship to which they would have conscientious objections. The council is now in a position to prove by experience of the results of the *modus vivendi* that this provision would not only adequately meet the needs of the case, but that the number of places so secured to Nonconformists, would be in excess of the number which they now occupy under the *modus vivendi*. They contend that this would make a satisfactory basis of permanent settlement which could be accepted by both sides, as securing to the one the provision of an adequate number of places, while securing to the other the maintenance, desired by them, of the definite religious character of their colleges.

In considering the general position, it should be remembered:—

1. That owing to the building of municipal colleges of an undenominational character, a very large number of additional places have been thrown open to candidates free from religious tests of any kind.
2. That the *modus vivendi*, owing to the uncertain nature of its working, is most uneconomical. A college might be called upon to provide fifteen places in one year and in another year only eight or ten. This changing number would mean grave difficulty and loss in working arrangements. You cannot easily rent a



house or houses suitable for the purpose of an annexe to meet constantly fluctuating numbers.

3. The Minister of Education has himself recognized the importance of securing religious teachers, by the publication in the regulations of chap. x (1909) which was afterwards withdrawn. In view of this it seems most unreasonable that colleges, prepared to make working arrangements for the admission of students not of their own communion, should be called upon to imperil that religious training which the minister himself has confessed to be so valuable and for which these colleges were definitely founded. The fact cannot be concealed that if the character of the Church or denominational colleges is destroyed there will be no guarantee whatever for the religious instruction of any class of teachers in our schools.

### APPENDIX III.

WE desire to express our cordial thanks to the following persons and associations who, in accordance with Mr. Athelstan Riley's invitation, sent in various schemes and suggestions. These have all been carefully considered, together with those finally selected as typical specimens, which have been printed at length in this book. Some of the suggested plans for meeting the religious difficulty are of considerable merit, and the space at our disposal, if the book was to be kept within reasonable limits, alone prevented their inclusion.

Rev. W. F. Norris, Archdeacon of Halifax.

Rev. J. H. Charles, Vicar of Oakham. (This is specially interesting as being a scheme actually in force at Oakham.)

Miss Francis, Head Mistress at St. Peter's School, Eaton Square, London.

Mr. John P. Eglen, Hon. Treasurer, Birkenhead Advisory Committee of Church Schools.

Rev. A. C. Almack and Lord Nelson.

Friends' Guild of Teachers. (A leaflet containing views of the Guild.)

Rev. H. J. Bardsley, Master of St. Paul's, Hulme.

Mr. T. Edmund Harvey. (An Address.)

Mr. J. J. Findlay, Professor of Education at Manchester. (An Article reprinted from the "Westminster Gazette," of 26 Nov. 1906.)

Mr. T. B. Bishop.

Mr. F. J. Leslie, Member of Liverpool Education Committee.

Prebendary R. C. Baynes.

Rev. John Morris, Rector of Narberth.

Rev. G. H. Harris of Christ's Hospital.

Mr. W. Langford.

Mr. A. J. Hodgarth.

Mr. R. M. Moorson.

Mr. Gerald Fitzmaurice.

Rev. D. S. Murray. (Letter to "Church Times".)

Mrs. Seymour Grenfell.

Rev. J. H. C. Clarke.

Miss Hartley.

Rev. J. Midgley. (Pamphlet on Allocation of Rates.)

Miss Geraldine Hodgson, B.A., D.Litt., Lecturer on Education, University College, Bristol.

Miss Caroline Hoare.

Rev. A. T. Fryer.

Mr. F. H. M. N. Humphrey-Davy.

Mr. G. R. Amsted.

Rev. H. W. Andrews.

Rev. A. J. B. Atkinson.

Mr. A. O. Simmons. (Letter to "Hampshire Chronicle" and Article in "Westminster Review".)

Rev. J. W. Adams.

Rev. W. A. Frith.

• Miss Florence Longridge.

Bishop of Manchester. (Article in "Church Family Newspaper".)

Mr. J. J. Cockshott.

Rev. F. Daustini Cremer. (Letter to "Manchester Guardian".)

Bishop of St. Asaph. (A Bill of 1904.)

Rev. D. Clifford. (Letter to "Times".)

Secular Education League. (Letter signed by G. K. Chesterton, Stewart Headlam, Bishop Mitchinson, G. W. E. Russell, and others.)

Lord Robert Cecil and Mr. Runciman. (Letter to "Times".)

Passive Resistance Committee. (Report of Conference, Nov. 1908.)

- Manchester Diocesan Committee of Church Schools. (Resolution, 1908.)
- Mr. F. D. Acland, M.P. (Speech.)
- Lord Halifax, Lord Hugh Cecil and Dr. Wace. (Circular letter.)
- Rev. J. Gregory Smith.
- Lady Frederick Cavendish. (An Article with notes by a friend.) "Onlooker."
- Rev. J. O. Bevan.
- Rev. J. P. Donald.
- Mr. M. E. M. Donaldson.
- Rev. J. Duggan. (A very interesting letter.)
- Mrs. Le Blanc-Smith.
- Rev. J. N. Herbert.
- Mr. E. L. Holland.
- Miss Sophia Beale.
- Mr. W. Howard.
- Rev. C. W. N. Hyne.
- Mr. G. A. Macirone.
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- Lt.-Col. R. C. Parry.
- Rev. J. Pimblett. (A scheme on German lines.)
- Rochester Deaneries. (Discussion of four main principles.)
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- Mr. F. E. Sach. (A Bill introduced at the Three Towns Debating Society.)
- Mr. John W. Stranderwick.
- Mr. Surrudge.
- Mr. Bertram Talbot.

Dr. C. Martindale Ward.

Rev. H. Wesley Dennis, Principal of St. John's Training College, Battersea, and Rev. Mosley Stevenson, Principal of Warrington Training College. (Allocation of schools.)

Anonymous. (A scheme without an accompanying letter.)

Rev. T. H. Wrenford, and Mr. H. E. Bannard.

Rev. J. Worthington.

Rev. A. R. Sharpe.

Colonel Lambert.

Very Rev. J. S. Brownrigg.

Mr. J. C. Kerry.

Mr. C. H. R. Weidemann.

Rev. Arthur Ogle.

The "Church Times" Scheme.

Rev. Canon Douglas Maclean.

Lord Sheffield. (Two schemes of 1905 and 1908, not for publication.)

Mr. W. H. Fayer.

Colonel Le Mesurier, R.E. (Two letters.)

Church School Emergency League. (A very complete and elaborate scheme.)

Rev. Hector McNeile.

Lord Salisbury. (A Parents' Committee Scheme.)

"School Manager in the Midlands." (A German, formerly an elementary school teacher in Germany.)

Rev. Clement F. Rogers. (An Article in the "Church Quarterly Review".)

Rev. T. W. Caw.

Bishop Thicknesse. (A letter.)

Rev. T. Holland. (A letter.)

Miss Fabery.

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