ART. II.—PEWS.

THE Parish Churches Bill is a curious illustration of what is sometimes called trying to sit on two stools. The framers are eagerly desirous to change the law, while at the same time they claim the law as already on their side. The obvious anomaly of this position is endeavoured to be surmounted by assuming the occurrence of a grievous lapse from the "ancient Common Law," which has led to customs in our churches equally at variance with theory and sound practice. Thus the Bill, although recommended by its defenders as a valuable measure of Church Reform, recommends itself rather as a scheme of conservative reaction, by which the Common Law is to be "declared with a view to its better observance." But it is almost superfluous to point out that Parliament is not accustomed to pass Bills for declaring what is already the law. It is the duty of the Judges rather than of the Legislature to see to the observance of the law, and it strikes me that if the House of Commons took to emphasizing all the laws which from time to time seem in danger of being forgotten by different classes and individuals, the chances of fresh legislation, already meagre enough, would vanish entirely.

I lay stress at the outset on the inconsistency of the basis of the Bill, because it seems to me to be not an accidental feature, but to enter into the essence and to penetrate to the core of the subject. Any particular system of church seats might, of course, be recommended on the ground of general advantage, even although it were an innovation, or it might be defended because it was legal, ancient and established, even although its modern expediency might be doubtful. But the merit, and at the same time the weakness, of the double line of advocacy in favour of the Pew Bill, is that when pressed on the inconvenience of the free and open plan, its exponents enlarge on the ancient common right of the parishioners; and on the other hand, when pressed with certain very plain facts of law and history, they shift easily on to the other leg, and inveigh against the degrading slights which feudal snobbishness has inflicted on poor church-goers.

Passing from the inconsistent ideas on which the Bill is based, it will be well before we go further to consider what is the present state of the law as to pews and church seats. Now, in the first place, it must be remembered that there was no pew system

before the Reformation. No doubt stools and benches, at first movable, were used in some churches from a much earlier date,[1] but as a rule standing room only was provided until the Reformation period, when preaching came into prominence, and the services were so modified as to make seats almost a matter of necessity. The Canon law is, I believe, absolutely silent as to pews, and in the Roman Catholic Church to this day no rights in sittings are acknowledged. Thus it is only in the last 350 years that our English pew law has grown up. Until there were seats there could be no appropriation of places in church, still less any law regulating or forbidding such appropriation. A man would scarcely seek, and it is difficult to see how he could possibly obtain, the right to stand or kneel on any particular spot of the church pavement.

The Bishop of Peterborough's charge against Henry VIII., that under him "property in pews was invented," is therefore scarcely fair. It would be nearer the fact to say that pews themselves were invented under Henry VIII. (although they were not unknown earlier), and thus the opportunity for creating rights of property in them first occurred. But the truth is that neither then nor later was property in church seats acknowledged or tolerated. To whatever extent pews are now proprietary, it is due to special legislation, either private Acts, or the Building Acts of the present century—legislation which, whatever its theoretical errors, has enabled a vast number of churches to be built, which, humanly speaking, would otherwise never have existed.

In the early days after the Reformation it would seem that persons were permitted to construct pews for the use of their families at their own cost. Those who obtained this leave would be people of means and position, and they probably looked upon the pews which they had paid for as their own property. But this was an error of individuals, not of the law. The rights of parishioners were never lost sight of by the Church Courts, and although the law of pews had not, I believe, thoroughly crystallized till the close of the seventeenth century, the main principles on which it is based have been recognised from the very first.

Thus in 1596, in the Court of the Archdeacon of Essex, Matthew Evered was detected for having erected a pew in Rottingdean Church, which "did breed contention."[2]

As I have quoted from the late Archdeacon Hale's book of

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[1] For an interesting collection of pre-Reformation references as to Church seats, see Heales on "Pews," vol. i., chaps. i.—iii.

[2] "Hale's Precedents," p. 212.

Precedents in the Ecclesiastical Courts of the diocese of London, I should like to say that it is much to be regretted that his example has not been followed in other dioceses. The records of the Consistory and Commissary Courts are practically unknown and unused. Yet they contain not only the best and most abundant materials for ascertaining the state of the ecclesiastical law in former times, but also a wonderfully instructive picture of English social life at different epochs. The Church Courts were the police courts of early times, and took cognisance—often I think by usurpation—of every sort of offence, no matter how trifling. The side-lights which these records throw upon manners and customs are invaluable. The assistance which everyone who has used Archdeacon Hale's book must have derived from it, is an indication of the excellent results which would accrue if his example were followed in every English diocese.

The truth is that for want of any effort to utilize the records of the Consistory Courts there is a great lack of early precedents in English ecclesiastical law. The first of the printed volumes of reported cases dates from the middle of the last century. The references to Church matters in the earlier Common Law reports are very fragmentary, and, as might be expected, not very accurate. Hence it is not easy to trace the development of the law of Pews from the Reformation downwards. But neither is it for our purpose very important. It will be enough if we take the law at a time when it had become settled and complete. For this purpose we cannot do better than refer to the celebrated judgment of Sir John Nicholl in Fuller *v.* Lane (1825).[1] In that judgment he delivered a somewhat elaborate exposition of the law on the subject, which has ever since been considered as of great authority. It is on a sentence of that judgment that the preamble of the Parish Churches Bill is founded. Unfortunately the draftsman has selected what suited his purpose, and ignored what did not :—

"By the general law, and of common right, all the pews in a parish church are the common property of the parish; they are for the use in common of the parishioners, who are all entitled to be seated orderly and conveniently, so as best to provide for the accommodation of all."

This is the proposition on which the framers of the Parish Churches Bill proceed, as if it contained the whole truth of the matter. The preamble of the Bill insists on pews being for the "*free* use in common of the parishioners," and free in the sense of uncontrolled seems to be intended. But so used, the word, which

[1] 2 Add., 419.

Sir John Nicholl, it will be observed, does not employ, conveys a misconception. The church (I am speaking of old parish churches) is free in the sense that no money can legally be charged by anyone for the use of its seats. It is for the use in common of all the parishioners in the same manner that the Queen's highways are for the use in common of all her Majesty's lieges. Everyone may walk along the high road, but no one can do exactly what he likes on it. The public right of using the streets and roads is a conditional right, subject to the regulation and supervision of the executive authorities. Try and set up an apple-stall in Regent Street, and you will soon find that your rights in Regent Street have their limitations. The police, moreover, exercise a discretionary power which operates to give privileges to one which are denied to another. Thus, suppose you take your apple-stall, which has been turned out of Regent Street, and getting up very early in the morning, erect it at some convenient corner which strikes you as a more eligible site for business; a little later another claimant for the position turns up in the shape of an old woman, who for years past has been allowed to display her wares there. Although you have equal rights to the highway, and it is for the use in common of both of you, you will find that the police will make you move on, and will use the civil arm to re-establish your rival.

So it is with church seats. They are for the use of all the parishioners, truly enough, but their user is subject to conditions and regulations. The Bishop takes the place of the police in my illustration. The next sentence to that which I have given from Sir John Nicholl's judgment is this: "The distribution of seats rests with the churchwardens as the officers, and subject to the control of the ordinary."[1] The Bishop's authority is delegated to the churchwardens, who, in placing the people in seats, act simply as the Bishop's agents.

There seems no reason to doubt that the churchwardens have always, since church seats existed, possessed this power of placing the people in them.

Thus, in 1595, the churchwardens presented before the Archdeacon of Essex's Court a man and his wife, "which will not be ordered in the church by us, the churchwardens, and doth use us with very hard speeches."[2]

Again, in 1579, Mrs. Harris, of Burnham, was arraigned before the same court, because "she refuseth to keep her seat in

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[1] 2 Add., 419. See also 1 Gibson's Codex, p. 197, "These heads are everywhere laid down in the cases on this subject, and have never been contested."

[2] Hale's "Precedents," p. 210.

the church according to the order appointed by the Archdeacon." Her husband explained on his wife's behalf that she had been "placed in a pew with two other women, whereof one hath a strong breath."[1] Hence her revolt.

Another case about the same date, and before the same court, shows us in vivid colours the picture of a village feud of bygone days, the like of which might be met with in our own time in many a country parish. William Rooke, of Westham, was presented because that—

He pulled awaye a man's hatt and threw it from him, and would not suffer him to sitt in his seate, in the tyme of devyne service, but molested him; wherby all the whole parishe was disquieted in the service tyme, and the minister was compelled to stay his service, throughe his rudenes, w^ch^ he sondry tymes hathe, and dothe use, in the church in service tyme. Comparuit et fassus est that upon a certayne Sondaie happeninge in somer laste, he this respondent, in the tyme of divine service, cominge into the parishe church of Westham, and enteringe in his pewe, *in which he was plased by the churchwardens;* and from tyme his ancesters have there bene plased, he by chaunce did throwe downe the hate of Mr. Shipman, w^ch^ honge as he entered into the pewe, and not otherwise; in which pewe the same Mr. Shipman willfully and stobernly entereth and entred, *being not there plased by the churchwardens.*[2]

It will be seen, therefore, that the right of the parishioners to the free use in common of the parish church, is limited and conditioned by the authority which the churchwardens, as agents of the ordinary, possess of selecting what seat each parishioner is to occupy, or, as it is technically called, of placing the parishioners.

There are three methods or degrees of placing parishioners:

1. A parishioner may be placed in a seat just for the nonce, as, *e.g.*, for one service or day.

2. A parishioner may apply to the churchwardens to allot him a regular seat. If there is room in the church they are bound to comply. A seat so allotted is set apart for the use of that particular individual, but only so long as the churchwardens think fit. The exigencies of the parish may render it necessary to revoke the permission, and they can do so at any time. The ordinary (*i.e.*, the Bishop through his Chancellor) can control the action of the churchwardens, in either giving or taking away seats.

3. A parishioner can go to the Bishop's Chancellor and ask for a *faculty, i.e.*, an order of the Consistory Court, dedicating a particular seat specially to his use. In former days all sorts of irregular faculties are said to have been granted, but there are now two forms only which are recognised as legal:

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[1] Hale's "Precedents," p. 171. [2] *Ibid.*, p. 164.

(1) To A and his family, so long as they continue inhabitants of the parish [or inhabitants of a certain house in the parish].

This is the usual form used.

(2) To A or other, the owner for the time being of a particular house in the parish.

This second form is now almost obsolete. Indeed, Sir John Nicholl, sixty years ago,[1] declared that it had then been entirely discarded. But I have ascertained by inquiry at the different Diocesan Registries that faculties are still sometimes, and in some dioceses, granted in this very objectionable form, the effect of which is to annex the pews to houses, irrespective of the character or position of their inmates.

It is doubtful whether faculty rights can be revoked by the ordinary, or be got rid of by any means except voluntary abandonment.

When an individual or a family, or the owner for the time being of a particular house, has occupied the same pew for a great many years, and has repaired it or in some other way exercised proprietary rights without dispute or interruption, he acquires a prescriptive title to the pew; that is to say, a faculty is presumed to have been granted in time long past, and to have been lost, and he is allowed the same advantages as if such a faculty were really in existence. Judging by their speeches in the House of Lords, both the Bishop of Peterborough and his opponent, Lord Grimthorpe, seem to have been imperfectly informed as to the facts relating to faculties. For while the former asserted that *all* faculties attached pews to houses (which is almost the exact reverse of the case), the latter declared that "no faculty had been granted for many years"—which is inaccurate, even with reference to the more unusual form spoken of by the Bishop.

Of the three methods of placing parishioners, the second, the churchwardens' power of allotting seats, is the most important, and the most frequently exercised. Applications for faculties are few and far between, and if, as the Bill proposes, faculties were abolished altogether, it would make but little difference. But the churchwardens' power of appropriating seats to particular families or individuals is a matter of moment. Now this power is not entirely arbitrary. There are certain rules which are supposed to guide their action. Of these the principal and, for our purpose, the only one worth mentioning, is that the churchwardens, in placing the people, are to have regard to their social position and station. I mention this because it disposes finally of the idea

[1] **Butt *v.* Jones, 2 Hagg., 417 (1829).**

that the poor and the rich have, according to law, a right to equally advantageous positions in church. I am very far from saying that the law is good; I confess, according to our notions, it seems repulsive, but nevertheless it is the law.

Sir John Nicholl says in Fuller *v.* Lane:[1]

> The parishioners, indeed, have a claim to be seated according to their rank and station; but the churchwardens are not, in providing for them, to overlook the claims of all the parishioners to be seated, if sittings can be afforded them. Accordingly they are bound in particular not to accommodate the higher classes beyond their real wants and to the exclusion of their poorer neighbours, who are equally entitled to accommodation with the rest, though they are not entitled to equal accommodation, supposing the seats to be not all equally convenient.

The accuracy of this statement of the law has been questioned; and one writer, Mr. Heales, the author of the best modern treatise on pews,[2] says: "It will be noted that the judge referred to no authority for his opinion, and a careful search has failed to discover any." I have already mentioned the lack of old precedents, so that the absence of authority would not be very surprising, even if it really existed. But besides many inferential references to the practice, there is at least one direct statement as to it in Archdeacon Hale's book. At p. 158 there are some directions to the churchwardens of St. Peter's, Malden, Essex, dated March, 1577, amongst which is the following: "Every parishioner to be placed according to his degree."[3] Of modern authority within the last century there is plenty, but this is of course inadmissible to rebut the charge of a supposed infraction in recent days of ancient law and practice.

Such, then, very briefly is the law of pews as it is, and as it has been ever since there were pews to have a law about. Buying, selling, or renting pews is absolutely excluded. The seats are for the use of all the parishioners, subject to the arrangements of the churchwardens acting as the agents of the Bishop; and they are to have regard, in placing the people, to their rank and station, giving the best seats to those who have the best estates.

Now what is the grievance which is supposed to require an Act of Parliament to get rid of? It may seem like affectation to ask the question, but I confess to have experienced the greatest difficulty in finding a coherent answer to it.

What is the grievance? Not the extortion of pew-rents or the buying and selling of seats in old parish churches, for such practices are already absolutely and clearly illegal, and to whatever extent they exist can be effectually dealt with by the

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[1] 2 Add., p. 426. [2] Heales on Pews. 2 vols. Butterworth, 1874.
[3] See also a pew faculty given in 2 Gibs., p. 1464.

Diocesan Chancellors in their several courts. Not the existence of pew-rents in the new parish churches, created under the Church Building Acts, for it is not proposed to interfere with them.

What then is the grievance? Not faculty pews already created, for they are not to be disturbed. The chance of the grant of fresh faculties for Church sittings is scarcely an adequate reason for an appeal to Parliament. Very few pew faculties are applied for nowadays, fewer still are granted. Moreover, the whole matter is one of discretion, and each Bishop can easily prevent the creation of fresh faculty rights in his own diocese. To prevent the creation of prescriptive rights an Act is, I think, necessary, but it is scarcely worth while to devote a separate statute to so minute a detail.

Still I ask, what is the grievance to be remedied? It is not surely an unwise, or ignorant exercise of discretion by churchwardens. That is an evil which no Act of Parliament can touch. So far as it admits of a remedy at all, I think a remedy will be found in a judicious use of the visitatorial power of the Bishop through his archdeacons and rural deans, by which the churchwardens might be advised as to the nature of their duties and supervised in the discharge of them.

The real purpose, and, so far as I can see, the only important result of the Bill must be to take away from churchwardens the powers which, as we have seen, they have always possessed, of placing the people by allotting pews to families, and to turn the churchwardens into mere pew-openers.

Instead of a parishioner having his own place in church given to him by the churchwardens, and kept for him by the churchwardens until, in their discretion, the interests of the parishioners at large require a change, no one will know from Sunday to Sunday where he may sit in church. Of course it is well known that this is the ideal condition which the Free and Open Church Association desire to bring about; but the Bill, concocted under their auspices, is so doubtful in its expressions that the Bishop of Peterborough himself (although he has consented to be its sponsor) is only very partially in sympathy with its purpose. The third and fourth sections (the operative ones) are as follows:

Every parish church in England and Wales is hereby declared to be for the free use in common of all the parishioners for the purposes of Divine worship, according to the rites and ceremonies of the Church of England.

From and after the passing of this Act it shall not be lawful for any archbishop, bishop, ordinary, court, or any corporation, or other person or persons whomsoever, to issue any faculty granting or confirming, or purporting to grant or confirm, or in any other way to appropriate any

seat or pew in any parish church to or in favour of any person or persons whomsoever, except in the cases hereinafter provided. The exceptions in the provisoes go to chancels, private aisle, and chapels and churches built under the Church Building Acts.

Now passing over the minute question of faculties, and remarking by the way that the Bill does not, as it well might have done, forbid the future growth of prescriptive titles in pews, it is singular to note that although the Bill will operate principally to abridge the authority of churchwardens, they are not so much as mentioned, but merely swept in amongst "other person or persons whomsoever." Yet if you will consider the clauses I have quoted with reference to the existing state of the law, I think you must come to the conclusion, for it seems inevitable, that their main effect will be what I have said.

Now is it worth while to pass a Bill through Parliament to accomplish this result? I do not put it now on the minuteness of the outcome, for it seems to me by no means inconsiderable or unimportant. But is it well or ill to take away from churchwardens the power of seating the people? I know what answer the Free and Open Church Association would give. They would say without reserve, "It is well;" and accordingly their Bill does so, although not very neatly or straightforwardly. But so little sympathy is felt with their object, and so little is it understood, that even the Bishop of Peterborough himself, when the Bill was attacked on this point in the *Times* newspaper, hastened to disown any desire to abridge the powers of churchwardens. "The effect," he says, "of the Bill would be to prevent all permanent appropriation of seats in parish churches, leaving to churchwardens whatever right they now may have of seating the parishioners from time to time, whether from Sunday to Sunday, or for longer periods, but in every case giving only a right of occupation subject to such alteration or limitation as occasion may require, and subject also to appeal to the ordinary."[1] But the condition of things which the Bishop wants to produce is exactly that which exists now. Churchwardens can only give "a right of occupation subject to such alteration as occasion may require," and in conferring this right they are said to make appropriations. They cannot allot or appropriate in any other sense. But the Bill which the Bishop has adopted rather than begot, by stopping appropriations puts an end not to the "property rights in pews," which (except by faculty or prescription) do not exist, but to those very "rights of occupation" which the Bishop desires to retain.

I shall not waste words by discussing the merits of the so-called "Free and Open Church" question. As the Bishop of

[1] See *Times*, January 30, 1886.

Peterborough is against allowing a free scramble for seats, so I believe nearly all churchgoers, rich and poor, are against it too.

I assume that we do not want to do away with all regulation of sittings; and I content myself, therefore, with drawing attention to this one point, that the Bill is aimed primarily and almost exclusively at the destruction of the authority of churchwardens; in perfect consistency, I admit, with the views of its framers, the advocates of free and unappropriated churches, but in absolute antagonism to the opinion expressed by its chief promoter in Parliament, whose genius and eloquence have secured for the Bill whatever attention it has received.

I have said nothing about the pew-rent churches, because although this aspect of the matter has attracted a great deal of criticism, especially from the clergy, I confess I do not see much cause for it. Pew-rents legally created under the Church Building Acts are preserved. Then it is said that in many cases, by some mistake or omission, the formalities of the Church Building Acts have been neglected, so that the pew-rents, although they might have been legally created, are in fact illegal and unauthorized. This difficulty has been met by the Bishop of Peterborough's frank avowal in the House of Lords: "I do not want to take advantage of any lapse or mistake on the part of any incumbent or churchwarden, or to promote any confiscation of clerical incomes. It is only reasonable that those who have in perfect good faith accepted that position should have a remedy, and be entitled to go to the Ecclesiastical Commissioners and obtain such a sale of pew-rents as might and ought to have been obtained at the time when the church was built."

It would be easy to introduce an amendment to carry this object into effect; and we may assume that, if the Bill is proceeded with, when it emerges from the Select Committee now sitting, such an amendment will be adopted.

To wind up what I have said. The law of pews may be amended—advantageously amended as it seems to me—by abolishing faculties; by preventing new rights of prescription from coming into existence; by getting rid of the old rule by which people were arranged according to the length of their purse; and by giving to all, whether rich or poor, equal opportunities of attending to the worship of God, without distraction or discomfort. But do not let us in our eagerness for reform destroy the wise plan of our forefathers, by which every person in a parish can, so far as the limits of the church permit, claim to have allotted to him and to his family seats, to which they may regularly betake themselves, Sunday

after Sunday, and year after year, so long as the circumstances of the parish allow of it. These seem to be the conditions and the limitations of pew-reform. The Parish Churches Bill is, I venture to think, at once futile and mischievous; futile because it is vague and hesitating where it should have been precise, and mischievous because it makes sweeping changes where none are required.

LEWIS T. DIBDIN.

ART. III.—AMIEL'S "JOURNAL INTIME."

THERE has grown up among us within the last century a class of literary production which is altogether new, yet full of a deep personal interest and importance, and which we cannot afford to disregard. It has been justly named "The Literature of Introspection." Quietly yet steadily it has made its way in our midst, though few have marked its progress; Obermann, De Senancour, Eugénie and Maurice de Guérin, have made those familiar with it who, led by chance or by sympathy, have touched upon their work. Mr. Shorthouse, quite lately among ourselves, contributed a most important monograph to swell its ranks, in the person of "John Inglesant." But it has remained for an obscure Genevese Professor to startle the thinking world with a work far higher in merit than "John Inglesant," though as yet not well known to the majority of readers.

The "Journal Intime" of Henri Frédéric Amiel is a revelation not only to the public at large, but even to his most intimate friends who undertook to give it to the world. Published necessarily after his death, and, with the exception of a few scattered "thoughts," jealously guarded from every eye until then, it has proved its claim to be one of those gems set apart in the history of culture and philosophy as belonging to that new "Literature of Introspection."

Our English taste does not, as a rule, bend in the direction of abstract philosophies; but we need not be precluded from the sorrowful enjoyment afforded us by Amiel's "Journal Intime." It is well for us, as a nation, that our natures are too vigorous, our tastes too positive, our minds too objective, to be in danger of falling into Amiel's mistake; the mistake to which he sacrificed all his hopes, all his happiness. For the history of Amiel as shown by himself, as told to us in a very small degree by his friends, is from first to last summed up in a very few words. It was a forlorn search after the ideal. M. Scherer, in the sketch of his friend which serves as preface to the